[BOURKE, C.J., and ZEKIA, J.]

1959
June 26, 29
Sept. 22

VASSOS PANAYI PELENDRIDES,

Appellant,

v.

HER BRITANNIC MAJESTY'S SECRETARY OF STATE FOR AIR, *Respondent.*

(*Case Stated No.* 132).

VASSOS PANAYI PELENDRIDES
v.
HER BRITANNIC MAJESTY'S SECRETARY OF STATE FOR AIR

Land acquisition—Compensation—Land Acquisition Law, Cap. 233, *section* 11(*b*) *as amended by Law No.* 26/52, *s.* 7—*Compensation Assessment Tribunal Law,* 1955

Underground water—Compensation in respect of underground water —As a rule underground water is the property of Government— —The Government Waterworks Law, Cap. 305, *s.* 3 (1) (*a*)— *Compensation for damage under s.* 11 (*f*) *of the Land Acquisition Law—Damage by reason of severance of the land acquired from other land belonging to the owner and the injurious effect on such other land—Section* 7 *of the Land Acquisition Law— Notice under s.* 6 *of the Land Acquisition Law, Cap.* 233 *—Presumption of continuance—Government Waterworks Law Cap.* 305, *s.* 3 (1)—*Permission to utilise water under the Government Waterworks Law—Permit under the Wells Law, Cap.* 312 *s.* 3—*Such permit personal to holder and not transferable with land— Minute trickle enabled to be brought to the surface from an old well for the watering of animals by bucket not "brought or raised to the surface" within the meaning of s.* 3 (1) (*a*) *of the Government Waterworks Law Cap.* 305—*Sinking a borehole amounts to "works constructed" within the second proviso to s.* 11 (b) *of the Land Acquisition Law.*

The applicant-appellant was the owner of a piece of land which was acquired by the respondent under the provisions of the Land Acquisition Law, Cap. 233 on the 20th January. 1955. The acquired land was leased for a year to respondent before it was so acquired. During the period of lease respondent drilled a borehole on the leased land. After the borehole was drilled he obtained a permit under section 3 of the Wells Law, Cap. 312. The appellant sought compensation for the land and also the water rights in respect of the water taken from under the land acquired. The question of the amount of the compensation payable to appellant was referred to the Tribunal. The Tribunal fixed the value of the land at £126 and the value of the water at £1,425; but it awarded only the value of the land on the ground that the appellant was not and had never been the owner of the water. It was further held that the appellant was any way precluded from claiming payment for the water in view of the second proviso to section 11(b) of the Land Acquisition Law as amended by section 7 of Law 26/52 (*see post*).

The appellant appealed by way of case stated for the opinion of the Supreme Court, contending that the Tribunal came to a wrong conclusion in law and that he is entitled to compensation in respect of the underground water at the valuation as assessed and that he should have been awarded compensation for damage under section 11 (f) of the Land Acquisition Law, Cap. 233 (*see post* for text).

Held : That the appellant is not entitled to compensation in respect of the water for the following reasons:—

(a) According to section 3 (1) (a) of the Government Waterworks Law, Cap. 305 (*post*) all underground water for which no measures have hitherto been taken enabling such water to be brought or raised to the surface is the absolute property of the Government.

(b) Although the respondent took steps to bring the water to the surface during the period of the lease obtaining for that purpose a permit as required by section 3 of the Wells Law, such permit is personal to the respondent and it could not have the effect of vesting any rights in the appellant over the water under appellant's land entitling him, thus, to be compensated under section 11 of the Land Acquisition Law.

(c) Although there was an existing old well since at least 1919 on that part of appellant's land which was not the subject of acquisition and about 200 feet away from the new borehole and although that well was being used from 1937 to 1947 for watering animals by means of a bucket, such trifling percolation of water from the water bearing strata underneath, enough in this instance to enable at one time the watering of animals by drawing with a bucket, does not defeat the objects of the Government Waterworks Law so as to render all the underground water of the area the property of the appellant.

(d) Sinking a borehole amounts to "works constructed" within the meaning of the second proviso to section 11 (b) of the Land Acquisition Law, Cap. 233. The appellant is thus precluded from obtaining compensation for the water.

Decision of the Tribunal affirmed. Case remitted to the Tribunal with the opinion of this Court.

Case Stated.

Appeal by way of a case stated for the opinion of the Supreme Court by the Compensation Assessment Tribunal (Stavrinides, President, Potamitis and G. Panayides, Members in Ref. No. 3/59 decided on 30.12.58) under section 7 of the Compensation Assessment Tribunal Law, 1955. On the application of the appellant a case was stated for the opinion of the Supreme Court.

A. P. Anastassiades for the appellant

Sir Panayiotis Cacoyiannis for the respondent.

Cur. adv. vult.

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

BOURKE, C.J. : This is an appeal by way of a case stated for the opinion of this Court by the Compensation Assessment Tribunal under section 7 of the Compensation Assessment Tribunal Law, 1955. The appellant was the owner of a piece of land which was acquired by the respondent under the provisions of the Land Acquisition Law, Cap. 233. Water was obtained from a borehole sunk in the land and was piped away for use at Akrotiri airfield. The appellant sought compensation for the land and also the water rights in respect of the water taken from under the land. The Tribunal fixed the value of the land at the material time, that is the 2nd December, 1954, (having regard to section 6 and the first proviso to section 11 (b) of the Land Acquisition Law), at £126 and the value of the water at £1,425, but it awarded only the value of the land on the ground that the appellant was not and had never been the owner of the water and therefore was not entitled to any compensation in respect thereof. It was further held that the appellant was any way precluded from claiming payment for the water in view of the second proviso to section 11 (b) of the Land Acquisition Law which, as amended by section 7 of Law No. 26 of 1952, reads as follows:-

> " Provided further that where Her Majesty's Naval, Military or Air Force Authorities or Her Majesty's Government in the United Kingdom or any Department has been in possession of the land, by virtue of a title less than absolute ownership, compensation shall be estimated without regard to any increase in value on account of works constructed on the said land by the said Authorities or any of them or by any Department".

The appellant now contends that the Tribunal came to wrong conclusions in law and that he is entitled to compensation in respect of the underground water at the valuation as assessed ; he also submits that he should have been awarded compensation for damage under section 11 (f) of the Land Acquisition Law which reads:—

> " The Assessing Authority shall also have regard to the damage, if any, to be sustained by the owner by reason of the severance of the land acquired for public purposes from other land belonging to such owner or other injurious effect on such other land by the exercise of the powers conferred by this Law".

The respondent seeks to uphold the decision of the Tribunal but disputes the correctness of the method of valuation

of the water that was adopted by the Tribunal and applies that it should be varied : to this end notice was served upon the appellant and filed in Court. It is argued for the appellant that there is no provision enabling the question to be raised by such a procedure and that if the respondent felt he was a "person aggrieved" by the decision of the Tribunal within section 7 of the Land Acquisition Law, he could have applied under that section for an opinion on case stated.

It will be convenient to observe the detailed nature of the claim and the circumstances by quotation from the statement of the case as rendered by the Tribunal :—

" 1. A notice to treat under s. 6 of the Land Acquisition Law, Cap. 233, published under No. 684 in Supplement No. 3 to the Gazette of the 2nd December, 1954, referred to "part of plot No. 58/1 of the Government Survey plan No. LVIII.14," situated at Kolossi village and belonging to the appellant, as one of several areas of privately-owned lands which were required by the Governor " for the undertaking of public utility " mentioned in Notification No. 32 published in Supplement No. 3 to the Gazette of the 2nd January, 1954, namely the establishment and operation of an airfield within the Akrotiri peninsula.

2. The said " part of plot 58/1 — now plot No.58/1/2" was compulsorily purchased by the Secretary of State for Air (hereafter called "the respondent") under Cap. 233 in virtue of the Governor's sanction in that behalf, published in Supplement No. 3 to the Gazette of the 20th January, 1955, under Notification No. 22.

3. No agreement having been reached between the respondent and the appellant as to the compensation payable for the said purchase, the respondent referred the question of the amount of compensation payable to the appellant to this Tribunal.

4. At the time of the notice to treat there was, within the limits of the land purchased as in paragraph 2 above stated, a borehole (hereafter called " the subject borehole ") ; and the appellant, on the view that the water of the borehole was his and was acquired by the respondent at the same time and by the same procedure as the land (which, exclusive of the subject borehole, is hereafter referred to as " the subject land"), claimed to be paid the value of that water as well as the value of the land.

5. The respondent, on the other hand, while not disputing that the water of the subject borehole (hereafter called " the subject water ") was included in the compulsory purchase if it had been the appellant's,

maintained that it had not been his, and the question whether it had or not was the main question that we had to decide.

6. (1) By his statement of claim the appellant asked for " £157 and £4,000 respectively, being the market value of the above land and the water under that land at the time when the notice under s. 6 of the Land Acquisition Law (Cap. 233) was published, including the compensation for the damage sustained by the claimant by reason of the severance of the land acquired from the other land belonging to such claimant and the injurious effect on such other land and the water under that land, under the provisions of s. 11, paragraphs (b) and (f), of the aforesaid Law (Cap. 233) ".

(2) Expert evidence led by the appellant was to the effect that the value of the subject water was £2,000.

(3) It would appear that as far as " severance " and " injurious effect " are concerned what the passage in subparagraph (1) of this paragraph set out meant was what was stated in paragraphs 3 and 4 of the statement of claim, which are as follows:—

" 3. The borehole of the acquiring authority which was complete at the beginning of March, 1954, prejudicially affected the underground water of the claimant's property under plot 58/1 and the water of the well of the claimant. This borehole, 200 ft. deep, is in a distance of about 200 ft. from the well of the claimant.

4. The said borehole prejudicially affects also the right of the claimant to sink or construct a new well.".

7. We, the Compensation Assessment Tribunal, heard the reference and fixed the value of the subject land at £126 and that of the subject water at £1,425, but awarded the appellant only the value of the land without costs and made an order against him under r. 21 (1) of the Compensation Assessment Tribunal Rules, 1956, for £104 fees.

8. The appellant being aggrieved by our decision as being erroneous in point of law, made application in writing within the time limited by the 1956 Rules to have a case stated for the opinion of the Supreme Court.

9. At the hearing of the reference the following facts were proved or admitted:—

(1) The subject borehole was drilled by the Department of the Water Development for the respondent. Work for that purpose began on the 8th February, 1954, and was successfully completed by the 22nd of the following March;

(2) throughout the period in the preceding sub-paragraph referred to the subject land was occupied by the respondent under a written lease dated the 4th February, 1954, (exhibit 2 (a)), whereby the lessee was granted a term of one year from that date;

(3) the average sustained yield of the subject borehole was 13,000 gallons an hour;

(4) on the 19th October, 1954, the Commissioner of Limassol issued to the lessee, in respect of the subject borehole, a document (exhibit 3) in the form of a permit under s. 3 of the Wells Law, Cap. 312;

(5) in the part of plot 58/1 not purchased as above stated (hereafter called simply " plot 58/1 " and at a distance of about 200 ft. from the subject borehole there had been since at least 1919 a well which was blocked by the appellant in 1947 by placing dry bushes some distance down its shaft and filling it in with earth from the bushes upwards;

(6) from 1937 till 1947 the well was in use, water being drawn from it by means of a bucket for the use of animals ; but there was no evidence on which any finding could be made as to its yield ;

(7) there was some water in the well when work on the subject borehole began, and the sinking of the subject borehole injuriously affected the water of that well ; but on the evidence it was impossible to form any opinion as to the degree of affection, quite apart from the fact that no finding was possible as to its yield while in use;

(8) the whole of plot 58/1 is part of a water-bearing area, that is to say an area underlain by water-bearing gravels, so that notwithstanding the subject borehole and other boreholes in the vicinity of plot 58/1, if a borehole were sunk in that plot water of a quantity and quality similar to that of the subject borehole would be found; and having regard to the size of plot 58/1 such water could be found in a borehole sunk more than 80 ft. from the subject borehole, whose water is raised to the surface by means of a pump ; the cost of sinking such a borehole would have been £300;

(9) both the subject land and plot 58/1 are underlain by the old, buried bed of Kourris river, which is the water-bearing area;

(10) the subject borehole in part derives its water from the strata under plot 58/1;

(11) the water of the subject borehole is conveyed to Akrotiri airfield by a pipe and is used by persons employed there, including civilian contractors, and if in consequence of such use s. 7 of Cap. 312 became applicable the value of plot 58/1 was injuriously affected to the extent of £50 per donum;

(12) plot 58/1 is within an area defined by an order made by the Governor under s. 3A of Cap. 312 (inserted by s. 3 of Law 19 of 1951) and published in Supplement No. 3 to the Gazette of the 8th March, 1956, under Notification No. 165, the effect of which was that no permit to "sink or construct a well" (which includes a borehole) within that area might be issued by the Commissioner without the concurrence of the Water Engineer;

(13) neither the subject land nor plot 58/1 is within any area specified for the purposes of s. 4 of the Immovable Property (Tenure, Registration & Valuation) Law, Cap. 231;

(14) the whole of plot 58/1 was fertile agricultural land and irrigable, but the subject land, which comprises an area of one donum, 2 evleks and 1,000 sq. ft. or thereabouts, formed the best part of it;

(15) the subject land was worth most as agricultural land.

The finding in sub-paragraph (7) set out is based on a presumption of continuance.".

The argument for the appellant stresses the fact that upon the date material to the assessment of compensation, the 2nd December, 1954, he was the lessor of the land under the lease for a year granted to the respondent and executed on the 4th February, 1954. Shortly after the leasehold interest was obtained steps were taken to sink the borehole and water was found and utilised by the respondent lessee. On the 19th October, 1954, the lessee was granted a permit for a year "to sink or construct one well" on the land. The property was acquired by the respondent on the 20th January, 1955, under the provisions of section 7 of the Land Acquisition Law. The appellant submits that because he was the owner of the land subject to the lease on the 2nd December, 1954; and "land" in section 11 of the Land Acquisition Law, which provides for the method of assessment of compensation, includes, by virtue of the definition in section 2 (b), all water and water rights on, over or under the land, he is entitled to have the value of the water taken into account in the estimating of compensation.

This proposition involves consideration of section 3 (1) of

the Government Waterworks Law (Cap. 305) which is as follows:—

"3. (1) Notwithstanding anything to the contrary contained in any other Law now in force in the Colony—

(a) all underground water (including second water) for which no measures have hitherto been taken enabling such water to be brought or raised to the surface or to run on the surface; and

(b) all water running to waste from any river, spring, stream or watercourse; and

(c) all other waste water,

shall be deemed to be the absolute property of the Government, and no person shall take or utilise or take measures to utilise such water without the written permission of the Commissioner first obtained:

Provided that no permission under this sub-section shall be required in respect of any water from any well or line of wells sunk or constructed in virtue of a permit of the Commissioner issued under the provisions of the Wells Law.".

Mr. Anastassiades seeks in the first place to surmount the obvious difficulty in his way resulting from that sub-section by relying upon the proviso thereto and contending that since a permit had been issued in October, 1954, under the provisions of the Wells Law to his lessee, the respondent, he had as the owner of the property acquired rights to take and utilise the underground water and those rights were vested on the material date, namely, the 2nd December, 1954 had other events not supervened, namely, the compulsory acquisition of the land, he could have had the benefit of the water and could have disposed of the property at an enhanced value since the water rights would continue in attachment to rights of ownership over the land. In support of this submission reference has been made to sections 4, 20 (as substituted by section 6 of Law 8 of 1953) and 21 (2)(c) and 21 (2)(ii) of the Immovable Property (Tenure, Registration and Valuation) Law, (Cap. 231).

I do not see how these sections can avail the appellant because they do not seem to be concerned with underground water. Such water, "for which no measures have hitherto been taken enabling (it) to be brought or raised to the surface or to run on the surface is vested in the Government as its absolute property" in virtue of section 3 (1) of the Government Waterworks Law. It was plainly considered necessary in the public interest to control the taking and utilising of such water, to conserve it and ensure that it is put to proper use, and the Government have powers to do this not only as the

owner but also under the express provisions of section 4. The work of sinking the borehole upon the land acquired from the appellant at the time it was under lease was carried out by a Government Department ; but in order to enable the respondent to take the water for use at Akrotiri airfield, and with the apparent object of meeting the requirements of section 3 (1) of the Government Waterworks Law, the permit (exhibit 3) was applied for, though apparently at a rather late stage, and obtained under section 3 of the Wells Law as amended by section 3 of Law 19 of 1951 — a "well" being a borehole within the definition contained in section 2 of that Law. The Department of Water Development in sinking the borehole was acting on behalf of the respondent to whom the permit was issued. Since this permit had been issued under the provisions of the Wells Law there was, having regard to the proviso to section 3 (1) of the Government Waterworks Law, no need to have the other " written permission " of the Commissioner mentioned in the sub-section to take and utilise the water. It is reasonable to suppose that when granting the permit the Commissioner knew and approved of the way in which the water was to be utilised because the application for a permit under section 3 of the Wells Law must state, as one of the required particulars, the purpose for which the water is to be used. I am quite unable to discover any substance in the appellant's argument that because this permit had been granted to the respondent he, the appellant, acquired some interest in or rights over the underground water for the loss of which he should be suitably compensated. He was not the holder of the permit and he or any person to whom he might have transferred an interest in or the title to the land could not take or utilise the water belonging to the Government unless he or his successor in title succeeded in obtaining permission as required by law. Such permission is not granted as a matter of course and might be refused. I have no doubt that the permit issued, to use the words employed in argument, was personal to the respondent, and it could not have the effect of vesting any rights in the appellant over the water under his land for which he should be compensated under section 11 of the Land Acquisition Law. Such water remained the property of the Government subject to leave granted to the respondent to take and use it for a particular purpose.

It is then contended that section 3 (1) of the Government Waterworks Law does not apply in the circumstances because under paragraph (a) of the sub-subsection only that underground water becomes the absolute property of the Government " for which no measures have hitherto been taken enabling such water to be brought or raised to the surface or to run on the surface ". It is said that on the facts the water under the land in question came within that exception and was not Government property, and therefore the appellant had the right to take and utilise the water without any restric-

tion and without obtaining any written permission or permit. It is necessary to turn to the facts as stated in paragraph 9 (5) to (7) of the case as quoted above. There was an old well existing since at least 1919 on that part of the appellant's land which was not the subject of acquisition and about 200 feet away from the new borehole. From 1937 to 1947 it was in use for watering animals by means of a bucket. There was no evidence as to its yield. In 1947 the appellant blocked up the shaft of the well by putting some bushes down it and then filling it up with earth. For about seven years prior to 1954 it had been disused and ceased to serve as a well. It was also established as a fact that the whole of the appellant's plot of land including the portion acquired is part of a water-bearing area and is underlain by the old buried bed of Kourris river.

It would be an odd thing if the object of the Government Waterworks Law could be defeated because at a time in the past a well or even a hole in the ground was made of sufficient depth to permit some trifling percolation of water from the water-bearing strata underneath — enough in this instance to enable at one time the watering of animals by drawing with a bucket. It would be even more extraordinary if this was the effect although the well had been filled in and abandoned and did not serve any purpose for the collection and utilisation of water. Plainly to my mind the section lends itself to no such absurdity. I construe it to mean that water coming from underground is exempted from rights of ownership in the Government which up to the time of enactment of the Government Waterworks Law has been subject to measures enabling it to be brought or raised to the surface. That is to say that *the appellant was entitled to take and use as his own the water* that filtered or seeped into his old well — the water that thus became available for bringing to the surface through the measure of constructing the well prior to 1928. It is certainly not the effect of the law that because of this comparative minute trickle enabled to be brought to the surface from the old well, all the underground water in the area, or at least under the appellant's land, did not become the property of the Government.

These two grounds of contention raised by the appellant with the object of escaping from the effect of section 3 (1) of the Government Waterworks Law have in my opinion no substance. The water was the property of the Government and the Tribunal came to a correct conclusion in Law in deciding that the appellant had no rights over it and was not entitled to any compensation in respect of underground water.

The correctness of the decision of the Tribunal that in any event the appellant was shut out from obtaining compensation for the water in view of the second proviso to section 11 (b) of the Land Acquisition Law has also been called into question on this appeal. Section 11 provides for the rules to

be followed for the assessment of compensation and the proviso under reference has been quoted above.

The Air Force Authorities were in possession of the land by virtue of a title less than absolute ownership arising under the lease for a year made on the 4th February, 1954, and under the terms of that lease it seems clear enough that, so far as the lessor was concerned, the respondent was entitled to make a borehole on the land. It is submitted that the proviso on its true construction can only cover "works constructed" in the nature of buildings and that it is doing violence to the ordinary and literal meaning of the words employed to hold that the sinking of a borehole amounts to the construction of works on the land. But is is perfectly good usage to speak of the construction of a borehole or well or waterworks on land (see, for instance, the Wells Law and the Government Waterworks Law) ; and it is apparent that what was construced on the acquired land was a waterworks consisting of the borehole and necessary pumping machinery etc. for piping the water to the Akrotiri airfield. Quite apart from anything else it was clearly, in my opinion, not open to the appellant to obtain compensation for any increase in value of the land on account of the construction work carried out on behalf of the respondent for the purpose of raising and conveying the underground water for use at the airfield.

Finally the appellant complains that the Tribunal erred in not applying section 11 (f) of the Land Acquisition Law to assess compensation in respect of damage alleged to arise under two heads — (a) by reason of the severance of the land acquired from the rest of the plot remaining with the appellant, and (b), by reason of the injurious effect on such other land belonging to the appellant arising on account of the provisions of section 7 of the Wells Law. The grounds of the appellant's claim in this regard are to be observed from paragraph 6 (5) of the case as already quoted. In argument it was put forward in the first place that in view of section 4 of the Wells Law the appellant, by reason of the construction of the respondent's borehole, suffered the disability of being unable to sink any other well on the land remaining to him within 80 feet of the borehole. Further it was said that the potentialities of the land he continued to own were diminished owing to the drawing off of underground water through the borehole and in particular that the supply of water to the old well was reduced. I confess I find it impossible to appreciate that the appellant has suffered any damage owing to the severance. The underground water in the area is the property of the Government and the appellant had no rights over it. No doubt it is open to him to apply to construct a well on his land, and use the water therefrom in a manner approved ; but he might properly be refused such permisson. It is agricultural land and its watering hitherto does not appear to have depended upon any well-borne water within the confines of the

land. If the appellant did apply and did succeed in obtaining the requisite permission to make a well, there is nothing to indicate that he would sustain any damage by having to observe the 80 feet limit. Again assuming that he or any successor in title did succeed in obtaining permission to construct a well or borehole, it is not established that the flow of water to it would be adversely affected by reason of the existence of the borehole on the acquired portion of the land. There may be ample underground water in the area adequately to supply several wells or boreholes. As to the "old well" about 200 feet from the new borehole, for years it had been filled in and abandoned and ceased to serve any purpose as a well. I cannot see how the appellant can validly claim compensation for damage as an owner relying on the problematical consideration that if he reopened this old well he might find that it yielded less water than when it was last in use, that is, in 1947. I fail to understand how, as stated in paragraph 9 (7) of the case, the Tribunal could conclude that the borehole had injuriously affected the water of this old well when it was found impossible to ascertain anything as to the quantity of water that it supplied when in use. But even if this could be regarded as a reasonable conclusion, I do not see that the appellant was in any position to show damage since he had long before filled up and abandoned the well and did not rely upon it to obtain water for his land or for any other purpose ; apart from anything else it seems likely that this consideration must have weighed with the Tribunal in not allowing any compensation in respect of damage.

The other head under which damage is alleged, is bound up with section 7 of the Wells Law (Cap. 312) which reads:—

> "7. If any water supply serving the public or any part of the public is prejudicially affected by the sinking or construction of any new well, the Attorney-General, for and on behalf of the Government, or any person or local authority interested in the supply, may bring an action in the District Court of the district within which the supply is situate and, if it is proved that the supply has been prejudicially affected by the sinking or construction of such well, the Court may, with a view to preventing damage and restoring the supply to its former condition and quantity, make such order as it may deem requisite, and may further award such compensation in respect of the damage as may appear to be reasonable and just".

The contention is that if the appellant should sink or construct any new well on the portion of land, about 14 1/2 donums, severed and remaining in his ownership, he might be liable to an action taken against him under section 7 which might go in his disfavour and thus involve him in loss. The Tribunal found, as stated at paragraph 9 (11) of the case that:—

"The water of the subject borehole is conveyed to Akrotiri airfield by a pipe and is used by persons employed there, including civilian contractors, and if in consequence of such use s. 7 of Cap. 312 became applicable the value of plot 58/1 was injuriously affected to the extent of £50 per donum".

The Tribunal rejected the appellant's claim except as to the value of the acquired land itself and presumably it considered that there was no basis for allowing compensation for damage alleged under any head; but there is no further reference in the case as to the question posed in paragraph 9 (11) as to the application of section 7. However, this Court has been invited by the advocate for the appellant to give an opinion on the point and it is said that there is sufficient material afforded. How the Tribunal arrived at the amount of £50 a donum as representing the damage on an assumption that section 7 had the effect relied upon, I do not profess to be able to understand. But, however that sum was worked out, I think that it is beyond contest that the appellant's claim rests on nothing more secure than a whole series of imponderables or rather suppositions as to what might befall in the future. I think there is no doubt that the borehole on the acquired land must on the finding be regarded as serving "part of the public". But the appellant could not lawfully sink or construct a " new well " without the requisite permit from the Commissioner and the concurrence of the Water Engineer under section 3 of the Wells Law as amended by section 3 of Law 19 of 1951. It is at least highly unlikely that such permission would be forthcoming if the water supply to Akrotiri airfield would be prejudicially affected. But even if this obstacle was surmounted and the appellant made a new well, it does not follow that he would find himself the defendant in an action brought under section 7 or that if an action was brought the result would go against him. It might not be possible, for one thing, to prove that the public water supply to the airfield was prejudicially affected at all or it might only be affected to such a degree as not to justify the bringing of an action in the discretion of the authority enabled to lodge a suit.

In my judgment the claim by the appellant for compensation for damage under section 11 (f) of the Land Acquisition Law rested on no solid foundation and the Tribunal was correct in not awarding any sum on this ground.

There remains the application on behalf of the respondent seeking to have reviewed the estimate of the value of the water which was not awarded as compensation and is referred to at paragraph 7 of the case. The advocate for the appellant has objected that it is not open to the respondent to seek the opinion of this Court by such a procedure. It seems evident from the case as stated that the respondent

did contest the validity of the method of valuation adopted by the appellant's valuers. It is stated in paragraph 11 (4) of the case that:—

" In support of his case the respondent contended that on the facts as proved.....

(4) the method of valuation of the subject water adopted by the respondent's own valuer in paragraph 8 of his 'Particulars of Valuation.' as well as by the appellant's valuer, based on capitalisation of its estimated net income, was wrong.".

It appears, though it is difficult to say from the particulars vouchsafed, that the estimate was based upon the valuation of the experts called by the appellant. To this extent, and even though the amount was not awarded, it seems to me that the respondent might properly be said to be a " person aggrieved " within section 7 of the Compensation Assessment Tribunal Law, 1955, and should have applied for a resolution of the question on the case stated in the event of the main issue on the appeal, as to liability to make payment as compensation in respect of the water, going against him. Had that been done no doubt we would have had full particulars stated in the case as to the manner in which the estimate was reached. Since that is my view I do not propose to attempt to deal with the question ; in any case in the event it is in its nature academic as between these parties.

Since my brother Zekia J. is in agreement the case will be remitted to the Tribunal with the opinion of this Court. The respondent will have the costs of the appeal.

ZEKIA, J. I concur.

Decision of Tribunal affirmed.