[ZEKIA, J., and ZANNETIDES, J.]

THE COMMISSIONER OF LIMASSOL, *Appellant*,

v.

MARIKKA N. KIRZI, *Respondent*.

(*Case Stated No.* 133).

Land acquisition—Land Acquisition Law, Cap. 233—*Assessment Tribunal—Compensation Assessment Tribunal Law,* 1955—*Decision of Tribunal final subject to its being amended in order to accord with the opinion of the Supreme Court obtained in a case stated—Supreme Court can only draw inferences of fact from the facts set forth in the case—Section* 5 (5) *and the Compensation Assessment Tribunal Rules,* 1956, *r.* 41—*Application to the Tribunal to determine the amount of compensation to be paid—Assessment to be made in accordance with section* 11 *of the Land Acquisition Law, Cap.* 233—*In valuing a land capable of sub-division into building plots the residual method can properly be resorted to—When there are concurrent sales of comparable properties best method to be employed is the direct comparison one, but when this is not available the residual method can be resorted to—Tribunal not bound as a matter of law to adopt one or the other system so long as they cannot be considered as erroneous tests or in violation of section* 11 *of the Land Acquisition Law—Point of law where appropriate method is incorrectly applied as by omitting to make the necessary deductions —Supreme Court does not question the amount of discount, unless so low as to amount to making no allowance at all.*

A piece of respondent's land was compulsorily acquired by appellant. Application was made to the C.A. Tribunal to determine the compensation to be paid to respondent. The Tribunal adopted solely the residual or development method of valuation and refrained from the direct comparison method on the ground that there was no similarity between the pieces of land indicated by both parties and the tract of land acquired. The appellant appealed against the decision of the Tribunal by way of case stated under section 7 (1) of the Compensation Assessment Tribunal Law, 1955, as being erroneous *in point of law in that:*

(*a*) In ascertaining the market value of the land acquired the Tribunal had to confine itself to the properties sold in cash and disregard the sale prices the payment of which were to be effected by instalments.

(*b*) The Tribunal made the valuation based on a comparison with plots not similar in size.

(*c*) The valuation was made of the building plots which the field would have produced at the time of the acquisition and not valued as a field ripe for development.

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(*d*) The allowances made for deferment were unreasonably low.

Held : (1) In valuing land capable of sub-division into building plots the residual or development method can be properly resorted to : *Maori Trustee v. The Ministry of Works* (1958) 3 W.L.R. 536, *followed*.

2. When there are concurrent sales of comparable properties the best method to be employed is the direct comparison of the sale prices of such properties with that of the land acquired, because such concurrent sales afford the best evidence as to market value of the land to be ascertained. But when this is not available the residual method can be resorted to.

3. The Tribunal did not go wrong in relying on sales by instalments as such sales were converted to cash sales by deducting 10% from the price stated in the agreements.

4. The Tribunal is not bound as a matter of law to adopt one or the other system so long as they cannot be considered as erroneous tests and unless a method adopted necessarily leads to violation of the provisions of the law regulating the assessment of compensation (Section 11 of the Land Acquisition Law).

5. Deductions regarding costs of the work to be carried out for a division as well as for profit and risk and for deferment allowance and other incidental expenses have been made from the gross value of all the building plots composing the land in question. It is not within the province of this Court to question the amount of discount unless it is so low as to amount to not making any allowance under the particular subhead at all.

Decision of the Tribunal affirmed.

Cases referred to:

Maori Trustee v. The Ministry of Works (1958) 3 W.L.R. 536.

Rees Roturbo Development Syndicate LTD v. Ducker (Inspector of Taxes) (1928) 1 K.B. 517.

Case Stated.

Case stated from the decision of the Compensation Assessment Tribunal, under Section 7(1) of the Compensation Assessment Tribunal Law, 1955, dated 8.5.59 (Ref. No. 5/58—Stavrinides, President, J. Potamitis and G. Aphamis, Members, whereby the acquiring authority was ordered to pay £9,450 compensation to the claimant with £115 costs and 4% interest.

Sir Panayiotis Cacoyiannis for the appellant.

A. P. Anastassiades for the respondent.

Cur. adv. vult.

The facts sufficiently appear in the judgment of the Court, read by :

ZEKIA, J. : This is a Case Stated from the decision of the Compensation Assessment Tribunal made under section 7 (1) of the Compensation Assessment Tribunal Law, 1955, which section reads :

> " Any person aggrieved by any decision of the Tribunal on the ground that it is wrong on a point of law may, subject to the Rules of Court, apply to the Tribunal to state a case for the opinion of the Supreme Court.
>
> Subject to the Rules of Court the Tribunal shall, on an application being made under sub-section 1, state a case on a question of law involved for the opinion of the Supreme Court and such case shall be heard and determined by the Supreme Court and such opinion shall be binding on the Tribunal ".

Section 5 (5) of the same law reads : "Subject to section 7 a decision of the Tribunal shall be final ". We cited from the outset the aforesaid sections with a view to indicate the jurisdiction of this Court in a Case Stated under the Compensation Assessment Tribunal Law, 1955.

This case presents a peculiar feature in that although the Tribunal does not admit that there was a question of law involved which could be properly referred for the opinion of the Supreme Court, proceeded to state a case, on the filing of an application by the appellant.

Indeed it is a moot point whether the Tribunal is bound to state a case on the mere allegation on the part of an aggrieved person that the decision involved a question of law notwithstanding an express opinion on the part of the Tribunal that the points raised for the statement of a case do not disclose a question of law at all. However, this aspect of the case was not argued and was not made a point and we shall be content by a mere reference to it.

Section 5 (5) of the Law in question makes it abundantly clear that the decision of the Tribunal, subject to its being amended in order to accord with the opinion of the Supreme Court on a point of law obtained in a Case Stated, is final. Rules 34 and 35 of the Compensation Assessment Tribunal Rules, 1956, relate to the application for a statement of a case ; and rule 41 relates to the powers of the Supreme Court, and reads:—

> " On the hearing of the case the Supreme Court may, if it thinks fit, amend the case or order it to be sent back to the Tribunal for amendment and shall have power to draw inferences of fact from the facts set forth in the case ".

From the phrase " and shall have power to draw inferences of fact from the facts set forth in the case " we understand that we are able to draw such inferences for the purpose of giving an opinion on a question of law stated. Beyond this we cannot go.

A piece of land consisting of 16 donums and 135 sq. ft. the property of the appellant was compulsorily acquired on the 29th May, 1956, under sections 75 and 76 of the Elementary Education Law, Cap. 203. No agreement having been reached between the Acquiring Authority and the owner of the land, the respondent, for the amount of compensation to be paid, application was made to the Compensation Assessment Tribunal to determine the compensation payable to her. Assessment had to be made in accordance with section 11 of the Land Acquisition Law, Cap. 233, as amended at the time of the hearing.

The Tribunal heard the reference and witnesses and examined the written valuation made by the expert valuers of both sides, namely, that of Mr. Mavroudis and Mr. Karseras. The Members of the Tribunal including the President in the presence of the interested parties inspected the land, the subject-matter of this appeal, and also other pieces of land in the neighbourhood which were indicated by the parties with a view to comparing their sale prices with the one compulsorily acquired.

Both the expert valuers adopted for valuation the residual method and direct comparison method. It appears that Mr. Karseras expressly stated in his evidence that he had recourse to both methods and he found the amount payable as compensation for the acquired piece of land to be £7,806. Mr. Mavroudis on the other hand, from his written valuation, it is clear that he made use also to some extent of the direct comparison system and arrived at the figure of £10,770 as the amount payable as compensation to the owner, the respondent. The Tribunal on the other hand, adopted solely the so-called residual or development method and refrained from the direct comparison method on the ground that there was no similarity between the pieces of land indicated by both parties and the tract of land acquired and therefore considered it safer to rely on the residual method and awarded the sum of £9,450 as compensation. The main grounds on which the decision of the Compensation Assessment Tribunal is attacked as being erroneous in point of law can shortly be stated as follows:-

(*a*) In ascertaining the market value of the land acquired the Tribunal had to confine itself to the properties sold in cash and disregard the sale prices of properties the payments of which were to be effected by instalments and the transfer of such properties were

to be carried out in the future after the full payment of the price.

(*b*) The valuation made by the Tribunal which is based on a comparison with small building plots not similar in size is arbitrary, unreasonable and legally wrong.

(*c*) The property in question was not valued as a field ripe for development but the valuation was made of the building plots which the field would have produced at the time of the acquisition as if the field was actually divided into approved building plots.

(*d*) The allowances made for deferment and/or for profit and risk were unreasonably low and were against the legal principles of valuation.

(*e*) The Tribunal should have estimated the value of the land acquired by a comparison with cash sales of plots Nos. 219, 223 and 233 which were situated in the same locality and were nearer in size to the land acquired than the tiny plots accepted by the Tribunal as a guide for valuation. The Tribunal wrongly refused to state an alternative amount based on direct comparison method under r. 26 (2) of the Compensation Assessment Tribunal Rules, 1956.

These are the main grounds on which this Court is invited to frame and give an opinion on questions of law. Paragraph 8 of the Case Stated reads:

"The question upon which the decision of the Court is desired is whether, upon the facts, we came to a correct determination and decision in point of law, and if not, the Court is respectfully requested to reverse or amend our determination or to remit the matter to us with the decision of the Court thereon".

We need hardly remark that this statement lacks precision altogether. We are presented with the facts of the case and the grounds advanced by the appellant and left to ourselves to find the points of law involved in the decision of the Tribunal.

The land in question no doubt was rightly considered as ripe for development ; and the potentialities of the land compulsorily acquired as the law stands have to be taken into account in ascertaining the value of such property. In valuing a land capable of sub-division into building plots or building sites the residual method can properly be resorted to and this is established by the authorities, the recent one being *Maori Trustee* v. *The Ministry of Works*, (1958) 3 W.L.R. 536, which has been quoted and acted upon by the Tribunal. The Privy Council endorsed with approval the

statement made in this connection by Gresson J. in his judgment in the Court of appeal :

> " Their Lordships would agree with the following passage in the judgment of Gresson J. : In my opinion in this case the land must be valued for what it in fact was on the specified date — a tract of land capable as to some, perhaps all of it, of subdivision into building allotments, and of being sold at some time and over some period in that form. That circumstance would influence a purchaser in his determination of price. In estimating what price a purchaser would be willing to pay recourse may be had to an examination of the estimated gross yield from a subdivision as yet notional only, and the estimated deductions that a purchaser would have to take into account ; but that is the extent to which a notional subdivision can be regarded.....".

In the same case the Privy Council appear to have approved the following opinion also:

> " If the land is to be valued as a whole the Court in assessing the potentialities may take into account the suitability of the land for subdivision, the prospective yield from a subdivision, the costs of effecting such a subdivision and the likelihood that a purchaser acquiring the land with that object would allow some margin for unforeseen costs, contingencies and profit for himself ".

The learned counsel for the appellant did not question the accuracy of the proposition laid down in the above case. He complained that in ascertaining the value of a big piece of land it was wrong and unreasonable to be guided by the price quoted in agreements of sale of half shares of two tiny building plots where one of the terms of agreement was that the payment was to be effected by instalments and transfer to be made in future. Lands in similar size and in same locality, it was submitted, were sold for cash near to the date of the notice to treat and were ripe for development and although these facts were brought to the notice of the Tribunal during the hearing of reference the Tribunal refused to make use of such comparable sales. No doubt when there are concurrent sales of comparable properties the best method to be employed is the direct comparison of the sale prices of such properties with that of the land acquired, because such concurrent sales afford the best evidence as to market value of the land to be ascertained. But when this is not available the residual method can be resorted to.

The Tribunal however clearly found that the properties alleged to be comparable properties are not similar to the one to be valued and they gave their reasons for it. On the other hand they found that the two tiny plots, namely, plots 131/5

and 146/1/4 were similar to the plots capable of being carved out of the land acquired and could safely be relied upon for ascertaining the value of such plots.

The President as well as the Members of the Tribunal visited the relevant pieces of land and after the evidence was heard they came to the conclusion that the best guide for valuation of the plots of the acquired land was by relying on the sale prices of the two plots. The sale by instalments was converted to cash sale by deducting 10% from the price stated in the agreements of sale. We are unable to see how the Tribunal went wrong in law in having recourse (*a*) to the residual method and (*b*) for making use of the particular tiny plots for the purpose of valuation of the plots of the land in question which was notionally divided into. The scheme for division into plots of the subject land had already received the approval of the appropriate authority. On the other hand we fully realise the great margin of error inherent in the residual method and the necessity to check the results wherever possible with alternative methods, such as the direct comparison method. We are indeed inclined to think that the more appropriate method in this case was the direct comparison system which might be adopted by comparing the sale prices of the pieces of land nearer in size to the land in question, namely, plots 219, 223 and 233 after making the necessary adjustment so that they might be accepted as concurrent sales of comparable properties. At any rate it seems to us the Tribunal might at least use for checking the result of their calculations the sale prices of the alleged comparable properties, plots 219 and 223, after the necessary adjustment. The following passage from Modern Method of Valuation, 4th Edition, p. 132, under the heading "the Residual or Development Method" is worth quoting :

> " It is obvious that a method such as this, in which a number of different factors are employed, each dependent on the judgment of the individual valuer, is likely to involve a wide margin of error. In practice, a valuation based on the residual or development method should be checked wherever possible by prices realised on actual sales of comparable properties ".

As we do not know however if the required material for making such adjustment was available before the Tribunal or not we do not think that we can go any further. We agree with the Tribunal that they are not bound as a matter of law to adopt one or the other system so long as they cannot be considered as erroneous tests and indeed, unless a method adopted necessarily leads to the violation of the provisions of the law regulating the assessment of compensation (section 11 of the Land Acquisition Law), we fail to see how we can say that by adhering to a particular method the decision of the Tribunal becomes erroneous in point of law.

A particular method of valuation might be the appropriate method in a case, yet it might not correctly be applied, as when, by omitting to make the necessary deductions which, if not done, the rules of assessment as provided by law are necessarily infringed. In such a case again there is room for a point of law. There might be instances where the omission or inclusion of a factor in the valuation of a property manifestly amounts to a misdirection in law. Absence of evidence to support a finding of fact amounts to an error in point of law ; also the taking of an erroneous view as to the nature and effect of a document. No doubt this Court is competent to deal with any point of law which relates to the construction to be placed on any relevant part of the law. It is difficult sometimes, however, to draw a distinction and to state with certainty whether a particular decision or part thereof involves a question of law at all. The difficulty to distinguish between fact and law is well illustrated in *Rees Roturbo Development Syndicate Ltd. v. Ducker* (*Inspector of Taxes*) (1928) 1 K.B. 517, where Scrutton L.J., said : " In my view it is impossible to reconcile the various statements of high authorities on the division between fact which is unappealable and law which is appealable ".

There appears to be no omission on the part of the Tribunal in making the required deductions from the gross realisation of the subdivided plots of the land in question. Deductions regarding costs of the work to be carried out for a division as well as for profit and risk and for deferment allowance and other incidental expenses have been made from the gross value of all the building plots composing the land in question. It is not within the provinces of this Court to question the amount of discount made under various subheads which is supported by evidence unless it is so low as to amount to not making any allowance under the particular subhead at all. To what extent a land ripe for development is similar to one or is dissimilar from other pieces of land regarding position and condition etc. for the purpose of comparison is a question of degree which has been regarded by authorities as a question of fact. The same applies to rates and percentages employed in deductions and adjustments. We are not reviewing — and indeed we have no power to do so — the decision given by the Tribunal consisting of a President and two Members experienced in law and valuation save when it is found to be erroneous in point of law.

Although we feel that it would have been safer for the Tribunal to depend on the sale of comparable properties (after of course making the necessary adjustment so as to render them comparable to the plots of the appellant), or check their results with such sales yet we cannot say that the decision of the Tribunal was wrong in law by adhering to the residual system and refusing to follow the course indicated.

We have not dealt with each of the grounds argued by the appellant but we have given consideration to them all.

In short we find that there is no question of law involved in this case and the decision of the Tribunal is hereby affirmed with costs in favour of the respondent.

Decision of the Tribunal affirmed.