1984 November 28

[I. LOIZOU, HADJIANASTASSIOU, DEMETRIADES, JJ.]

ANDREAS MINA CHRISTOPHIDES,

Appellant-Applicant

v.

THE REPUBLIC OF CYPRUS,

Respondent-Acquiring Authority

(*Civil Appeal No.* 5816)

Compulsory acquisition—Compensation—Interest—Principles applicable—Delay by applicant in seeking the assessment or collection of compensation due to him—Not a ground for awarding to him interest on the compensation assessed at a low rate

In proceedings for the assessment of the compensation payable to the appellant for the compulsory acquisition of his property the trial Court awarded interest at 4% p.a. from 28.3.1963 (the date of the order of compulsory acquisition) upto 24.5.1976 (the date the statement of claim was filed by the appellant) and thereafter at 8% p.a. up to payment. The interest at the rate of 4% p.a. was awarded in view of the long delay of appellant to file his statement of claim.

Upon appeal it was contended that interest ought to be awarded at the rate of at least 8% p.a. from the date of the order.

Held, that although there was a delay by the appellant in seeking the assessment or collection of the compensation due to him, this should not be taken against him in view of the fact that the offer by the Acquiring Authority was made to him on the 15th May, 1975, that interest is awarded to a claimant in order to compensate him for the loss that he has suffered as a result of being deprived of rights he has over his property, for instance, the right to sell at such time as he chooses to do so, or the chance to improve his property; that compensation is paid in order to make sure that the person whose property is expropriated receives no less than what he would be entitled

to receive at the time the acquisition was published and that by receiving interest he is considered as having been paid at the time of the acquisition; and that, accordingly, the interest payable on the assessment should be 8% p.a. as from 28.3.1963 (the date of the order).

Appeal allowed.

Appeal.

Appeal by claimant against the judgment of the District Court of Nicosia (Stavrinakis, P.D.C. and Orphanides, S.D.J.) dated the 31st January, 1978, (Reference No. 24/75) whereby the Acquiring Authority was adjudged to pay to claimant the sum of £3,300.- as compensation for the acquisition of his property.

N. Zomenis, for the appellant.

K. Michaelides, for the respondent.

Cur. adv. vult.

L. LOIZOU J.: The judgment of the Court will be delivered by Mr. Justice Demetriades.

DEMETRIADES J.: This is an appeal against the assessment made by the District Court of Nicosia in Reference No. 24/75 regarding the compensation payable to the appellant for the compulsory acquisition of his property, Plot No. 162, Block 25, Sheet/Plan XXI.46.6.III, of an extent of one evlek and 816 sq. feet, situated at Tripiotis Quarter, Nicosia.

The Acquiring Authority is the Republic of Cyprus and the property acquired lies within a good commercial area of the town.

The notice of acquisition under section 4 of the Compulsory Acquisition of Property Law, 1962 (Law 15/62) was published in the Official Gazette on the 11th October, 1962, under Notification No. 516 and the order of acquisition, under section 6 of the same Law, was published on the 28th March, 1963.

It is an admitted fact that the property concerned is situated within an area protected by the provisions of section 11 of the Antiquities Law, Cap. 31, within which no building is permitted to be erected above ground level.

It is pertinent to mention at this stage that an application made by the applicant in 1960 for the erection of a building, the height of which exceeded the ground level, was rejected by the appropriate authorities.

The trial Court having in mind the above said restriction imposed by section 11 of Cap. 31, and that it was unlikely to be removed in the future, reached the conclusion that it was equivalent to an absolute prohibition, which had reduced extensively the potentialities and exploitability of the property, as a result of which the value of the property had to be reduced by two thirds.

The trial Court based its assessment of the value of the property by using the "direct comparison method". In this respect they have stated the following in their judgment:

> "It has been established by the evidence that the safest way to assess the value of the property is by using the direct comparison method provided, of course, that certain important facts are taken into consideration and the necessary adjustments are made, and provided that the circumstances of the case are not such as to make the employment of this method inappropriate. ..... we feel that the better course to follow is to find the value of the property by comparing it with the most appropriate and close comparable, free from any restrictions, making whatever allowances or adjustments are necessary, and then assess the extent to which the property is affected by the restrictions, evaluate that extent and deduct it from the value free from any restrictions. We decided to follow this course not because it is free from difficulties but because we have sufficient material before us and safe guide lines to enable us to make a fair, just and equitable assessment of the compensation".

The trial Court relying on the evidence of Mr. Vassiliou, a valuer called by the respondent, found that the most appropriate and close comparable property which was, however, free from any restrictions, was that which they, in their judgment, name as "Comparable 1", or the "Lefkaritis property", and excluded as comparables two other properties used by the appellant's expert, Mr. Pantelides, giving the following reasons for doing so:-

(a) That they were sales effected after the Notice of Acquisition and after the widening of Stassinos Avenue, the street running along the property in question.

(b) That the widening of the street and its conversion into a wide avenue transformed the character of the area from residential into commercial and that as a result of that, values increased.

(c) That after the widening of the street multi-storied buildings began to be erected, more shops were opened and in general there was a drastic development of the area, the result of which was the increase in the value of properties.

Having reached the above conclusions, the trial Court found, on the basis of the evidence of the respondent's valuer, that the value of the property in question was, free from any restrictions, worth £1.837 mils per sq. ft. or £9, 848.- as a whole and then proceeded to assess the compensation to be paid to the appellant which it found that in the circumstances, i.e. the existence of the restrictions, had to be reduced by two thirds.

Counsel for the appellant has argued that the assessment made by the trial Court was wrong in that—

(A) It found that—

(a) the use of the property as a parking place was an uneconomical investment;

(b) only comparable 1, i.e. Lefkaritis property, was the only reliable one on which to base their assessment.

(B) It ignored the cost of purchasing the property by the appellant, a factor which ought to be taken into consideration.

(C) It reduced by two thirds the value of the property.

(D) It found that the restrictions imposed on buildings in the area are irrevocable and permanent.

Counsel for the appellant further submitted that the rate of interest awarded, i.e. 4% p. a., was wrong and that same ought to be at least 8% p.a. from the date of the notice to treat.

Having in mind the evidence adduced with regard to the arguments of counsel for the appellant on issues (A) and (B)

above, we find that the trial Court could reasonably reject the evidence of Mr. Pantelides and that its conclusions on these two issues should not be interfered with.

With regard now to arguments (C) and (D) which we find to be closely connected the trial Court, having carefully gone through all the material placed before it, could reach the decision to which it has arrived at, and we are, therefore, not satisfied that its assessment of the compensation should be disturbed.

The last complaint of the appellant is that the trial Court awarded interest on the compensation assessed at 4% p.a. from 28.3.1963 (the date of the order), up to 24.5.1976 (the date the Statement of Claim was filed by the appellant) and, thereafter, at 8% p.a. up to payment, which interest ought to be awarded at the rate of at least 8% p.a. from the date of the order.

In reaching its conclusion on this issue the trial Court said the following:-

> "It seems that the Acquiring Authority took possession of the expropriated property when the order was published or at least soon after and yet nothing was done by the owner for the assessment or collection of the compensation due to him. It may be that the offer was made late. On the notice of reference, it is stated—though not clearly—that the offer was made on 15.5.1975 but in our opinion this could not be taken as an excuse for the claimant to sleep over his rights for such a long period. In view of this long delay for which it seems that both sides are to blame, we shall award interest at the rate of 4% only (for part of the period) instead of a higher rate because we feel that if we were to award a higher rate we would have penalised the Acquiring Authority for a delay for which they are not alone to blame. The rate of 4%, in our view, represents a just and equitable part of the compensation particularly since the claimant was deprived of his property soon after the acquisition and the Acquiring Authority, on the other hand, had full use and enjoyment ever since. In arriving at this conclusion, we took also into consideration the considerable difference between the assessment made by the Acquiring Authority and the claimant, on the one hand, and on the other, the difference between any of the two and the assessment made by the Court".

We are not in agreement with that part of the finding reached by the trial Court as regards the rate of interest awarded for the period of 28.3.1963 to 24.5.1976, as we think that although there was a delay by the appellant in seeking the assessment or collection of the compensation due to him, this should not be taken against him in view of the fact that the offer by the Acquiring Authority was made to him on the 15th May, 1975. In our view, interest is awarded to a claimant in order to compensate him for the loss that he has suffered as a result of being deprived of rights he has over his property, for instance, the right to sell at such time as he chooses to do so, or the chance to improve his property. Compensation is paid in order to make sure that the person whose property is expropriated receives no less than what he would be entitled to receive at the time the acquisition was published and that by receiving interest he is considered as having been paid at the time of the acquisition.

In the light of all the above, we dismiss the appeal against the assessment of the compensation arrived at by the trial Court, but we make an order that its finding as regards the interest payable on the said assessment should be 8% p.a. as from 28.3.1963, i.e. the date of the Order.

With regard to the costs of the appeal, we find that as the appellant has failed to satisfy us that he had a good cause on all issues except that on interest, we have decided to make no order as to costs.

Appeal partly allowed with no order as to costs.