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

OSMAN MISIRLIZADE,

Appellant–Claimant,

v.

MUNICIPALITY OF NICOSIA,

Respondent–Acquiring Authority.

(*Civil Appeal No.* 4985).

Compulsory Acquisition—Compensation—Assessment—Principles of statutory compensation—Principle of equivalence—Just and equitable compensation—Date by reference to which compensation is to be assessed—Methods of valuation—Direct comparison method—The more appropriate one in this case—Though some of the plots referred to by the Acquiring Authority's expert have been sold at an earlier date there was sufficient material for the trial Court to reach the view that those plots were comparable—Section 10 *of the Compulsory Acquisition of Property Law,* 1962 (*Law* 15 *of* 1962).

Interest—Compulsory Acquisition—Compensation—Court may award interest on the amount of compensation—Factors governing award of interest—Award of interest part and parcel of the notion of "just and equitable compensation"—Trial Court went wrong in not considering question of awarding interest—Their award reversed—Award of interest at 7% as from the date of filing of the report of claimant's expert.

By an order of acquisition, published on November 18, 1965, the respondent-acquiring authority acquired compulsorily one shop of an area of 676 square feet, situated at Eptanisos and Apostolos Varnava streets, Nicosia. The appellant–claimant owned 5/12 shares of this shop. The walls of the shop in question were partly of stone and partly of mud bricks. The roof was made with tiles and the floor was with cement tiles. The shop was built 30 years ago and was subject to rent control; the tenant in possession of the shop was a statutory tenant and was paying £12 per month.

The expert of the claimant was of the opinion that the compensation payable was in the region of £9,785. He arrived at this figure by relying on the income method, as there were no sales of similar properties in the vicinity.

On the other hand the expert of the acquiring authority relied on the direct comparison method and was of the opinion that the correct amount of compensation was £1,765.

The trial Court came to the conclusion that the comparison method was better than the income method; and it not only accepted the former method but also made a finding of fact that the sales of propety described in the report of the acquiring authority were comparable. It then assessed the amount of compensation payable for the whole plot at £2,310.245 mils and as the appellant owned 5/12 shares he was awarded £962.602 mils.

The notice of acquisition was published on October 21, 1965 and the order of acquisition was made on November 18, 1965; the acquiring authority applied to the Court for directions regarding service on the claimart on September 17, 1966 and the report of its expert was ready by that time. An appearance was entered on behalf of the claimant on March 1, 1967 and the report of his expert was filed on October 4, 1969. Judgment was given on May 8, 1971.

Counsel for the appellant contended (a) that the method of valuation used was a wrong one and (b) that the trial Court failed to award interest on the sum awarded to the appellant as from the date of the publication of the order of acquisition.

Held, (I) with regard to contention (a) (after dealing with the principles of statutory compensation at pp. 419–422 post):

The direct comparison system, when adopted, remains and is still the best method of valuation. The more appropriate method of valuation in this case was the direct comparison system. In spite of the fact that some of the plots, which are referred to by the expert of the acquiring authority have been sold at an earlier date, there was sufficient material for the trial Court to reach the view that those plots were comparable and I see no valid reason for disagreeing with them (*Myers* v. *Milton Keynes Development Corporation* [1974] 2 All E.R. 1096 at p. 1103 adopted and followed). Accordingly the contention of counsel for the appellants that the method used was a wrong one is dismissed.

Held, (II) on contention (b) above (after dealing with the factors governing award of interest at pp. 428–436 post):

(1) There is hardly any room for complaint by the claimant that he has been kept out of his money due to the conduct of

the acquiring authority, because although the acquiring authority acted with commendable speed and presented its report, it took the claimant a very long time to prepare his own report which was finally filed on October 4, 1969 and he was seeking a much higher amount of compensation than was offered to him by the acquiring authority.

(2) In the particular circumstances of this case and of the then prevailing conditions, and having regard to the principles formulated judicially that the trial Court was entitled to award interest, in my view, the Court has failed to address its mind to the question of awarding interest; it did not even address its mind to the authorities that the award of interest is part and parcel of what is known as just and equitable compensation. For these reasons this Court can, and will interfere, because it is satisfied that the Judges were wrong in not considering the question of awarding interest.

(3) Interest should be paid by the acquiring authority on the amount awarded by the trial Court at 7 per cent as from October 4, 1969, when the report of the expert was filed in Court.

Appeal partly allowed. Order for £50 costs in favour of appellant.

Cases referred to:

I.R.C. v. *Clay* [1914–1915] All E.R. Rep. 882 at p. 890;

Inland Revenue Commissioners v. *Crossman* [1936] 1 All E.R. 762;

Moti and Another v. *The Republic* (1968) 1 C.L.R. 102;

Monongahela Navigation v. *U.S.* (1893) 148 U.S. 312;

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

Myers v. *Milton Keynes Development Corporation* [1974] 2 All E.R. 1096;

Birmingham City Corporation v. *West Midland Baptist (Trust) Association (Inc.)* [1969] 3 All E.R. 172;

Commissioner of Limassol v. *Kirzi* (1959) 24 C.L.R. 197;

Republic of Cyprus v. *Savvides & Others* (1975) 1 C.L.R. 12;

Luckenbach Steamship Co. v. *United States*, 71 L. Ed. 394;

Hji Michael and Others v. *The Republic* (1972) 3 C.L.R. 246.

1976
Dec. 30
—
OSMAN
MISIRLIZADE
v.
MUNICIPALITY
OF NICOSIA

Appeal.

Appeal by claimant against the judgment of the District Court of Nicosia (Ioannides, P.D.C. and Kourris, Ag. P.D.C.) dated the 8th May, 1971, (Reference No. 58/66) by virtue of which the compensation payable for the acquisition of his property was assessed at £962.602 mils.

A. Dana, for the appellant.

K. Michaelides, for the respondent.

Cur. adv. vult.

The facts sufficiently appear in the judgment of the Court which was delivered by:

HADJIANASTASSIOU, J.: This is an appeal by the applicant Osman Misirlizade from the decision by the Full District Court of Nicosia in which he was awarded the sum of £962.602 mils as just and equitable compensation for the acquisition of his property by the acquiring authority, the Municipal Corporation of Nicosia.

The facts are these:- The acquiring authority is the Municipal Corporation of Nicosia, and because the property of the applicant was required for a purpose of public benefit, a notice of acquisition was published in the Official Gazette of the Republic, on October 21, 1965, containing a description of the property intended to be acquired, and called upon the applicant to submit to such authority within a time specified, any objection which he might wish to raise to such acquisition. On the expiration of the specified period, the order of acquisition was published (under the provisions of s. 6 of Law 15/62) on November 18, 1965. The property acquired consisted of one shop of which Mr. Misirlizade was the owner of 5/12 shares of an area of 676 sq. ft., plot 26 of Sheet/Plan XXI.46.6 II, Block B of Omerie Quarter, situated at Eptanissos and Apostolos Varnava Streets, Nicosia. The acquiring authority took possession and demolished the shop in question.

I think I should have stated that part of the said property was affected by a street widening scheme, and eventually an area of 12 sq. ft. in extent would have been taken by the Nicosia Municipality and ceded to the road, with the result that the area to be left was an area of 664 sq. ft.

The Full District Court of Nicosia had before it the evidence of two experts, that is to say, of Mr. Frixos Kimonis on behalf of the applicant and Mr. Karoullas, a valuer, 1st grade, attached to the Lands and Surveys Department since 1960. The walls of the shop in question were partly of stone and partly mud bricks. The roof was made with tiles and the floor was spread with cement tiles and was built 30 years ago. It was subject to the rent control and the tenant who was in possession of the said shop was a statutory tenant and was paying £12 per month.

It was the opinion of the expert for the applicant that the proper compensation payable by the acquiring authority was in the region of £9,785 and as there were no sales of similar properties in the vicinity, he said that he had to rely and base his report on the rental value of the property by comparing rents paid for similar properties in the vicinity. Having used the income method, he reached the conclusion that the gross rental value of the property was £1 per sq. ft.

On the other hand, the report of Mr. Karoullas for the acquiring authority was based on the comparison method of valuation, and he was of the view that the correct amount of compensation was £1,765, which in effect meant that it should be calculated at the rate of £2.500 mils per sq. ft., based on 706 sq. ft. In reaching that conclusion the expert explained to the trial Court that he relied on the sales of properties referred to in paragraph 6 of the report.

Mr Kimonis, in giving evidence, told the Court that he used the income method because in his view it is a better method than the comparison method, because an investor looks primarily to the income of the property which he intends to purchase; and that he used that method for the additional reason that he was unable to trace comparable sales in 1965. Furthermore, this expert, in criticising the report of the expert for the acquiring authority expressed his disagreement that the sales referred to in the latter's report were comparable, once they were not situated in the same area, and because the sales were effected prior to the time of the acquisition of the present property. He conceded, however, that the property in question was situated in an ill-reputed area where houses were used at that time by tenants for immoral purposes. Finally, he expressed his opinion that the building alone in 1963 could be valued at a sum of £850–£900.

On the contrary, Mr. Karoullas explained to the Court that the comparable sales method was better than the income method, unless one finds no comparable sales and can trace no criteria by way of comparison.

There was further evidence before the Court by the owner of the property, who said quite clearly that when he bought the 5/12 shares from another person in 1956, he paid the sum of £941.000, but I am sure the Court had also in mind the reason for that purchase. The trial Court, having considered the evidence as a whole and having addressed its mind to the provisions of s. 10(1) of Law 15/62, made these observations:-

> "It is needless to say that the comparable sales method is by far the best method, provided that there are comparable sales of course, and provided it is fit for the circumstances of each case".

Then the Court, having examined the pros and cons of each method, came to the conclusion that the comparable sales method was better than the income method and not only accepted it, but at the same time made a finding of fact that the sales of property described in the report of the acquiring authority were comparables, and relied particularly on plot 52 in order to award the compensation. Finally, having also taken into consideration the question of increase of value of the properties, the Court reached the conclusion, using the comparable method that the value of the property in question at the material time was £2,310.245 mils, and in showing how this sum was made up, the Court concluded as follows:-

> "664 sq. ft. multiplied by £2.500 mils per sq. ft. as per Zone 'A' of plot 52, amounts to £1,660.— Further, since there is no evidence that the claimant intended to demolish the building standing on the subject plot, the street alignment scheme would not take effect and therefore we must add the 12 feet covered by that scheme, although, naturally, at a reduced value to that of Zone 'A' of plot 52. As such, we consider half that value to be reasonable, i.e. £1.250 mils per sq. ft. and thus to the sum mentioned above we must add the sum of £15.900 mils. To this sum we also add the value of the shop which we find to be £850.— thus making a total of £2,565.900 mils in the year of 1963. We then add 20% increase for two years, till 1965, when the property was acquired, i.e. £513.080 mils, thus making a total sum

of £3,078.980 mils. From that sum we deduct 25% by which plot 52 is more valuable than plot 26, i.e. £768.735 mils, and we find the sum of £2,310.245 mils. As the claimant is the owner of 5/12 share, we find that he is entitled to the sum of £962.602 mils".

I think I would turn to consider first what is a "just and equitable compensation". Article 23 of the Constitution deals specifically with the right of the Republic or of the Municipal Corporation to acquire compulsorily immovable property, and paragraph 4 says that:–

"4. Any movable or immovable property or any right over or interest in any such property may be compulsorily acquired by the Republic or by a municipal corporation or by a Communal Chamber for the educational, religious, charitable or sporting institutions, bodies or establishments within its competence and only from the persons belonging to its respective Community or by a public corporation or a public utility body on which such right has been conferred by law, and only–

(c) upon the payment in cash and in advance of a just and equitable compensation to be determined in case of disagreement by a civil Court".

The first complaint of counsel in this Appeal is that the trial Court erred in law in awarding compensation to the applicant, in that the compensation was far below the figure to be considered as being "just and equitable compensation", by not using the income method.

What are then the principles of compensation? I think the answer is provided by s. 10 of Law 15/62 which introduces rules for the guidance of the Court for the assessment of compensation and it says:–

"The compensation payable in respect of the compulsory acquisition of any property shall be assessed in accordance with the following rules:–

(a) the value of the property shall, subject as hereinafter provided, be taken to be the amount which the property, if sold in the open market on the date of the publication of the relative notice of acquisition by a willing seller, might be expected to realize' .

It has been said in a number of cases that the one principle that permeates all aspects of statutory compensation is the need to ensure equivalence between the loss to the claimants and the compensation to be awarded. This principle which has been judicially formulated, has one aim behind it, which is that at the root of statutory compensation lies the need to make a just equation of loss and compensation. This I am sure was in the mind of our own legislator when he introduced s. 10 of Law 15/62.

I think that irrespective of the fact that the applicant claimed that he paid more for a few shares of the property in question than the amount awarded, what we must seek to find is the price that a willing seller was likely to obtain from the sale of the subject property in the open market, at the time the notice of acquisition was published. Furthermore, it has been laid down that a willing seller is one who is prepared to sell provided a fair price is obtained under all the circumstances of that case. But I do not think it means only a seller who is prepared to sell at any price and on any terms or who is actually at the time wishing to sell. In other words, I do not think it means an anxious seller. (Per Pickford L.J., in *I.R.C.* v. *Clay*, [1914–1915] All E.R. Rep. 882 at p. 890). The law no doubt envisages an informed seller who is enlightened by such expert advice as he might reasonably be expected to receive respecting the state of the market, and that the market is not limited to any particular class of persons but is open in the sense that the seller may advertise his property and offer it to the public at large. (See the observations made in the *Clays* case (*supra*) and in the *Inland Revenue Commissioners* v. *Crossman*, [1936] 1 All E.R. 762 H.L.).

The principles of statutory compensation have been considered in a number of cases both in Cyprus and abroad, and the first one was the case of *Moti and Another* v. *The Republic*, (1968) 1 C.L.R. p. 102, where the principle in *Monongahela Navigation* v. *U.S.* (1893) 148 U.S. 312 was adopted and followed. Josephides, J., delivering the judgment of the Court of Appeal said at pp. 117–118:–

> "We have already referred to the principle of equivalence which is at the root of statutory compensation (see *Horn* v. *Sunderland Corporation* [1941] 1 All E.R. 480). On the American authorities 'just compensation' means the full and perfect equivalent in money of the property taken (The *Monongahela Navigation* v. *United States* (1893) 148 U.S. 312, 326).

'The right to just compensation could not be taken away by statute or be qualified by the omission of a provision for interest where such an allowance was appropriate in order to make the compensation adequate...' (*Seaboard Air Line R. Co* v. *United States*, 261 U.S. 299); and the owner 'is entitled to such addition (to the value of the property at the time of the taking) as will produce the full equivalent of that value paid contemporaneously with the taking' (*Jacobs* v. *U.S.A.* (1933) 290 U.S. 13; 78 Law. ed. 142)".

In *Rashid Ali and Another* v. *Vassiliko Cement Works Ltd.*, (1971) 1 C.L.R. 146, Vassiliades P., having dealt with the question of the valuation of the lands by the direct comparison method, and having considered the reports and the evidence of the two experts with regard to the compensation payable, and having observed that the Court was not bound by the opinion of either expert, said at pp. 155, 156:-

"... 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".

Then, dealing with the finding of the Court as to the correct amount of compensation, he continued at p. 156:-

"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".

In *Myers* v. *Milton Keynes Development Corporation*, [1974] 2 All E.R. 1096, the Development Corporation on the 17th March, 1970, published a master plan which contained its proposals for the development of a certain area. It included the compulsory acquisition of the Walton Manor Estate. On the next day, the 18th March, 1970, the Corporation gave a notice to treat to Mr. Myers for the purchase of the estate; or rather, by agreement a notice to treat was deemed to be served on that day. On the same day, 18th March, 1970, vacant possession was given. Lord Denning, M.R., delivering the Judgment of the Court of Appeal said at p. 1098:- "The value is to be assessed as at that date: see *Birmingham City Corpn.* v. *West Midland Baptist (Trust) Association (Inc.)* [1969] 3 All E.R. 172".

Later on, his Lordship, dealing with the question of the valuation made by the tribunal, said at p. 1103:-

"But these are valuation questions, not questions of law. Different valuers may take different views about the best method of valuing the land in the hypothetical circumstances which have to be imagined. In the event of any divergence of views of valuers called to give expert evidence, the tribunal must decide whose evidence it prefers and determine the value as a question of fact".

In spite of what is stated in the recent decisions in England, nevertheless, the position in Cyprus remains that the principle of compensation is the indemnity to the owner and the basis in Cyprus on which all compensation for lands required or taken should be assessed is their value to the owner as at the date of the notice to treat.

I now turn to deal as to which is the best method of valuation. No doubt it has been said in a number of cases that the direct comparison system, when adopted, remains and is still the best method of valuation. No doubt, such method reduces speculation to the minimum and makes the forecast that one makes in retrospect of the price the subject property would fetch if sold in the circumstances and conditions contemplated by our legislation. I think I would go further and lay stress on the

point that the very idea of comparison pre-supposes the existence of lands comparable, but I would at the same time warn that again there are inherent risks in comparing properties which are dissimilar in size and character and that a valuer even with a lot of experience will continue to face those problems.

In the case in hand, having gone very carefully through the reports of the valuers and having the valuable assistance of counsel, we have been referred to the various plots and passages on which they relied, and I take the opportunity of expressing my gratitude for their assistance. Having done so, I have reached the conclusion that in spite of the fact that some of the plots which are referred to by the expert of the acquiring authority have been sold at an earlier date, nevertheless, in my view there was sufficient material for the trial Court to reach the view that those plots were comparable and I see no valid reason for disagreeing with them.

In reaching the above conclusion, I adopt and follow what has been stated by Lord Denning M.R. in *Myers* case (*supra*) that different valuers may take different views about the best method of valuing the land in the hypothetical circumstances which have to be imagined, and in the event of any divergence of views of valuers called to give expert evidence, the tribunal must decide, and certainly is entitled to decide whose evidence it prefers and determine the value as a question of fact.

In the case in hand, as I said earlier, the expert for the applicant was of the view that the best method of valuing the property in question was the income method, but on the contrary, the valuer of the acquiring authority preferred the direct comparison system as being the best one on the facts of this case and the trial Court, having considered the matter, decided and found themselves in agreement with the evidence of the expert. If further authority is needed, I think the answer can be found in *The Commissioner of Limassol* v. *Marikka N. Kirzi*, (1959) 24 C.L.R. 197. In that case, the tribunal in valuing those lands acquired, adopted solely the so-called residual or development method as it is known.

Zekia, J., (with respect a Judge of great experience in these matters), dealing with the two methods of valuation, and having dealt with the contentions of both counsel on this issue, made these observations at p. 202:-

" 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."

Then Zekia, J., dealing with the finding of the Tribunal that the properties alleged to be comparable properties were not similar to the one to be valued, said at p. 203:-

" 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."

Applying these principles, I will reiterate once again that the more appropriate method of valuation in the case in hand was the direct comparison system and the expert for the acquiring authority adopted it by comparing the sale prices of those lands to which he referred to in his evidence, and after making the necessary adjustments so that they may be accepted as concurrent sales of comparable properties, he assessed the value of the property in the sum of £1,765 and made the necessary deductions from that amount. I would, therefore, dismiss this contention of counsel for the appellants that the method used was a wrong one.

So now I turn to the next complaint of counsel that the trial Court failed to grant interest on the sum awarded to the appellant as from the date of the publication of the notice of acquisition. I think I should start by saying that I find myself in agreement with counsel because once in any developing community there must be power to take land from private owners for public purposes, the acquiring authority should not only pay compensation for acquiring land from the owners, but also give interest on that amount. This is in accordance with the authorities which I am about to quote and with the decision of the Full Bench to which I will be referring at a later stage. In the meantime, I find it necessary to express the view and to deprecate any long delay for the payment of compensation by the appropriate authority to the applicant because the situation in Cyprus has changed radically since the establishment of the Republic. In the days when values were stable, there was no real point in an owner complaining both that the value of the land was assessed as on the date of the notice to treat, and not on the day it was taken over by the acquiring authority, but as I said earlier, in view of the realities of the day, it has been proved that prices are changing from day to day and

there was certainly justification for the complaint by those who come to Court that the delay in not paying compensation is done purposely and in my view it operates and it is a great injustice to the owners of land acquired by the acquiring authority.

Subject to these observations, I think that there are also cases in which the claimant is not free from blame and at times the acquiring authority had reason to complain also for the delay exhibited by the owner of the land. Take the present case. The compulsory purchase order which operates as a notice to treat was served on the owner on October 21, 1965. No doubt negotiations must have started between the parties, and although no agreement was reached for the amount of compensation and on November 18, 1965 an order of acquisition was published, nothing was done by the other side to speed up the proceedings. It is true that at that time we have been facing in Cyprus a crisis between the two communities, but in fairness to counsel on behalf of the acquiring authority, even in those prevailing circumstances, and because of the urgency of the matter regarding the acquisition, he applied to the District Court for directions on September 17, 1966, in an *ex parte* application for an order of the Court dispensing with service upon the claimants. The acquiring authority assessed the value of the property in accordance with the comparison method and reached the conclusion that the reasonable amount was £1,765. In support of the application before the Court, there was an affidavit dated September 16, 1966, sworn by the Secretary of the Municipality.

Finally, on March 1, 1967, Mr. Dana appeared for claimant No. 1, Mr. Osman Misirlizade, and because of the urgency of the matter, counsel on behalf of the acquiring authority filed a written statement giving particulars of the property and of the mode which the expert had followed and the amount of compensation. Unfortunately, and in spite of the urgency of the matter, there was an unacceptable delay on behalf of the first applicant to prepare and file his report, with which I will deal later on.

Para. 6 of the report of the expert of the Acquiring Authority reads as follows:-

> " For the valuation of this property I took into consideration the sales below which had been effected in the vicinity since 1962:-

(a) Plot 52, Omerye Quarter, Block 'B' of an extent of 3334 sq. ft. sold for £6,500.- in October 1963, i.e. £1.950 mils per sq. ft. Analysing this sale to Zones A & b, with Zone 'B' as 50% less than Zone 'A' the the result is:-

Zone A of 35 ft. depth at £2.500 mils per sq. ft.
Zone B of 35 ft. depth at £1.250 mils per sq. ft.

(b) Plot 71 of Sh/pl. 21/46.6.III of an extent of 1890 sq. ft., sold for £2,250.- in June 1962, *i.e.* £1.100 mils per sq. ft.

(c) Plots 214, 215, 216, 225, 226 & 227 of Sh/pl. 21/46.3X of an extent of 2024 sq. ft. sold in November 1962 for £3,000.-, *i.e.* £1.500 mils per sq. ft.

(d) Plots 33 & 34 of Sh/pl. 21/46.6.11 of an extent of 3-0-3102, sold for £30,000.- in April 1965, *i.e.* £0.650 mils per sq. ft."

On the contrary, the report of the other side shows that as there were no sales of similar properties in the vicinity, he based his estimation on the rental value of the property and he observed that as the rent paid for the property on the date of the acquisition was abnormal (rent restricted) his estimation was based on the rental value by comparing rents paid for similar properties in the vicinity of other shops. Having based his report on the income method—having said earlier that there were no comparable properties—he concluded as follows at p. 2 paragraph 9 of his report:-

" Having in mind the above, I am of the opinion that the rate of capitalization of the net annual income of the property should not in any case be over 7%

Capitalization of Net Income	
Net annual Income $\frac{£685 \times 100}{7}$ =	£9,785.-
Estimated present market value of property under acquisition	£9,785.-
Valuer's fees	£ 97.-
	£9,882.-

In any case having in mind the estimated rental value of the property and the increasing demand of properties similar to the one under acquisition, I am of the opinion

that the value of the property as stated above is correct, fair and reasonable."

This was the position before the trial Court, and as I have already said earlier, the question which remains is what is the amount of interest payable on the amount awarded to the appellant.

As I said before, both reports and the evidence were before the trial Court, and although we have agreed with the award of the trial Court, we have decided to reserve this case pending the decision in the case of *The Republic of Cyprus* v. *Christakis A. Savvides and Others*, (1975) 1 C.L.R. 12, which has been decided by the Full Bench of the Supreme Court. In that case the main question was what were the principles under which the Court was empowered to award interest in a case which land was compulsorily acquired.

Triantafyllides, P., after referring to our own case law on this point, and after referring to a number of English and American cases, showing when interest is granted, delivered our reserved judgment on January 29, 1975, which covered that point fully and in an impressive language, he said at pp. 28–29:–

> "Having in mind all that we have set out in this judgment as regards how the notion of the adequacy of compensation in cases of compulsory acquisition has been understood till now in Cyprus and elsewhere (as well as regards an award of interest where this is necessary in order to do justice) we have reached the conclusion that in a proper case a Court may, in the exercise of its discretion, award, acting under section 10(λ) of Law 15/62, interest on the amount of such compensation, or on a certain part thereof, as the case may be, and for such period as it may deem fit, as a means of rendering such compensation 'just and equitable', as required expressly by Article 23.4(c) of the Constitution.
>
> In our view the notion of 'just and equitable' compensation is wide enough as to include the notion of 'complete compensation' in Greece and of 'just compensation' in the U.S.A.; and an award of interest may be found appropriate depending on the circumstances of a particular case in order to render the compensation 'just and equitable', because of the 'reality of the matter' (see the *H. Cousins & Co. Ltd.*

case, *supra*) and because, also of 'basic equitable principles of fairness' (see the *Fuller* case, *supra*).

The rate at which interest may be awarded is, again, a matter which has to be left to the discretion of the Court assessing the compensation; but, in our opinion, the rate of interest prevailing at the material time could be a relevant consideration (see the *Jefford* case, *supra*, the *Funabashi*, [1972] 2 All E.R. 181, and *Cremer and Others* v. *General Carriers S.A.*, [1974] 1 All E.R. 1).

It would not be feasible, or proper, for us to lay down in this judgment rules covering all possible situations in which interest may or may not be awarded in cases of assessment of the compensation for compulsory acquisition; until, and unless, this matter is regulated by statutory provision (see, for example, the Federal Declaration of Taking Act, 1931, in the U.S.A.) the said rules will have to be developed by means of case-law; but we may, in this respect, mention some of the factors which appear to us to be relevant to the matter in question:"

Then the learned President proceeds to deal with what are some of those factors, and continues in these terms:-

"One such factor is delay in the assessment of the compensation payable, which has occurred due to the conduct of the acquiring authority. When the Order of Acquisition is published the acquiring authority should be in a position to make a formal offer of compensation to the owner of the affected property, so that if no agreement can be reached proceedings for the assessment of the compensation by a civil Court can be instituted either by the acquiring authority or the owner; and, of course, any delaying of the normal course of such proceedings, attributable to the conduct of either side, will have to be duly weighed, too.

Another relevant factor is the extent of the difference, if any, between the amount of compensation offered and the amount of compensation assessed by a Court in case the offer is refused: If an owner, having rejected the offer made to him, does not succeed, through proceedings in Court, in increasing to an appreciable extent the amount of the compensation then he can hardly complain that he has been in the meantime, kept out of his money due to the conduct of the acquiring authority".

Finally, having quoted also from the Judgment of Mr. Justice Van Devanter in *Luckenback Steamship Co.* v. *United States*, 71 L. Ed. 394, the learned President concluded his judgment in these terms at pp. 30–31:–

"On the other hand, if it turns out that the offer made by the acquiring authority was appreciably below the, eventually, judicially assessed value of the acquired property, then, obviously, its owner has been prevented by the conduct of such authority from receiving earlier the compensation due to him.

Another factor which might, conceivably, be taken into account in deciding about an award of interest, would be the whole or a part of the delay caused by an unsuccessful exercise of the right of recourse, by the affected owner, under Article 146 of the Constitution, as regards the Order of Acquisition; the refusal of interest in this connection should not be regarded as penalizing the owner for having exercised the right of recourse, but as a course of avoiding, in a proper case, to burden unjustifiably the acquiring authority with the amount of such interest.

A further relevant consideration would be the extent of the effective enjoyment, by its owner, of the expropriated property, between the date of the Notice of Acquisition and date of the assessment of compensation in respect thereof, for example by way of receipt of rents; likewise, there has to be borne in mind whether during the above period the acquiring authority has entered upon the property and if so if this was done under an Order of Requisition (entailing the payment of compensation) or otherwise.

In the light of all the foregoing and of the particular circumstances of the present case (as set out already at the beginning of this judgment) we are of the view that it was lawfully and properly open to the trial Court, in the exercise of its discretion, to award interest on the amount of compensation, as it has done, especially as the compensation assessed by it was considerably more than what had been originally offered by the appellant; it is true, indeed, that the compensation assessed by the trial Court was, also, considerably less than what had been demanded by the respondents and had we been trying this case, as a Court of first instance, we might have awarded lower interest or

we might have awarded it on only part of the judicially assessed compensation; but the matter of the award of interest being a matter of discretion, we are not prepared to say, in this particular case, that we have been satisfied that we should interfere on Appeal with the exercise, in this respect, of the discretion of the trial Court".

In the *Moti* case (*supra*), Josephides, J. said at p. 117:–

"The trial Court in an exhaustive and careful judgment, relying on the English authorities construing a provision similar to section 10(1) of our Compulsory Acquisition of Property Law, 1962 (formerly rule 6 of section 2 of the English Acquisition of Land (Assessment of Compensation) Act, 1919, now rule 6 of section 5 of the English Land Compensation Act, 1961), and on their interpretation of the expression 'just and equitable compensation' in Article 23.4(c) of our Constitution, held that no interest or other compensation could be awarded to the appellants for the delay in the sanctioning of the acquisition and payment of compensation. They did so as they were of the view that this matter did not come within the ambit of 'any other matter not directly based on the value of the property acquired' in section 10(1) of our Law. This provision was construed in the English cases to mean 'any loss or expense which is the natural and reasonable consequence of the compulsory acquisition' (see *Harvey* v. *Crawley Development Corporation* [1957] 1 All E.R. 504). But in fact, the English Courts did not have to consider the question of the payment of compensation for delay in the sanctioning of the acquisition".

And at p. 118 of the report, the learned Justice said:–

"Construing section 10(1) of our Law in the light of the provisions of Article 23.4(c) of our Constitution, which provides for the payment of 'just and equitable compensation', we are of the view that the owner of land is entitled to the payment of compensation for the loss arising directly out of the delay in the sanctioning of the acquisition, such as the delay which occurred in the present case. As usual, the enunciation of such a principle is easy enough, but its application to varying facts is apt to be difficult. It is not easy to spell out of it a general criterion which will afford a practical test in all cases. For this purpose we shall consider the case of the two appellants separately".

Finally, the learned Justice concluded at p. 120:–

"In all the circumstances of this case, namely, the unjustified delay in the sanctioning of the acquisition and the common ground that the market value of the lands taken has to be assessed on the basis of the 1956 prices (the date of the notice to treat), pursuant to the provisions of section 10(a) of the Law, we are of the view that, having regard to the provision in the Constitution for the payment of 'just and equitable compensation', the provisions of section 10(λ) of the Law, for the payment of compensation 'for any other matter not directly based on the value of the property acquired', should be construed to include compensation for unreasonable delay in the sanctioning of the acquisition, such as the one which occurred in the present case. We hold that such compensation should take the form of legal interest at the rate of 4 per cent per annum on the assessed market value of the property acquired and on the damage for injurious affection, unless the owner's loss due to the delay exceeds that rate of interest, e.g. where he has to pay a higher rate on a mortgage debt on the property acquired.

As already stated, a period of 6 years and 3 months elapsed from the date of the notice to treat (28.11.1956) to the date of the order of acquisition (28.2.1963). Of this period we think that (as now provided in the law) one year would be reasonable, and that the remaining period of 5 years and 3 months is unreasonable delay for which the land owners should be compensated. We accordingly award to the appellants compensation under this head (section 10(1) of the Law)", (i.e. interest which he had to pay on his mortgage debt for 5 years and 3 months at £171 per annum).

In *The Vassiliko Cement Works* case (*supra*) the learned president of the Court, in allowing the Appeal concluded in these terms at p. 157:–

"The expropriated owners were deprived of their property from the publication of the acquisition order on 11.8.66. 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".

In *HjiMichael and Others* v. *The Republic*, (1972) 3 C.L.R. 246 Triantafyllides, P., dealing with the principle of just and equitable compensation, said at pp. 253-254:-

> "... if it were to be found that any delay by the respondent acquiring authority did operate inequitably against the appellants as regards the quantum of compensation for the acquisition of their properties, the competent in the matter civil Court has power to make the necessary adjustment by directing the payment of interest in respect thereof, for such length of time as it may deem fit in the circumstances of the case for the purpose of awarding just and equitable compensation; in this respect we might refer to the decision in *Moti* v. *The Republic*, (1968) 1 C.L.R. 102—which was adopted in argument by learned counsel for the respondents —and to the later case of *Rashid Ali* v. *Vassiliko Cement Works Ltd.*, (1971) 1 C.L.R. 146".

Turning now to the decision of the House of Lords in *Birmingham City Corporation* v. *West Midland Baptist (Trust) Association (Incorporated)*, [1969] 3 All E.R. 172, Lord Reid, delivering the first speech in the House of Lords made a startling revelation and said at p. 176:-

> "But the appellants maintain that long before any of them was written it had become a rule of law that the value of land to the owner must always be assessed as at the date of the notice to treat, whether or not that was in fact sufficient to enable the owner to re-instate himself as soon as that was reasonably practicable. It appears to me to be self evident that, if anything is taken, compensation should be assessed as at the date when it is taken. But taking or acquisition under the Lands Clauses Consolidation Act 1845 involves a series of steps spread over a period of time and so it is necessary to determine at what stage the promoters can properly be regarded as having taken the land and the owner can properly be regarded as having had it taken from him. In the nineteenth century the purchasing power of money remained fairly constant over long periods, otherwise consols would not have been held to be the safest possible investment. And there was seldom any long delay by the promoters in completing the acquisition of land after notice to treat had been served; counsel could not find any case in which the delay had exceeded two or three years. So from a practical point of view it did not much matter

which stage in the process of acquisition was taken as the time as at which compensation should be assessed. It was convenient to take the date of the notice to treat, and from at least 1870 onwards it was generally assumed that this was the right date to take.

The first authority generally cited for the proposition that interests must be valued as at the date of the notice to treat is the judgment of Sir William Page Wood, V.C., in *Penny* v. *Penny* [1868] L.R. 5 Eq. 277. There an executor held a house on trust to permit the testator's sons to have the house at a low rent so long as they carried on the family business there. When the Metropolitan Board of Works served a notice to treat the sons were still carrying on the business and likely to go on doing so. The sons were held to be entitled to be compensated for their interest, but the executor sought compensation on the basis that the sons' interest should be disregarded and the executor should be regarded as free to deal with the property. This contention was of course rejected. In the course of his judgment Sir William Page Wood V.C. said[1]:

> '... I think the valuation ought to be made as at the time when the house was about to be taken, and should be made of the exact interest which the Plaintiff (the executor) would at that moment have had, assuming that the house had not been taken... The scheme of the Act I take to be this: that every man's interest shall be valued, rebus sic stantibus, just as it occurs at the very moment when the notice to treat was given. Any difference in the result which is due to the accident of the property being taken by a public body is not to be thrown into the compensation fund'.

The essence of this decision was that the extent or quality of an interest to be compensated cannot be altered or increased by the giving of the notice to treat or the compulsory acquisition of that interest. No one would now doubt that. But this does not imply that the interest must be valued as at the date of the notice to treat, and it is to be observed that Sir William Page Wood, V.C. did not say that serving the notice is or must be regarded as a taking of the property. He treated as identical 'the time when the house was about to be taken' and the 'moment when the

1. [1868] L. R. 5 Eq. at pp. 235, 236.

notice to treat was given'. If he had foreseen present conditions I think he would have used rather different language.

There is no indication in the later authorities of anyone having contended that any other date should be taken than that of the notice to treat. The appellants relied on *Bwllfa and Merthyr Dare Steam Collieries (1891) Ltd.* v. *Pontypridd Waterwords Co.* [1903] A.C. 426, but it appears from the judgment of Romer, L.J. in the Court of Appeal ([1902] 2 K.B. 135 at p. 141) that it was not disputed that this was the proper date. They also relied on the judgment of Scott, L.J., in *Horn* v. *Sunderland Corpn.* [1941] 1 All E.R. 480 at p. 496 where, obiter, he set out 'the legal principles' including ' (iii) it (i.e. the value) must be ascertained as at the moment when the notice to treat was given'. But plainly he did not have in mind anything like recent conditions, for he said that the Act of 1845 (II)–

> 'possesses two leading features. The first is that what it gives to the owner compelled to sell is compensation —the right to be put, so far as money can do it, in the same position as if his land had not been taken from him. In other words, he gains the right to receive a money payment not less than the loss imposed on him in the public interest, but, on the other hand, no greater. The other is that the ligislation recognises only two kinds or categories of compensation to the owner from whom land is taken—namely, (i) the fair value to him of the land taken, and (ii) the fair equivalent in money of the damage sustained by him in respect of other lands of his, held with the lands taken, by reason of severance or injurious affection'.

He would never have said that if he had foreseen that one day the application of his third principle would result in the owner only getting a sum equal to half his actual loss".

Later on, after quoting a passage from Cripps on Compensation, 2nd Edn. 1884, p. 68, his Lordship continued in these terms:–

> "I can find no substantial reason given for taking the date of the notice to treat other than that it was the most convenient date to take, and that it was so near to the date of the actual taking that assessment as at the date of the notice to treat would do no substantial injustice to either

party. Moreover this so-called principle does not appear to have been applied to every element of the value of the land to the owner. It has certainly been regarded as applying to that element which consists of the market value of the land taken. But there is little or no indication that it was regarded as applicable to the other elements in an owner's claim. These might include costs of removal, loss of profit or other consequential loss and there appears to be no suggestion in the authorities that these elements in the value of the land to the owner must be valued as at the date of the notice to treat. The actual costs or losses following on actual dispossession have been taken, and that appears to be the accepted practice today with regard to claims under r.(6). But this would be quite illogical if it were an absolute rule that the value of the land to the owner must be assessed as at the date of notice to treat, for it has been said again and again from an early date that there is only one subject for compensation—the value of the land to the owner. And it could not be right to value one element of the value to the owner, the market value of the land, as at one date, and to value the other elements, consequential losses, as at a different date. So it appears to me that the so-called principle rests on very unstable foundations".

Finally, Lord Reid concludes:-

"The only other difficulty is to find the right date for the assessment of compensation. No stage can be singled out as the date of expropriation in every case. Sometimes possession is taken before compensation is assessed. Then it would seem logical to fix the market value of the land as at that date and to take actual consequential losses as they occurred then or thereafter provided that the dispossessed owner had acted reasonably. But if compensation is assessed before possession is taken, taking the date of assessment can I think be justified because then either party can sue for specific performance and the promoters obtain a right to the land, as if there had been a contract of sale at that date. In cases under r.(5) I have already said that that rule appears to point to assessment of the cost of re-instatement at the date when that became reasonably practicable.

I do not think that altering the existing rule would necessitate overruling any of the decisions cited except *Phoenix Assurance Co.* v. *Spooner* [1905] 2 K.B. 753".

Having considered and reviewed the authorities at length, and particularly the case of the *Republic* v. *Savvides and Others*, (*supra*) on the question what is just and equitable compensation to be awarded by the trial Courts in cases of compulsory acquisition, I think there is hardly any room for complaint by the claimant of the property in question that he has been kept out of his money due to the conduct of the acquiring authority. If anything more is to be said, it is that he has himself to blame because although the acquiring authority acted with a commendable speed and presented its report, it took the claimant a very long time to prepare his own report which was finally filed in Court on October 4, 1969, and he was seeking a much higher amount of compensation than was offered to him by the acquiring authority.

On the other hand, and in fairness to the claimant, I would add, that in the particular circumstances of this case and of the then prevailing conditions, and having regard to the principles formulated judicially that the trial Court was entitled to award interest, in my view, as it appears from the whole tenor of the judgment, the Court has failed to address its mind to the question of awarding interest. I would even go further and say that the trial Court did not even address its mind to the authorities that the award of interest on the amount awarded for compulsory acquisition of property is part and parcel of what is known as just and equitable compensation.

For these reasons, this Court can, and will interfere, because it is satisfied that the Judges were wrong in not considering the question of awarding interest to the owner of the land in question. It seems to me that they have not given weight at all to this important point, and as I said earlier, have not even exercised their discretionary power in deciding whether to grant or not to grant interest. For these reasons I consider that it is the duty of this Court to interfere in order to do justice in the case in hand. I would, therefore, once the Judges have gone wrong in not awarding interest, reverse their decision, and order that interest should be paid by the acquiring authority on the amount awarded by the trial Court at 7 per cent as from October 4, 1969, when the report of the expert was filed in Court.

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With this in mind, and for the reasons I have advanced, I would partly allow the Appeal and order that the amount which would be found due, representing interest, be added to the

amount awarded by the trial Court. I would also order an amount of £50 costs in favour of the appellant. Order accordingly

A. LOIZOU, J.: I agree.

MALACHTOS, J.: I also agree.

Appeal partly allowed. Order for costs as above.