

1978 January 26

[STAVRINIDES, L. LOIZOU, A. LOIZOU, JJ.]

EVANGELOS LOUIS LOUISOS,

Appellant-Claimant,

v.

THE MUNICIPAL COUNCIL OF FAMAGUSTA,

Respondent-Acquiring Authority.

(Civil Appeal No.5157).

Compulsory Acquisition—Compensation—Assessment—Methods—Notional Division of land affected into two parts—Betterment of the remaining property in consequence of the acquisition.

The appellant is the owner of two adjacent plots of land at Famagusta, abutting the seashore on the one side and Kennedy 5
avenue on the other. The respondent acquired compulsorily a portion of appellant's property for the purpose of widening the said avenue.

In proceedings for the assessment of compensation payable to the appellant the trial Court accepted the method of valuation 10
adopted by the expert valuer of the acquiring Authority who notionally divided the subject property, though a continuous plot, into two Parts 'A' and 'B'.

Though the trial Court preferred the evidence of the acquiring authority's expert to that of claimant's expert, in proceeding to find within the framework of the law the compensation, if any, 15
payable to the claimant, did not feel bound to accept the evidence of either expert (see *Ali and Another v. Vassiliko Cement Works Ltd.* (1971) 1 C.L.R. 146 at p. 155).

The trial Court concluded that before the acquisition the value of Part 'B' was £2.300 mils per square foot and that the 20
value of Part 'A' was the same both before and after the acquisition. It further accepted that in consequence of the acquisition Part 'B' of an extent of 6,008 square feet, would gain in value

by £1.465 mils per square foot, *i.e.* £8,801.720 mils which should be set off for the compensation otherwise payable to the claimant which was £3,604.400 mils *i.e.* 1,568 square feet by £2.300 mils.

5 The claimant appealed and contended that the above method of valuation and particularly the notional division of the land into two parts was erroneously accepted by the trial Court because it was an arbitrary one.

10 *Held, dismissing the appeal,* (1) the method employed was, in the circumstances, not an arbitrary one. The evidence of both experts coincided on the fact that higher values were paid for properties facing the sea, than facing the avenue and the property of the claimant facing the sea remained unaffected by the acquisition and definitely enhanced in value, by facing much
15 wider road for access to it, a fact, that a developer would seriously consider when deciding to put up a large block of flats on a property.

(2) The trial Court in making their assessment obviously
20 took into consideration all available data that qualified the value of land in the area and all those factors that were likely to influence a prudent vendor in fixing a price for his land and a purchaser in making an offer to buy, including the circumstances of each case.

Appeal dismissed.

25 Cases referred to:

Ali and Another v. Vassiliko Cement Works, Ltd. (1971) 1 C.L.R. 146 at p. 155.

Appeal.

30 Appeal by claimant against the judgment of the District Court of Famagusta (Pikis, Ag. P.D.C. and Artemides, D.J.) dated 24th January, 1974 (Reference No. 3/71) whereby it was decided that by the widening of Kennedy Avenue, effected through the compulsory acquisition of a portion of appellant's property, there was such betterment to the remainder, that it
35 set off the value of that property, subject matter of the acquisition.

G. Michaelides, for appellant-claimant.

M. Papas, for respondent-acquiring authority.

Cur. adv. vult.

STAVRINIDES, J.: The judgment of the Court will be delivered by Mr. Justice A. Loizou.

A. LOIZOU, J.: This is an appeal from the judgment of the Full District Court of Famagusta, whereby it was decided that by the widening of Kennedy Avenue effected through the compulsory acquisition of a portion of appellant's property, there was such betterment to the remainder, that it set off the value of that property, subject matter of the said acquisition. 5

The appellant is the owner of two adjacent plots of land forming one unit at Stavros quarter, Famagusta, under Reg. Nos. A.25 dated 7.1.1966, Sheet Plan 33 13.4.IY, Plot 25, Block A, and A.25.A dated 14.3.1946 Sheet Plan 33 13.4.4IY Plot 26, of a total extent of 13,576 sq. ft. abutting the seashore on the one side and Kennedy Avenue on the other. 10

By the end of 1969 Kennedy Avenue had developed into an area of intense tourist and commercial activity, and a good number of blocks of flats, hotels and shops had gone up. There was a building boom along that avenue, but it was developed piece meal and inspite of the importance that it had acquired by the end of 1969, it had no uniform width. 15 20

The property of the appellant abutted a very narrow part of the street linking two already widened parts of the avenue. It was so narrow that there was hardly room for two cars travelling in opposite directions to make use of the road at the same time. Its width there varied from 20 ft. on the northern side to 24 ft. on the southern side and 11 ft. in the middle; by the acquisition the avenue would have a uniform width of 52 ft. 25

The street in question was affected by a street widening scheme since the 10th March, 1955 in accordance with which no building permit could be issued in respect of appellant's property, unless the area which has been compulsorily acquired was ceded to the public road, in compliance with the said scheme. Instead, however, of the Acquiring Authority waiting for this eventuality to happen, it proceeded with the compulsory acquisition of this portion through the machinery of The Compulsory Acquisition of Property Law, 1962 (Law 15/1962). The relevant notice was published in the official Gazette on the 27th December, 1969 and the order of acquisition on the 2nd October, 1970. 30 35

The trial Court had before it the valuation report prepared by an expert valuer on behalf of the claimant and that of an expert filed by the Acquiring Authority. Both experts gave evidence and were subjected to lengthy cross-examination.

5 The difference in their conclusions has to be traced in the manner they approached the question of valuation.

Mr. Pandelides, the expert valuer for the claimant, found that the value of the land compulsorily acquired was at the material date 3,114 mils per square foot. He made his valuation on the basis of the method of direct comparison, that is to say, a comparison between the subject property and other plots allegedly comparable with the subject property, the sale price of which had been used as a measure to obtain the value of the land compulsorily acquired at the material date. The properties relied upon for such comparison were described in his valuation report and they all abut on Kennedy Avenue. Mr. Pandelides further suggested in his evidence that the remaining land of the applicant would not gain in value, and that the widening of the street would in no way enhance the value of the property of the claimant, arguing, as he did, that dwellers of flats into which the property might be developed, would, on the balance, suffer from the noise a wide street would bring to the area and that there is a premium on country-side landscape and the privacy it gives in contrast to the noise of commercial centres.

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The trial Court commenting on the evidence of Mr. Pandelides pointed out, and rightly so, that the said witness had ignored that he was referring to property situated in the midst of a highly developed area, in fact a well-defined area of intense touristic and commercial activity and it would be impossible in the circumstances to leave the street as narrow as 11 ft. in order to have the property of the claimant for development as a country tourist establishment. The character of the area was already well defined and if the road was left as narrow as it was, considering the traffic jams it would create, there would be worse nuisance to the occupants of the applicant's property. Furthermore, what he entirely overlooked was that properties on Kennedy Avenue commanded high prices, mostly because of the intense development of the area as a tourist and commercial centre and not because of the privacy they might give to occupants of apartments at Kennedy Avenue, and it would

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be idle for any one to argue, as Mr. Pandelides did argue, that a developer would seriously consider putting up a large block of flats on a property abutting a road only 11 ft. wide.

Pandelides, however, did agree with Mr. Lambrou, the expert valuer for the Acquiring Authority, that flats nearer to the sea have a higher value than flats nearer to Kennedy Avenue, irrespective of the fact that the occupants of all apartments might have direct access to the seashore. According to Mr. Pandelides the difference in price is 16 per cent, whereas, according to Mr. Lambrou, the difference is 20 per cent. There was, therefore, common ground to the effect that the part of the property corresponding to the two sides is different in value.

According to Mr. Pandelides, the total value of the portion acquired was 4,717, calculated at £3.072 mils per square foot and making no allowance for any betterment.

On the other hand, Mr. Lambrou proceeded with the valuation of the land in question and for the purpose he divided the subject property, though a continuous plot, in two parts, and gave a different value to each part, according to its proximity to the seashore. In this witness's lengthy report, an analysis was made of the sales of several plots situated on and off Kennedy Avenue and there was an offer to demonstrate that the way in which land values varied, depended on their location and proximity to the sea and concluded that the value of the remaining property would rise, as compared to its price before the acquisition.

The trial Court preferred the evidence of Mr. Lambrou to that of Mr. Pandelides to the effect that in consequence of the acquisition the remaining property of the claimant would rise in value compared to its price before the acquisition. It was not altogether easy for them to determine the precise effect of this element of betterment, but on the whole, they find, subject to certain qualifications that the approach of Mr. Lambrou to the question of betterment was sound. It proceeded then to find within the framework of the law the compensation, if any, payable to the claimant, not feeling bound to accept the opinion of either expert, and they rightly did so, in view of the fact that the valuation of both valuers was a matter of speculation to a considerable extent and a matter of opinion based on

such speculation. If any authority is needed for this proposition, it will be found in the case of *Ali and Another v. Vassiliko Cement Works, Ltd.* (1971) 1 C.L.R. 146 at p. 155.

5 The conclusion of the trial Court was that before the acquisition, the value of the subject property listed under letter 'B', was £2.300 mils per square foot and that the value of that part of the subject property that Mr. Lambrou divided and classified under letter 'A' had, both before and after the acquisition, the same value. It further accepted that in consequence of the
10 acquisition that part of the property marked 'B' in the Report of Mr. Lambrou, would rise in value and be worth £3.765 mils per square foot and that after deducting £2.300 mils from £3.765 mils, the remaining area of the subject property marked 'B' of an extent of 6,008 sq. ft. would gain in value by £1.465
15 mils per square foot, *i.e.* £8,801.720 mils which should be set off for the compensation otherwise payable to the claimant which was £3,604.400 mils, that is to say, 1,568 sq. ft. by £2.300 mils.

20 This method of valuation, and in particular the notional division of the land into two parts, was heavily criticized by the claimant; and in fact the only ground of appeal is to the effect that the trial Court erroneously accepted this method of valuation as being an arbitrary one.

25 On the totality of the evidence and having given due consideration to counsel's able argument, we have come to the conclusion that the method employed was, in the circumstances, not an arbitrary one. The evidence of both experts coincided on the fact that higher values were paid for properties facing the sea, than facing the avenue and the property of the claimant
30 facing the sea remained unaffected by the acquisition and definitely enhanced in value, by having much wider road for access to it, a fact, that a developer would seriously consider when deciding to put up a large block of flats on a property. Needless to say that properties at Kennedy Avenue commanded
35 high prices at the material date, mostly on a consideration of the fact that they were suitable for the erection of a multi-storeyed blocks of flats, hotels and other tourist establishments.

The trial Court in making their assessment obviously took into consideration all available data that qualified the value of

land in the area and all those factors that were likely to influence a prudent vendor in fixing a price for his land and a purchaser in making an offer to buy, including the intrinsic circumstances of each case.

In the result, this appeal fails, but in the circumstances, we 5
make no order as to costs.

*Appeal dismissed. No
order as to costs.*