

None so blind

18th July 2014

Property ownership is a critical ingredient of the society we are trying to build. No one can deny that. The wealthiest people and companies in this society have made a great part of their wealth through property dealings – buying, leasing, sub-dividing, selling, renovating and so on. We all know that property is critical to amassing and holding wealth.

The single largest owner of all classes of property in the Republic is of course, the State. Those properties are described as ‘Public Property’ in the [Public Procurement & Disposal of Public Property Bill 2014](#) which is now being debated in Parliament. The penultimate paragraph of [the Private Sector Civil Society group \(PSCS\) group statement](#) of 13 June 2014, is clear –

“...Whilst very pleased with the progress to date and while not having sight of the amended bill we note two areas that remain of serious concern; the Role of civil society and the acquisition and disposal of public property...”

At pg 7 of that Bill – “public property” means real or personal property owned by a public body;”

‘Real Property’ usually means real estate (freehold or leasehold), while ‘Personal Property’ usually means all other types of property such as licenses, concessions and tangible items of worth.

‘Owned’ usually means literally owned, as in the case of a freehold or leasehold interest, but there are other important types of property which are not literally in the ownership of a public body. Public Property is important because it is extremely valuable. The power of the State or its agencies to allocate those Public Properties must therefore be exercised in an equitable and transparent fashion if we are to foster proper conduct of our country’s public affairs.

Crown Grants

In relation to real estate, it is important to note that the system of Crown Grants was used during the colonial period to encourage immigrants of a particular type. Immigrants who were of acceptable race, religious belief or station in life were allocated public lands for the purpose of agriculture. The actual documents are called ‘Crown Grants’ and they can be seen in our country’s records. The allocation of those lands to those selected people established a pattern of substantial wealth which took generations to displace. Of course such a system of property allocation, on the basis of ones’ external appearance and belief system, would be incompatible with our Republican status.

That history and the important role which property plays in today’s society are both reasons why the ‘disposal of public property’ is an inescapable part of the new law, so that we can ensure good governance in these matters.

The Maha Saba Episode

This is a good example of a type of Public Property not literally owned by a Public Body. The dispute was over the decision of the previous administration to allocate radio licenses overnight to the Citadel Group, which was owned by a PNM member, at the same time as delaying the grant of broadcast licenses applied for by the Maha Saba. The Maha Saba had to take legal action all the way to the Privy Council to obtain [a favourable judgment](#) as to the breaches of principles of good public administration by that PNM government.

A new law intended to control dealings in Public Property as defined above would be one which extended beyond those literally owned by Public Bodies to include species of property in the '*care, custody or control*' of those bodies. That would allow future occurrences of a 'Maha Saba episode' to be rapidly rectified, also at less expense, by the Procurement Regulator as that type of property transaction would be within oversight of the new law.

In point of fact, it was reported that the Citadel group which comprised three radio stations was sold in 2012 to the CCN group (owners of this newspaper) in 2012 for a sum reported to be over \$50M. So it is clear that these species of property have serious value, quite apart from any other aspects.

Caroni Lands

When Caroni Ltd. was closed in August 2004, about 76,000 acres came out of cultivation and become available for alternative uses. The Caroni lands stretch from Orange Grove at Trincity (near the large new Blue Water facility) as far south as Princes Town.

Given the fact that Chaguanas has been our fastest-growing town for almost 20 years now and the ongoing growth of investment in San Fernando and its outlying districts, it is clear that the Caroni lands have a critical role to play in our medium to long-term prospects. But those possible outcomes would be conditional on just how the Caroni lands are allocated in the short-term. As far as I am aware, a decade after abandoning sugar cultivation, there is still no strategic plan for how these lands are to be utilised. In the absence of a proper strategy for the management of those important State lands, there is scope for missed opportunity in terms of development and re-distribution.

The decisive land allocation issues would include –

- How does the allocation policy work together with the State's broader economic policies?
- To whom are the lands allocated?
- On what terms are the lands allocated – i.e. for how long are the lands to be leased and with what restrictions? Some of the ex-Caroni workers are demanding grants of freehold interests from the State, but no decision seems to have been made on that.
- Does the State have the right to repossess the lands upon expiry of the lease?

- Does the allocation strategy have dynamic measures to control speculation? This is to prevent the growth of ‘flippers’ who just acquire property to hold and re-sell. There is a serious view that ‘flippers’ are a part of the market, but there is also a way that their presence can retard development as they do not typically improve or maintain their properties.

All of those issues must be located within equitable and transparent arrangements as required by the new law.

State Leases of offices

When the State leases offices or other property it is in fact procuring property via a transaction in Public Money. Those transactions must take place within a modern system which ensures good governance by attaining accountability, transparency and value for money.

There is a huge oversupply of offices in greater POS as a result of the State’s overbuilding during the last regime and the current administration is now shifting significant public offices out of POS. The combined impact of those ought to be a steady decline in both the gross amounts paid to landlords via State leases and the amounts paid per sq. ft.. That kind of change can only be obtained and monitored if the State’s leases of offices and other property are also part of the new Procurement system, so that the details are published as part of the database of State contracts.

Invader’s Bay

The State-owned reclaimed lands at Invader’s Bay in west POS are another pregnant example of how the use of improper land allocation processes can injure the public interest. The JCC has mounted a legal challenge to seek publication of the legal advice obtained by the Ministry of Planning & Sustainable Development as to the legality of their activity ‘thus far’ in respect of that 70-acre parcel of prime land.

It is interesting to recall that one of the legal opinions on which the State seems to be relying, notes that this proposal was to grant long leases (about 99 years) to the successful bidders at Invader’s Bay. That was not considered a disposal since the State would have retained the freehold interest. Now that is probably the best example of why these types of transactions must be controlled by these modern and effective laws. The attempt to conflate a residual freehold interest with ownership, while at the same time denying the tremendous commercial value of a 99-year lease over prime lands was scandalous.

The most valuable properties in the capital are the leaseholds in St. Clair and Woodbrook, that much is indisputable, which is why we have guard against this kind of evasive advice to facilitate arrangements to escape proper oversight.

The Landed Interests

The ill-fated 2009 proposals for a new Property Tax would have required an updated and open database of the entire country’s property holdings. The campaign to ‘Axe the Tax’ was successful and

that database never saw the light of day, which entirely suited the Landed Interests who are wary of any system which would expose their operations to easy scrutiny.

We need to be vigilant to ensure that the [Public Procurement & Disposal of Public Property Bill 2014](#) does not leave a gaping, purposeful loophole thorough which our Public Money will continue to pour.

Given that our political parties receive financing from business-people, how will those party financiers be rewarded? In a situation which properly controls the award of State contracts for goods, works and services, how can they be rewarded?

The answer is Public Property.