1986 May 12

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

THE REPUBLIC OF CYPRUS,

Appellant-Acquiring Authority,

v.

PANAYIOTA CHARITOU AND OTHERS,

Respondents-Claimants.

(Civil Appeal No. 6788).

Compulsory Acquisition—Compensation for—Part of a citrus grove compulsorily acquired—Property registered as a field, but divisible at the time into plots of one donum and ready for immediate development—Extent of part under acquisition two donums, one evlek and 3,200 sq. ft.—Comparison with sales of building sites in the area—In the circumstances such comparison was justified—Sales in the area made after the publication of the notification for the acquisition—Whether and in what circumstances can be taken into consideration.

This is an appeal from the judgment of the District Court of Limassol assessing the compensation payable to the respondents for the compulsory acquisition by the appellant Authority of part of an extent of two donums, one evlek and 3,200.- sq. ft. of the respondents' twelve-donum citrus grove.

Notwithstanding its registration as a field, the said property was, at the relevant time, ready for development. The zoning made possible at such time (i. e. before enactment of Law 16/80) the division of the acquired part into one-donum plots. The expert of the Acquiring Authority took the view that in the absence of sales of similar properties making direct comparison feasible the only amenable process for exacting the value of the acquired land was the development or residual method of valuation. Pressed with the fact that as regards an adjacent plot of

land (Plot 357) acquired for a similar purpose the Acquiring Authority used the comparison method he advanced the explanation that the size of such plot, namely 10,800 sq. ft. made comparison with building sites possible.

The valuer for the respondents took the view that the sales of building sites in the area provided a proper premise for direct comparison with the property acquired and cited numerous such sales.

The trial Court found the method of the expert of the Acquiring Authority unsound and, as a result his valuation unreliable; it also found that though the valuation for the respondents was sound in its approach, it was grossly exaggerated. As a result the trial Court decided to appraise the material before it with view to discern the proper value of the land in accordance with the principles, in *Rashid Ali and Another* v. *Vasiliko Cement Works Limited* (1971) 1 C.L.R. 146.

Counsel for the appellants did not dispute the exposition in the judgment of the trial Court of the relevant principles of valuation, but confined the appeal to the findings of the trial Court, and in particular the view taken of the character and potential of the land and its comparability to the properties ultimately relied upon by the trial Court which were sold subsequently to the relevant date of valuation. Counsel for the respondents supported the judgment, except the finding that there was no injurious affection, in respect of which the respondents filed a cross-appeal.

Held, dismissing both the appeal and cross-appeal: (1) The following passage in *Zacharoulla and Others* v. *The Republic* (1975) 6 J.S.C. 867, a decision of a District Court, namely that "In principle, there is no objection to the ascertainment of the value by reference to transactions after the date of publication of the notification, if they can be adjusted to market conditions on or before such date, so that no element of value unascertainable or unforeseeable at the date of notification is taken into account" correctly depicts the position. The trial Court correctly applied the above principle.

(2) The submission that the subject-property was not amenable to comparison with building sites cannot be upheld. Its location, its divisibility into plots of one donum and the amenity to develop it immediately, which was the most prominent factor likely to influence a willing seller and a willing buyer freely negotiating in open market conditions, disclosed similarities with building sites in the area that cannot be overlooked. The pertinent question, which the trial Court in effect addressed itself, is whether a willing seller could dispose of the subject-property in the open market, as property suitable for immediate building development. The answer is plainly in the affirmative.

(3) The premise upon which the land acquired was valued was as safe as the known data could make and this is equally true of the rejection of the claim for injurious affection. There is no ground for interfering with the judgment of the trial Court.

Appeal and Cross-appeal dismissed. Appellants to pay one half of the costs.

Cases referred to:

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

Zacharoulla and Others v. *The Republic* (1975) 6 J.S.C. 867.

Appeal and cross-appeal.

Appeal and cross-appeal against the judgment of the District Court of Limassol (Artemides, P.D.C.) dated the 29th May, 1984 (Reference No. 8/81) against the assessment of compensation payable to respondents-claimants for the compulsory acquisition of their property affected by the construction of the new Nicosia-Limassol road.

M. Photiou, for the appellant.

Y. Phaedonos, for the respondents.

Cur. adv. vult.

A. Loizou J.: The judgment of the Court will be given by Pikis, J.

Pikis J.: This is an appeal of the Acquiring Authority against the assessment made by the District Court of Limassol (Artemides, P.D.C.) of the compensation payable to the respondents for the compulsory acquisition of their property effected for the construction of the new Nicosia-Limassol road. Notice of the intention to acquire the property was given in the Gazette on 24.3.77 and sanctioned about a year later by the notification in the Gazette, dated 3.3.78. The property acquired, of an extent of two donums, one evlek and 3,200 sq. ft., formed part of a twelve-donum citrus grove of the respondents. Notwithstanding its registration as a field, there were two houses in the garden and the property was ready for immediate development, equipped, as it was, with the necessary facilities for the purpose, namely, access to a road, water and electricity supply and telephonic connection.

Before the trial Court there were two valuations, submitted by land valuers on behalf of the two sides, diametrically opposed in their approach to the valuation of the property and vastly differing in their end result. The valuer of the Acquiring Authority, an officer of the Lands and Surveys Department, adopted the view that the development or residual method of valuation was the only amenable process for exacting the value of the property. This, in his opinion, was the only available method of valuation in the absence of sales of similar properties making direct comparison feasible. Sales of building plots in the vicinity offered no basis for comparison for the subject property could not be treated as anything other than an undivided field. Relying on the development method he discerned the value of the whole twelve-donum field, at the material time, to be £38,500.- after deduction of development expenses, and its value after severance of the acquired land to be £32,000.-. Consequently, a compensation of £6,500.- was offered, supported as just before the Court.

The expert of the Acquiring Authority was hard pressed to explain his stance, particularly the exclusion for purposes of direct comparison of building sites sold in the immediate

and wider vicinity. More so, as the zoning of the property made possible at the time (before the enactment of Law 16/80) the division of the land acquired into one-donum plots. Also, he was challenged with regard to the seemingly unequal treatment extended to the respondents compared to the owner of an adjacent plot of land acquired for a similar purpose, namely, the owner of plot 357. In his case, his land was valued by reference to the price at which building sites in the locality were sold. Whereas, in the case of the respondents their land was valued as a field. The explanation of the witness for the Acquiring Authority was that in the case of plot 357 its limited extent, namely 10,800 sq. ft., made comparison with building site possible on account of similarity in the size of the properties.

The expert of the respondents took the view that the sales of building sites in the area provided a proper premise for direct comparison with the property acquired and cited numerous such sales in his effort to determine the value of the land acquired. Guided by these sales and after making a number of adjustments to reflect the individual characteristics of the property acquired, he concluded that the property was worth £46,815.-, and advised that corresponding compensation should be paid to the respondents.

After thorough review of the evidence, illuminated by an inspection of the locus and the surrounding area, and after paying due consideration to the principles of compensation enshrined in the Compulsory Acquisition Law (15/62), the learned trial Judge came to the following conclusions:-

(a) The premise upon which the expert of the Acquiring Authority valued the property acquired, was unsound and, as a result, his valuation unreliable. The Court found that building sites sold in the vicinity admitted, because of their similarities to the property acquired, direct comparison to the subject property and should, therefore, be used as a yardstick for the ascertainment of the compensation payable to the respondents. This similarity with the subject property was indirectly acknowledged by the valuation of plot 357 made by

the Lands Authorities, a plot in many respects similar to the land acquired.

(b) The valuation made for the respondents, though sound in its approach, that is, the amenity of direct comparison, was grossly exaggerated and bore no true relationship to the actual value of the land acquired.

(c) Hence, it became necessary for the Court to appraise the material before it in order to discern the proper value of the property at the relevant time, in accordance with the principles approved in *Rashid Ali and Another* v. *Vassiliko Cement Works Limited*[1].

Appellants mostly confined their appeal to the findings of the Court, challenging in particular the view taken of the character and potential of the land and its comparability to the properties ultimately relied upon the trial Court as a guide for the ascertainment of the value of the land acquired. Counsel had no dispute with the exposition in the judgment of the relevant principles of valuation applicable to the determination of the compensation payable for land compulsorily acquired. The statement of these principles is, in the words of counsel, free of any fault. Counsel for the respondents supported the judgment as correct in all respects, except one; namely, the finding that there was no injurious affection, the subject of a cross appeal. However, limited emphasis was laid on the cross appeal, counsel for the respondents devoting his efforts towards supporting the judgment. He drew our attention to the comprehensiveness of the judgment and the reasons given for arriving at the conclusion that there was room for direct comparison of the property with some of the "comparables" cited by the expert of the respondents.

The judgment of the trial Court is indeed commendable for its thoroughness, the succinct identification of the issues calling for resolution and the clarity of the deliberations of the Court.

Apart from contesting the amenity for direct comparison between the acquired property and the building sites sold in the vicinity, cited as "comparables", appellants disputed

[1] (1971) 1 C.L.R. 146.

the usefulness for comparison of the two building sites primarily relied upon as guide for the valuation, for the following reasons:-

(a) Differences in the extent of the properties, and

(b) the fact that the "comparables" were sold on dates subsequent to the relevant date for valuation, that is, the date of notification. He acknowledged, however, that subsequent sales cannot, as a matter of principle, be ruled out for purposes of comparison, provided there is room for proper adjustment of their price to reflect the realities of the material date.

Both counsel expressed approval to the statement of the law made in *Zacharoulla & Others* v. *The Republic*[1] (a decision of the District Court) and principles of valuation referred to therein, governing the assessment of the land acquired.

The following passage from the judgment in *Zacharoulla*, supra[2], correctly depicts the value and relevance of sales subsequent to the material date as a yardstick for direct comparison:

> "In principle, there is no objection to the ascertainment of the value by reference to transactions after the date of publication of notification, if they can be adjusted to market conditions on or before that date, so that no element of value unascertainable or unforeseeable at the date of notification is taken into account."

Another complaint made by appellants is that the Court misconceived the realities surrounding the subject property, at the material time, confusing them with those created after the construction of the work envisaged by the acquisition. Careful reading of the judgment in its entirety rules out any such possibility and for that reason we shall debate no further this contention.

At the core of the challenge of the appellants is the submisson of appellants that the subject property was not

[1] (1975) 6 J S.C. 867.
[2] See p 882.

amenable to comparison with building sites sold in the vicinity. We are unable to uphold this argument. Further, we regard the observations of the trial Court that the position of the Acquiring Authority is somewhat contradictory in this respect having regard to the basis of valuation of plot 357 as well merited. The location of the property acquired, its divisibility into plots of one donum, and the amenity to develop it immediately, disclosed similarities with nearby properties suitable for immediate development, like building sites that could not be ignored or overlooked. The amenity to develop such plots into which the subject property could be parcelled, was the most prominent consideration likely to influence a willing seller and a ready purchaser freely negotiating the price of the property acquired in open market conditions. Given the realities of the subject property, it was unrealistic and wrong in the end to treat the property acquired as capable of development only in conjunction with the development of the entire twelve-donum property. The pertinent question was and, in fact, this is the question to which the trial Court addressed itself, though not in precisely the same terms, whether a willing seller could dispose of the property acquired of an extent of two donums, three evleks and 3,200 sq. ft. in the open market, as property suitable for immediate building development. The answer is plainly in the affirmative given the zoning of the property and the existence of housing estates nearby. As such, it could and, in fact, should be compared to properties suitable for a similar use and with a similar potential. Such were the building sites situate nearby and in the vicinity. Furthermore, the existence of a number of sales of building sites did suggest that demand for land for building purposes in the area was not lacking; it was this demand for the use of land for housing purposes that primarily shaped land prices. The usefulness for comparison of individual sales primarily depended on their proximity to the subject property and similarities in the characteristics of the properties. To this end the learned trial Judge applied his mind and his findings cannot be faulted. Reliance on sales that took place subsequent to the date of notification was not impermissible as they formed part of a wider pattern revealing price trends in the area. There was, at it appears from the judgment, keen awareness of the need for proper

adjustment to reflect the time factor as well as the individual characteristics of the subject property and those to which it was compared for valuation purposes. The visit made by the Court to the locus placed it in a unique position to appreciate the intrinsic characteristics of different plots and perceive the impact of this factor on the value of the several properties. We find no ground justifying interference with either the approach of the trial Court to the valuation of the property acquired or the comparisons and adjustments made to discern the value of the property.

The premise upon which the land acquired was valued was as safe as the known data could make, reducing as far as possible the element of uncertainty inherent in the valuation of land notionally sold but in fact compulsorily acquired. This is equally true of the rejection of the claim for injurious affection. The advantages and disadvantages to the remaining property, flowing from the acquisition were finely balanced, as the Court found. Nothing we heard persuades us otherwise.

For the above reasons, the appeal and cross appeal are dismissed. The appellants will pay one half of the costs of the appeal.

Appeal and cross-appeal dismissed. Order for costs as above.