[VASSILIADES, P., STAVRINIDES, L. LOIZOU, JJ.]

RASHID ALI AND ANOTHER,
Appellants-Claimants,

v.

VASSILIKO CEMENT WORKS LTD.,
Respondents-Acquiring Authority.

(*Civil Appeal No.* 4837).

Compulsory Acquisition—Land and trees—Compensation—"Just and equitable"—Property taken possession of, on publication of the acquisition order—Therefore, interest at the rate of 7% per annum as from that date on the amount of such compensation should be paid to the owners—Assessment regarding the land sustained—Assessment regarding the trees set aside as based on speculation—The Compulsory Acquisition of Property Law, 1962 (*Law No.* 15 *of* 1962) *section* 10 *and Article* 23 *of the Constitution.*

Compulsory Acquisition—Interest on the amount of compensation payable in the circumstances of this case—See also supra.

Compulsory Acquisition—For mining purposes—Increased compensation payable—Section 10 (*b*) *of the said Law No.* 15 *of* 1962—*Whether or not the expropriation in hand was for mining purposes.*

"*Just and equitable compensation*"—*Section* 10 *of the said Law and Article* 23.4 (*c*) *of the Constitution—Cf.* supra.

The property was compulsorily acquired in August, 1966, (Acquisition order published on August 11, 1966). The Acquiring Authority apparently entered and used it for their purposes ever since ; levelling the land with excavators and uprooting most of the trees.

Held, (1). The expropriated owners were in effect deprived of their property from the publication of the acquisition order on August 11, 1966. As from that date they were entitled to payment of the amount of the " just and equitable " compensation payable for the loss of their property provided in section 10 of the Compulsory Acquisition of Property Law, 1962 (Law No. 15 of 1962) and in Article 23 of the Constitution.

(2) It follows that as from that date they are entitled to interest on the amount of such compensation ; and which

interest, considering the current rates and other relevant circumstances, we would put at the rate of 7% per annum (see *Jefford and Another* v. *Gee* [1970] 2 W.L.R. 702, at pp. 709 and 712,C.A.).

Appeal allowed with costs throughout.

Per curiam : As regards allowance in connection with the purpose of the expropriation (mining purposes), the learned President of the trial Court took the view that the property was being expropriated for mining purposes, and that this should be taken into account in assessing the compensation under section 10 (*b*) of the Compulsory Acquisition of Property Law, 1962. The other member of the Court, looking at the matter through the definition in section 2 of the Mines and Quarries Regulation Law, Cap. 270 took the view that this was not a case of expropriation for mining purposes. The matter has not been sufficiently argued before us ; and we do not find it necessary to deal with that question in deciding this appeal. As at present advised, we are inclined to the view that the appellants have not persuaded us that the result of the trial Court's decision on the point is erroneous.

Cases referred to :

Jefford and Another v. *Gee* [1970] 2 W.L.R. 702, at pp. 709 and 712, C.A. ;

Yiannis Moti v. *The Republic* (1968) 1 C.L.R. 102, at pp. 115-116.

Appeal.

Appeal by claimants against the judgment of the District Court of Larnaca (Georghiou, P.D.C. and A. Demetriou, D.J.) dated the 3rd July, 1969 (Reference No. 74/67) whereby the first claimant was awarded an amount of £666.750 mils and the second claimant an amount of £20 as compensation for the compulsory acquisition of certain lands belonging to them.

A. M. Berberoglou, for the appellant.

K. Michaelides with *L. Symeonidou* (*Mrs.*) for the respondents.

Cur. adv. vult.

The judgment of the Court was delivered by :—

VASSILIADES, P. : On June 20, 1967, the Vassiliko Cement Works Ltd., of No. 67, Passiades Street, Nicosia, (the respondents in the appeal), acting as the Acquiring Authority, filed in the District Court of Larnaca, a notice of reference under rule 3, of the Compensation Assessment Tribunal Rules, 1956, for the determination by the Court under section 9 of the Compulsory Acquisition of Property Law (No. 15 of 1962) of the compensation payable to the appellants for the expropriation of the property described in the notice (land and trees at Kalavassos village in the district of Larnaca), acquired by the respondents for the purpose of promoting the cement industry in the island.

There is no statement on the record as to how the respondents (a limited liability company—public or private we do not know—presumably duly registered) became the acquiring authority under the relevant statute ; but as the matter was never raised, both sides to the proceedings having acted on that basis throughout, we shall take the respondents to be a duly constituted acquiring authority under section 2 of the statute ; and shall refer to them as the " Authority ".

The appellants are, apparently, inhabitants of Kalavassos village where the property is found. One of them is now living in the United States of America and is represented by his duly authorised agent. The other, is a woman now living at the neighbouring village of Mari. The former owned the land and most of the trees which stood on it ; the latter owned four of the carob trees. We shall refer to them as the " owners " No. 1 and No. 2 respectively.

The property consisted of a field of 14¼ donums in extent, with over 100 trees on it. These, according to the notice were

66 fruit-bearing and 13 wild carob trees belonging to owner No. 1 ;

4 fruit-bearing carob trees belonging to owner No. 2 ;

14 olive trees and 13 wild olive trees, belonging to owner No. 1.

A total of 110 registered trees.

According to the notice published by the Authority in the Official *Gazette* for the purpose of the expropriation in question, the Authority acquired in that area, 14 different

plots (including the subject plot) with the trees standing thereon, belonging to different owners, of a total extent of just over 61 donums of land. (See Notification No. 307, at page 388 of Supplement No. 3 of the Official *Gazette* No. 500 published on 9th June, 1966). The expropriation is stated to have become necessary for the promotion of the industry of cement-making, described as " a purpose of public utility "; and, according to the notification, was made for three reasons ;

(*a*) the discovery and mining (extraction) of layers of lime stone and argil clay ;

(*b*) the installation of the required equipment ; and

(*c*) for " general installations ".

The statutory acquisition order was published in the Official *Gazette* No. 517 of the 11th August, 1966 ; and negotiations for the purchase of the property (or the amount of compensation) having presumably failed, the Authority took the Court proceedings described above, on June 20, 1967. The value of the property, according to the Authority's notice, is £490 for the land and trees belonging to owner No. 1 ; and £20 for the four carob trees belonging to owner No. 2.

More than a year after the filing of the notice of reference, the owners had their property valued by a qualified valuer, Mr. T. Suleiman, B.Sc. London and a Chartered Surveyor (A.R.I.C.S.) whose valuation report dated 22.11.68 is on the record as *exhibit* 1. In his opinion, the compensation payable to both owners, amounted to a total of £2,440. On the other hand, the Authority also had the property valued by an expert, Mr. J. Mavroudis, also a qualified valuer (F.S.V.A.), whose report dated 20.4.69 is likewise on the record as *Exhibit* 2. In his opinion the value of the plot (land and all the trees thereon) amounted to a total of £632.500 mils. Both these valuers gave oral testimony at the hearing of the proceeding, in support of their respective valuations.

The owner's valuer who inspected the property in August and November, 1968, made his valuation by employing the " direct comparison method " as, according to his report, there were—

> " ample comparable sales in the area to give a good picture about the market value of the property as on the date of the publication of the notice of acquisition, *i.e.* 9th June, 1966."

He compared the sale of three other plots in the vicinity, two of which were purchased by the Authority, apparently for the same purpose. The three comparable sales in question were :

(*a*) Plot 182—7½ donums of land (described as " very poor ") with 60 carop trees, purchased for £190 ;

(*b*) Plot 243—3¼ donums of land with 17 carob trees, acquired by the Authority in 1967, for £360 ;

(*c*) Plot 246—1 olive tree, acquired by the Authority in 1966, for £8.

Analysing these sales and apportioning, according to his own opinion, the value of the land as he classified it, in better and poorer parts and the value of trees of different kind and growth, the owners' valuer eventually estimated the value of the acquired property as follows :—

Owner No. 1 :

	£
(*a*) Land 4 donums (out of 14¼ of the acquired plot) Class B, higher @ £45 p.d.	180
(*b*) Land 10¼ donums (out of 14¼) Class B, lower at £32 p.d.	328
(*c*) 66 carob trees at £7 each	462
(*d*) 13 wild carob trees at £2 each ..	26
(*e*) 14 olive trees at £10 each	140
(*f*) 13 wild olive trees at £2 each ..	26
Total market value	1,162

Say £1,160 for round figures.

Owner No. 2 :

4 carob trees at £10 each £40

To these assessments, the valuer added certain allowances. Taking into consideration the devaluation of the pound by 14.3% which took place after the comparable sales, and furthermore taking into consideration that the expropriation was being made for mining purposes, he (the valuer) recommended an increase allowance at the rate of 100% in respect of the property of owner No. 1 and an allowance of 200% in respect of that of owner No. 2. He thus reached the conclusion that the compensation payable to the former amounted to £2,320 and that payable to the latter to £120 ; *a total of* £2,440.

The Authority's valuer on the other hand, who inspected the property between October, 1968 and April 1969, also made his valuation by using the " direct comparison method " subject to such adjustments as he thought necessary. He referred to seven comparable sales, six of which concerned land and trees in the vicinity, acquired by the Authority, apparently for the same purpose. He added, however, that two of them, he did not consider as comparable sales, because, in his opinion, the land and trees were " indeed much better than the subject properties."

These " better " plots, were :—

(1) Plot No. 268/2—land about 4 donums with 14 olive and 3 carob trees, purchased by the Authority in 1966, for £480 ; and

(2) Plot No. 243—3¼ donums, with 17 carob trees purchased by the Authority in 1967 for £360.

This valuer also analysed the comparable sales, apportioning the sale price between land and trees according to his opinion. Using the same method, he valued the property of owner No. 1 at £612.500 mils ; and that of owner No. 2 at £20, as follows :—

Owner No. 1 :

	£ mils
(*a*) Land 12 donums (out of 14¼ of the plot) @ £15 p.d. (as against 10¼ ds. of the other valuer at £32 p.d.)	180.000
(*b*) Land 2¼ ds. (out of 14¼) at £18 p.d. (as against 4 ds. of the other valuer at £45 p.d.)	40.500
(*c*) 50 fruit-bearing carob trees at £5 each	250.000
16 fruit-bearing carob trees at £2 each (as against 66 fruit-bearing carob trees of the other valuer at £7 each) ..	32.000
(*d*) 13 wild (ungrafted) carob trees at £1 each (as against £2 each of the other valuer)	13.000
(*e*) 14 fruit-bearing olive trees at £6 each (as against £10 each, of the other valuer)	84.000
(*f*) 13 wild (ungrafted) olive trees at £1 each (as against £2 each, of the other valuer)	13.000
Total	612.500

Owner No. 2 ;

4 fruit-bearing carob trees at £5 each (as against £10 each, of the other valuer) £20

A total of £632.500 mils.

Both these valuers stated in evidence that they had considerable experience in the valuation of such properties having both served in the Lands and Surveys Department for many years. It may be observed that each valuer made his valuation by dividing the land into " higher " and " lower ", or " better " and " poorer ", drawing the imaginary dividing line at different points. Out of 14¼ donums one found 4 donums as better land and 10¼ donums as the poorer land. The other found 2¼ donums as better land and 12 donums as poorer land. The former valued the better land at £45 p.d. ; and the poorer land at £32 p.d. ; *finding the total value of the land at* £508, *i.e.* an average of £36 p.d. The latter valuer found 2¼ donums as better land which he valued at £18 p.d. and 12 donums as poorer land which he valued at £15 p.d. *finding the total value of the land at* £220.500 mils, *i.e.* at an average of less than £16 p.d.

The trees now. One of the valuers assessed the 66 fruit-bearing carob trees at £7 each and the 13 wild carob trees at £2 each, *a total of* £488. The other valuer divided the fruit bearing carob trees into two categories : 50 at £5 each and 16 at £2 each, a total of £282. The 13 wild carob trees he valued at £1 each, *a total* of £295. The olive trees : One valuer assessed the fruit bearing olive trees at £10 each ; and the wild olive trees at £2 each ; *a total of* £166 for 14 fruit-bearing olive trees and 13 wild. The other valuer assessed the 14 fruit-bearing olive trees at £6 each and 13 wild at £1 each ; *a total* of £97. The four fruit-bearing carob trees belonging to owner No. 2 were assessed by one of the valuers at £10 each (£40) ; and by the other at £5 each (£20). The differences in the valuations of the two experts are indeed striking.

As already stated, the property was acquired in August, 1966 (Acq. Order published 11.8.66). The Authority apparently entered and used it for their purposes ever since ; levelling the land with excavators and uprooting most of the trees. The valuers inspected the property about two years later (Autumn 1968) when the land was not in its original state and most of the trees had been uprooted. Some trunks were still lying about ; some had been removed ;

and others were covered by earth. Obviously, these were not circumstances for a proper valuation of the owners' land or trees by either of the valuers, for the purposes of finding the compensation payable to the expropriated owners under the Compulsory Acquisition of Property Law 15 of 1962.

Th Authority's valuer, Mr. Mavroudis, stated that he did not count the trunks still found on the land ; nor did he take any size measurements. On his last visit in April 1969, all trees had been uprooted. Also, most of the land had been " interfered with ", he said, excepting for about 3–4 donums. We do not know what he exactly means by " interfered with ". Pressed by counsel for the owners as to where he based his valuation, he said that he based it on the few trees which were still standing on his earlier visits ; on those of the trunks which could still be wholly or partly seen ; and on the olive and carob trees in the vicinity which were, he said, of the same quality. The other valuer was apparently under similar disadvantage. Their valuation was, obviously, a matter of speculation to a considerable extent ; and of opinion based partly on such speculation.

The only question for determination by the trial Court was the amount of compensation to which the expropriated owners were entitled under the law. The matter was rightly approached, we think, by the learned trial Judges, with reference to section 10 of the Compulsory Acquisition of Property Law (15 of 1962) and to the relevant provisions in Article 23 of the Constitution. The Court reminded themselves that the compensation to be paid for property compulsorily acquired, should be equivalent to the loss suffered by the party deprived of his property ; and that such compensation should be found at what is " just and equitable " in the circumstances.

After dealing with the evidence, in their judgment, the trial Court say :—

> " Weighing with due consideration the experts' reports and evidence, we prefer that of Mr. Mavroudis as to the land with one exception of two donums and as to the trees, but with one qualification. As to the land, we have the evidence of witness Rashid Beyzade that four donums of this land were cultivated with ' farras ' (green fodder). We prefer the evidence of this witness to that of the Mukhtar Costas Averkiou

who is an employee of the Acquiring Authority and, as a result, we find that the land should be 10¼ donums at £15 each and four donums at £18, *i.e.* £226.750 mils.

In relation to the trees, it is a fact that when Mr. Mavroudis visited the property, most of the trees were uprooted ; and only very few were standing. We believe that he could not have had the opportunity to make the distinction which he did in his report, classifying the carob trees into two classes, one class 50 carob trees at £5, and 16 carob trees at £2. Therefore, we should assume that they were all of the same quality and size and we should award a uniform price for all of them, the highest price which he awarded, *i.e.* £5 each, making a total of £330. Plus 13 wild carob trees at £1 each *i.e.* £13 ; 14 olive trees at £6 each *i.e.* £84 ; and 13 wild olive trees at £1 each, *i.e.* £13. Therefore, we award for claimant No. 1 a total sum of £666.750 mils. For claimant No. 2 we assess £5 for each carob tree and we award £20."

The Court made no increase allowance either on the ground of the devaluation of the pound, or on the ground that the expropriation was being made in connection with mining purposes. As the compensation must be found at the time of the expropriation, we think that the trial Court were justified in refusing to make any allowance on that ground ; although there can be no doubt that the owners suffered loss on that account. As regards allowance in connection with the purpose of the expropriation, the two members of the District Court disagreed. The President of the District Court took the view that the property was being expropriated for mining purposes, and that this should be taken into account in finding the compensation under section 10 (*b*) of the Compulsory Acquisition of Property Law. The other member of the Court, looking at the matter through the definitions in section 2 of the Mines and Quarries Law (Cap. 270) took the view that this was not a case of expropriation for mining purposes. The matter has not been sufficiently argued before us ; and we do not find it necessary to deal with that question in deciding this appeal. As at present advised, we are inclined to the view that the appellants have not persuaded us that the result of the trial Court's decision on the point is erroneous.

We shall now deal with the valuation of the property. We did not have the advantage of hearing the two valuers from the witness box, as the District Court did ; and it

is difficult for us to say that it was not open to the trial Court to rely on the assessments made by Mr. Mavroudis in preference to those made by Mr. Suleiman. But we may observe that the evidence of both these experts was evidence of opinion ; and, as already stated, to a considerable extent a matter of speculation. It was for the trial Court to find the compensation, considering all the evidence before them. In fact this is what the trial Court did in two rather minor points : The division of the land ; and the classification of the carob trees. It may also be observed that declining to consider as comparable sales the two purchases by the Authority of the plots referred to in the end of Mr. Mavroudis' report, may not have been quite the right way of looking at the matter. A glance at the Land Registry Plan (*exhibit* 3) showing these plots suggests that they are all in the same vicinity ; and the fact remains that for one of them of just over four donums in extent, with 14 olive and 3 carob trees, the Authority paid the price of £480 in 1966 ; and for the other of 3¼ donums, with 17 carob trees the Authority paid in 1967 the price of £360.

Be that as it may, however, the assessment of £686.750 mils for the whole property of 14¼ donums of land and 110 trees (including non-grafted trees) is now challenged by the appeal, mainly on two grounds : (*a*) That the acquisition is made for mining purposes and the owners are entitled to an increase on that account ; and, (*b*) that the assessment is too low, considering the whole evidence, and should not be sustained.

We have already dealt with the first ground. As regards the second, *i.e.* the amount awarded by the trial Court, we are faced with the position that having had the advantage of hearing the two valuers from the witness box, the trial Court preferred the valuation of the Authority's valuer. They were entitled to do so ; and no reason has been shown by the appellants for intervention by this Court.

On the other hand, as already pointed out earlier, the valuation of both valuers (including that on which the trial Court based their award) was a matter of speculation to a considerable extent, and a matter of opinion based on such speculation. It seems to us that in such circumstances the trial Court should proceed to make their own assessment of the compensation payable to the owners under the Compulsory Acquisition of Property Law, by taking the evidence before them as a whole ; as they in fact did on the two

points already referred to : The division of the land and the classification of the carob trees. In the circumstances, we considered whether the case should not be referred back to the District Court for re-hearing. (*Yannis Moti* v. *The Republic* (1968) 1 C.L.R. 102 at pp. 115–116). Taking all matters into account, we came to the conclusion, not without some difficulty, that a valuation of this size, pending since 1966, should be now determined.

The District Court found the compensation for the 14¼ donums of land at £226.750 mils (an average of about £16 per donum). Although we are inclined to think that this figure is well on the low side, we do not see how we can intervene. The evidence of the owner's valuer was obviously rejected as much too exaggerated ; one sided ; and is, indeed, unsupported.

But as regards the trees, the position is different ; and we think there is room for intervention. Neither of the valuers had the opportunity of looking at the trees before they were uprooted. Almost all of them had been uprooted ; some of the trunks could still be seen there, partly covered by earth ; many had been removed away ; and very few trees were still standing, apparently neglected for over two years, when inspected by the valuers. The District Court basing themselves mostly on the evidence of the Authority's valuer (referred to earlier) gave to the trees a uniform value of £5 each for the fruit-bearing carob trees ; £6 each for the fruit-bearing olive trees ; and £1 each for the wild trees. The other valuer put the fruit-bearing carob trees at £7 each, the olive trees at £10 each ; and the ungrafted trees at £2 each.

According to Appendix " A " in the report of the Authority's valuer, one olive tree on plot 246 was sold in 1966 for £8 ; and 8 olive trees " first class " were sold in that same year for £180 *i.e.* £22½ each. In their analysis of comparable sales both valuers put the carob trees at £7 each. And we do think that one pound for an ungrafted tree (olive or carob) is far too low a value, considering the time and other factors involved in the making of a tree fit for registration even though still ungrafted.

In the circumstances of this case, we think that the compensation payable for the trees should be found on an average of £7 for each fruit-bearing carob tree ; £8 for each fruit-bearing olive tree ; and £2 for each ungrafted

tree (carob or olive). This makes up the amount of the compensation as follows :—

	£ mils
(1) for 14¼ ds. of land as found by the District Court	226.000
(2) for 66 fruit-bearing carob trees at £7 each	462.000
(3) for 14 fruit-bearing olive trees at £8 each	112.000
(4) for 26 ungrafted trees (13 carob and 13 olive) at £2 each	52.000
Total payable to owner No. 1	852.000
(5) for 4 fruit-bearing carob trees belonging to owner No. 2 at £7 each	28.000
	880.000

The expropriated owners were deprived of their property from the publication of the aquisition order on 11.8.1966. As from that date they were entitled to payment of the amount of the "just and equitable" compensation payable for the loss of their property. And we think that as from that date they are entitled to interest on the amount which, considering current rates and other relevant circumstances, we would put at the rate of 7% per annum (see *Jefford and Another* v. *Gee* (C.A.) [1970] 2 W.L.R. 702 at 709 and 712).

We, therefore, allow the appeal and increase the compensation payable to owner No. 1 to £852 with 7% per annum interest from 11.8.1966 ; and that payable to owner No. 2 to £28 with 7% per annum interest from 11.8.1966.

We, moreover, think that the appellants, who defended their rights jointly, are entitled to costs for one party throughout the proceedings. We make order against the Acquiring Authority for the claimants' costs both in the District Court and in the appeal.

Appeal allowed ; award for compensation varied as above ; with costs to be taxed against the Acquiring Authority throughout the proceedings.

Appeal allowed with costs throughout.