

1954
January 20

CHRISTOFOROS
TALIADOROS
v.
THE ATTORNEY-
GENERAL

[ZENON, P.D.C., AND JOSEPHIDES, D.J.]
(January 20, 1954)

CHRISTOFOROS TALIADOROS, *Plaintiff,*

v.

THE ATTORNEY-GENERAL, *Defendant.*

(District Court of Nicosia—

Action No. 1492/52)

Land Acquisition Law—Interest on sum awarded as compensation.

The Governor's sanction for the compulsory acquisition of plaintiff's property, under section 7 of the Land Acquisition Law, Cap. 233, was published in the *Gazette* on the 26th June, 1947, on which date the Government took possession of the said property.

The arbitrators having failed to agree on the amount of compensation payable to the plaintiff, the District Court of Kyrenia sitting as umpire, under section 10 of the above Law, awarded a sum of money as compensation on the 18th June, 1949, which was duly paid to plaintiff by the District Commissioner. The said Court, acting under the proviso to section 11(b), assessed the value of plaintiff's property as it stood on the 26th June, 1947, and it did not take into consideration the use of the property by Government for about two years, viz. from the date of the acquisition to the date of the award, nor did it award any interest on the amount awarded in respect of that period.

It was not sought in the present action to vary or challenge the award. The Court sitting as umpire considered that the question of interest on the sum awarded as compensation was not within its terms of reference.

On an action for the recovery of interest.

Held: That the plaintiff was in equity entitled to legal interest, i.e. 4 per cent. per annum, on the compensation money from the date of the notification of the Governor's sanction and the entry on plaintiff's properties to the date of the award by the Court sitting as umpire.

Fuad with *G. Clerides* for the plaintiff.

R. R. Denktush, Crown Counsel, for the defendant.

Judgment was delivered by:

ZENON, P.D.C. : Plaintiff was, in 1947, the owner of certain properties at Iapithos consisting of fields, a house and running water, described in paragraph (1) of the Statement of Claim.

The Governor acting under section 7 of the Land Acquisition Law, Cap. 233, by notification dated the 19th June, 1947, and published in the *Gazette* of the 26th June, 1947 (Supplement No. 3, page 248) sanctioned the acquisition of the aforesaid properties of plaintiff for an undertaking of

public utility, *i.e.* the establishment of a Reform School; and in accordance with section 8 of the said Law the said properties vested absolutely in the Government as from the date of the notification of the Governor's sanction, and in fact it is common ground that the Government took possession of the said properties as from that date.

1954
January 20
CHRISTOFOROS
TALIADOROS
v.
THE ATTORNEY-
GENERAL.

The plaintiff did not agree with the Commissioner as to the amount of compensation for the properties so acquired and the determination of such amount was referred to arbitrators under section 9 (1) of Cap. 233. The said arbitrators failed to agree and the District Court of Kyrenia, sitting as umpire under section 10 of the said Law on the 18th June, 1949, awarded the sum of £3,800 as compensation, and in accordance with section 17 ordered the Commissioner of Kyrenia to pay the said sum according to the terms of the award, and the Commissioner duly complied with the said order. The District Court of Kyrenia as assessing authority acting under the proviso to section 11 (*b*) assessed the value of the aforesaid properties as it stood on the 26th June, 1947, the date of the notice given under section 7 of the said Law, and it did not take into consideration the use of the property by the Government between the date of the acquisition and the date of the award of the Court as umpire, or the interest on the amount awarded between those dates.

Plaintiff contends that as from the 26th June, 1947 (and *not* 19th June, 1947, as wrongly stated in the Statement of Claim), when the Government acquired his properties, he became the owner of the price which was found by the Court on the 18th June, 1949, to be payable, and as that price was kept by the Government and not paid until after the 18th June, 1949, plaintiff is in equity entitled to legal interest thereon, *i.e.* 4 per cent. per annum from the 19th June, 1947 to the 18th June, 1949, and the plaintiff claims £704 interest as aforesaid. But as the correct date of the notification of the Governor's sanction and entry on the properties is the 26th June, 1947 (and *not* the 19th June, 1947), his claim should be £697.4.6.

The defendant denies the plaintiff's claim and alleges that—

- (a) the Government in paying the compensation after the determination of the amount thereof by the umpire (the District Court of Kyrenia) has acted in accordance with the Law, and
- (b) that the plaintiff is not entitled, in equity or otherwise, to interest on the amount awarded as claimed or for any period.

In England, where an entry on the lands to be purchased

1954

January 20

CHRISTOFOROS
TALIADOROS

v.

THE ATTORNEY-
GENERAL.

or taken is made by the promoters under the Lands Clauses Act, 1845, before the payment of purchase-money, the promoters are liable to pay interest at the rate of 4% from the time of entry, that is, as soon as the vendor ceases to be entitled to the rents and profits, in accordance with the ordinary practice which regulates the liability of a purchaser to a vendor: *Rhys v. Dare Valley Ry. Co.* (1874) L.R. 19, Eq. 93. The principle laid down in the House of Lords in *Birch v. Joy* (1852) 3 H.L.C. 565; 10 E.R. 222, is perfectly plain. When such a state of things arises between a vendor and purchaser as that the latter has become entitled in equity to the thing purchased and to the receipt of the rents (if there be such), or to the enjoyment (if there can be enjoyment) of the thing purchased, there arises in equity a correlative right in the vendor to have interest on his purchase-money if remaining unpaid. The head-note to the report of *Birch v. Joy* runs as follows: "It is a general rule of equity, that if a purchaser is in possession of an estate, receiving the rents, he is liable to pay the purchase-money and that the purchase-money being retained by him will carry interest to be paid by him to the seller. An agreement, which appears to prevent the application of this rule, will be examined in a Court of Equity, by its aid, and will or will not be enforced, according to circumstances". The general principle has been applied in many subsequent cases. "The decision of Bacon V. C. in *Rhys v. Dare Valley Ry. Co.* is a fair instance of the application of the principle in the case of a purchase by a railway company. Interest was there held to be payable by a railway company on the purchase or compensation money from the time when the company took possession of the land under its statutory powers. It must always be ascertained whether the purchaser on the one hand has obtained the enjoyment of the property and the vendor on the other hand has not acquired the enjoyment of the purchase-money". *Fletcher v. Lancashire and Yorkshire Railway* (1902) 1 Ch. D. at page 908.

Viscount Cave, L.C., in his speech in the case of *Swift and Co. v. Board of Trade* (1925) Appeal Cases 520 at page 532 said :

"Upon the question of interest I am of opinion that the view taken by the majority of the Court of Appeal is right. It is true that on a contract for the sale and purchase of land it is the practice of the Court of Chancery to require the purchaser to pay interest on his purchase-money from the date when he took, or might safely have taken, possession of the land: see *Birch v. Joy*; but this practice rests upon the view that the act of taking possession is an implied agreement to pay interest; per Sir W. Grant in *Fludyer v. Cocker*. It is true also that the rule has been extended to cases of compulsory purchase under the Lands Clauses Consolidation

Act, 1845; in *re Pigott and Great Western Ry. Co.*; *Fletcher v. Lancashire and Yorkshire Ry. Co.*; but this is because the notice to treat under the statute is treated in equity as creating the relation of vendor and purchaser. No doubt the rule is well established in the case of sales of land”.

1954
January 20
CHRISTOFOROS
TALIADOROS
v.
THE ATTORNEY-
GENERAL.

In *re Pigott and the Great Western Railway Company* (1881) 18 Ch. D., page 146, it was held that—

“ a complete contract being established between a railway company and a landowner by the notice to treat, and an award under the Lands Clauses Consolidation Act, 1845, fixing the amount of the purchase-money, the ordinary rules as between vendor and purchase apply to such a contract, including the liability of the purchasing company, in a proper case, to pay interest on their unpaid purchase-money.

“ Thus where the title has not been accepted before the award, and the company, not being in possession, delay paying or depositing the purchase-money, they are liable to pay interest at 4 per cent. per annum, not from the date of the award, but from the time they might prudently have taken possession; that is, when a good title was shewn”. See also pages 151, 152, 153 and 154.

A more recent case to the point is that of *Inglewood Pulp and Paper Co. v. New Brunswick Electric Power Commission* (1928) Appeal Cases, p. 492. In that case lands belonging to the appellants were expropriated by the respondents in October, 1920, under the provisions of the Brunswick Electric Power Act, 1920, for the purposes of their statutory undertaking.

The respondents were virtually a department of the Province of New Brunswick, and were incorporated by the Act above referred to for the purpose of constructing, maintaining and operating works, machinery and plant for generating electrical energy from (amongst other things) water power and for transmitting the same. They were given extensive powers of expropriation, and it was not disputed that such powers had been validly exercised.

With regard to compensation it was provided in the Act that in default of acceptance of the sum offered within the time fixed by the Act, the Commission might in such a case as the present, apply for the assessment of damages to a judge of the Supreme Court, and upon the application being made the judge should by order designate himself the sole arbitrator, and the judge so designated should thereupon become the sole arbitrator, for determining the compensation to be paid. In that case the sum offered as compensation

1954

January 20

CHRISTOFOROS
TALLADOROS

v.

THE ATTORNEY-
GENERAL

was not accepted and a judge of the Supreme Court was in November, 1924, designated as the sole arbitrator and he made his award in October, 1926. He awarded the sum of \$42,500, but no interest. The Appeal Division of the Supreme Court of New Brunswick by their order, dated April, 1927, varied the award and allowed interest refused by the arbitrator, at the rate of 4 per cent. per annum from October, 1920. The Privy Council on appeal affirmed this decision. Lord Warrington of Clyffe who delivered the judgment of Their Lordships (at p. 498) said:

“The last question is that of the allowance of interest, and it is a serious one.

“It is now well established that on a contract for sale and purchase of land it is the practice to require the purchaser to pay interest on his purchase-money from the date when he took possession: per Lord Cave, L.C., in *Swift and Co. v. Board of Trade*. The law on the point has also been extended to cases under the Lands Clauses Consolidation Act, 1845.

“Their Lordships can see no good reason for distinguishing the present case from such cases. It is true that the expropriation under the Act in question is not effected for private gain, but for the good of the public at large, but for all that, the owner is deprived of his property in this case as much as in the other, and the rule has long been accepted in the interpretation of statutes that they are not to be held to deprive individuals of property without compensation unless the intention to do so is made quite clear. The statute in the present case contains nothing which indicates such an intention. The right to receive interest takes the place of the right to retain possession and is within the rule.

“The respondents in their case state that they expropriated the land on October 13, 1920, the date from which the Appeal Division directed the interest to be calculated, and that date may be taken as correct”.

Now, reading our Law, Chapter 233, as a whole, there is nothing to indicate any intention of the legislature to deprive individuals of the payment of interest. It has been submitted that section 17, which runs as follows, precludes the payment of interest:

“..... the Court..... shall order the Commissioner to pay the sum awarded in accordance with the terms of the award. Such sum shall be paid from the public funds of Cyprus..... or by the public body concerned as the case may be”.

The way we read section 17 is that that section does not refer to a matter of substance but of procedure as to who will pay the amount and out of what funds.

The case of *Newport Borough Council v. Monmouthshire County Council* (1947) 1, All England Reports, p. 900, can be distinguished in the same way as the case of *Collins v. Feltham Urban District Council* (1937) 4, All England Reports, p. 189. In the latter case the Urban District Council passed a resolution to schedule an area as an open space under the Town and Country Planning Act, 1932, but there was never any vesting of title or entry on the land.

1954
January 20
CHRISTOFOROS
TALLADOROS
v.
THE ATTORNEY-
GENERAL.

In the "Current Law" for November, 1953, paragraph 51, it appears that a case on this point was recently considered in England, but unfortunately the full report is not available in Cyprus; it is reported in the "Current Property Law". The extract from the "Current Law" reads as follows:—

"Right to interest on purchase-money. In Edwards v. Southern Electricity Board (1953) C.P.L. 650, where the plaintiff claimed interest on unpaid purchase-money, the defendants, after Upjohn, J., had intimated that in his view they should pay interest, agreed, without prejudice to their strict legal rights, to pay interest at 3½ per cent. from the date they had given the plaintiff notice that they intended to take possession of the land".

For all these reasons we hold that the plaintiff is in equity entitled to legal interest, *i.e.* 4 per cent. on the compensation money £8,800 from the date of the notification of the sanction of the Governor and the entry on his properties, *i.e.* the 26th June, 1947 to the 18th June, 1949, the date of the award by the Court.

We, therefore, give judgment for the plaintiff for £697.4.6 and costs.

This judgment shall carry no interest.