

[HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, JJ.]

COSTAS NICOLAOU TSIAPPAS,

Appellant - Claimant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE DISTRICT OFFICER NICOSIA,

Respondent - Acquiring Authority.

(Civil Appeal No. 5222).

1974
Nov. 12

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COSTAS
NICOLAOU
TSIAPPAS

v.

REPUBLIC
OF CYPRUS
THROUGH THE
DISTRICT
OFFICER
NICOSIA

Civil Procedure—Pleadings—Amendment—Within the discretion of the court—Guiding consideration—The need to ensure that the triable issues are properly and sufficiently defined before the Court pronounces final judgment—Civil Procedure Rules, Order 25, rule 1—See further immediately herebelow.

Compulsory acquisition of land—Compensation—Leave granted to the acquiring authority to amend the valuation report so as to include provision for betterment of the rest of the land on account of works executed on that part of the claimant's land which was compulsorily acquired—Leave to amend granted after commencement of the hearing of the case and about 20 years after acquisition—In the special circumstances of the case—Such leave properly granted—Cf. further immediately hereabove; Cf. also immediately herebelow.

Compulsory acquisition—Estoppel—The acquiring authority is not estopped from amending the valuation or retracting or reducing their previous offer—Offer of compensation not binding until accepted—See first proviso to section 8 of the Land Acquisition Law, Cap. 226.

Compulsory acquisition of land—Betterment of the remaining land by reason of works executed on that part of the land which had been compulsorily acquired—Material time—Question of consequential enchancement of the rest of the land (as well as the question of injurious affection) has to be determined as at the date of the trial—But the court abstained from deciding finally this issue as it was not necessary so to do for the purposes of this appeal.

1974
Nov. 12

COSTAS
NICOLAOU
TSIAPPAS

v.

REPUBLIC
OF CYPRUS
THROUGH THE
DISTRICT
OFFICER
NICOSIA.

Pleadings—Amendment—Discretion—Principles applicable. See supra.

Betterment—See supra.

Estoppel—Acquiring authority not estopped from reducing the offer of compensation originally made, once such offer was not accepted by the owner.

This is an appeal by the claimant in this compulsory acquisition case from an order of the District Court of Nicosia allowing the acquiring authority (now respondent) to amend their valuation report by making provision for alleged betterment brought about because of the acquisition.

The facts of this unusual case are very briefly as follows :

The notification for acquisition of the appellant's (claimant's) property was published in the Official Gazette of the 4th November, 1954, and the order of acquisition by the then Governor of the Colony of Cyprus on the 7th July, 1956. Apparently, the offer for compensation on behalf of the acquiring authority (*i.e.* £872) was not accepted by the claimant (now appellant); and eleven years later on May 8, 1967 the said authority applied to the District Court of Nicosia by reference No. 61/67 for the assessment of the compensation for the acquisition in question.

Now, on December 5, 1970, the claimant after a delay of 3½ years filed in Court the appropriate documents claiming as compensation the amount of £6,884. On January 20, 1972, the claimant obtained leave of the District Court to amend both the statement of claim and the valuation report, the amount now claimed rising to £24,776.

During the hearing of the substance of the case before the District Court of Nicosia some time early in 1973, the acquiring authority applied for leave to amend its valuation report on the ground that the said report did not include the betterment *i.e.* the enhancement of the value of the claimant's other property as a result of the acquisition and the works made on the acquired part of claimant's property. On March 27, 1973, the claimant opposed the application on two grounds: (1) The acquiring authority is estopped from reducing any previous offer made to the claimant, and/or (2) as a matter of discretion the District Court should refuse the amendment sought at that late stage. On July 17, 1973 the District Court taking into consideration the facts and special circumstances of the case and holding that

the claimant would not suffer any prejudice by the delay in seeking the amendment, gave leave to amend as applied for (with costs against the applicant-acquiring authority). From that order of the trial Judge the claimant took the present appeal.

Dismissing the appeal, the Supreme Court :-

Held, I. (1) The guiding consideration for the trial Judge in making up his mind whether or not he should exercise his discretion one way or the other is the need to ensure that the triable issues be properly and sufficiently defined before he pronounces final judgment in the case; and such leave to amend may be granted in a proper case even during the trial.

(2) In the present case the real controversy between the parties is the question of compensation, especially after the claimant was allowed in the year 1972, to amend both his statement of claim and the valuation report by increasing the amount claimed as compensation almost to three times as much.

(3) In the circumstances, the trial Court in order to arrive at the proper amount of a just compensation, has to take also into consideration the additional fact that on account of the execution of the works by the acquiring authority, the rest of the claimant's property was enhanced in value.

(4) In the circumstances of this case, my conclusion is, therefore, that the trial Court properly exercised its discretion under the Civil Procedure Rules, Order 25, rule 1, in allowing the amendment sought by the acquiring authority (respondent) and that no real injustice has been done thereby to the claimant once he has been awarded the appropriate costs.

Held, II. (*Regarding the issue of estoppel*):

(1) It was very ably argued that the acquiring authority is estopped from retracting or amending the valuation previously made. We are unable to agree with this submission. The valuation made

1974
Nov 12

COSTAS
NICOLAOU
TSIAPPAS

v

REPUBLIC
OF CYPRUS
THROUGH THE
DISTRICT
OFFICER
NICOSIA

1974
Nov. 12

COSTAS
NICOLAOU
TSIAPPAS

v.

REPUBLIC
OF CYPRUS
THROUGH THE
DISTRICT
OFFICER
NICOSIA

by the authority and communicated to the claimant—owner cannot be anything more than in the nature of an offer made by the purchaser, and, therefore, is not binding on the maker until accepted by the vendor.

- (2) Indeed, we find ourselves unable to see how an estoppel is created, once the first proviso to section 8 of the Land Acquisition Law, Cap. 226—on which counsel relies—clearly and expressly lays down that “..... unless agreement is reached between the Acquiring Authority and the person interested as to the compensation the Acquiring Authority shall refer the question to the Tribunal and it shall be determined thereby in manner provided by this Law”.
- (3) That no question of estoppel arises appears also from judicial precedent which shows that the Court is not bound to adopt the valuation report of either side (*Ali and Another v. Vassiliko Cement Works* (1971) 1 C.L.R. 146.

Appeal dismissed.

Per curiam: It seems to us that the question of consequential enhancement of the value of that part of the land which had not been acquired (as well as the question of injurious affection of the same land) falls to be determined by the Tribunal (now the Court) as at the date of the trial. However, we do not think that it is necessary for the purposes of this appeal to decide finally whether the *dicta* in *Birmingham Corporation v. West Mid Baptist* [1969] 3 All E.R. 172 were rightly followed or were wrongly used by the trial Judge regarding the aforesaid principles, once it has not been fully argued before us; we leave, therefore those questions open.

Cases referred to:

J. Leavey and Co. Ltd. v. G. H. Hirst and Co. Ltd.
[1944] K.B. 24 at p. 27;

Georghiou and Another v. Pistolia (1969) 1 C.L.R. 613
at p. 614;

Hunt v. Rice and Son Ltd. [1937] 53 T.L.R. 931, at
p. 933;

Laird v. Briggs, 19 Ch. D. 22;

Australian Steam Navigation Co. v. Smith and Sons, 14
App. Cas. 318, at p. 320 P.C.;

Ali and Another v. Vassiliko Cement Works (1971) 1
C.L.R. 146;

Birmingham Corporation v. West Mid Baptist [1969] 3
All E.R. 172.

1974
Nov. 12

COSTAS
NICOLAOU
TSIAPPAS

v.

REPUBLIC
OF CYPRUS
THROUGH THE
DISTRICT
OFFICER
NICOSIA

Appeal.

Appeal by claimant against the order of the District Court of Nicosia (Pikis Ag. P.D.C.) dated the 17th July, 1973 (Reference No. 61/67) allowing the acquiring authority to amend their valuation report by making provision for betterment allegedly brought about because of the acquisition.

A. Triantafyllides, for the appellant-claimant.

G. Tornaritis with *A. Angelides*, for the respondent-Acquiring Authority.

Cur. adv. vult.

The judgment of the Court was delivered by :-

HADJIANASTASSIOU, J.: This is an appeal by the claimant from the Order of the District Court of Nicosia allowing to the acquiring authority amendment of their valuation report by making provision for betterment allegedly brought about because of the acquisition.

This matter arose during the hearing of reference No. 61/67, when in the course of the cross-examination of Mr. Mavroudis, the expert witness for the claimant, it was admitted that since the date of the acquisition the remaining property of the claimant had risen considerably in value. An adjournment was granted at the instance of counsel for the acquiring authority, and an application was filed in due course seeking leave to amend the valuation report in order to make provision for the

1974
Nov. 12

COSTAS
NICOLAOU
TSIAPPAS

v.

REPUBLIC
OF CYPRUS
THROUGH THE
DISTRICT
OFFICER
NICOSIA

enhancement of the remaining property of the claimant due to the execution of the works carried out because of the acquisition. This application was made under the provisions of Order 25 rule 1 and Order 4 rule 2, and was supported by an affidavit sworn by Mr. Emiliios Makrides, the valuation expert of the acquiring authority.

It appeared that the notification for acquisition of part of the property of the claimant was published in the Official Gazette of the 4th November, 1954, and the order of confirmation by the then Governor of the Colony of Cyprus on the 7th July, 1956. Apparently, the offer for compensation on behalf of the acquiring authority was not accepted by the claimant, and eleven years later, on the 8th May, 1967, the said authority applied to the Court for the fixing of compensation of the property in question covered by reference No. 61/67. On 5th December, 1970, the claimant, after a delay of 3½ years, filed in Court an application supported by a valuer's report alleging that because of the acquisition, he suffered a loss and claimed the amount of £6,884 as compensation. We should have added that the offer of the acquiring authority for compensation was the amount of £872.

For reasons which do not appear in the affidavit or on record, nothing more was done to bring the case to an end in spite of the fact that in March, 1971, a statement supported by a valuer's report on behalf of the acquiring authority was also filed. On 20th January, 1972, counsel, not feeling satisfied with the valuation report of the expert for the claimant, applied to the District Court for the amendment of both the statement of claim and of the valuation report and an order for amendment was granted accordingly at this late stage of the proceedings. It appears from the file of the District Court that the affidavit in support of the application for amendment was because "it was considered necessary in order that justice may be done in the present case". Counsel on behalf of the acquiring authority did not object to the amendment, and having the occasion to look at the amended valuation report, the amount claimed as compensation was £24,776.

As we said earlier, during the hearing of the sub-

stance of the case, an adjournment was sought by counsel appearing on behalf of the acquiring authority, and according to the affidavit, the reason was that the acquiring authority's report did not include the enhancement of the value of the property of the claimant and those facts were necessary to enable the Court to reach a just solution regarding the amount of compensation (paragraphs 7 and 8).

On 27th March, 1973, the claimant, in opposing the application put forward that the acquiring authority should not be "allowed to revise downwards the offer which they have made to respondent in writing twice before the commencement of the present proceedings, because had a claimant accepted the original offer the acquiring authority would not be in a position to claim the amount so paid". Furthermore, the claimant put forward the allegation that by the offers made to him, the acquiring authority is estopped from changing same for the worse. Finally, it was alleged that any betterment in 1973 is not material to the present proceedings.

On the 17th July, 1973, the District Court, after taking into consideration the facts and circumstances of this case, and that the claimant will not suffer any prejudice if the acquiring authority was allowed to amend at that late stage, granted leave to the acquiring authority to alter or to amend its valuation report by making provision for betterment and to file its amended report within a period of 15 days. The Court further directed that the claimant would be at liberty to file an amended valuation within a period of 3 weeks.

The claimant now appeals from the Order of the District Court and the first question to be decided in this appeal is whether the trial Court misdirected itself in exercising its discretionary power in granting the application for amendment at that late stage when the hearing of the case had already begun. On the first question, it is said by counsel on behalf of the claimant that the trial Court wrongly exercised its discretionary powers to grant an amendment to the acquiring authority after the lapse of about 20 years, and because it does not appear from the application that the betterment became apparent only after the filing of the opposition. It is further

· 1974
Nov 12

—
COSTAS
NICOLAOU
TSLAPPAS

v

REPUBLIC
OF CYPRUS
THROUGH THE
DISTRICT
OFFICER
NICOSIA

1974
Nov. 12

COSTAS
NICOLAOU
TSIAPPAS

v.

REPUBLIC
OF CYPRUS
THROUGH THE
DISTRICT
OFFICER
NICOSIA

said that if it was always open to the acquiring authority to claim betterment, they have not done so and they should not be allowed to do so at this stage.

We think that we cannot accept this contention of counsel as in accordance with the provisions of Order 25 rule 1, the Court or judge may, at any stage of the proceedings, allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and/or such amendments shall be made as may be necessary for the purpose of determining the real questions and controversy between the parties. If authority is needed that the trial Court had discretion even at that late stage, that is to say, after the commencement of the hearing of the reference in question, on such terms as to cost or otherwise, as the Court or a judge may think just, *J. Leavey & Co. Ltd. v. G. H. Hirst & Co. Ltd.* [1944] K.B. 24, provides the answer, where Lord Greene, M.R., speaking about the matter of amending pleadings, said at p. 27 :-

“In the present case, we required the defendants to formulate the amendment which they desired and to ask for leave to amend before us, and on the particular facts of the case, and in view of what took place at the trial, we came to the conclusion that no real injustice may be done by allowing the amendment”.

In *Georghiou and Another v. Pistolia* (1969) 1 C.L.R. 613, the trial Court of Larnaca refused to allow an amendment of the statement of claim to the plaintiff, and in allowing the appeal, Mr. Justice Josephides had this to say at p. 614 :-

“We think that counsel for the respondent very properly has taken that stand, because we are of the view that although it is a matter for the discretion of the learned judge, nevertheless, he applied a wrong principle in exercising his discretion. By their proposed amendments, the plaintiffs (appellants) were not asking to introduce a different claim and there was no allegation that the plaintiffs were acting *mala fide*”.

Thus, it appears that the guiding consideration for a

trial judge in making up his mind whether or not to exercise his discretion even during the course of the trial, is the need to ensure that the triable issues be properly and sufficiently defined before the Court pronounces judgment in the cause. Cf. *Hunt v. Rice & Son Ltd.* [1937] 53 T.L.R. 931 at pp. 933 - 934; *Laird v. Briggs*, 19 Ch. D. 22; and *Australian Steam Navigation Co. v. Smith & Sons*, 14 App. Cas. 318, at p. 320 (P.C.).

In the present case, the real controversy between the parties, is the question of compensation, especially after the claimant was allowed in the year 1972 to amend both his statement of claim and the valuation report by increasing the amount of compensation almost to three times as much.

In these circumstances, the trial Court in order to arrive at the proper amount of a just compensation, has to take also into consideration the additional fact that on account of the execution of the works by the acquiring authority, the rest of the property of the claimant was enhanced in value. This, indeed, is not denied by the other side, as according to the evidence of Mr. Mavroudis, the property in question has risen considerably in value.

Our conclusion, therefore, is that the trial Court, in the circumstances of this case, properly exercised its discretion and no real injustice had been done by having allowed the amendment, once the claimant was compensated by awarding costs in his favour occasioned by the said amendment. We would, therefore, dismiss this submission of counsel on this point.

The second question to be decided is whether the trial Court wrongly exercised its discretion to grant the amendment as by such order it allowed the acquiring authority to withdraw their offer. On this second question it is said by counsel that the Court once the property in question has vested under s. 8 of Cap. 226—misdirected itself in allowing the amendment because the valuation made can no longer be revoked; and that the said authority is barred or estopped from taking such a step.

Having considered very carefully the able argument of counsel, we think that we are unable to accept the

1974
Nov 12

—
COSTAS
NICOLAOU
TSLAPPAS

v

REPUBLIC
OF CYPRUS
THROUGH THE
DISTRICT
OFFICER
NICOSIA

1974
Nov. 12

COSTAS
NICOLAOU
TSIAPPAS

v.

REPUBLIC
OF CYPRUS
THROUGH THE
DISTRICT
OFFICER
NICOSIA

submission that the acquiring authority is estopped from retracting or amending the valuation previously made for the following reasons:- (a) Because the valuation made to the claimant cannot be anything more than in the nature of an offer made by the purchaser, and, therefore, is not binding on the maker until accepted by the vendor. Indeed, we find ourselves unable to see how an estoppel is created, once the first proviso to s. 8 of Cap. 226—on which counsel relies—clearly and expressly laid down that “..... unless agreement is reached between the Acquiring Authority and the person interested as to the compensation, the Acquiring Authority shall refer the question to the Tribunal and it shall be determined thereby in manner provided by this law”.

Thus, it appears that the question of compensation will finally be determined by the tribunal in order to award a fair and reasonable compensation taking into consideration the circumstances of the case. That no question of estoppel arises appears also from judicial precedent, which shows that the Court is not bound to adopt the valuation report of either side. (*Ali and Another v. Vassiliko Cement Works* (1971) 1 C.L.R. 146).

Finally, counsel has contended that the Court misdirected itself in allowing the amendment applied for in that the supervening betterment in 1973 could not affect the position as it existed in 1956. It seems to us that the question of consequential enhancement relating to the value of the remaining land of the claimant, as well as the question of injurious affection of the same land, fall to be determined by the Tribunal as at the date of trial, and in our view, this accords with the principle and with the need to ensure complete equality between loss and compensation. In view, however, of the fact that reference 61/67 has not as yet been completed, we do not think that it is necessary for the purposes of this appeal to decide finally whether the *dicta* in *Birmingham Corporation v. West Mid Baptist* [1969] 3 All E.R. 172 were rightly followed and/or were wrongly used by the learned trial judge regarding the aforesaid principle, once it has not been fully argued before us, and we therefore, leave these questions open because the main issue in this appeal was the exercise of discretionary powers of the trial Court.

For the reasons we have endeavoured to advance, we have reached the conclusion not to interfere with the discretion of the trial Court, because no serious injustice has resulted by the said amendment, and we would, therefore, affirm the Order of the Court and dismiss the appeal with costs.

Appeal dismissed with costs.

1974
Nov. 12

COSTAS
NICOLAOU
TSIAPPAS

. v. .
REPUBLIC
OF CYPRUS
THROUGH THE
DISTRICT
OFFICER
NICOSIA