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Case No: 161

The Truth, Reconciliation and National Unity Commission

In the Complaint of Madhav Kannan

31 December 2022

Determination on the Complaint of Madhav Kannan

Complainants:

Madhav Kannan

The Truth, Reconciliation and National Unity Commission ("Commission"), seized of the complaint of Mr. Madhav Kannan,

OBSERVING that the complaint of Mr. Kannan, who brings his complaint as a representative of the heirs of his father, Mr. Rajaram Naidu, was filed on 1 October 2019, in conformity with Sections 3(4) and 3(5) of the Truth Reconciliation and National Unity Act, 2018 ("TRNUC Act");

NOTING that pursuant to Section 2(8) of the TRNUC Act, the complaint must allege an abuse of human rights that was committed during or in relation to the Coup d'état of 1977,[1] and Mr. Kannan alleged unjustified acquisition of land,[2] during the primary temporal period of the Commission's mandate from the Coup d'état of 1977 until the reintroduction of the multiparty system in 1993;

RECALLING that pursuant to Rule 25 of the Rules of Procedure and Evidence of the Commission, the test for admissibility is low but a "complaint will be deemed inadmissible where the information contained within the complaint falls manifestly outside the mandate of the Commission", and in this case the Commission rendered the complaint of Mr. Kannan prima facie admissible on 21 January 2020;

RECALLING FURTHER that the Commission, having rendered the complaint prima facie admissible pursuant to Section 3(3) of the TRNUC Act, heard the complaint of Mr. Kannan, presented by Mr. Kannusamy Naidu, on 11 March 2020,[3] and investigated the veracity of the complaint as evidenced by the hearing record and the file in this case;

CONSIDERING the evidence heard by the Commission, coupled with the Commission's consideration of similar cases;

HEREBY determines, pursuant to Section 11 of the Truth, Reconciliation and National Unity Commission Act, 2018 ("TRNUC Act"), as follows:

1. The Commission recalls Mr. Kannan's evidence that he was the son of the late Mr. Rajaram Naidu, who passed away on 24 November 1980. Before the Commission, Mr. Kannan claimed that his father was forced to transfer his land at Parcel C762 to President Albert René, for the Government of Seychelles, in 1979;

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[1] "[...] (a) unlawful killing; (b) unlawful imprisonment or other deprivations of physical liberty; (c) torture; (d) rape; (e) enforced disappearance of persons; (f) kidnapping; (g) forceful eviction from legally owned building or land; (h) unjustified acquisition or loss of property or business; (i) wrongful denial of the right to employment; (j) wrongful termination of employment; (k) forced exile; (l) abuse of office by a Government official, including the executive, judiciary or legislature; or (m) other acts of a similar character causing suffering or injury to body or to mental or physical health". Truth, Reconciliation and National Unity Commission Act, 2018, Act 9 of 2018 (14 September), sec. 2(8) [hereinafter "TRNUC Act"].

[2] TRNUC Act, sec. 2(8)(h). The Commission has considered that the violation of unjustified acquisition or loss of property or business entails 1) the unlawful or arbitrary taking or appropriation 2) of the physical, real, financial, intellectual, or other property or business of one or more persons 3) that results in the deprivation or interference of use of the property or business by that person 4) without adequate, prompt, and effective compensation, 5) by a perpetrator. The Commission recalls that this violation is a violation of the fundamental human right to property, including the protection from arbitrary deprivation of property, enshrined in the Universal Declaration of Human Rights (UDHR). *See* UDHR, art. 17, G.A. Res. 217A (III) (Dec. 10, 1948).

[3] Hearing No. 58 of Wednesday 11 March 2020.

2. The Commission recalls Mr. Kannan's evidence that his father told his mother that he was forced to sell Parcel C762, which comprised of 86.545 acres of prime agricultural land, situated at Baie Lazare, to the Government of Seychelles for a nominal sum. Mr. Kannan stated that his father told his mother that he had been threatened by the Government, and told that if he did not agree to the transfer by sale, the land would be acquired, and his father, who was not a citizen, could face arrest and deportation;

3. The Commission recalls Mr. Kannan's evidence that at the time his father was forced to sell his property, the property was doing very well financially, as it was producing large amounts of coconuts, cinnamon, fresh fruits, and vegetables. Mr. Kannan informed the Commission that his father never had any intention of selling their property, but rather had planned to develop it further;

4. The Commission recalls Mr. Kannan's claim that his father died as a direct result of the forced sale of his land to Government. Mr. Kannan recalled that he was only 12 years old at the time of his father's death, and his sister was just 10 years old. Mr. Kannan stated that their mother was a housewife, and that the family were devastated by his father's death; he said that they went through a long period of absolute poverty, as their father had been the only breadwinner;

5. The Commission recalls the evidence of Mr. Patrick Lablache, who appeared before the Commission on Friday 3 July 2020[4], that the allegations made by Mr. Kannan concerning the forced sale of his father's land could not be true. Mr. Lablache claimed that Mr. Kannan's father had offered his land for sale in the "colonial days", and Mr. Lablache produced an exhibit, dated 28 September 1972, prepared by the Lands Officer, which reported as followed:

> Land at Baie Lazare owner Mr. K.R Naido
>
> Following our conversation I have inspected this land. It is situated at the head of the Anse aux Poules Bleues River and extends southward to Val' d'Endor. It is very rough and mostly covered in scrub. Access is by footpath only but it does have a good water supply. The land is zoned for agricultural use and is not in fact suitable for any other form of development.
>
> If the area quoted of 187 acres is correct the asking price of Rs 300,000 is not unreasonable (Rs. 1,600 or £120 per acre). I do understand, however from the Ag. C.S that the actual area owned by Mr. Naidoo is less than 100 acres, which confirms my impression, in which case the asking price is far roo (sic) high. Should the Director of Agriculture require the land and provided that funds are available I would recommend that we negotiate with Mr. Naidoo, otherwise it is pointless to pursue the matter.

6. The Commission recalls Mr. Lablache's evidence that in 1972, the Government told Mr. Naidoo that it could not purchase the land. Mr. Lablache provided the Commission with a document from the Lands Officer, dated 20 November 1972, which stated that Government did not have any money "at present" and it was recommended that the Government not negotiate to purchase the land;

7. The Commission recalls Mr. Lablache's evidence that then, Douglas Bouchereau, who was acting on behalf of Mr. Naidoo, again approached the Government to sell it the land, but that the Government was not interested. In support of this, Mr. Lablache provided the Commission with a minute note

[4] Hearing No.83 of Friday 3 July 2020, Patrick Lablache.

addressed to the Director of Agriculture from the Lands Officer, dated 2 October 1975, which stated as follows:

> Mr. Bouchereau of Glacis is now acting for Mr. Naidoo who is still anxious to sell his land. Mr. Bouchereau tells me that he had spoken to Minister Loizeau who expressed interest on the part of Government.
>
> The land is described at 1 and 3. The area is in dispute and is somewhere between 87 and 100 acres thus the asking price of Rs 300,000 is between Rs 3,500 and Rs 3000 per acre.
>
> The land can only be used for agriculture and would be expensive to put into production. I think that any funds which we might be able to obtain for further agricultural holdings could be better spent elsewhere but if we were to consider the property I include to think we should not pay more than Rs 1,000 - 1, 250 per acre.

8. The Commission notes that on 14 October 1975, the above was responded to by handwritten note, which stated that the situation had not changed since the previous assessment, and unless the property could be obtained at "a very cheap price of about Rs 1,000 per acre", the author of the note could not recommend its purchase to Government;

9. The Commission recalls a further exhibit provided by Mr. Lablache, dated 17 October 1975, from the Lands Officer, which stated as follows:

> Mr. Naidoo, this time through Mr. Bouchereau, is again trying to sell his land to Government, having yet again failed to find another buyer.
>
> Access to the land is difficult and the land itself is poor. The asking price bears no relationship to what it is worth and as I have recommended above, if we had money to spend on the purchase of agricultural land we can do better than this.
>
> My advice is not to buy the land at any price. I shall be grateful for the Minister's Decision.

10. The Commission notes a further note on file, dated 20 October 1975, stating that the matter should not be pursued further;

11. The Commission recalls the evidence of Mr. Lablache that in 1975, Mr. Albert René was the Minister for Works and Land, and that it was Mr. René who took the decision not to pursue the purchase of the property;

12. The Commission recalls the evidence of Mr. Lablache that in 1978, Mr. Naidoo again offered his land for sale to Government, and this time he advised the Government that he wanted to keep four acres and sell the remainder to the Government. Mr. Lablache produced a minute from the Land Officer, dated 4 August 1978, directed to the Minister, which stated as follows:

> Please see letter at folio (13) from K. Rajaram Naidoo referring to the proposed purchase of his property at Baie Lazare by the Government. He wishes to propose that in return for his paying survey fees and registration fees he be allowed to retain 4 acres of land by Government. The survey comprises an amount of money outstanding over a period of years from a previous survey request by Naidoo when the field work of the survey was completed but was not paid for, plus an additional amount

recently incurred for the completion of that survey. Government would normally be responsible for the survey of any land it acquires but in this case Mr. Naidoo had appointed a surveyor in the past who had completed the majority of the work which was then completed for this transaction. The total survey fee is Rs 10, 381.

In addition to this Rs 10, 381 Mr. Naidoo is claiming that he must pay Rs 9.000 towards registration fees. This is incorrect as normally the 9% registration fee is shared between the purchaser and the vendor. When the Government is the purchaser the price is negotiated usually nett to the vendor with Government paying the whole 9%. This in turn is waived as it would mean just a transfer of revenues internally in Government through the Registrar's Office. The Registrar-General does not normally collect in these circumstances.

Mr. Naidoo has thus incurred an expense of Rs 10, 381 in order to complete the sale but this is payment for a survey he authroised (sic) some years ago. Mr. Naidoo requires a decision as to whether Government would allow him to retain 4 acres of land still pay the full Rs 200,000 which was agreed initially for the purchase of the whole. If Government agrees to his request in principle then the location of his 4 acres can be discussed.

13. The Commission notes the evidence of Mr. Lablache that Mr. Naidoo sold his property on 10 January 1979, for the sum of SR 205,100. However, Mr. Naidoo was not allowed to retain the four acres he had requested. Mr. Lablache again provided the Commission with a copy of the applicable document, the transfer evidencing that fact. The Commission recalls Mr. Lablache's evidence that while it was true that the property was being transferred to Albert René, President René was acting on behalf of the Republic;

14. The Commission also accessed the land file in this case to ascertain whether there was any veracity to Mr. Kannan's claim that his father was forced to sell his land to Government, but it could find no evidence in support of that allegation. It was further able to confirm from the file that all the documents produced by Mr. Lablache had been derived from the land file;

15. In light of the evidence adduced, the Commission cannot find that Mr. Naidoo was forced to sell his land to Government, or that Mr. Naidoo suffered the violation of unjustified acquisition or loss of property under Section 2(8)(h); as such, it finds that no human rights violation under its mandate has been established on the balance of probabilities;

16. The Commission recalls that it is mandated pursuant to Section 3(7) of its Act to make recommendations for reparations for victims for human rights violation it has determined to have been established as a result of its investigations;

17. The Commission finds, therefore, that the complainant in this case shall not be awarded compensation or other reparation in accordance with the recommendations set out in the Commission's Reparations Policy, which reflects the views of the victims and international human rights principles as to appropriate recommendations due for the human rights violations established above.

Each of the undersigned Commissioners swears and affirms that he or she has comprehensively familiarised him or herself with the record in Case 161.

On this 31 December 2022

The Commission

Gabrielle McIntyre, Chairperson

Michael Green, Vice Chairperson

Marie-Therese Purvis, Commissioner

Jacques Koui Gbilimou, Commissioner

Archbishop James Wong, Commissioner