

1988 September 14

(A. LOIZOU, P., DEMETRIADES, PIKIS, JJ.)

MAROULLA XENOFONTOS M. MESARITIS,
WIFE OF DIOGENIS HADJINICOLAOU,

Appellant-Applicant,

v.

THE REPUBLIC OF CYPRUS,

Respondent.

(Civil Appeal No. 7189).

Compulsory acquisition — Compensation — Betterment — Purpose of acquisition — The construction of roads — One of such roads already constructed illegally through appellant's property — Rightly such construction was not taken into consideration in calculating betterment to the remainder — Rightly held that betterment was the result of the acquisition. 5

Compulsory acquisition — Compensation — Betterment — The Compulsory Acquisition (Amendment) Law, 25/83, section 6 — Right or obligation respecting betterment — Accrues on the date of the notice of acquisition — Its crystallisation and extent is determined at the date of trial. 10

On 21.2.1975 a notification was published for the compulsory acquisition of part of appellant's property for the construction of a trunk road and a service road. In fact, the trunk road had, already, been constructed illegally. 15

The order for acquisition was eventually published and, as a result, proceedings were initiated for the determination payable to the appellant.

The trial Judge preferred the evidence of the expert valuer for the acquiring authority and found that the appellant was not entitled to any compensation, because of the betterment by reason of the acquisition of the remaining part of appellant's property. 20

The appellant contended that: (a) The trial Court failed to assess the value of the acquired part as well as the betterment to the

remainder as on the date of the notification of the acquisition*, and (b) The betterment was due to the construction of the trunk road that preceded the notification and, therefore, it should not have been taken into consideration.

5 Held, *dismissing the appeal*: (1) No account could be taken of the unlawfully constructed road nor could its existence be taken into consideration for the development of the property. Passage thereon could at any stage be stopped at the instance of the owners of the property. The road came into existence only after the acquisition. It
10 became so upon the acquisition of the property and its conversion into a lawfully constructed road. Therefore, any betterment brought about to the remainder of the property of the Claimant was the result of the acquisition of the property.

15 (2) The right or obligation as the case may be, respecting betterment accrues on the date of the notice of acquisition. The crystallisation of the right and its extent fall to be determined at the date of trial as in every case where the extent of the right, other than the right itself, is affected by subsequent events.

20 *Appeal dismissed. No order as to costs.*

Cases referred to:

Demetriou and Others v. Republic (1985) 1 C.L.R. 217.

Appeal.

25 Appeal by claimant against the judgment of the District Court of Nicosia (Ioannides, D.J.) dated the 9th June, 1986 (Ref. No. 79/84) whereby her claim for compensation for the compulsory acquisition of her property at P. Deftera was dismissed.

P. Messaritis, for the appellant.

Chr. Kitromelides, for the respondent.

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Cur. adv. vult.

A. LOIZOU P. read the following judgment of the Court. This is an appeal against the judgment of a Judge of the District Court of Nicosia who concluded that the registered owner of property at Pano Deftera, the Claimant in the case, was not entitled to any
35 compensation for the part of the property compulsorily acquired by the Republic of Cyprus.

* See the *Compulsory Acquisition (Amendment) Law, 25/83, s.6.*

The Republic of Cyprus under Notification No. 125 published in the official Gazette on the 21st February 1975 notified its intention to acquire compulsorily part of the property of the applicant for the purposes of constructing a new road from Nicosia to Anayia village and a service road through the property in question. 5
Subsequently the Acquiring Authority confirmed their intention by an Order of Acquisition published in the Official Gazette of the Republic on the 25th April, 1975 under Notification No. 292. Under the said Order a total area of one donum one evlek and four hundred square feet i.e. 18,400 sq. ft. has been acquired out of the 10
total area of 11 donums one evlek and 3,400 sq. ft. By this acquisition the land was severed into two parts north and south of the road, the service road to be constructed being alongside the boundary of the north part of the new road.

Two valuation reports were filed; one on behalf of the Claimant and the other on behalf of the Acquiring Authority. Furthermore, the two valuation experts gave evidence at the trial. 15

It was the case of the Claimant that the value of the so acquired part of her property on the date of acquisition was £1,200.- that is £940 per donum, whereas the Acquiring Authority valued the 20
property in question at £255.55 cent, that is £200.- per donum and that the betterment to the remainder was £1,786, whereas the Claimant alleged that there was no such betterment.

It was the view of the valuer of the Claimant that the value of the acquired property had risen tremendously on account of the 25
Turkish Invasion of 1974 which displaced thousands of Greek Cypriots and forced them to seek land in that area. This demand was the reason for such increase in the value of the property and no question of betterment of the remainder arose as a result of a 30
Acquiring Authority Scheme, since the land retained had at all times before the acquisition ample and sufficient access on two public rural roads of 20 ft width which were accessible and used by tractors, lorries, cars and other vehicular traffic; it therefore brought no benefit of road accessibility or development potential 35
to the property but on the contrary it caused injurious affection to the property by reason of dust, noise, fumes and vibration due to the heavy traffic and which the valuer of the Claimant had not estimated.

On the other hand the valuer of the Acquiring Authority testified

that as a result of the construction of the new road the value of the property of the Claimant rose by 100%.

It was not in dispute that the said road was constructed in the years 1972, 1973, but it became public after the 21st February
5 1975 that is the date of the Notification of Acquisition. As regards the access to the property in question through the rural road he said that the said road, was an agricultural dust one, proceeding through a stream, which during the winter was not usable on account of the flow of water.

10 Both experts gave their comparable sales and their mode of valuation and the learned trial Judge concluded as follows:

(a) Witness Nicolaou (the expert for the Respondent acquiring Authority) took into consideration six comparable sales three of which took place before the construction of the road and the other
15 three after its construction. The last one in fact after the Invasion.

There appears in these sale the increase in the value of the property brought about originally by the construction of the road during 1972-1973 and subsequently after 1974. On the other hand
20 Mr. Pantazis (the expert for the claimant - appellant) took into consideration only the comparable sale which took place on the 28th July 1975 that is a sale after the construction and after the Turkish invasion and in fact after the notification of acquisition.

(b) Whereas witness Nicolaou was prepared to accept that the Turkish invasion brought increase in the value of property in the
25 area on account of the demand, witness Pantazis did not accept any increase in the value of property on account of the construction of this trunk-road giving more importance to the fact that the property had access before to a dust rural road, although same crossed a river and in winter could not be used when there
30 was a flow of water in the said river, and not attaching any importance to the fact that with the acquisition the property had access to a public road.

(c) On account that the comparable sale which Mr. Pantazis took into consideration was made on the 28th July 1978, that is after
35 the construction of the road and after the notification of acquisition, the sale in question could not indicate the real value of the land before and after the construction of the road as well as at the date of notification because it did not take into consideration the existing factors on the date of the Notice of acquisition.

For all the aforesaid reasons the learned trial Judge accepted the evidence of the valuer of the Acquiring Authority and rejected that of the valuer of the Claimant and concluded that the construction of the road brought about a hundred per cent increase to the value of the property of the Claimant and the betterment, therefore, was hundred per cent. 5

The learned Trial Judge proceeded to examine the legal aspect of the case and referred to the provisions of s. 10 of the Compulsory Acquisition Law 1962, (Law No. 15 of 1962 as amended by s. 6 of Law No. 25 of 1983 and the decision of this Court in *Vias Demetriou and other v. The Republic of Cyprus* (1985) 1 C.L.R. 217, where at p. 225 the following is stated: 10

«The extent of the increase by reason of the acquisition is a matter of fact in every case. It is for the Trial Court to consider on the evidence before it, if there is any betterment and the extent thereof. Any scheme or project of any Public purpose for which an acquisition takes place must be in some shape or form and it develops from day to day and the ultimate question for the Court to decide is to what extent the value of the remainder land on the day by reference to which the valuation is to be made has been increased by reason of the acquisition. The legislature by the change effected by Law 25/83 rationalised the law. Both elements - the value of the land acquired and betterment or injurious affection of the remainder - are assessed by reference to the same day, the date of the notice of acquisition». 15 20 25

It is the contention of the appellant that the Trial Court did not in fact take into consideration s.6 of Law No. 25 of 1983 as well as the Judgment of this Court in the case of *Vias Demetriou and other v. The Republic of Cyprus* (supra) and that it failed to assess the value of the acquired part of the property as well as of the remainder on the basis as on the date of the Notification of acquisition that is the 21st February 1975 and furthermore it did not take into consideration that the trunk road in question was constructed by the Acquiring Authority by an unlawful entry into the property of the claimant between July 1972 and June 1973, that is two to three years before the date of the Notice of Acquisition. 30 35

It was further argued by learned counsel for the appellant that any betterment brought about by the construction of the said road 40

could not have been taken into consideration as that betterment, if any, occurred before and not as a result of the compulsory acquisition of the property.

In our view the approach of the learned trial Judge was correct. 5. No account could be taken of the unlawfully constructed road nor could its existence be taken into consideration for the development of the property. Passage thereon could at any stage be stopped at the instance of the owners of the property. The road came into existence only after the acquisition. It became so upon the 10 acquisition of the property and its conversion into a lawfully constructed road. Therefore, any betterment brought about to the remainder of the property of the Claimant was the result of the acquisition of the property and the learned trial Judge was correct in this approach that the betterment was the result of the scheme 15 authorised to be carried out by the Notice of Acquisition.

The judgment in the case of *Demetriou* (supra) has not changed the law. The right or obligation as the case may be, respecting betterment accrues on the date of the notice of acquisition. The 20 crystallisation of the right and its extent fall to be determined at the date of trial as in every case where the extent of the right, other than the right itself is affected by subsequent events.

For the above reasons the appeal is dismissed, but in the circumstances there will be no order as to costs.

Appeal dismissed. No order as to costs.