[TRIANTAFYLLIDES, STAVRINIDES, L. LOIZOU, JJ.]

ANASTASSIA CHRISTOU KITTOU, *Appellant*,

*v.*

THE REPUBLIC OF CYPRUS, *Respondent*.

(*Civil Appeal No.* 4921).

*Compulsory Acquisition—Compensation—Assessment—Proper measure of reduction in respect of the effect of section* 8 (1) *of the Antiquities Law, Cap.* 31—*Trial Court's award increased by adding to compensation value of a well—Otherwise award sustained.*

*Compulsory Acquisition—Compensation—Assessment—Rules* (*a*) *and* (i) *in section* 10 *of the Compulsory Acquisition of Property Law* 1962 (*Law No.* 15 *of* 1962)—*Whether or not any particular instance comes within the ambit of rule* (i) *is primarily a question of fact.*

Cases referred to :

*Aston Charities Trust Ltd.* v. *The Metropolitan Borough of Stepney* [1952] 2 Q.B. 642, at p. 647.

The facts sufficiently appear in the judgment of the Court.

**Appeal and Cross-appeal.**

Appeal and cross-appeal against the judgment of the District Court of Limassol (Malachtos, P.D.C. and Loris, D.J.) dated the 9th July, 1970, (Reference No. 7/65) by virtue of which the compensation payable for the acquisition of appellant's land was assessed at £948.600 mils.

*M. Houry*, for the appellant.

*J. Potamitis*, for the respondent.

*Cur. adv. vult.*

The judgment of the Court was delivered by :—

TRIANTAFYLLIDES, J. : This is an appeal against the assessment made by a Full District Court in Limassol,

in reference No. 7/65, in respect of the compensation payable to the appellant for the compulsory acquisition of her property (plot 168, sheet/plan LIV/46, registration No. 8357 of the 28th February, 1962) at the locality known as " Palia Lemesos ", near the main Limassol-Nicosia road. The area of the property is one donum, one evlek and 2,100 square feet.

The acquiring authority is the Republic of Cyprus, the respondent in this case. The notice of acquisition, under section 4 of the Compulsory Acquisition of Property Law, 1962 (15/62), was published on the 5th November, 1964, and the order of acquisition, under section 6 of the same Law, was published on the 3rd June, 1965.

It is not in dispute that this property lies within an area specified in the Second Schedule to the Antiquities Law (Cap. 31) and is, thus, affected by the provisions of section 8 (1) of such Law, which, in effect, prohibit the development of an affected property except by permission of the Director of Antiquities.

The compensation assessed by the trial Court for the compulsory acquisition of the appellant's property is £948.600 mils ; in this respect the following is stated in its judgment :

> " Taking into consideration the above mentioned comparable sales, we assess the value of the property of the claimant, without taking into account the restrictions to be imposed by the Director, to £800 per donum. Although the evidence as to the potentiality of the land of the claimant, taking into consideration the restrictions that the Director may impose, is rather vague, yet we think that a 15% should be deducted from the assessed value of the property of the claimant as representing the restrictions that the Director may impose by virtue of s. 8 (1) of the Antiquities Law, Cap. 31."

The comparable sales relied on by the Court below were those about which evidence was given by the valuation expert who was called as a witness by the respondent.

Counsel for the appellant has argued that the assessment of compensation should have been made on the basis of rule (*i*) in section 10 of the Law 15/62, and not on the basis of rule (*a*) in the same section. Rule (*a*) reads as follows : " The value of the property shall, subject as hereinafter provided, be taken to be the amount which the property, if sold in the open market on the date of the publication

of the relative notice of acquisition by a willing seller, might be expected to realize " ; and rule (*i*) reads as follows: " In the case of immovable property which at the date of the publication of the notice of acquisition was, and but for the acquisition would continue to be, devoted to a purpose of such a nature that there is no demand or market for immovable property for that purpose, the compensation may, if re-instatement in some other place is *bona fide* intended, be assessed on the basis of the reasonable cost of an equivalent reinstatement ".

Whether or not any particular instance comes within the ambit of rule (i) is primarily a question of fact (*see, inter alia, The Aston Charities Trust Ltd.* v. *The Metropolitan Borough of Stepney* [1952] 2 Q. B. 642, at p. 647, in relation to rule (5) in section 2 of the Acquisition of Land (Assessment of Compensation) Act, 1919, which is a provision similar to our rule (*i*)). Bearing in mind the particular circumstances of the present case, the way in which the appellant's case was presented to the Court below, as well as the object of a provision such as rule (*i*) (see, also, in this respect the Halsbury's Law of England, 3rd ed., Vol. 10, p. 139, para. 241) we are of the view that the Court below has not erred in any way by not treating the matter before it as calling for the application of rule (*i*).

It has, further, been argued on behalf of the appellant that the trial Court erred in arriving at the amount of £800 per donum as being the value of land in that area in 1964 ; moreover, that the Court failed, to take into account the value of a house standing on appellant's property, and, also, the value of a well. The value of the house and the value of the well were assessed, by the respondent, to be £112 and £200, respectively, on the basis that the property of the appellant was suitable for only agricultural purposes.

By a cross-appeal counsel for the respondent has contended that the £800 per donum measure adopted by the Court below was too high for 1964, and that, in any case, the deduction made in respect of the effect of section 8 (1) of Cap. 31, *viz.* 15%, was too low ; in this connection we have been referred to the prices paid in relation to two sales effected in 1968 to one and the same purchaser, the one of land within the area which is subject to restrictions because of the application of section 8 (1) of Cap. 31—and in which lies, also, the property of the appellant—and the other of land outside such area, and it was argued that the said purchaser must have treated the value of land within the area subject to restrictions as being reduced, because of the restrictions, by approximately 80%.

In the light of the totality of the material on record we are of the opinion that the value of £800 per donum was a conclusion at which the learned trial Judges could reasonably arrive and that it should not be interfered with.

Regarding the contention that 15% was a low measure of reduction in order to make allowance for the effect of section 8 (1) it should be observed that the two properties to which reference was made in this respect are not of the same nature as the property of the appellant ; and, in particular, it appears clearly from the survey map before us that the property of the appellant is situated in a much more advantageous position than the property which is within the same area—affected by the application of section 8 (1)—and to the price of which we were referred for comparison with the price of the property outside the said area in order to find that the aforesaid 15% measure of reduction was erroneously adopted by the Court below ; therefore, without laying down a general rule that such measure should be only 15% for all properties within the area concerned, or any other similarly affected area, we are of the view that in the present case we have not been satisfied that we should disturb in this connection the assessment of compensation as made by the District Court.

In relation to the value of the house we think that it was rightly treated as not being relevant to the assessment of compensation, in view of the dilapidated condition of the house and, also, of the fact that the land of the appellant was valued, by the trial Court as land ripe for building development and such development would inevitably entail the demolition of the said old house (which consists, actually, of one room only).

Concerning, however, the value of the well the position is different : Such value was estimated to be £200 by the valuer of the respondent on the basis that the appellant's property was suitable for agriculture. But a well is useful for many purposes and, therefore, some reasonable value has to be attributed to it even on the basis that the land of the appellant is not agricultural land but land suitable for building development. We are, thus, inclined to the view that the Court below ought to have taken the value of the well into account, even though such value would be less than £200 once the land of the appellant was not valued as being agricultural land but as land ripe for building development. We think that another £100, as being the value of the well, should be added to the compensation

assessed for the land of the appellant by the Court below, *viz.* £948.600 mils, thus increasing such compensation to £1,048.600 mils. The judgment appealed from is, therefore, varied accordingly.

Lastly, we do not agree with counsel for the respondent that the trial Court was wrong in awarding costs to the appellant. That was a matter in respect of which the Court possessed a wide discretion and we have not been persuaded that it has been exercised wrongly.

On the other hand, in view particularly of the fact that the appellant has not been successful in relation to many issues raised in this appeal we are not prepared to make an order for the costs of the appeal in favour of the appellant ; there will be no order for such costs and also, the cross-appeal, is dismissed without any order as to costs.

The order for costs made by the trial Court in favour of the appellant remains in force but the costs to be paid by the respondent thereunder will have to be assessed on the scale appropriate to the amount of compensation as increased on appeal by us.

*Appeal allowed. Cross-appeal dismissed. Order for costs as above.*