Court of Appeal
Supreme Court

New South Wales

Case Name:	Rafailidis v Roads and Maritime Services
Medium Neutral Citation:	[2015] NSWCA 143
Hearing Date(s):	12 May 2015
Decision Date:	12 May 2015
Before:	Beazley P at [1]; Basten JA at [27]; Ward JA at [32]
Decision:	The appeal against the judgment of Craig J delivered on 11 February 2014 is dismissed. The application for leave to appeal against the judgment of Sheahan J delivered on 18 March 2014 is refused.
Catchwords:	COMPULSORY ACQUISITION – Land Acquisition (Just Terms) Act 1991 (NSW), s 66 – jurisdiction of the Land and Environment Court – no question of law
Legislation Cited:	Constitution Act 1902 (NSW), s 5 The Constitution, ss 51(xxxi), 106, 107, 108, 109 Land Acquisition (Just Terms Compensation) Act 1991 (NSW), s 66 Land and Environment Court Act 1979 (NSW), ss 19, 24, 25, 57 Judiciary Act 1903 (NSW), s 78B Roads Act 1993 (NSW) Uniform Civil Procedure Rules 2005 (NSW), r 36
Cases Cited:	Durham Holdings Pty Ltd v The State of New South Wales [2001] HCA 7; 205 CLR 399 Ebner v Official Trustee in Bankruptcy [2000] HCA 63; 205 CLR 337 Johnson v Johnson [2000] HCA 48; 201 CLR 488

	R v MSK and MAK [2004] NSWCCA 308; 61 NSWLR 204
Category:	Principal judgment
Parties:	Koula Rafailidis (Applicant and Appellant) Roads and Maritime Services (First Respondent) Efrem Rafailidis (Second Respondent)
Representation:	Counsel: In person (Applicant and Appellant) N Eastman (First Respondent) Solicitors: In person (Applicant and Appellant) Clayton Utz (First Respondent)
File Number(s):	2014/102141
Decision under appeal:	
Court or Tribunal:	Land and Environment Court
Jurisdiction:	Class 3
Citation:	Rafailidis v Roads and Maritime Services (No 2) [2014] NSWLEC 9; Rafailidis v Roads and Maritime Services (No 3) [2014] NSWLEC 21
Date of Decision:	11 February 2014; 18 March 2014
Before:	Craig J; Sheahan J
File Number(s):	2013/30195

[Note: The Uniform Civil Procedure Rules 2005 provide (Rule 36.11) that unless the Court otherwise orders, a judgment or order is taken to be entered when it is recorded in the Court's computerised court record system. Setting aside and variation of judgments or orders is dealt with by Rules 36.15, 36.16, 36.17 and 36.18. Parties should in particular note the time limit of fourteen days in Rule 36.16.]

JUDGMENT

1 **BEAZLEY P:** The appellant, Mrs Koula Rafailidis, challenges two decisions of the Land and Environment Court relating to the compulsory acquisition of land

pursuant to the *Roads Act 1993* (NSW) and the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

2 Mr Ephram Rafailidis, the joint owner of the land with Mrs Rafailidis, was joined as a second respondent to these proceedings by an order of the Registrar on the basis that these proceedings may affect his interests.

3 The documents that had been filed in Court were served upon Mr Rafailidis by Ken David Gray, as deposed to in his affidavit sworn 12 December 2014 which was filed in Court today. In addition, Mr Rafailidis was forwarded a notice of the listing of the hearing at his home address, that notice of listing having been signed by the Principal Registrar of the Court.

4 The acquired land was Lot 52 in Deposited Plan 1170535, which formerly comprised part of the land in Certificate of Title 10/27602. Mr and Mrs Rafailidis remain joint registered proprietors of the residue of the subject land, being Lot 51 of Deposited Plan 1170535. The acquired land has an area of 2,127m2, and the residue has a remaining area of 20,178m2. The acquisition was for the purpose of an upgrade of Camden Valley Way, as was recognised by Mrs Rafailidis in an affidavit which she swore in the Land and Environment Court proceedings.

5 The land was compulsorily acquired on 16 November 2012 by an Acquisition Notice published in Government Gazette Number 121 of 2012. A copy of that notice in the Government Gazette is contained at p 5 of the Blue Appeal Book. On 17 December 2012, the Valuer-General determined the amount of compensation due to Mr and Mrs Rafailidis to be $96,500, comprising a market value of $89,500 and compensation for disturbance of $7,000. That determination is contained in the Blue Appeal Book at p 6.

6 I have just looked up in the course of delivering these ex tempore reasons and have noticed that Mrs Rafailidis is no longer in the Court. I note that there is a gentleman sitting at the Bar table who sat with her during the course of the hearing, and from time to time assisted her by handing papers to her for the purposes of making her submissions.

7 Mr and Mrs Rafailidis appealed against the determination made by the Valuer-General as to the amount of compensation payable. The appeal was made pursuant to s 66 of the *Land Acquisition (Just Terms Compensation) Act.* That appeal was dismissed by Craig J of the Land and Environment Court on 11 February 2014: *Rafailidis v Roads and Maritime Services (No 2)* [2014] NSWLEC 9. His Honour rejected a challenge to the validity of the *Land Acquisition (Just Terms Compensation) Act* and determined an amount of compensation totalling $153,820, being just over fifty per cent higher than the valuation determined by the Valuer-General.

8 On 6 March 2014, Mr and Mrs Rafailidis filed a notice of motion and a document entitled "*Notice-Challenge to the Jurisdiction of the Court*" by which they challenged the validity of the orders made by Craig J, and the jurisdiction of the Land and Environment Court to make them. Those challenges were dealt with by Sheahan J as an application to reopen pursuant to r 36 of the Uniform Civil Procedure Rules 2005 (NSW) (UCPR). The application was refused by his Honour in his judgment delivered on 18 March 2014: *Rafailidis v Roads and Maritime Services (No 3)* [2014] NSWLEC 21.

9 The proceedings before each of Craig J and Sheahan J were in the Land and Environment Court's Class 3 jurisdiction. Appeals from Class 3 proceedings to this Court are made only on the basis of questions of law: see s 57(1) of the *Land and Environment Court Act 1979* (NSW). Leave is required to appeal against the decision of Sheahan J, that being an interlocutory decision pursuant to the notice of motion brought by Mr and Mrs Rafailidis on 6 March 2014: see s 57(4)(d) of the *Land and Environment Court Act*.

10 I note that Mrs Rafailidis has now returned to the Court.

11 Mrs Rafailidis raised thirteen grounds of appeal. The first five relate to the decision of Sheahan J, and, in essence, comprise a challenge to the Land and Environment Court's jurisdiction (grounds 1-3), an allegation that his Honour could not proceed without the consent of Mr and Mrs Rafailidis (ground 4), and a claim that his Honour was biased (ground 5).

12 Mrs Rafailidis' contentions regarding jurisdiction and consent may be answered in three short points. First, her general attacks on the valid existence of the

Land and Environment Court, articulated in the proceedings before Sheahan J that it was not a Court but that it was "*an administration tribunal*", and that it "*has no jurisdiction over living man*". These challenges were factually incorrect and without substance. Secondly, the Land and Environment Court had jurisdiction to make the orders that were made by Sheahan J as well as those made by Craig J pursuant to ss 19, 24 and 25 of the *Land and Environment Court Act*, and r 36 of the UCPR. Thirdly, in the circumstances in which the court was dealing with an application brought before it by Mr and Mrs Rafailidis, it was not open to them to challenge its jurisdiction, and the court did not require any further consent from them to proceed.

13 As for ground 5, the test for whether a judicial decision is vitiated for apprehended bias is whether a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial and unprejudiced mind to the resolution of the question that the judge is required to decide: see *Johnson v Johnson* [2000] HCA 48; 201 CLR 488; *Ebner v Official Trustee in Bankruptcy* [2000] HCA 63; 205 CLR 337. Mrs Rafailidis did not point to any evidence or circumstance that satisfied that test.

14 Mrs Rafailidis' remaining grounds of appeal related to the decision of Craig J. These grounds appear to fall into two categories. The first related to consent to the proceedings being heard or consent to the Land and Environment Court acting in "*summary jurisdiction*", which I understand to be a complaint that there was no consent to the matter being heard without a jury. These grounds were misconceived: the proceedings were regularly invoked by Mr and Mrs Rafailidis and any further consent to them being dealt with was not required. Mr and Mrs Rafailidis had no legal basis on which to claim a right to a hearing by a jury, and the proceedings were not otherwise heard "*summarily*".

15 The second category of grounds of appeal appear to be a reiteration of the claim made before Craig J that the *Land Acquisition (Just Terms Compensation) Act* was not constitutionally valid. These grounds involve allegations that the Land and Environment Court and/or the Council were acting in a way that amounted to slavery or cruel treatment, such that their actions were improper. Mrs Rafailidis also served notices under s 78B of the

Judiciary Act 1903 (NSW) contending that the second category of claims involved matters arising under s 51(xxxi) of the Commonwealth Constitution or involving its interpretation.

16 Section 51(xxxi) of the Constitution applies to acquisitions of property made by a Commonwealth agency or pursuant to a law of the Commonwealth, and requires that the acquisition be on "*just terms*". The acquisition in this case, however, was made by the first respondent, a public authority of the State of New South Wales, pursuant to the New South Wales legislation. As such, s 51(xxxi) of the Constitution does not apply.

17 No question of invalidity pursuant to the *Constitution Act 1902* (NSW) arises. Section 5 of that Act provides the New South Wales Parliament with plenary power to make laws for the peace, welfare and good government of the State, subject to the Commonwealth Constitution. The *Land Acquisition (Just Terms Compensation) Act* and the *Roads Act* were made pursuant to s 5. It is a matter for the Parliament, and not for the courts, to determine whether a particular law is a law for the peace, welfare or good government of the State: see *R v MSK and MAK* [2004] NSWCCA 308; 61 NSWLR 204 at [37]. It follows that it is not open for Mrs Rafailidis to contend that a law was not a law to which s 5 applies. Mrs Rafailidis' contention that her treatment has been cruel, sincerely felt though it may be, did not otherwise raise any question of law.

18 Further, there is no provision equivalent to s 51(xxxi) of the Commonwealth Constitution in the *Constitution Act 1902* (NSW), and the laws of New South Wales are not subject to a requirement to provide for "*just terms*" in the event of an acquisition of property: see *Durham Holdings Pty Ltd v The State of New South Wales* [2001] HCA 7; 205 CLR 399 at [7] per Gaudron, McHugh, Gummow and Hayne JJ, and at [56] by Kirby J.

19 Finally, the New South Wales Constitution, the powers of the New South Wales Parliament, and the laws of New South Wales are saved, and are thereby given continuing effect by ss 106, 107 and 108 of the Commonwealth Constitution, respectively. Mrs Rafailidis raised no argument such as would demonstrate that the laws here in question are inconsistent with any provision

of the Commonwealth Constitution, such that, pursuant to s 109, they would be invalid.

20 In her oral submissions put in the course of her argument before the Court today, Mrs Rafailidis raised the following further issues. She contended that legislation permitting compulsory acquisition was contrary to various international covenants and treaties to which Australia is a party. She also contended that the manner in which the first respondent, the Roads and Maritime Services, came upon the land that was compulsorily acquired, was contrary to these various international covenants and treaties. The answer to this submission is that the international covenants and treaties are not relevant to the enactment of laws by the New South Wales Parliament.

21 Mrs Rafailidis also submitted that neither she nor Mr Rafailidis entered into any contract for the acquisition of the property that they jointly owned. Whilst that is correct, the acquisition of a portion of the property jointly owned by them was undertaken pursuant to the compulsory processes permitted by statute, and a contract was therefore not required.

22 Mrs Rafailidis also said that they had attempted to settle the matter with the Roads and Maritime Services but that the first respondent refused to do so. A failure or refusal to settle is not, however, relevant to any issue on the appeal, although it may have been the cause of Mr and Mrs Rafailidis having gone to court, bringing the application in the Land and Environment Court as they did.

23 The appellant also read a document onto the record that she had obtained from the Internet. There was nothing in that document that was relevant to the issues before the Court. Mrs Rafailidis also referred to quotations from various parts of the Bible. These quotations were in large measure directed to her allegation that by the compulsory acquisition, the land had been stolen from her. This material did not deal with the issues that are contained in grounds of appeal. But in any event, the compulsory acquisition of land pursuant to statute with a payment of compensation does not constitute stealing, even in any colloquial sense of the word.

24 The appellant also submitted that she was deceived by "*many people*" into bringing the proceedings in the Land and Environment Court. She had made

the same claim in the Land and Environment Court. In that Court, Mrs Rafailidis included, in those who deceived her, Mr Carrapetta, the valuer, whom Mr and Mrs Rafailidis had engaged for the purposes of obtaining a valuation in determining whether or not to challenge the valuation that had been made by the Valuer-General. Apparently, Mr Carrapetta had told Mr and Mrs Rafailidis that the correct procedure was to bring proceedings in the Land and Environment Court. That was correct for the purposes of their challenging the amount of compensation payable. As it turned out, they were successful in obtaining a higher amount of compensation than that which had been determined by the Valuer-General, and indeed, higher than the Roads and Maritime Services had indicated to the court it was prepared to pay.

25 Whilst it is apparent that Mrs Rafailidis did not wish for her land to be compulsorily acquired at all, the fact is that there is power pursuant to statute for that process to have occurred. She was entitled to engage, as she did, the processes under the *Land Acquisition (Just Terms Compensation) Act* to seek a higher amount of compensation than had been determined by the Valuer-General. I am of the opinion that her application under that Act was appropriately dealt with in the Land and Environment Court.

26 The first respondent indicated that it did not seek costs. Accordingly, I would propose that the following orders be made:

1. That the appeal against the judgment of Craig J delivered on 11 February 2014 is dismissed.

2. That the application for leave to appeal against the judgment of Sheahan J delivered on 18 March 2014 is refused.

27 **BASTEN JA**: I agree with the orders proposed by the President.

28 It may seem curious that the applicant, who invoked the jurisdiction of the Land and Environment Court, sought to deny it had jurisdiction to deal with her claim. It is possible that what she intended to assert was that, even if the Court had jurisdiction, it did not exercise its powers lawfully. But the Land and Environment Court is a statutory court, and it was not shown to have acted otherwise than according to the terms of its statute.

29 It may also seem curious that a person, who claims to own land in accordance with the laws and usages of this State, claims that she cannot be deprived of that land without her consent, even where the laws of the State expressly so provide. The only identifiable thrust of her oral submissions in this Court was a challenge, either to the fact of the taking of the land, or to the manner of the taking, or perhaps both. These were not issues raised, or indeed able to be raised, by the proceedings in the Land and Environment Court, and for that reason, are not before this Court.

30 The applicant also claimed that she commenced proceedings in the Land and Environment Court as a result of deception. The deception referred to may have been a belief that the point she wished to raise as to the unlawfulness of the taking of the land would be able to be raised in that Court. That belief, however it arose, was wrong. In any event, she did not discontinue the proceedings in that Court.

31 I also agree with the reasons given by the President. I would only add that, although State law is not subject to a constitutional requirement that an acquisition of property be on just terms, in fact, such terms are generally required by the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

32 **WARD JA**: I agree with the reasons and orders proposed by the President, and I also agree with the additional observations of Basten JA.

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