

dismissed the application and made orders accordingly. The orders are at end of this decision. These are the reasons.

2. The intended quashing order would quash a ministerial “order” made on 5.4.2007, under s: 26 (1) of the Petroleum Act, cap. 225, Laws of Belize, by the Minister of Natural Resources and the Environment. By that order the Minister directed Mr. Wan-I-Huang, the applicant, to allow Belize Natural Energy Limited, the second respondent, known as the contractor, to conduct petroleum operations on four adjoining parcels of land, the subject matter of this application, all in Cayo District, Belize; and that the exploration activities be completed within two years. Mr. Huang was shown on two transfer certificates of titles to be the owner of two of the parcels of land. The third certificate showed other persons as owners. No certificate was filed in respect of one parcel. The applicant said, he was the agent of the owners of the parcels he did not own. He did not produce powers of attorney appointing him agent. There has been no evidence that any of the four parcels of land were physically occupied or developed.

3. The property in, and control of petroleum and other minerals in

Belize, belong to the State of Belize –see *s: 2 of Mines and Minerals Act Cap 226, Laws of Belize*. Before the Minister’s order issued the Government had agreed with, and engaged the second respondent to explore for petroleum in an area that included the four parcels of land. Other land owners and occupiers in the area had come to agreement with the contractor for the use of their lands for the exploration activities and for the sums of money payable for the use, and as compensation generally.

4. The grounds on which the applicant relied for his application for permission were two, namely, 1) that the Minister acted *ultra vires* his power in s: 26 (b) of the Petroleum Act; and 2) that if the Minister acted *intra vires*, then his action was not “in conformity with the Constitution of Belize”. Section 17 of the Constitution was cited. The grounds covered nine paragraphs, eight of them were merely arguments about the two alternative grounds I have stated.
5. The affidavit dated 25.4.2007, of the applicant, is scanty and lacking in the material facts. The applicant simply stated that the Minister, on the application of the contractor, issued a permit to the contractor to

enter the applicant's land; and that the order did not include an "offer of compensation..." for the use of the land and further, that the Minister, "did not require the contractor to pay to the applicant, reasonable compensation for the use of the land". The affidavit did not commit to a statement as to whether the applicant gave consent for the petroleum exploration activities of the contractor at all, or as to whether any demand made as a condition of consent was reasonable.

6. On the other hand, the two affidavits; one by Mr. Andre Cho, filed on behalf of the first respondent, and the second by Dr. Gilbert Canton, filed on behalf of the second respondent, stated much detail of events and discussions between, the applicant and the second respondent, and between the applicant and the Minister and officials of the Ministry of Natural Resources and the Environment, represented in court by the first respondent. The applicant did not, in his affidavit, deny or contradict the contents of the two affidavits. In fact learned counsel Mr. Hubert Elrington for the applicant, in his submission, ended up relying on the facts in the two affidavits filed for the respondents. I am entitled to regard the contents of the affidavits filed for the respondents as proved.

7. The affidavit evidence confirmed that the Minister made an order authorizing the second respondent to enter the four parcels of land for the purpose of carrying out exploration for petroleum thereon. Two transfer certificates of title exhibited, confirmed that two of the four parcels were owned by “Huang, Wan I”, the applicant. He did not produce certificates to prove that he owned the other two parcels; and he has not produced powers of attorney authorizing him to act for the owners or occupiers of those other parcels. He did not say he was in occupation either. So, in regard to the two parcels that the applicant did not own, he has not shown to the court, sufficient interest to bring judicial review proceedings to review the Minister’s order in as far as it affected the two parcels of land. The applicant’s application to the extent that it challenges the Minister’s order in respect of those two parcels that the applicant did not own, did not occupy, and had no powers of attorney for, is refused and dismissed.

8. The consideration that follows is only in respect of the two parcels transferred on 18.7.1994, to the applicant and he has been shown to own. The parcel numbers do not appear on the certificates. The price

for which the parcels were transferred to the applicant were also not shown.

9. The ground that the Minister's order authorizing the second respondent to enter the parcels of land and carry out petroleum exploration activities was, "not in conformity with the Constitution" is completely baseless. Section 17 of the Constitution provides protection from arbitrary taking possession of property or arbitrary acquisition of property of another. It protects right to property, but allows for taking possession or acquisition of another's property, provided it is done "*under a law that – (a) prescribes the principles on which and the manner in which reasonable compensation thereof is to be determined and given within reasonable time and (b) secures to any person claiming an interest in or right over the property, a right of access to court...*" It is not clear from the ground and submission what facts are regarded as failure to conform with the Constitution. My explanation as to the reason for not accepting that the Minister's order did not "conform" with s: 17 of the Constitution is therefore based on the facts that I consider might be regarded as

relevant to the question of whether the order is consistent with s:17 of the Constitution.

10. The petroleum Act under which the Minister made an order is a law that provides for taking possession and use of land owned or occupied; it prescribes for reasonable and prompt compensation, and for access to court; the matters required by subsections (a) and (b) of section 17 of the Constitution. So the petroleum Act 'conforms' with s: 17 of the Constitution. I agree with learned senior counsel Mr. D. Courtenay for the second respondent, that the ground advanced by the applicant did not seek to challenge the lawfulness of the Petroleum Act; nevertheless, I must mention that the Petroleum Act does not offend s: 17 of the Constitution, so as to answer fully the submission by the applicant.

11. If the contention was that the order made by the Minister did not include a provision for compensation and so it was unconstitutional, then the answer is; no, the order is not unconstitutional because it did not include in its text an order for compensation. The facts show that in the discussion with the applicant, the Minister wanted

compensation agreed between the applicant and the second respondent. When the second respondent applied to the Minister for an order, he directed the second respondent to have, yet further discussion with the applicant and agree on compensation. Unfortunately they failed to agree on the quantum. The Minister, in the circumstances, decided to make an order under s: 26, directing that the applicant allow the second respondent to enter the parcels of land.

12. The Minister's order did not state that compensation was not payable nor did it in any way deny compensation. On the facts, it is obvious that the Minister left the question of compensation to be pursued under s: 27 of the Act, which provides for arbitration. Section 26 or the Act as a whole, does not require that compensation must be stated in the Minister's order. On the contrary, the provision in s: 27, that in the event of disagreement the question of compensation be referred to an arbitrator, implies that in that event the Minister's order may issue before the question of compensation has been settled. The decision of the arbitrator is expected to settle the question of how much will be reasonable compensation. There cannot be any cause for complaint at all in this case.

13. The ground that the Minister acted ultra vires was not made clear at all. It was submitted that the Minister could not issue an order under s: 26 of the Petroleum Act unless consent of the owner or lawful occupier of the land had been withheld, and that in this case the applicant gave consent, so the Minister had no power to issue the order.

14. I do not think even Mr. Elrington believed his submission. The correct position is that the Minister may issue an order if, “*after hearing both parties [he] is satisfied that consent is being unreasonably withheld.*” The operative clause is: “*consent is being unreasonably withheld*”. The facts are that; the applicant first agreed to the sum of US\$5,000.00 lump sum and US\$2,500.00 for the use of every two acres per year. That was the average accepted by other land owners in the vicinity; he was so informed. The applicant later changed his mind and demanded US\$100,000.00; and then again changed his mind and demanded US\$300,000.00 together with 2.5% of the total cost of operation and a percentage of the profit from sale of petroleum. Was consent not being withheld unreasonably?

15. The facts that are material in deciding the question are these. There is

no evidence that the two parcels of land were occupied and were being used, or that they had been developed in any way. There has been no evidence of actual or future injury or damage to the land. Payment of the sum of US\$300,000.00 could properly be regarded by the Minister as an unreasonable condition for granting consent. The demand for a percentage of the total cost of operation and of the profit was about factors totally unconnected with the value or use of the land. The total cost of production is simply total expense. The petroleum if found, belongs to the State of Belize. The Minister could properly regard the demand including those unconnected factors as unreasonable demand and unreasonable condition upon which consent would be granted by the applicant. I think that the Minister did not unreasonably arrive at his conclusion that consent of the applicant was being withheld unreasonably. He had enough relevant material facts from which to come to that conclusion, and make his order.

16. For the above reasons, I came to the conclusion that there is not any case, let alone an arguable one, for which permission for bringing judicial review proceedings could be granted. I think it was a matter of wild greed on the part of the applicant. Dr. Canton deposed that the

second respondent abandoned the operation. That would have been before this application was filed. I hope it was not because of the greed.

17. The application for permission to bring judicial review proceedings for a quashing order fails. The order made are:

- 17.1 The application dated 25th April 2007, by Wan I Huang, for permission, “to issue a claim against the Attorney General of Belize and the Minister of Natural Resources of Belize [and Belize Natural energy Limited] for an order for judicial review by way of certiorari to review and quash the decision of the Hon. Minister of Natural Resources dated the 5th day of April 2007...” is refused and dismissed.

- 17.2 Costs of the application are to be paid by the applicant, Wan I Huang, forthwith to the

respondents, the Attorney General and Belize
Natural Energy Limited.

18. Delivered this Friday the 27th Day of July 2007
At the Supreme Court
Belize.

Sam Lungole Awich
Judge
Supreme Court