

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

SAN FERNANDO

CLAIM NO. CV 2017-01839

**IN THE MATTER OF AN APPLICATION BY DEVANT MAHARAJ FOR AN
ADMINISTRATIVE ORDER PURSUANT TO PART 56 OF THE CIVIL
PROCEEDINGS RULES 1998 AND THE JUDICIAL REVIEW ACT, CHAPTER 7:08**

AND

**IN THE MATTER OF AN APPLICATION FOR REDRESS PURSUANT TO SECTION
14 OF THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO FOR
THE VIOLATION OF FUNDAMENTAL RIGHTS GUARANTEED UNDER SECTIONS
4 AND 5**

BETWEEN

DEVANT MAHARAJ

Claimant

V

THE COMMISSIONER OF VALUATIONS

First Respondent

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Second Respondent

Before the Honourable Mme. Justice Jacqueline Wilson

Appearances:

Mr. A. Ramlogan SC, Mr. A. Pariagsingh instructed by Ms. J. Lutchmedial on behalf of the Claimant

Mrs. D. Peake SC, Mr. R. Heffes-Doon instructed by Ms. S. Ramhit, Ms. K. Madhosingh, Mr. V. Jardine and Ms. A. Hosang on behalf of the Commissioner of Valuations

Mr. F. Hosein SC, Mr. R. Dass, Ms. S. Bridgemohansingh, instructed Ms. S. Ramhit, Ms. K. Madhosingh, Mr. V. Jardine and Ms. A. Hosang on behalf of the Attorney General

JUDGMENT

1. This is the Claimant's judicial review application challenging the legality of the Commissioner of Valuations' decision "to require all property owners to submit a Valuation Return Form (VRF) to the Valuation Division of the Ministry of Finance for calculation of their property's annual rental value." The illegality is said to arise by virtue of the Commissioner's misplaced reliance on section 6 of the Valuation of Land Act Chapter 58:03 in issuing the VRF.
2. The Claimant also seeks constitutional relief in relation to the Valuation of Land Act in the form of a declaration that the Commissioner's decision infringed his rights under sections 4(a) (to the enjoyment of property), 4(b) (to equality before the law and protection of the law), 4(c) (to respect for his private and family life) and 5(2)(h) (to such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms) of the Constitution.
3. The Claimant initially sought constitutional relief in relation to the Property Tax Act, 2009 but that aspect of the claim was abandoned at the hearing.
4. The impugned decision of the Commissioner is set out in a letter that was issued to property owners in the following terms (the VRF letter):

"Dear Owner/Agent,

Please complete the Schedule II form below and return in a **sealed envelope** to any office of the Valuation Division (Table below), together with **COPIES** of as many supporting documents as possible from the following list (kindly check box (es) to indicate documents submitted):

- | | | |
|---|--|---|
| <input type="checkbox"/> Deed/RPO Certificate of Title | <input type="checkbox"/> Sketch of Building | <input type="checkbox"/> T&TEC bill (no more than 3 months old) |
| <input type="checkbox"/> Land Survey Plan | <input type="checkbox"/> Site Plan | <input type="checkbox"/> Town & Country Planning Approval (Status of Land) |
| <input type="checkbox"/> Previous Land and Building Taxes receipt for property identified | <input type="checkbox"/> Building Plan | <input type="checkbox"/> Town & Country Planning Approved Use (Change of use) |
| <input type="checkbox"/> Photograph of exterior of the Property | <input type="checkbox"/> Rent/Lease agreement | |
| | <input type="checkbox"/> Completion Certificate | |
| | <input type="checkbox"/> WASA bill (no more than 3 months old) | |

| Valuation Division Area/Region | Office Address | Tel # |
|--------------------------------|--|-----------------------|
| Port of Spain | #109 Henry Street, Port of Spain | 612-9700 option #7 |
| Tunapuna & Arima | #25-27 Eastern Main Road, Arouca | |
| Sangre Grande | Corner Brierley and Henderson Streets, Sangre Grande | |
| Chaguanas | #206, Caroni Savannah Road, Charlieville, Chaguanas | |
| Rio Claro & San Fernando | #29-31, Point-a-Pierre Road, Palms Club Building, San Fernando | |
| Point Fortin | Techier Road, Point Fortin | |
| Siparia | Siparia Administrative Complex, High Street, Siparia | |
| Tobago | Caroline Building, No. 2 Hamilton Street, Scarborough, Tobago | |

On completion, the Schedule II form should be returned to any office of the Valuation Division by **May 22nd 2017**.

COMMISSIONER OF VALUATIONS

5. The Schedule II form, amended to include provision for the land owner's email and telephone contact details, was reproduced at the end of the VRF letter. The Schedule II form is a statutory form in which a land owner, pursuant to obligations under section 6(1) of the Valuation of Land Act, provides particulars of the use of his land to the Commissioner for valuation purposes.

6. Section 6 of the Valuation of Land Act provides that:
 - 6.(1). *Every owner of land in Trinidad and Tobago shall, by 1st April 2010, make with the Commissioner, a return of land in the form set out in Schedule II.*
 - (2). *Where the owner of land fails to file a return by 1st April 2010, the Commissioner shall by Notice inform the owner that he is required to file a return, failing which he may be liable to conviction under this section.*
 - (3). *A notice under subsection (2) shall be sent by registered post.*
 - (4). *A person who wilfully –*
 - (a) *fails to file a return within the prescribed time under subsection (1);*
or
 - (b) *makes a return which is defective or incomplete or which is to his knowledge false in any material particular, commits an offence and is liable on summary conviction to a fine of five hundred dollars.*

7. It is the Claimant's case that the VRF is the Schedule II form prescribed by section 6(1) of the Valuation of Land Act; that the Commissioner, in issuing the VRF, acted in the exercise of powers under section 6(2); and that the failure to comply with the VRF attracted the penal sanctions of section 6(4). The Claimant alleges that the Commissioner's decision to issue the VRF was unlawful as the temporal requirements of section 6 expired on 1 April 2010, thereby vitiating any legal authority on which its provisions could be invoked.

8. The issues that arise for consideration are:

- i. Whether the VRF was a compulsory demand by the Commissioner enforceable by penal sanction;
- ii. Whether the temporal requirements of section 6 of the Valuation of Land Act expired on 1 April 2010;
- iii. Whether the VRF was unlawful and unconstitutional; and
- iv. Whether the Commissioner's decision infringed the Claimant's rights under sections 4(a), 4(b), 4(c) and 5(2)(h) of the Constitution.

The legislative regime and chronology of events provide the relevant context.

The Legislative Regime

9. The Valuation of Land Act came into effect on 1 July 1970. By its long title, it is an "Act to make provision for the valuation of land for taxation, rating and other purposes and for matters connected therewith and incidental thereto."

10. The Valuation of Land (Amendment) Act 2009 and the Property Tax Act came into operation on 1 January 2010. The amendments made by the 2009 Amendment Act brought the principal Act into alignment with the Property Tax Act and together both pieces of legislation served to reform the existing measures governing the taxation of properties in Trinidad and Tobago.

11. Prior to the 1 January 2010, the assessment of taxes on properties was governed by the Lands and Building Taxes Act of 1920, in the case of the regional corporations and the Municipal Corporations Act of 1990 in the case of the cities and boroughs. The two systems of taxation led to different rates of tax being applied to different districts, yielding widely disparate results.
12. The Property Tax Act repealed the Lands and Building Taxes Act and Part V of the Municipal Corporations Act and established the Board of Inland Revenue as the single tax assessment and collection agency. The 2009 Amendment Act established the Commissioner as the single agency for the determination of property values for taxation purposes, applying the same principles for the entire country.
13. The Finance Act 2015 amended the Property Tax Act by providing for a waiver of the payment of taxes from 1 January 2010 to 31 December 2015. At the time the Property Tax Act was so amended, no amendments were made to suspend the operation of any provision of the Valuation of Land Act. Therefore, the legal requirements of section 6 remained intact for the duration of the six-year tax moratorium.
14. In or around 2017, the government sought to implement measures for the recovery of tax under the Property Tax Act which, hitherto, had not been enforced. It was in this context that the Commissioner issued the VRF letter to all property owners seeking information for use in the calculation of their property's annual rental value, for use by the Board of Inland Revenue in the assessment and collection of taxes. The Claimant's concerns with the VRF form the basis of this application.

Chronology of Events

15. In his fixed date claim form dated 22 May 2017 the Claimant seeks declaratory orders that the Commissioner has no legal authority under section 6 of the Valuation of Land Act to compel the Claimant or property owners to submit the VRF or supporting documents by the given deadline under threat of criminal sanction. The Claimant also

seeks an order of certiorari to quash the Commissioner's decision. In support of the fixed date claim form were three affidavits sworn by the Claimant on 19, 22 and 29 May 2017. On 7 July 2017, the Claimant swore a further affidavit in response to the Respondents' affidavits sworn on 21 June 2017.

16. In his principal affidavit, the Claimant referred to information disseminated by government agencies and representatives requiring property owners to complete and return the VRF and supporting documents. The Claimant alleged that there was inconsistency in the information in the public domain giving rise to confusion whether the penalties or sanctions prescribed by the Property Tax Act or the Valuation of Land Act could be applied to persons who failed to comply with the VRF.
17. The Claimant stated that he received a copy of the VRF in the mail informing him that the deadline for submission was 22 May 2017. He challenged the legality of the Commissioner's decision to issue the VRF on the following grounds:
 - i. The VRF was non-compliant with schedule II as it sought the submission of documents outside the scope of Schedule II, including private and personal information (telephone numbers and email addresses), in breach of the Claimant's rights under section 4(c) of the Constitution (to respect for his private and family life);
 - ii. The VRF was not sent by registered post;
 - iii. The VRF failed to stipulate that non-compliance with its requirements could not attract penal sanction;
 - iv. Alternatively, if there was a sanction or risk of sanction for non-compliance, the VRF did not so stipulate;
 - v. The above omission was in breach of the Claimant's right under section 5(2)(h) of the Constitution to such procedural provisions as are necessary to give effect and protection to his rights under sections 4(a) and 4(c) of the Constitution;
 - vi. The VRF failed to draw attention to the difference between a failure to make a return, which could attract no sanction, and making a defective return

which could result in a sanction. This omission violated the Claimant's rights under section 5(2)(h) of the Constitution.

- vii. The process adopted by the Commissioner was manifestly unfair as persons who returned the VRF and supporting documents may have become liable to tax while those who did not return the VRF would or may avoid tax;
- viii. No consideration was given to the fact that the temporal requirements of section 6 were linked to 2010.¹

18. A review of the Claimant's evidence demonstrates that the alleged uncertainty regarding the nature of obligations imposed by the VRF is at odds with other statements in which he asserts categorically that the VRF is unlawful and does not attract legal sanction or penalty for non-compliance. The ambivalent statements are captured in the paragraphs below:

18. "I am therefore of the view that the Commissioner is purporting to exercise a power under section 6 of the Act which he no longer has and that I am under no legal obligation to submit the VRF by May 22, 2017 and that the list of supporting documents requested by the Commissioner/Ministry is not a legal requirement. Having regard to the time that has elapsed for the deadline for the submission of the VRF I cannot be penalized for failing to submit it.

19. The decision to require property owners to submit the VRF is illegal and in excess of the jurisdiction conferred by the Act. The Commissioner appears to have acted unreasonably and improperly in the exercise of his discretion. I have seen several posts on social media and various blogs etc where many citizens have expressed concerns over the deadline and the requirements to submit. There is a prevailing sense of uncertainty as to whether they are required to submit what if any they must submit and what penalties they may face for failing to submit the form and/or supporting documents.

¹ See Claimant's affidavit sworn on 22 May 2017 at paragraph 15.

20. The property tax regime is a law imposing a financial obligation on citizens at a time when the country is undergoing a recession and economic downturn. It is a significant liability for me, for which I did not budget. The uncertainty surrounding the valuation exercise and the imposition of the property tax has resulted in great confusion. I therefore seek urgent clarification on my own behalf and in the public's interest so that the extent of the duties, obligations and liabilities imposed can be made known starting with the obligation to comply with the request to submit the VRF with supporting documents by May 22, 2017 and the penalty or sanction that would apply, if any, for default.
21. The purported imposition of the May 22nd deadline for the submission of the VRF coupled with the multiplicity of opinions which have been reported on by the media has created confusion in my mind and in the minds of many of those persons who have contacted me to express their concern. This lack of certainty is most undesirable when one considers that this law seeks to impose financial obligations and penalties upon citizens.²
19. Notwithstanding the Claimant's stated need for clarity on the matter, his first communication with the Commissioner took the form of a pre-action protocol letter dated 12 May 2017 by his Attorneys. The pre-action protocol letter made detailed assertions regarding the illegality of the VRF and condemned the government's initiative to implement the property tax regime in the prevailing economic climate. The letter called upon the Commissioner to make it clear that there was no legal obligation to submit the VRF by the given deadline and that no sanction or penalty would apply for non-compliance, failing which legal proceedings would be instituted for interim and other relief.
20. On 19 May 2017 the Commissioner's Attorneys responded to the Claimant's pre-action protocol letter. The Commissioner refuted the assertion that the VRF letter was issued

² See Claimant's affidavit sworn on 22 May 2017

pursuant to section 6(2) of the Valuation of Land Act and explained that the objective of the VRF was to afford land owners an opportunity to comply with their obligation to submit the Schedule II return and to participate in the valuation process. The Commissioner confirmed that no penalty or sanction was imposed or threatened for the refusal or failure to submit the VRF by the extended deadline of 5 June 2017. The Commissioner stated that if land owners did not submit the Schedule II return by that date, he would proceed to conduct valuations in keeping with his obligations under section 5 of the Valuation of Land Act, utilising his powers under section 15.

21. The Commissioner stated further that section 6 imposed a continuing duty on land owners to make a return in the form set out in Schedule II and that the duty did not expire on 1 April 2010, albeit that a person who failed to make a return by that date would be in breach of legal obligations. The Commissioner asserted that the legislative purpose of section 6 would be defeated if a land owner could avoid his obligation to submit a return once the 1 April 2010 deadline had passed and that this interpretation was supported by section 6(2), which empowered the Commissioner, after that date, to issue a notice requiring a land owner to file a return.
22. On 19 May 2017 the Claimant filed an application for leave to apply for judicial review of the Commissioner's decision to issue the VRF, contending that it was unlawful for the Commissioner, pursuant to section 6 of the Valuation of Land Act, to require the Claimant and other property owners to submit the VRF on or before 22 May 2017 or at all.
23. The application was filed by the Claimant on the very day given in the pre-action protocol letter for the Commissioner to provide a response, and allegedly, before the response was received. The application was heard as an opposed ex parte application on the said 19 May 2017, when the then trial judge made orders granting leave to the Claimant to apply for judicial review and a stay of the implementation and/ or enforcement of the Commissioner's decision until 31 May 2017.

24. On 31 May 2017, at the hearing of the case management conference, the trial judge granted an interim injunction restraining the Commissioner from taking further action to issue or receive the VRF until 27 June 2017 or further order. The Respondents appealed the grant of the interim orders of 19 May and 31 May 2017 to the Court of Appeal and on 7 June 2017 the Court of Appeal set aside both orders.
25. The Court of Appeal considered that the grant of the interim injunction was neither just nor proportionate in circumstances where the Commissioner had made his position clear that the request for information was purely voluntary and that the failure to submit the VRF would not attract any sanction. The Court of Appeal made the following observations:

“On the evidence, the Respondent could reasonably have entertained some doubt or confusion as to whether the Commissioner of Valuations’ COV-1 (the VRF) was a compulsory and sanctionable demand for information. However, by 19th May, when the Respondent and the Court received the Commissioner of Valuations’ reply to the pre-action protocol letter, the evidence of the Commissioner of Valuations was that COV-1 was only a voluntary request that would not attract sanction.

However, in spite of this, the evidence before the Court at this stage suggests that on 22nd May, officers from the Commissioner of Valuation may still have been giving the impression to the public that there may have been sanctions for non-compliance. This came before us in the form of an interview on television.

Before this court, however, it was made clear that the Commissioner of Valuations’ position is that the request for information is purely voluntary, and that the failure to submit the forms or the choice not to supply all of the information requested would not attract any sanctions.

In these circumstances, which also existed before the Trial Judge on 31st May, that is to say before he granted the second Interim Order, this position was also clear.

In our opinion, therefore, the second Interim order that was made was neither just nor proportionate in the circumstances of this case.”³

26. The Court of Appeal expressed the view that it was in the public interest that the Commissioner’s position regarding the voluntary and non-sanctionable nature of the data collection exercise should be made public. It was therefore ordered and directed that the data collection exercise by means of the VRF could continue provided that the Commissioner published a prominent notice to this effect at all data collection sites and in the daily newspapers once a week for three consecutive weeks. The substantive application was remitted for determination by the trial judge.
27. On 21 June 2017, the Commissioner and the Chief State Solicitor’s representative each filed an affidavit in response to the Claimant’s affidavits sworn on 19, 22 and 29 May. In his affidavit the Commissioner reiterated the matters set out in his reply to the Claimant’s pre-action protocol letter. The Commissioner also disclaimed knowledge of, or responsibility for, information disseminated by government representatives and agencies regarding the VRF exercise.

The Claimant’s Submissions

28. The Claimant rejected the Commissioner’s assertions regarding the voluntary nature of the VRF and contended that the compulsory nature of the VRF was established by the VRF itself and contemporaneous information published by the government. The Claimant argued that there were no contemporaneous records to support a voluntary exercise; that a voluntary approach was inconsistent with the Commissioner’s opinion that section 6 imposed a continuing duty to file a VRF; and that a voluntary system

³ Transcript of Court of Appeal Proceedings, 7 June 2017, p. 7

would be ineffective to facilitate the Commissioner's stated objective of valuing every parcel of land pursuant to section 5 of the Act. The Claimant argued that the Act did not contemplate the voluntary submission of information by property owners, as the compulsory requirements of section 6, reinforced by criminal sanction, were intended to safeguard the integrity of the information provided to the Commissioner.

29. The Claimant submitted that the VRF should not be viewed through the prism of the public statements issued pursuant to the directions of the Court of Appeal, but in the light of contemporaneous documents and evidence, as the public statements were no more than a belated attempt by the Commissioner to convert the intrinsic nature of the VRF into something that it was not. The Claimant argued that an ex post facto rationalisation by the Commissioner, given after proceedings had been filed, could not be used to explain or elucidate an inconsistent decision and that the position taken in public statements cut across the very grain of the VRF: *Nash, Ermakov, Re CD*
30. The Claimant asserted that while the Court of Appeal's decision made it clear that, going forward, the Commissioner could proceed only on the basis of a voluntary data collection exercise, the decision under review did not relate to the public statements but to the VRF and its inherent concerns, which were live issues for determination by the Court having regard in particular to the interests of those persons who had submitted the VRF before the public statements were issued.

The Commissioner of Valuation's Submissions

31. The Commissioner argued that the Claimant's case was based entirely on the premise that the VRF letter was a compulsory demand to submit the VRF and supporting information under threat of criminal sanction and that this central issue was rendered academic as early as the pre-action protocol stage of the proceedings when it was made clear that the Commissioner was not purporting to exercise any legal power under section 6 of the Valuation of Land Act.

32. The Commissioner argued that there was no requirement for the Claimant or property owners to submit VRF and no intention to prosecute the Claimant or any member of the public for failing to comply with the voluntary request. The Commissioner contended that the position was reaffirmed in the public statements published pursuant to the directive of the Court of Appeal and that the Claimant thereafter could be under no misapprehension that the exercise was voluntary and the failure to provide information did not attract penal sanction.
33. The Commissioner submitted that where a breach of administrative law was apprehended or discernible at the time of institution of proceedings but the purported decision was overtaken by events, the public law court would not intervene as the grant of relief would serve no practical purpose: *R (Edwards) v Environment Agency* [2009] 1 All ER 57; *Devant Maharaj v Statutory Authorities Service Commission* HCA No. S-1302 of 2005; *Balram Singh v Public Service Commission* [2014] UKPC 26; *R (on the application of C and another) v Nottingham County Council* [2010] EWCA Civ 790.
34. The Commissioner criticised the Claimant's approach in seeking the Court's intervention before the deadline given for a response to the pre-action protocol letter as a flagrant violation of the pre-action protocol process and an abuse of the process of the court, contending that the Claimant's stubborn insistence on pursuing the claim after receiving the Commissioner's response was in defiance of logic.
35. The Commissioner submitted that the decision of the Court of Appeal sanctioning the continued conduct of the data collection exercise, provided that its voluntary and non-sanctionable nature was made public, was a clear endorsement of its legitimacy and confirmed that the Commissioner had not embarked upon unlawful action that needed to be restrained.
36. The Commissioner refuted the Claimant's assertion that he was improperly attempting to substitute different reasons for the impugned decision and asserted that the Claimant's case, based as it was on the erroneous premise that the VRF letter was an

unlawful and sanctionable demand, was entirely misconceived. The Commissioner argued that the Claimant could not properly impeach the credibility of the Commissioner's evidence without recourse to cross-examination and that in the absence of cross-examination the Commissioner's evidence must prevail.

37. The Commissioner argued further that the VRF should not be reviewed in the context of statements by others regarding their understanding of the data collection exercise as those statements were of no probative value in determining the nature of the Commissioner's decision and that the Commissioner's evidence was neither inherently contradictory or improbable and thereby satisfied the guidance laid down by Moosai JA, in *Audine Mootoo v the Attorney General*.⁴
38. The Commissioner rejected the allegation that the contact details sought in the VRF infringed the Claimant's right to respect for his private and family life, having regard to the voluntary nature of the VRF exercise. The Commissioner argued that the right to respect for private and family life was engaged where a person had a reasonable expectation that there would be no interference with the broader right of personal autonomy: *R (Catt) v Commissioner of Police of the Metropolis* [2015] UKSC 9; and that the qualified nature of the right meant that it must yield to other legitimate social interests, including the payment of taxes: *Collymore & Abraham v The Attorney General* (1967) 12 WIR 5; *Suratt v The Attorney General* [2007] UKPC 55; *Barry Francis v The State Crim. App. Nos 5 & 6 of 2010*.
39. The Commissioner argued that sections 15, 27(1), 29(1) and 29(3) of the Valuation of Land Act conferred a wide range of compulsory powers on the Commissioner, enforceable by criminal sanction under section 32, pursuant to which the Commissioner could obtain information for use in the exercise of his statutory functions. The Act therefore did not become unworkable if property owners did not supply Schedule II forms by 1 April 2010.

⁴ Civ App No. 38 of 2009

The Attorney General's Submissions

40. The Attorney General submitted that as of 10 June 2017, concurrent with the issue of the public statements by the Commissioner, any dispute as to whether the VRF was or was not a voluntary request would have become devoid of any practical significance. The Attorney General pointed to the reluctance of the courts to grapple with matters that had been overtaken by events and ceased to have practical importance or were theoretical, fictitious or academic: *R v Head Teacher and Governors of Fairfield Primary School and Hampshire County Council, ex p W*, 1998 COD 106; *Dennis Graham v Commissioner of Police*, Civ. Appeal No. 67 of 2005.
41. The Attorney General observed that although the academic or theoretical status of a matter was not an absolute barrier to relief, the jurisdiction to grant relief in such cases was to be exercised sparingly:
- “The courts have jurisdiction to grant a declaration if there is a need for clarification of the law on an issue of general importance even if the need for a remedy in a particular case has now passed and there is no live issue between the parties. The discretion to hear such disputes, even in public law matters, is to be exercised with caution and the courts ought not to entertain such cases unless there is a good reason in the public interest in doing so. One such case is where the claim raises a discrete point of law not dependent on the facts of the case and where a large number of similar claims are likely to need to be resolved in the near future.”⁵
42. The Attorney General submitted that the features that would typically justify the hearing of a matter that had become academic or theoretical were significantly absent in this case as there was no discrete point of law requiring resolution or guidance to be shed on any looming or likely future cases. The Attorney General submitted that upon the Commissioner’s removal of all uncertainty regarding the nature of the VRF the Claimant ought to have relinquished his claim and that his pursuit of the matter was

⁵ Clive Lewis, *Judicial Remedies in Public Law* (5th edn) at paragraph 7-051

“for no ostensible purpose other than a truculent unwillingness to let go of an argument that had lost all meaning.”

43. The Attorney General argued that the literal interpretation of section 6 of the Valuation of Land Act for which the Claimant advocated would yield absurd results and should be rejected in favour of a constructive or purposive approach that would advance the legislative purpose of the Valuation of Land Act.
44. The Attorney General submitted that sections 15, 27 and 29 of the Valuation of Land Act conferred wide powers on the Commissioner to compel information for use in the exercise of his statutory functions and that in light of those broad powers, the exercise a lesser power to request information on a voluntary basis was, by implication, legally permissible: *Attorney General v Great Eastern Railway Co. (1880) 5 Appellant Cas 473*; *Akumah v Hackney LBC [2005] UKHL 17*; *New London College Ltd, R (on the application of) v Secretary of State for the Home Department [2013] UKHL 5*; *R v secretary of State for the Home Department, ex p Z [1998] Imm AR.1*
45. The Attorney General argued that there was no sustainable basis on which the VRF could be impugned and no serious question whether section 4(c) of the Constitution was engaged. It was submitted that the purpose, nature and intended use of the information sought in the VRF, being in aid of the recovery of a tax, negated the existence of any reasonable expectation of privacy in the absence of which there was no question of the right being infringed and no need to justify the impugned measure as reasonable and proportionate⁶ and that the suggestion of any infringement of the right to respect for private life must give way to the government's interest in advancing its goals.⁷

⁶ Re JR 38 Application [2015] UKSC 42

⁷ *Bernstein v Bester* No. CCT 23/95; *Hunter et al v Southam Inc*

Discussion and Analysis

Whether VRF Imposed Binding Obligations on the Claimant

46. A review of the VRF letter and the VRF demonstrates that there were ample grounds for uncertainty whether the VRF constituted a compulsory and sanctionable demand by the Commissioner or a voluntary and consensual request. In the absence of an explanatory statement in this regard, the VRF, being a replica of the Schedule II form, with minor amendments that did not affect its substance, could reasonably be construed as imposing a legal obligation to file a return under threat of the penal sanction.
47. However, the voluntary nature of the VRF was made clear to the Claimant in the Commissioner's response of 19 May 2017 to the pre-action protocol letter and to the population at large in the public statements issued pursuant to the directive of the Court of Appeal. Thereafter, the Claimant's uncertainty regarding the obligations imposed by the VRF and the potential exposure to criminal liability could not be sustained.
48. In addition, while the information disseminated by government representatives and agencies as part of a wider public awareness campaign did not expressly confirm the voluntary nature of the VRF exercise, and to this extent was inconsistent with the Commissioner's later clarifying statements, the inconsistency may reasonably be attributed to a lack of co-ordination in the collective effort, moreso than a deliberate intention to mislead.
49. Further, notwithstanding the Claimant's opposition to the Commissioner's statements regarding the voluntary nature of the VRF, the Claimant did not seek recourse to cross-examination. In those circumstances, the general principle is to act on the evidence of the party on whom the onus of proof does not lie in so far as it is impossible from the internal evidence to come to any conclusion as to which account is the more credible:

Ramnath v Public Service Commission;⁸ *R v Oxfordshire Local Valuation Panel ex parte Oxford City Council*.⁹

50. This principle was adopted and applied by Moosai JA in *Audine Mootoo v the Attorney General and Public Service Commission*¹⁰ where the learned Judge held that:

“...a court can, in appropriate cases, include in its examination matters such as the contemporaneous documents and the inherent probability or improbability of rival contentions, in the light in particular of facts and matters which are common ground or unchallenged: *Attorney General of Trinidad and Tobago v Samlal*¹¹

51. The Claimant’s evidence vacillates between challenging the validity of the VRF on the one hand and seeking clarification as to its nature, on the other. The ambivalent statements, together with the Claimant’s approach in seeking the Court’s intervention before the Commissioner’s response to the pre-action protocol letter fell due and his tenacity thereafter in pursuing redress on the nature of obligations imposed by the VRF when he had received the Commissioner’s unequivocal response thereto, called his motives into question and undermined the value of his evidence.

52. The Commissioner’s evidence is that VRF was issued in circumstances where a waiver of payment of taxes was in effect for more than six years. It is reasonable that the Commissioner, in seeking to facilitate the taxation regime after a prolonged hiatus, would in the first instance seek to obtain information from land owners on a consensual basis while reserving the right to exercise more intrusive powers at a later stage.

53. In light of all the circumstances, I am of the view that the Commissioner’s assertion that the VRF was a voluntary request for information is both reasonable and credible

⁸ Civil Appeal No. 123 of 2008

⁹ [1981] 79 LGR 432, 440

¹⁰ Civil Appeal No. 38 of 2009

¹¹ Record of Appeal p 26

and that the Commissioner's evidence in this regard should prevail over the evidence of the Claimant.

Whether the Temporal Requirements of Section 6 of the Valuation of Lands Act Expired on 1 April 2010

54. When the Property Tax Act was amended in 2015 to provide for a waiver of payment of taxes, no consequential amendments were made to the Valuation of Land Act to suspend the operation of section 6 or any other provision.
55. It is not for the court to speculate whether this omission was inadvertent or intentional. The task of the court is to discern the intention of Parliament as expressed in the language under consideration. The court must have regard to the purpose of a particular provision and interpret its language, so far as possible, in a way that gives effect to its purpose. The purposive approach to statutory interpretation applies to all legislation, including fiscal legislation.¹²
56. The starting point in identifying the legislative intention or purpose is to construe the wording of a provision in the context of the statute. The context includes other provisions of the Act and provisions of other Acts *in pari materia* with the subject matter of the Act.¹³ If the language is plain and unambiguous and does not give rise to absurdity, that is the meaning to be ascribed to the provision.
57. In deciding whether the language of a provision is clear and unambiguous the court is not limited to its wording but may consider the 'mischief' the statute was intended to cure.¹⁴ This may include consideration of the pre-enacting history and, in some circumstances, the post-enacting history¹⁵. Where the plain meaning of an enactment

¹² WT Ramsay Ltd v Inland Revenue Comrs [1982] AC 300; UBS AG v Revenue and Customs Commrs (SC(E)) [2016] 1 W.L.R. 1005, para 61

¹³ Bennion on Statutory Interpretation, 6th ed., s.284, 285 at p 780

¹⁴ Bennion, supra, 201, 208, 209

¹⁵ Bennion, supra, s 226-231, pp. 702, 288(5), pp. 890, 912-913

gives rise to an absurdity the words are to be interpreted so as to avoid that outcome and may justify a strained construction.¹⁶

58. I am of the opinion that the literal construction of section 6 for which the Claimant advocates would defeat the objective of the Act which, as its long title suggests, is “to make provision for the valuation of land for taxation, rating and other purposes and for matters connected therewith and incidental thereto.”

59. As stated earlier, section 6 of the Valuation of Land Act came into effect on 1 January 2010 pursuant to amendments made in the Valuation of Land (Amendment) Act 2009. The obligation to file a return existed previously in section 5 of the Lands and Building Taxes Act, which was repealed by the Property Tax Act when the latter took effect on 1 April 2010. Under section 5 of the repealed Act land owners were required to file a return on or before 31 October *in each year* specifying among other things, the name of the occupier of the land and the annual value of each building. The annual deadline of 31 October applied in circumstances where the due date for payment of taxes was the 31 March in each year.¹⁷ The return was required to be filed in the District Revenue office and was deemed to form part of the assessment roll of the particular Ward in which the land or building was situated.¹⁸

60. The Property Tax Act retained the annual deadline of 31 March for the payment of taxes. However, under the 2009 Amendment Act the deadline for filing a return was changed from 31 October *in each year* to 1 April 2010. I am of the view that it would be incongruous and absurd if the obligation to file a return under section 6(1) were construed as a one-off obligation that expired permanently on 1 April 2010, in circumstances where the return is for the purpose of assessing taxes that are due and payable annually, save and except where a waiver of such payment is in effect.

¹⁶ *Bennion, supra, s.286, p.783*

¹⁷ Lands and Building Taxes, section 5(1)

¹⁸ *Ibid.*, section 5(2)

61. I therefore reject the submissions of the Claimant that the obligations conferred by section 6(1) expired on 1 April 2010 and uphold the submissions of the Respondents that the obligations did not so expire and remain valid and intact.

Whether the VRF was Unlawful and Unconstitutional

62. The Claimant's allegations of illegality were premised on the Commissioner's perceived reliance on section 6(2) of the Valuation of Land Act in issuing the VRF. Having determined that the VRF was a voluntary request for information that was not issued pursuant to section 6(2), the relief sought by the Claimant under this head must fail.
63. The Claimant's allegations of unconstitutionality are similarly based on the perceived, illegality of the VRF. The Claimant asserts that the VRF, in seeking telephone and email contact details, infringed his right to respect for his private and family life. Section 4(c) is in similar terms as Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms.¹⁹ An analysis of the width and scope of the concept of private life and the purpose of Article 8 is summarised in the passage below:

“...it is important that this core right protected by article 8, however protean, should not be read so widely that its claims become unreal and unreasonable. For this purpose I think there are three safeguards, or qualifications. First the alleged threat or assault to the individual's autonomy must (if article 8 is to be engaged) attain ‘a certain level of seriousness.’ Secondly, the touchstone for article 8.1's engagement is whether the claimant enjoys on the facts a ‘reasonable expectation of privacy’ (in any of the senses of privacy accepted in the cases). Absent such an expectation, there is no relevant interference with personal autonomy. Thirdly, the breadth of article 8.1 may in many instances be greatly curtailed by the scope of justifications available to the

¹⁹ UK Human Rights Act 1998, Sch 1, Pt 1

state pursuant to article 8.2. I shall say a little in turn about these three antidotes to the overblown use of article 8.”²⁰

64. With the above guidance in mind, I accept the submissions of the Respondents that the nature, purpose and intended use of the information sought in the VRF cannot be considered to impact upon the values that section 4(c) of the Constitution is designed to protect, in the absence of which there is no question of the right being infringed and no need to justify the impugned measure as reasonable.

Whether the Commissioner's decision infringed the Claimant's rights under sections 4(a), 4(b), 4(c) and 5(2)(h) of the Constitution.

65. In his fixed date claim form the Claimant sought a declaration that his rights under sections 4(a), 4(b), 4(c) and 5(2)(h) of the Constitution were infringed as a result of the Commissioner's reliance on section 6 of the Valuation of Land Act in issuing the VRF. Therefore, the allegations of unconstitutionality were, similarly, premised on the perceived illegality of the VRF. Having determined that the VRF was a lawful request by the Commissioner, the relief sought by the Claimant under this head must also fail.
66. In light of the foregoing, the Claimant's application is dismissed. I would hear the parties on costs.

Dated this 29th day of March 2018.

Jacqueline Wilson

Judge

²⁰ Re JR 38 [2016] AC 1131 at 1163 B-D