

Hamilton C.J
Barrington J
Barron J
201/96

THE SUPREME COURT

THOMAS DOYLE AND ELAINE DOYLE

Applicants/Appellants

and

**THE MINISTER FOR THE ENVIRONMENT IRELAND, THE ATTORNEY GENERAL AND
COUNTY COUNCIL FOR THE COUNTY OF KILDARE**

Respondents

JUDGMENT delivered on the 18th day of May 1999 by BARRON J. [Nem. Diss.]

The Kildare County Council (Kilcullen Link) Motorway Scheme 1978 was perfected by the Council on the 28th October 1987. In

_____ page break _____

(2)

accordance with the provisions of the Local Government (Roads and Motorways) Act, 1974 the scheme was submitted to the Minister for the Environment on the 1st December 1987. A public inquiry was held between the 10th and the 12th May 1988. On the 26th May 1989 the Minister made an order approving the scheme. On the same date he declared the road to be provided by the scheme should be a motorway. This was advertised on the 28th of June 1989.

The applicants' home adjoined the proposed motorway and portion of their lands were required for the purposes of the scheme. Additionally, the scheme affected their access to the public road.

Construction of the new motorway commenced in the year 1991 and was finished in 1994. The formal ceremony of the opening of the motorway was conducted by the Minister on the 24th October 1994.

_____ page break _____

(3)

Pursuant to the provisions of the statute the approval of the scheme by the Minister had the same effect as if a compulsory purchase order had been made in respect of the land. Accordingly, on the 23rd August 1989 the County Council served a notice to treat upon the applicants in relation to the lands to be acquired to carry out the scheme. The parties were unable to come to terms in relation to the amount of compensation to be paid to the applicants. They did, however, agree that the provision of an alternative access to that being lost by virtue of the scheme would cost a sum of £21,000. It was agreed that the matters in dispute between them should go to arbitration and that the sum of £21,000 should be included in the award of the arbitrator. The arbitrator was appointed on the 13th June 1990. The arbitration took place on the 10th and 13th December 1990 and on a date in May 1991. The arbitrator made his award on the 26th July 1991 in which he included the sum of £21,000.

(4)

Meanwhile the Council had entered on to the applicants' premises for the purposes of the scheme and had closed the applicants' existing access to the public road. At that date neither the sum of £21,000 had been paid to the applicants nor had any start been made by them on the provision of the alternative access.

The applicants were dissatisfied with the award and on the 17th October 1991 instituted proceedings in the High Court to have the award set aside. They were successful in the High Court but on appeal to this Court the appeal was allowed and the award of the arbitrator was confirmed. This judgment was given on the 31st October 1995.

On the 19th December 1995 the applicants were given liberty to seek judicial review *inter alia* by way of a declaration that the order of the Minister approving the motorway scheme was null and void, and an order

(5)

that the County Council acted *ultra vires* in blocking the access to his premises before an alternative access had been provided.

The relief sought was refused by Geoghegan J. and the matter comes before this Court by way of appeal from that order. The sole issue argued before this Court was whether the Order approving the scheme dated the 26th May 1989 was valid. The issue in relation to the sum of £21,000 was not argued nor was the submission raised in written submissions relating to the constitutional validity of the Acquisition of Land (Assessment of Compensation) Act, 1919 pursued.

In my view it is inappropriate for this Court to rule on the submissions raised in relation to the validity of the Minister's Order. The notice to treat, the arbitration, and the proceedings to contest the award were all based upon the acceptance of the order as being a valid order. The parties to the arbitration must be taken to have accepted that. What

(6)

is being sought is in effect to re-open completed litigation. The time to impugn the order was when the notice to treat was served. Not having done so then, the applicants cannot now reopen the matter. Having acted on the basis that the Order was valid, they cannot now impugn it.

In any event, there was no substance to the issues raised and had they been open for determination, I would have upheld the Order of the Minister. I do not propose to set out reasons since I regard the matter as being in effect moot.

Like Geoghegan J. held, there is no reason to decide the legal issue as to the proper interpretation of s. 6 (4) of the 1974 Act. Nevertheless, when road authorities agree with landowners to pay compensation towards the cost of provision of an alternative access to the public road, regard must be paid to the situation in which the landowner will find himself if there is a

_____ page break _____

(7)

gap between the time the existing access is blocked off and the time the alternative access is provided.

In the event, I would dismiss the appeal.