1983 May 19

[A. LOIZOU, DEMETRIADES, LORIS, JJ.]

THE ATTORNEY-GENERAL OF THE REPUBLIC,
Appellant-Acquiring Authority,

v.

DESPINA MICHAEL CHARALAMBOUS AND OTHERS,
Respondents-Claimants.

(*Civil Appeal No.* 6402).

Compulsory acquisition—Compensation—Properties, subject-matter of acquisition, an ancient monument and subject to the limitations laid down by section 8 of the Antiquities Law, Cap. 31—*Expert evidence required regarding development potentialities of such properties—Direct comparison method—Several drawbacks in the valuations made by the valuer of each side—Court can proceed to assess the compensation by making its own adjustments and estimates, upon a consideration of the evidence as a whole—Whether lands in question possessed a "hope" value.*

This was an appeal on behalf of the Acquiring Authority against the assessment of the compensation payable to the owners in respect of the compulsory acquisition of their respective properties.

The properties in question lay within an area that has been declared an ancient monument under section 6 of the Antiquities Law, Cap. 31 and were, in consequence, subject to the limitations laid down in section 8 of this Law. The valuer of the acquiring authority based his valuation on the assumption that any development for building purposes of the properties in question was impossible without destruction of the antiquities and that by virtue of s.8(i) of Cap. 31 the Director of the Department of Antiquities would object to the issue of a permit for any development of the said properties.

The trial Court, which had before it the evidence of two valuers - one on each side - and their respective reports, whose

valuations were based on the direct comparison method, concluded that there were several serious drawbacks in the valuations made by both valuers which made it impossible for it to accept entirely the valuation or evidence of either valuer, and proceeded to make its own adjustments and estimates upon a consideration of the evidence taken as a whole. The trial Court, also, concluded that there was no evidence to justify the above assumption of the valuer of the acquiring authority about the impossibility of development of the properties in question and that these matters were beyond the field of expert knowledge of this valuer and their existence and truth had to be established by proper expert or other evidence.

Held, that the assessment of the value of the subject properties by the trial Court and for the detailed reasons given in its elaborate judgment, was neither arbitrary nor unreasonable, nor there has been any misdirection as to the legal principles applicable to the assessment of compensation payable in the circumstances; that the trial Court, having listened to the divergent views of the two valuers who were called to give expert evidence, could in the circumstances proceed with 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, (see *Ali and Another v. Vassiliko Cement Works Ltd.* (1971) 1 C L R 146).

Held, further, that the finding of the trial Court that the acquired lands had a "hope" value was correct in law and reasonable in the circumstances because of the absence of any expert evidence on the archaelogical potentialities of these lands.

Appeal dismissed.

Cases referred to

Lordos and Others v. Government of Cyprus (Case Stated 128) unreported,

Michael v The Improvement Board of Dhali (1969) 3 C.L.R. 112;

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

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

D.J. Demades & Sons Ltd. v. The Republic (1977) 1 C.L.R 189.

Commissioner of Limassol v. Kirzi, 24 C.L.R. 197 at p. 204

Appeal.

Appeal by the acquiring authority against the judgment of the District Court of Limassol (Boyadjis, P.D.C. and Anastassiou, S.D.J.) dated the 29th January, 1982, (Ref. Nos. 5/78, 16/77 and 2/78) whereby the compesation for claimants' properties which have been compulsorily acquired was assessed at £32,538.-.

Gl. HadjiPetrou, for the appellant.

B. Vassiliades, for respondents-claimants 1, 2 and 4

A. Papadopoulos, for respondent-claimant 3.

A. Loizou J. gave the following judgment of the Court. This is an appeal from the judgment of a Full Court sitting in Limassol (I. Boyadjis, P.D.C. and A. Anastassiou, S.D.J.) given in three consolidated reference which were referred to the Court under section 9 of the Complulsory Acquisition of Property Law 1962 (Law No. 15 of 1962) for the assessment of the compensation payable to the claimants - respondents in this appeal - in respect of their respective properties, which have been compulsorily acquired by the Republic of Cyprus pursuant to an order of acquisition under Notification 808, dated October 16, 1976, published in Supplement No. 3 in the official Gazette No. 1305 of the 8th October, 1976.

The subject properties are the following:

(i) Plot No. 123/1/1 of Sheet/Plan No. 54/46 of Ayios Tychonas village, a field of an extent of two donums, two evleks and 1,500 square feet, covered by Registration No. 8536 in the name of the deceased Michael Theophanous, late of Ayios Tychonas, claimant, through the administrators of his estate, in Reference No. 5/78.

(ii) Plot No. 121 of Sheet/Plan No. 54/46 of Ayios Tychonas village, a field of an extent of six donums and one evlek, covered by Registration No. 9097 in the name of the claimant in Reference No. 16/77 one half undivided

share, and in the name of the claimant in Reference No. 2/78 for the other half undivided share therein.

They are both situated on the main Limassol - Nicosia road close to the sea. Plot 121, however, has only a small frontage on this road along its south-east corner, the rest of its frontage being on the abandoned old Nicosia - Limassol road, which is in fact a cul-de-sac due to the destruction of a small bridge which existed over a rill. Plot 123/1/1 and part of plot 121 have a panoramic view over the sea being located higher than the street level. The shape of this plot is regular and, as found by the trial Court, it offers itself for better and more profitable use than that of plot 121.

It is an undisputed fact that both properties lie within an area containing properties that have been declared ancient monuments under s.6 of the Antiquities Law, and they form part of the ancient city of Amathus and are in consequence subject to the limitations laid down in s.8 of the said Law (Cap. 31). In fact, the two acquired properties have been specified in the Second Schedule thereof long before the establishment of the Republic, but other ancient monuments like plots 180/1 and 174/1/4 were added thereto in 1966. In the middle of this area there are two rills which are shown on the map produced at the trial as exhibit 1 with red dotted lines, marked with capital letters (A) and (B) respectively.

The acquired properties and also plots 162/1 and 162/2, referred to in evidence as Claimants' Comparable No. 4, as well as plots 171/1 and 171/2, referred to in evidence as Claimants' Comparable No. 1, are all located in the area enclosed by these rills, whereas plots 180/1 and 174/1/4, referred to in evidence as Claimants' Comparable No.3, are situated to the east and outside the area bounded by the rills.

On this aspect of the case the trial Court had this to say:

"It is the allegation of the Acquiring Authority that there is a great difference between ancient monuments situated within the area between the two rills, on the one hand, and those situated outside the area, on the other hand. This difference which affects the prospects of development for building purposes of the ancient monuments of the aforesaid two categories, a most relevant matter to be had in

mind in assessing their respective market value, underlies the philosophy and the very approach of the valuation of the acquired properties by the valuer for the Acquiring Authority who, inter alia, exluded from consideration the claimants' Comparable No. 3, an ancient monument in the vicinity, on the ground that it is situated to the east of the area bounded by the two rills. In his written valuation report filed in Court and adopted on oath in the witness box, referring to the ancient monuments within the area between the two rills, the valuer for the Acquiring Authority says this:

'*Paragraph* (*b*) (*ii*). By virtue of Article 23(i) of the Constitution the rights of the Republic to antiquities is reserved. Any development for building purposes is impossible without destruction of the antiquities for which the Director of the Department of Antiquities is certain of their existence.

(iii) By virtue of s.8(i) of the Antiquities Law, Cap. 31, the Director of the Department of Antiquities objects to the issue of a permit for any development of the property under valuation'.

It follows that the valuer for the Acquiring Authority based his valuation on the assumption that the Director of Antiquities is convinced that there are things of great archaeological value in or under the acquired properties as well as the properties in the area bounded by the two rills; that any use of these properties for building purposes shall inevitably result in the destruction of these archaeological treasures; and that he objects to the granting of a permit for any kind of development of the acquired properties. These matters are, no doubt, beyond the field of expert knowledge of this valuer, and their existence and truth should be established by proper expert or other evidence in Court, before any opinion as to the value of the land by a land valuer, based on the existence of such factors, may be validly made and accepted. During the hearing of a number of other references regarding acquisition of other ancient monuments in the area, tried before this Court, where most of the witnesses and advocates appearing were the same with those in the present case, the

existence of such matters was positively established by evidence from expert archaeologists, but the present cases must be decided exclusively on the evidence adduced in their own trial".

The trial Court then after referring to what was said in the case of *Georghios Lordos and Others v. Government of Cyprus* (Case Stated No. 128, unreported), and in the case of *Aphroditi Michael v. The Improvement Board of Dhali* (1969) 3 C.L.R., 112. said:

"With the above in mind we do not find any evidence on record to justify the assumption that the Director of Antiquities could lawfully refuse absolutely any kind of development of any of the acquiring properties. Certain answers or admissions made in cross-examination by the expert for the claimants, upon which, we understand, the Acquiring Authority is relying in this respect, cannot afford, in the circumstances, adequate factual substratum for such an inference. On the evidence before us as a whole, we are satisfied that the acquired properties were agricultural lands but they also possessed a hope value regarding other more profitale use and development including building in the future, provided adequate supply of water could be secured. Such additional hope value should be measured and appreciated, however, in the light of the fact that the limitations under section 8(1) of Cap. 31 were always there, and that the owners of the acquired plot No. 121 applied once in 1972 for a permit to build a hotel which was turned down on several reasons including the lack of proper supply of water."

The trial Court had before it two valuers and their respective reports. Both employed the direct comparable method of valuation which has been considerd in a number of authorities as one of the safest methods and as possessing advantages provided of course certain factors exist, such as the availability of sales of other properties which are comparable or capable of comparison with the acquired property being similar as regards their size potentialities, neighbourhood and all other characteristics which indeed in minds of informed prospective purchasers affect their market value. Also their

sale must have taken place under similar conditions so that any element of speculation is either reduced or eliminated and the truth is arrived at as a result of the advantages of the direct comparable method of valuation (see *Moti and Another v. The Republic*, 1961 1 C.L.R. 102).

The trial Court then dealt at some length with the evidence and the reports of the two valuers and with the characteristics of the comparable sales and came to the following conclusion:

"We have already referred to several serious drawbacks in the valuations made in the present case by both valuers. This makes it impossible for us to accept entirely the valuation or evidence of either valuer. It is, therefore, pertinent, in performing our task to assess compensation for each claimant, which would be equal to the loss which he has suffered as a result of the acquisition, to make our own adjustments and estimates upon a consideration of the evidence before us taken as a whole. We are entitled to do so on the authority of *Rashid Ali and Another v. Vassiliko Cement Works Ltd.* (1971) 1 C.L.R., 146. We are minded in the context that equivalence of the compensation to the loss suffered is the basis of statutory compensation as provided for in section 10 of the Compulsory Acquisition of Property Law, 1962, as it has been interpreted and applied in a number of authorities having regard to the provisions in Article 23.4(c) of our Constitution. See, for instance, *D. J. Demades & Sons Ltd. v. The Republic of Cyprus* (1977) 1 C.L.R., 189, and *Moti* case (supra).

It is our task to dermine the value of the acquired properties as a question of fact which in the present case can, we think, be best formulated thus: on 14th May, 1976, what price would a willing purchaser offer, and a a willing seller accept, or the properties taken, having regard to their intrinsic characteristics which include the fact that they are ancient monuments.

On the basis of all the above, we propose now to compare each acquired plot with each comparable and make those adjustments which we think necessary and fair in the circumstances.

A. *Comparables* 1 *and* 1*A viz-a-viz Plot* 121

Sale price per donum as at 1.1.1968	£1,900
Plus 10% (ten per cent), being the net result of all plus and minus regarding location and shape	£ 190
TOTAL	£2,090
Plus 9% (nine per cent) increase annually for seven years	1,323
Total per donum value on 14.5.1976 as adjusted	£3,413

B. *Comparable* 3 *viz-a-viz Plot* 121

Sale price per donum as at 31.12.1970	£3,100
Advantage of Plot 121 regarding location is set off against advantage of Comparable 3 regarding shape and whole interest.	
Plus 9% (nine per cent) annual increase for four years	£1,116
Total per donum value on 14.5.1976 as adjusted	£4,216

C. *Comparable* 4 *viz-a-viz Plot* 121

Sale price per donum as at 24.8.73	£2,200
Plus 15% (fifteen per cent) for better location and shape	£ 330
TOTAL	£2,530
Plus 9% (nine per cent) annual increase for about one year and a half	£ 340
Total per donum value on 14.5.1976 as adjusted	£2,870

We shall now go through the same process regarding Plot 123/1/1.

A. *Comparables* 1 *and* 1*A viz-a-viz Plot* 123/1/1

Sale price per donum as at 1.1.1968	£1.900
Plus 10% (ten per cent) for being a sale of 1/4 share, and another 20% (twentry per cent) for the better shape and location of Plot 123/1/1, i.e. 30% (thirty per cent) in all	£ 570
TOTAL	£2.470
Plus 9% (nine per cent) annual increase for seven years	£1.556
Total per donum value on 14.5.1976 as adjusted	£4.026

B. *Comparable* 3 *viz-a-viz Plot* 123/1/1

Sale price per donum as at 31.12.1970	£3.100
Plus 15% (fifteen per cent) for better location of Plot 123/1/1	£ 465
TOTAL	£3.565
Plus 9% (nine per cent) annual increase for four years	£1.285
Total per donum value on 14.5.1976 as adjusted	£4.848

C. *Comparable* 4 *viz-a-viz Plot* 123/1/1

Sale price per donum as at 24.8.1973	£2.200
Plus 10% (ten per cent) for being a sale of 1/2 share and 25% (twenty-five per cent) for the better shape and location of Plot 123/1/1, i.e. 35% (thirty-five per cent) in all	£ 770
TOTAL	£2.990
Plus 9% (nine per cent) annual increase for about one and a half year	£ 408
Total per donum value on 14.5.1976 as adjusted	£3,398

The above calculations lead us to three figures, each corresponding to the per donum market value of each of the three comparable properties as at the date of the publication of the relevant notice of acquisition, as adjusted after comparison with the acquired Plot 121. The average of the other three figures produced from a comparison and adjustment of the same comparable properties with the other aquired plot, i.e. Plot 123/1/1, we arrive the figure of £4,090.

In view of the above, we assess the per donum value of Plot 121 at £3.500 and that of Plot 123/1/1 at £4,090.

This is the nearest to the truth that we can reach on the evidence before us as a whole. Taking further into consideration the extent of each acquired plot we find the market value of each acquired property as follows:

Plot 121: £21,875.-

Plot 123/1/1: £10,663.-

Regarding Plot 121 the amount of £21,875.- represents the aggregate of the interest of each of the two joint owners, valued separately, i.e. on the basis that each owner owns only one half share therein. It follows that the value of each half undivided share therein is assessed at £10,937.500 mils.

The above amounts, though smaller than the ones claimed by the claimants, are very substantially larger than those offered by the Acquiring Authority. Taking this into consideration and the delay which has occurred for which the claimants are not to blame, we think that the claimants are entitled to additional compensation in the nature of interest on the above amounts at the rate of 7% (seven per cent) per annum from 8.10.1976 when the acquisition was sanctioned and until today. Such additional compensation is, in the circumstances of this case, payable to the claimants under paragraph (1) of section 10 of the Law so that the compensation may become just and adequate having regard to their loss. We have in this respect followed and applied *Jacobs v. U.S.A.*, (1933) 290 U.S., 13, *Moti* case (supra), *Rashid* case (supra), and particularly, *The Republic of Cyprus v. Christakis A. Savvides & Others*, (1975) 1 C.L.R., 12.

The Claimants are also entitled to their cost" .

At this stage it may be mentioned that although appeals were filed on behalf of the claimants against the aforesaid assessments they have been withdrawn and dismissed accordingly with no order as to costs. We have, therefore, to deal only with this appeal and the grounds upon which it has been argued are the following:-

"1. The decision of the trial Court in assessing the value of Plots Nos. 121 and 123/1/1 of Sheet/Plan No. 54/46 of Ayios Tychonas village at £21,875.- and £10,663.- respectively is arbitrary and unreasonable.

2. The trial Court misdirected itself as to the legal principles applicable respecting the assessment of compensation payable.

3. The trial Court wrongly applied the law respecting the assessment of conpensation payable.

4. The finding of the Court that the acquired lands possessed a hope value regarding other more profitable use and development including building in the future is unfounded and not based on the evidence.

5. The trial Court was wrong in holding that there ought to be an enhanced value to the acquired lands by an increase of 9% on the value of the comparables as it bases this finding on the value of properties of different potential and character to the acquired properties.

6. The trial Court was wrong in finding that the acquired lands due to their lacation had an enhanced value over the comparables.

7. The trial Court was wrong in holding that comparables 1 and 4 do not have an enhanced value on account of the fact that part of them is by or next to the sea.

8. The trial Court was wrong in considering comparable No. 3 as a comparable viewing the different potential and character of the said property.

9. The trial Court was wrong in finding that Plot 123/1/1 had a greater value than Plot 121."

The first three grounds are obviously of a general nature and are elaborated in effect by the remaining six.

We have paid due regard to the arguments advanced on behalf of the appellants' counsel and to the answers given thereto on behalf of counsel for the respondents and we have come to the conclusion that this appeal cannot succeed. The assessment of the value of the subject properties by the trial Court, and for the detailed reasons given in its elaborate judgment, was neither arbitrary nor unreasonable, nor in our view there has been any misdirection as to the legal principles applicale to the assessment of compensation payable in the circumstances.

The trial Court, having listened to the divergent views of the two valuers who were called to give expert evidence, could in the circumstances proceed with their own assessment of the compensation payable to the owners under the Compulsory Acquisition of Property Law, by taking, as held in the *Rashid Ali and Another v. Vassiliko Cement Works Ltd.*, (supra), at p. 155, the evidence before them as a whole, as they in fact did. Needless to say that on such matters this Court does not have the advantage of hearing the evidence of the two valuers from the witness-box as the trial Court did.

With regard to the complaint that the trial Court was wrong in finding that the acquired lands possessed a hope value, the answer is to be found in the trial Court's own reason for coming to this conclusion, that it was because of the absence of any expert evidence on the archaeological potentialities to these lands that it so concluded unlike other similar cases where such expert evidence was called by the acquiring authority.

In our view this was correct in law and reasonable in the circumstances. Though no separate amount is given for it, yet, if a comparison is made between the valuations of the experts of the two sides and the adjustments made to these values on other grounds, one can see that this "hope value" was not a big one, and in no way it can be considered as that that would have been given had the lands in question been found to be free from any restriction development. Indeed only the value of a "hope" in the sense that that word naturally indicates was accordingly given and there was also positive evidence before the trial Court justifying such a conclusion. Further-

more this "hope value" was subject to further limitations such as the securing of adequate supply of water and also the limitation under section 8(1) of Cap. 31 and that the owners of the acquired plot No. 121 applied once in 1972 for a permit to built a hotel which was turned down for several reasons, including the lack of proper supply of water.

With regard to the complaint that it was wrong for the trial Court to hold that there ought to be an enhanced value to the acquired lands by an increase of 9% on the value of the comparables, same has to be viewed in the light of the conclusions drawn on the evidence regarding the comparables and the correctness in treating them as such a conclusion, which we have already found reasonable and in accordance with the Law in respect of which we pronounced that we could not on appeal interfere. That being so, the assessments that the trial Court found that it ought to have made in aliminating differences and reducing disadvantages or adding normal annual increases in values, was only a natural consequence, and as said in the case of the *Commissioner of Limassol v. Marika Kirzi*, 24 C.L.R. 197 at p. 204, it is not within the province of this Court to question the amounts of the discount made by the Tribunal (trial Court) under various subjects when supported by evidence, unless it is so low as to amount to not making any allowance under the particular subject at all, and as said therein at p. 204 of the report the same applies to rates and percentages employed in deductions and adjustments for bringing up the comparisons on the same level.

We do not intend to go into detail with regard to grounds 6, 7, 8 and 9 as the trial Court in its judgment has dealt admirably with the matter in a separate chapter under the heading "The Comparables" where it deals with every aspect of the matter, the divergent views of the two valuers and as emanating from their respective reports and explained on oath in evidence before them. We would have been unnecessarily making this judgment more lengthy if we were to reproduce here verbatim what the trial Court said on this matter. Suffice it to say that having heard the arguments advanced against the findings of fact made by the trial Court and the conclusions drawn thereon we have not been persuaded that this Court, on appeal, could interfere with them.

The trial Court saw no sufficient reason to justify the exclusion of Comparable 3 by the expert of the Acquiring Authority on the ground that the limitations imposed on ancient monuments in the area within the two rills are more honerous or strict than those imposed on ancient monuments which, like Comparable 3, are situated outside the area. Furthermore regarding this comparable, which was included in the Second Schedule to the Law in 1966 no explanation has been given regarding the price it fetched in the open market on the 31st December 1970, a price indicative of the fact that its purchaser offered to the seller such one that in his opinion the property was worth it in view of its characteristics and its potentialities restricted by the limitations of its having been declared an ancient monument, no matter whether that was done in 1966 or in 1935.

On the question of Comparables 1 and 4, the Court rejected the opinion of the expert of the Acquiring Authority that they possess any advantage increasing their market value to any extent whatsoever over the acquired properties on account of their extending to the south of the main road and offering themselves as a private access to the sea by the occupants of two other plots which lie to the north of the road and form the basic parts of these two Comparables respectively. We need not say any more on this point.

Finally the question of the increase in value of properties the area where the acquired properties lie from 1966 when the earliest Comparable sales occurred, i.e. Comparable 1, until 1976 when the relevant Notice of Acquisition was published was also examined by the Court. The Acquiring Authority's expert said that he did not know whether any such increase occurred between the years 1967 to 1973 when Comparable 4 was sold. In contradistinction to this claim of the expert of the Acquiring Authority there had been produced a study on behalf of the expert of the claimants giving an annual increase ranging from 9% to 111%. On the evidence before them the trial Court found that from 1967 to 1974 the average annual increase of the properties in the area was in the region of about 9% per annum. There was no increase, however, from the time of the invasion until at least the end of 1975, but there was a further small increase during the first months of 1976.

All these conclusions are duly born out from the evidence adduced and we see no reason to disturb them.

In conclusion, we would like to observe that the trial Court obviously exercising its discretion under rule 19 of the Compensation Assessment Tribunal Rules, 1956, still in force by virtue of the provision of section 20 of Law 15 of 1962 and which rule provides that the Court may, if it thinks fit, direct that any sum awarded by it shall carry interest from the date of the award at the rate of 4% per annum, made no order as to interest urge that speedy payment be made to the claimants so that they will not suffer undue loss through any delay.

For all the above reasons this appeal is dismissed with costs.

Cross appeals as already said dismissed with no order as to costs.

Appeal dismissed with costs.