[TRIANTAFYLLIDES, STAVRINIDES, HADJIANASTASSIOU JJ.]

1966
Nov. 24
1967
June 20
—
MAY FORSYTH AND OTHERS
v.
THE REPUBLIC OF CYPRUS, THROUGH THE DISTRICT OFFICER NICOSIA

MAY FORSYTH AND OTHERS,

Appellants,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE DISTRICT OFFICER, NICOSIA,

Respondent.

(Civil Appeal No. 4581).

Compulsory Acquisition of Land—Surplus land compulsorily acquired and offered back to its ex-owner—Determination of price to be paid by the latter—Time material for the determination of such price—Such time is the time when the offer back ought to *have been made according to Law—And not the time either when the original notice to treat was published or when the offer back was* actually *made—The Land Acquisition Law, Cap. 226, section* 10 *and rules thereof, especially rule (b) proviso, and section* 13 (1)*(c)—The Compulsory Acquisition of Property Law,* 1962 *(Law No.* 15 *of* 1962) *sections* 15 (1) *and* 23 (2)*—Review of the relevant legislative evolution and legislative and Constitutional provisions—Articles* 23.5 *and* 28 *of the Constitution.*

Constitutional Law—Constitution of the Republic Articles 23.5 *and* 28*—Nothing in either* 23 *or* 28 *of the Constitution to exclude the application made by the Court in the present cases of section* 13 (1) *(c) of Cap.* 226 (supra) *to offer back of surplus land resulting from a compulsory acquisition made before the coming into operation of the Constitution—As in the present cases where the said acquisition took place in* 1956 *and the offer back ought to have been made some time in* 1958*—Nor is found, in the circumstances, any contravention of the principle of equality safeguarded under Article* 28 *of the Constitution.*

Statutes—Construction of statutes—Construction of section 13 (1) *(c) of the Land Acquisition Law, Cap.* 226*—In the light of the relevant legislative evolution, both prior and after its enactment.*

Surplus Land—Offer back to its ex-owner—Price to be paid by the latter—How determined—See above.

This is an appeal against the judgment of the full District Court, Nicosia given in four consolidated references on the

20th May, 1966. The purpose of such references was to determine the price to be paid for land which was, on the 15th November, 1962, offered back to, and accepted by, the appellants, as surplus land resulting from the compulsory acquisition by Government, in 1956, of appellants' properties. The said references were made by Government, agreement having not been reached with the appellants regarding the price to be paid for the surplus land offered back to them as above

The properties in question of the appellants were compulsorily acquired by the then Colonial Government in 1956, in return for a total compensation of £7,450 The first relevant notice was published on the 12th August, 1954, then a Notice to treat was published on the 4th November, 1954, and the order sanctioning the acquisition was published on the 7th June, 1956

The surplus parts of the said properties—about 1/3 of the total area acquired—were offered back on the 15th November, 1962, by means of notices given under section 23 (2) of the Compulsory Acquisition of Property Law, 1962 (Law No 15 of 1962) and section 13 of the old Law *i e* the Land Acquisition Law, Cap 226.

The trial Court, basing itself on the 1962 proprietary values, decided, by the judgment appealed against, that the appellants had to pay, in all, £20,385 for the land offered back to them as aforesaid

The main issue in this appeal is what should be held to be the time material for the purposes of the determination of the price to be paid by the appellants in respect of the surplus land offered back to them in November, 1962 as above The respondent Republic always contended that such price has to be fixed on the basis of the values prevailing at the time the offer back of the surplus land to the ex-owners-appellants was actually made *viz.* in November 1962. The appellants, on the other hand, maintained throughout that : (1) on the true construction of section 13 (2) (c) of the Land Acquisition Law, Cap 226, rule (b) of section 10 of the same Law is applicable in this case, *i.e* the price of the said surplus land has to be determined on the basis of the values prevailing at the time when the original notice to treat was published, that is to say on the 4th November, 1954 (*supra*); (2) alternatively, such price should be fixed by reference to the prices or values prevailing at the time the offer back of the surplus ought to have been made, contending in this connection that such time in this case was some time in

1957 when, as the appellants alleged, the Government decided that the said land, which was offered back to them in 1962, was in excess of the requirements of the public undertaking concerned.

In relation to the aforesaid argument on behalf of the appellants under (1) hereabove, it was, also, urged on their behalf that any other mode of application of the aforesaid provisions in section 13 (1) (c) and in the proviso to rule (b) of section 10 of Cap. 226 (*supra* and *infra*) would be unconstitutional, as offending against fundamental principles to be derived from Article 23 of the Constitution, especially the principle that compulsory acquisition is to be resorted to for the public benefit only, and not for the benefit of the *fiscus*, and that surplus land should, therefore, be returned to their ex-owners on terms of *restitutio in integrum*.

The trial Court held that the time material for the purposes of determining the price to be paid for the aforesaid surplus land was the time when the offer back to the appellants *ought to have been made*. But, according to the trial Court, this *was one year* after the completion of the relevant works (see section 13 (1) of Cap. 226, *infra*); and such completion was found to have taken place some time *circa* March 1962. In the result the trial Court held that the reference for the purposes of determining the price of the said surplus land should be to the prices prevailing *circa* March 1962—which prices on the evidence were the same as those prevailing *circa* November 1962—and proceeded to determine such price on that basis and fixed it to the amout of £20,385 (*supra*).

In taking the above view the trial Court relied on the provisions of section 13 of Cap. 226 (*supra*), as read in the light of section 23 (2) of the aforesaid Law No. 15 of 1962 (*supra*).

All material statutory provisions are fully set out in the judgment of the Court, *post*.

The Supreme Court allowing the appeal, held, agreeing in that with the trial Court, that the price of the aforesaid surplus land has to be fixed by reference to the values prevailing at the time when the offer back to the appellants *ought to have been made viz.* one year after the completion of the works *concerned.* But, on the facts of the present case, the Supreme Court found that the works concerned have been completed at the latest by the end of 1957; and, therefore, the basis of

the determination should be in this case the values prevailing by the end of 1958; and the Court remitted the case back for the price to be so determined.

Section 13 of Cap. 226 (*supra*) provides :

"13 (1) Subject to sub-section (2), the Government..... or....., shall, within one year from the completion of the works on ....., sell and dispose of any land which is found to be in excess of the extent actually required or to be no longer required for the purpose for which it has been acquired..... (2) Before any sale as in sub-section (1) the land shall, ... (i) ..... (ii)..... be offered for sale, as in paragraph (b) of this sub-section provided, to the person from whom the land has been acquired who shall signify his desire to purchase the land within six weeks from the date when the offer was made,.....

(b) . . . . . .

(c) in case the offer is accepted, if the parties fail to agree as to the price, such price shall be determined by the Tribunal (now the Court) *and for the purposes of this paragraph the rules* set out in section 10 of this Law shall, *so far as possible*, apply to any..... proceedings instituted hereunder".

Rule (b) of section 10 of the Law reads, in its material part, as follows :

"(b) the value of the land shall, subject as hereinafter provided, be taken to be the amount which the land, if sold in the open market by a willing seller, might be expected to realize : Provided that the Court in estimating such compensation shall assess the same according to what it shall find to have been the value of such land at the time when the notice under section 6 of this Law (*viz.* the notice to treat) is published and without regard to any improvements of works made or constructed thereafter or to be made or constructed thereafter on the said land".

It is to be noted that the said section 10 and the rules thereof deal with the assessment of land compulsorily acquired, and they are made applicable "so far as possible" by virtue of section 13 (1)(c) (*supra*) to the cases of surplus land offered back to the ex-owners thereof.

In allowing the appeal, the Court :

Held, (1) in dealing with the issue what is the correct construction to be put on section 13 (2) (c) of Cap. 226 (*supra*), it is useful to bear in mind the relevant legislative evolution:

(a) Section 13 of Cap. 226 was enacted in 1952 as—at the time—a new section 19 of Cap. 233 of the then in force consolidated edition of the Laws of Cyprus, known as 1949 edition.

The old section 19 of Cap. 233, dealing with the question of surplus land, provided that the person from whom the land had been acquired should have the right of pre-emption at the price at which it was acquired from him or, in the case where such surplus land is only part of the land acquired, at a price proportionate to that at which the whole was acquired from him. (See the full text in the judgment of the Court, *post*).

(b) The new section 19 of Cap. 233—now section 13 of Cap. 226, *supra*, remained in force from 1952 until the new Compulsory Acquisition of Property Law, 1962 (Law No. 15 of 1962) repealed the whole of Cap. 226. The corresponding section of the new Law of 1962 is section 15 which provides in substance that the price of the surplus land offered back to its previous owner shall be the price at which the property has been acquired (Cfr. Article 23, paragraph 5 of the Constitution, set out in full in the judgment of the Court, *post*).

(2) Therefore, the argument on behalf of the appellants amounts to saying that section 13 (2) (c) provides for a right of pre-emption in return for a price to be determined on the same footing as the compensation paid for by the acquiring authority for the compulsory acquisition of the property in question; and in such a case there would be, in actual practice, hardly any difference between section 13 (2) (c) of Cap. 226 and section 19 of Cap. 233 as it stood before 1952 (*supra*). Had this been the case, however, then the legislator need not have introduced in 1952 a new section in Cap. 233 (now section 13 of Cap. 226, *supra*); we cannot accept that the legislator intended to retain the position as it was, more or less, under section 19, prior to 1952, and yet, instead of plainly saying so, the legislator resorted to enacting what is now section 13 (2) (c) of Cap. 226 and referring therein to the rules section 10 of the same Law—*viz.* Cap. 226.

(3) Moreover, if section 13 (2) (c) of Cap. 226 (*supra*) provides, in effect, for an offer back of surplus land at a price based on the same footing as the compensation on acquisition, then section 15 of the new Law No. 15 of 1962 (*supra*), which is based on the same premise, would have been made applicable to all cases of offers back of surplus land taking place after its enactment (as in the cases in hand) and it would not have

been necessary to make separate, different, provision by means of section 23 (2) of the said Law No. 15 of 1962 which provides that "any immovable property acquired before the coming into operation of this Law, under the provisions of legislation then in force, and later found to be in excess of the extent actually required or.....may be disposed of as provided in the Land Acquisition Law (Cap. 226) repealed by this Law, as if this Law had not been enacted".

(4) In our view the proviso to rule (b) of section 10 of Cap. 226 (*supra*) relied on by the appellants is clearly designed to fit solely the situation arising at the time of the compulsory acquisition and nothing else.

(5) (a) On the other hand the principle behind the said proviso—namely, that nothing should be done to gain an undue advantage once the relevant rights have crystallized—should certainly be abided by in applying sub-section 2 (c) of section 13 of Cap. 226 (*supra*).

(b) In our opinion the application of such principle would result in holding that the time material for the purposes of determination of the price to be paid in respect of surplus land, which is being offered back to its ex-owner, must be taken to be the date when such land *ought to have* been offered back, in accordance with the legislation in force, and not the date of the actual offer—if the offer was not made when it ought to have been made, but later; because an acquiring authority should not be allowed to put off offering back surplus land with a view to gaining a better price through a possible increase in the values of land in the meantime.

(c) We are, therefore, in full agreement with the trial Court regarding the time by reference to which the price of the land offered back to the appellants ought to have been determined.

(6) (a) But we differ from the trial Court's finding regarding the actual time at which the offer back ought to have been made.

(b) In our view the trial Court in holding that the completion of the works has taken place some time in March 1961 acted on a misconception of the facts in this case. On the basis of the material before us we have reached the conclusion that, under section 13 (1), of Cap. 226 (*supra*) the surplus land in question ought to have been offered back to the appellants at the end of 1958, *i.e.* one year after the completion in 1957 of trunk road "A" for which the appellants' properties had been

compulsorily acquired, and it is a fact that the trunk road in question was completed and opened to the public and put in full use in 1957, crossing the river—which does not flow perenially—not by means of a bridge but by means of a dip of the road down to the river-bed, known as an "Irish bridge". In our view the learned trial Judges erred in treating the construction of a bridge in 1961 as part of the works carried out in relation to the undertaking in respect of which the properties of the appellants were compulsorily acquired in 1956.

(7) (a) We pass on next to the issue of Constitutionality of the application to the circumstances of this case, of section 13 (1) (c) of Cap. 226 (*supra*), as construed by the trial Court, in a manner upheld already in this judgment. In our opinion there is nothing in Article 23 of the Constitution which could be held to exclude the application of the aforementioned provision to the present cases, which are instances of offers back of surplus land resulting from acquisitions which took place before 1960 *i.e.* before the coming into operation of the Constitution, and where the determination of the price to be paid for the land offered back would be made by reference to the year 1958 when the said offers ought to have been made.

(b) Nor in the circumstances, can we find any contravention, either, of Article 28 of the Constitution and the principle of equality entrenched thereunder.

(8) In the result the appeal succeeds to the extent that the price of the land concerned has to be determined by reference to values at the end of 1958 (and not in March 1962). The orders made in the references in question are set aside. As neither party put before the trial Court valuations in relation to the said point of time, the references in question are remitted back to the trial Court to be determined in the light of this judgment. No order as to costs in this appeal. The costs in the trial Court to-date to be costs in the cause.

Appeal allowed. Orders made in the references set aside; order made for retrial of these references. Order for costs as aforesaid.

Appeal.

Appeal against the judgment of the District Court of Nicosia (Dervish P.D.C. and Mavrommatis, D.J.) dated the 20th

May, 1966 (Ref. Nos. 7/64—10/64—consolidated) determining the price of land which was, in 1962, offered back to, and accepted by appellants, as surplus land resulting from the compulsory acquisition by Government, in 1956, of appellants' properties.

Fr. Markides and *R. Stavrakis*, for appellants.

G. Tornaritis, for respondent.

Cur. adv. vult.

The judgment of the Court was delivered by :

TRIANTAFYLLIDES, J. : This is an appeal against the judgment of the Full District Court, Nicosia, given in four consolidated references–7/64, 8/64, 9/64 and 10/64–on the 20th May, 1966.

The purpose of such references was to determine the price to be paid for land which was, in 1962, offered back to, and accepted by, the Appellants, as surplus land resulting from the compulsory acquisition by Government, in 1956, of Appellants' properties.

The said references were made by Government, agreement having not been reached with the Appellants regarding the price to be paid for the surplus land offered back to them as above.

The properties in question of the Appellants–situated at Ay. Omoloyitae, Nicosia, and shown on survey map "Sheet XXI.54.1.II"–were compulsorily acquired in 1956, in return for a total compensation of £7,450. The relevant Notice specifying the public undertaking concerned–"to layout, construct and protect new main roads in and to the west of the town of Nicosia"–was published on the 12th August, 1954 (Not. 497, Supplement No. 3 to *Gazette* No. 3775); then a Notice to treat was published on the 4th November, 1954 (Not. 640, Supplement No. 3 to *Gazette* No. 3789); and the Order sanctioning the compulsory acquisition was published on the 7th June, 1956 (Not. 475, Supplement No. 3 to *Gazette* No. 3951).

The surplus parts of the said properties–about 1/3 of the total area acquired–were offered back to the Appellants on the 15th November, 1962, by means of notices given under

section 23 (2) of the Compulsory Acquisition of Property Law, 1962 (Law 15/62) and section 13 of the Land Acquisition Law, Cap. 226.

The trial Court basing itself on the 1962 proprietary values, decided, by the judgment appealed against, that the Appellants had to pay, in all, £20,385 for the land offered back to them.

The first, and most important, issue which arises for determination in this appeal is what should be held to be the time material for the purposes of the determination of the price to be paid by the Appellants in respect of the land offered back to them in 1962.

The Appellants have submitted that such time should be the date of the Notice to treat, in 1954. In the alternative they contended that it should be the time when Government actually decided that the land, which was offered back to them in 1962, was in excess of the requirements of the public undertaking concerned; and this, according to the Appellants, took place in 1957.

The trial Court has held that the time material for the purposes of the determination of the price to be paid for the surplus land was the time when the offer back to the Appellants *ought to have been made*. According to the trial Court this was *one year after* the completion of the relevant works; and such completion was found by the trial Court to have taken place in 1961.

In taking the above view the trial Court relied on the provisions of section 13 of Cap. 226, as read in the light of section 23 (2) of Law 15/62.

Sub-section (2) of section 23 of Law 15/62 reads as follows :

"(2) Τηρουμένων τῶν διατάξεων τοῦ ἐδαφίου (1) τοῦ ἄρθρου 14, ἀνεξαρτήτως ὅμως πάσης ἑτέρας διατάξεως τοῦ παρόντος Νόμου, ἀκίνητος ἰδιοκτησία ἀπαλλοτριωθεῖσα πρὸ τῆς ἐνάρξεως τῆς ἰσχύος τοῦ παρόντος Νόμου, δυνάμει τῶν διατάξεων τῆς τότε ἐν ἰσχύϊ νομοθεσίας, ἥτις εἴτε ἀποδεικνύεται ὅτι ὑπερβαίνει τὰς πραγματικὰς ἀνάγκας, ἢ μὴ οὖσα περαιτέρω ἀναγκαία, διὰ τὸν σκοπὸν δι' ὃν ἐγένετο ἡ ἀπαλλοτρίωσις, δύναται νὰ διατεθῇ καθ' ὃν τρόπον προβλέπεται ἐν τῷ περὶ Ἀπαλλοτριώσεως Γαιῶν Νόμῳ τῷ καταργηθέντι διὰ τοῦ παρόντος Νόμου, ὡς ἐὰν ὁ παρὼν Νόμος δὲν ἐθεσπίζετο":

("(2) Subject to the provisions of sub-section (1) of section 14 but notwithstanding any other provision of this Law, any immovable property acquired before the coming into operation of this Law, under the provisions of legislation then in force, and later found to be in excess of the extent actually required or to be no longer required for the purpose of which it has been acquired may be disposed of as provided in the Land Acquisition Law repealed by this Law, as if this Law had not been enacted").

The provision of the "Land Acquisition Law", which is referred to in section 23 (2) of Law 15/62, is section 13 of Cap. 226; it is necessary to quote only sub-section (1) and paragraphs (a) and (c) of sub-section (2) of section 13. They read as follows :

"13. (1) Subject to subsection (2), the Government..... or the public body concerned, as the case may be, shall, within one year from the completion of the works or at the expiration of the period prescribed for the completion of the works, or from the abandonment of the undertaking in connection with which the land had been acquired, sell and dispose of any land which is found to be in excess of the extent actually required or to be no longer required for the purpose for which it has been acquired, unless, in the meantime, such land is required for another undertaking of public utility in respect of which a notification has been published in the Gazette under the provisions of this Law, in which case such land may be retained for the purposes of such other undertaking.

"(2) (a) Before any sale as in subsection (1), the land shall, unless–

(i) it has, in the meantime, been built upon or used for building purposes; or,

(ii) the abandonment, as in the said subsection provided, takes place more than ten years after the date of the acquisition,

be offered for sale, as in paragraph (b) of this subsection provided, to the person from whom the land has been acquired who shall signify his desire to purchase the land within six weeks from the date when the offer was made, otherwise he shall be deemed to have refused the offer;

(b) . . . . . .

(c) in case the offer is accepted, if the parties fail to agree as to the price, such price shall be determined by the Tribunal and for the purposes of this paragraph the rules set out in section 10 of this Law shall, so far as possible, apply to any arbitration proceedings instituted hereunder;"

Relying on the reference made—in sub-section 2 (c) of section 13, above,—to the rules in section 10 of the same Law, the Appellants have argued that by virtue of rule (b) in such section 10, the time material for the purposes of the determination of the price of the land offered back to them was the date of the Notice to treat, which was published in relation to the compulsory acquisition of their properties concerned on the 4th November, 1954.

The said rule (b) reads, in its material parts, as follows :

"(b) the value of the land shall, subject as hereinafter provided, be taken to be the amount which the land, if sold in the open market by a willing seller, might be expected to realize :

Provided that the Tribunal in estimating such compensation shall assess the same according to what it shall find to have been the value of such land at the time when the notice under section 6 of this Law is published and without regard to any improvements or works made or constructed thereafter or to be made or constructed thereafter on the said land :"

In relation to this point the Appellants have submitted, also, that any other mode of application of the provisions concerned would be unconstitutional, as offending against fundamental principles to be derived from Article 23 of the Constitution, especially the principle that compulsory acquisition is to be resorted to for the public benefit only, and not for the benefit of the *fiscus*, and that surplus land should be returned to its ex-owner on terms of *restitutio in integrum*.

In dealing with the issue before us it is necessary to examine, first, what is the correct construction to be put on sub-section 2 (c) of section 13, as found in the whole context of that section; and in this respect it is useful to bear in mind the relevant legislative evolution :

Section 13 of Cap. 226 was enacted in 1952, by means of the Land Acquisition (Amendment) Law 1952 (Law 26/52, as–at the time–a new section 19 of Cap. 233 (of the then in force consolidated edition of the Laws of Cyprus).

The old section 19 of Cap. 233 provided as follows :

"19. The Government or His Majesty's Naval, Military or Air Force Authorities or the public body concerned, as the case may be, may sell, lease, or exchange any land acquired under the provisions of this Law in excess of the extent actually required for the purpose for which it has been acquired :

Provided that the person from whom the land has been acquired shall have the right of pre-emption at the price at which it was acquired from him by the Government or His Majesty's Naval, Military or Air Force Authorities or the public body concerned, as the case may be, and in case the Government, or His Majesty's Naval, Military or Air Force Authorities or the public body concerned, as the case may be, desires to sell only a portion of the land acquired from any individual, he shall have the right of pre-emption at a price proportionate to that at which the whole was acquired from him".

The new section 19 of Cap. 233—now section 13 of Cap. 226—has been already quoted, in its material parts, in this judgment. It remained in force until the enactment of Law 15/62 (having been amended in a non-material, for the purposes of this appeal, respect in 1955, by the Compensation Assessment Tribunal Law, 1955, Law 43/55).

By means of Law 15/62, Cap. 226 was repealed as a whole and the provision in Law 15/62, corresponding to section 13 of Cap. 226, is section 15 which, in its material parts, reads as follows :

"15.–(1) Ὁσάκις ἀκίνητος ἰδιοκτησία ἀπηλλοτριώθη μετὰ τὴν ἔναρξιν τῆς ἰσχύος τοῦ Συντάγματος, καὶ ἐντὸς τριῶν ἐτῶν, ἀπὸ τῆς ἡμερομηνίας καθ' ἣν ἡ ἰδιοκτησία περιῆλθεν εἰς τὴν ἀπαλλοτριοῦσαν ἀρχήν, δὲν ἐπετεύχθη ὁ σκοπὸς δι' ὃν ἐγένετο ἡ ἀπαλλοτρίωσις ἢ ἡ ἐπίτευξις τοῦ τοιούτου σκοποῦ ἐγκατελείφθη ὑπὸ τῆς ἀπαλλοτριούσης ἀρχῆς, ἢ τὸ ὅλον ἢ μέρος τῆς τοιαύτης ἰδιοκτησίας ἀπεδείχθη ὅτι

ὑπερβαίνει τὰς πραγματικὰς ἀνάγκας τῆς ἀπαλλοτριούσης ἀρχῆς, θὰ ἐφαρμόζωνται αἱ ἀκόλουθοι διατάξεις, ἤτοι—

(α) ἡ ἀπαλλοτριοῦσα ἀρχὴ δι' ἐγγράφου αὐτῆς γνωστοποιήσεως προσφέρει τὴν ἰδιοκτησίαν εἰς ἣν τιμὴν ἀπέκτησεν ταύτην, εἰς τὸ πρόσωπον εἰς ὃ αὕτη ἀνῆκε πρὸ τῆς ἀπαλλοτριώσεως ἢ, ἐὰν τοῦτο ἀπέθανεν, εἰς τοὺς προσωπικοὺς ἀντιπροσώπους ἢ τοὺς κληρονόμους αὐτοῦ, οἵτινες ὑποχρεοῦνται ὅπως ἐντὸς τριῶν μηνῶν ἀπὸ τῆς τοιαύτης γνωστοποιήσεως ἀποστείλωσιν εἰς τὴν ἀπαλλοτριοῦσαν ἀρχὴν ἔγγραφον ἀποδοχῆς ἢ μὴ ἀποδοχῆς τῆς γενομένης προσφορᾶς· ἐὰν ἐντὸς τῆς προμνησθείσης περιόδου δὲν δοθῇ ἀπάντησις εἰς τὴν γενομένην προσφορὰν αὕτη λογίζεται ὡς μὴ γενομένη ἀποδεκτή :

> Νοεῖται ὅτι ἐὰν διαρκούσης τῆς κατοχῆς ἀκινήτου ἰδιοκτησίας διὰ τὸν σκοπὸν δι' ὃν ἐγένετο ἡ ἀπαλλοτρίωσις δυνάμει τοῦ παρόντος Νόμου, ἐγένετο ἐπὶ ταύτης οἱαδήποτε προσθήκη, ἀφαίρεσις ἢ ἑτέρα τροποποίησις, ἢ ἐὰν μέρος μόνον τῆς ἀπαλλοτριωθείσης, δυνάμει τοῦ παρόντος Νόμου ἀκινήτου ἰδιοκτησίας προσφέρεται ὑπὸ τῆς ἀπαλλοτριούσης ἀρχῆς δυνάμει τοῦ παρόντος ἄρθρου, ἡ ἀπαλλοτριοῦσα ἀρχὴ καθορίζει εὔλογον τινα τιμὴν ἣν ἀναγράφει ἐν τῇ ἀνωτέρω ἀναφερθείσῃ γνωστοποιήσει· καὶ τὸ πρόσωπον εἰς ὃ ἐδόθη ἡ τοιαύτη γνωστοποίησις δύναται ἐν τῷ ἐγγράφῳ τῆς ἀποδοχῆς τῆς γενομένης προσφορᾶς τῆς ἰδιοκτησίας ν' ἀμφισβητήσῃ τὴν ὡς ἀνωτέρω καθορισθεῖσαν καὶ δηλωθεῖσαν τιμὴν· ἐὰν δὲν ἐπιτευχθῇ συμφωνία, ἡ τιμὴ καθορίζεται ὑπὸ τοῦ δικαστηρίου".

("15.—(1) Where any immovable property has been acquired after the date of the coming into operation of the Constitution and, within three years of the date on which such property has vested in the acquiring authority, the purpose for which it has been so acquired is not attained, or the attaining of such purpose is abandoned by the acquiring authority, or the whole or any part of such property is found by the acquiring authority to be in excess of its actual requirements, the following provisions shall have effect, that is to say—

(a) the acquiring authority shall, by a notice in writing, offer such property, at the price at which it has been acquired, to the person from whom such property has been acquired or, if dead, to his personal representatives or heirs who

shall, within three months of the giving of such notice, by a notice in writing addressed to the acquiring authority, signify acceptance or non-acceptance of the offer; and if no reply to the offer is given within the period aforesaid, such offer shall be deemed not to have been accepted :

Provided that where, during the period of the occupation of any immovable property for the purpose for which it has been acquired under the provisions of this Law, there has been any addition to, or deduction from, such property or any other alteration thereof, or where only a part of any immovable property acquired under the provisions of this Law is offered by the acquiring authority under the provisions of this section, a reasonable price therefor shall be fixed by the acquiring authority and indicated in the notice herein before mentioned; and the person to whom such notice has been given may, in his notice signifying acceptance of the offer of the property, dispute the price therefor fixed and indicated as aforesaid, whereupon the price shall, in default of agreement, be determined by the Court;").

In relation to section 15 of Law 15/62, one has to bear in mind, also, paragraph 5 of Article 23 of the Constitution which reads as follows :

"5. Οἱαδήποτε ἀκίνητος ἰδιοκτησία, ἢ δικαίωμα ἢ συμφέρον ἐπὶ τοιαύτης ἰδιοκτησίας ἀπαλλοτριωθεῖσα ἀναγκαστικῶς θὰ χρησιμοποιηθῇ ἀποκλειστικῶς πρὸς τὸν δι' ὃν ἀπηλλοτριώθη σκοπόν. Ἐὰν ἐντὸς τριῶν ἐτῶν ἀπὸ τῆς ἀπαλλοτριώσεως δὲν καταστῇ ἐφικτὸς ὁ τοιοῦτος σκοπός, ἡ ἀπαλλοτριώσασα ἀρχή, εὐθὺς μετὰ τὴν ἐκπνοὴν τῆς ρηθείσης προθεσμίας τῶν τριῶν ἐτῶν ὑποχρεοῦται νὰ προσφέρῃ τὴν ἰδιοκτησίαν ἐπὶ καταβολῇ τῆς τιμῆς κτήσεως εἰς τὸ πρόσωπον παρ' οὗ ἀπηλλοτρίωσεν αὐτήν. Τὸ πρόσωπον τοῦτο δικαιοῦται ἐντὸς τριῶν μηνῶν ἀπὸ τῆς λήψεως τῆς προσφορᾶς νὰ γνωστοποιήσῃ τὴν ἀποδοχὴν ἢ μὴ ταύτης. Ἐφ' ὅσον δὲ γνωστοποιήσῃ ὅτι ἀποδέχεται τὴν προσφοράν, ἡ ἰδιοκτησία ἐπιστρέφεται εὐθὺς ἅμα ἀποδοθῇ παρὰ τοῦ προσώπου τὸ τίμημα ἐντὸς περαιτέρω προθεσμίας τριῶν μηνῶν ἀπὸ τῆς τοιαύτης ἀποδοχῆς".

("5. Any immovable property or any right over or interest in any such property compulsorily acquired shall only be used for the purpose for which it has been acquired.

If within three years of the acquisition such purpose has not been attained, the acquiring authority shall, immediately after the expiration of the said period of three years, offer the property at the price it has been acquired to the person from whom it has been acquired. Such person shall be entitled within three months of the receipt of such offer to signify his acceptance or non-acceptance of the offer, and if he signifies acceptance, such property shall be returned to him immediately after his returning such price within a further period of three months from such acceptance".)

The above review of relevant legislative provisions shows that the line adopted, from time to time, by the legislator regarding the fate of surplus land, and the price to be paid in this respect by the ex-owner of the land, has not been uniform; it certainly cannot be said that the successive provisions concerned differ only in terms of wording, and not in substance, too.

In particular, a comparison of section 19 of Cap. 233 (as it stood originally, prior to 1952), of section 13 of Cap. 226 and of section 15 of Law 15/62 shows that under sections 19 and 15 the price to be paid for surplus land offered back is related to the compensation paid for the compulsory acquisition, whereas under section 13 such price is to be determined specially for the purpose.

In our opinion, on the point of the price to be paid for surplus land, the legislator made, by means of section 13 of Cap. 226, a clear departure from what was laid down by means of section 19 of Cap. 233, as it stood before 1952.

In this respect we cannot accept that the reference, in section 13 (2) (c) of Cap. 226, to the rules under section 10 of the same enactment, means that the time material for the purposes of the determination of the price to be paid for surplus land offered back to its ex-owner is the date of the Notice to treat published in relation to the compulsory acquisition concerned; this would amount, in effect, to holding that section 13 (2) (c) provides for a right of pre-emption in return for a price to be determined on the same footing as the compensation paid for the compulsory acquisition; and in such a case there would be, in actual practice, hardly any difference between section 13 (2) (c) of Cap. 226 and section 19 of Cap. 233, as it stood before 1952. Had this been so, however, then

Law 26/52 need not have introduced a new section 19 into Cap. 233 (now section 13 of Cap. 226); we cannot accept that the legislator intended to retain the position as it was, more or less, under section 19, prior to 1952, and yet instead of plainly saying so the legislator resorted to enacting what is now section 13 (2) (c) and referring therein to the rules under section 10 of Cap. 226.

Moreover, if section 13 (2) (c) of Cap. 226 provides, in effect, for an offer back of surplus land at a price based on the same footing as the compensation on acquisition, then section 15 of Law 15/62, which is based on the same premise, would have been made applicable to all cases of offers back of surplus land taking place after its enactment, and it would not have been necessary to make separate, different, provision, by means of section 23 (2) of Law 15/62–incorporating the provisions of section 13 (2) (c) of Cap. 226–in relation to offers back of surplus land resulting from a compulsory acquisition made prior to the enactment of Law 15/62.

It is correct that according to section 13 (2) (c) which we are construing, the price to be paid by the Appellants for the land offered back to them has to be determined, *so far as possible*, by applying the rules laid down in section 10 of Cap. 226.

One such rule is rule (b) which, as quoted earlier, provides that the value of the land shall be taken to be the amount which it might be expected to realize if sold in the open market by a willing seller; and to this extent it is clearly possible to apply rule (b) to a case coming under section 13 (2) (c).

But it is not possible, in our view, to hold, also, that the first proviso to rule (b), which lays down that the basis of the compensation for the acquisition shall be the value of the land at the time of the Notice to treat, without regard to any improvements or works made or constructed thereafter, is applicable when determining, under section 13 (2) (c), the price to be paid by an ex-owner for surplus land offered back, because such proviso is clearly designed to fit solely the situation arising at the time of the compulsory acquisition and nothing else.

On the other hand the principle behind the said proviso –namely, that nothing should be done to gain an undue advantage once the relevant rights have crystallized—should certainly be abided by in applying sub-section 2 (c) of section 13 of Cap. 226.

In our opinion, the application of such principle would result in holding that the time material for the purposes of the determination of the price to be paid in respect of surplus land, which is being offered back to its ex-owner, must be taken to be the date when such land *ought* to have been offered back, in accordance with the legislation in force, and not the date of the actual offer–if the offer was not made when it ought to have been made, but later; because an acquiring authority should not be allowed to put off offering back surplus land with a view to gaining a better price through a possible increase in the values of land in the meantime.

We are, therefore, in full agreement with the trial Court regarding the time by reference to which the price for the land offered back to the Appellants ought to have been determined.

We pass on next to the finding of the trial Court regarding the actual time at which the offer back ought to have been made; and we shall proceed to deal with the issue of the constitutionality of the relevant legislation after we have examined the correctness of the said finding–because the said issue is correlated to such finding.

As stated earlier on in this judgment, the undertaking in respect of which the properties of the Appellants were expropriated was the construction of new main roads; in particular, the Appellants' properties were acquired in relation to the construction of trunk road 'A'–now named as Grivas-Dhigenis avenue.

The said properties lie not far from the west bank of Pediaeos river, over which the said avenue now crosses by means of a bridge.

It is quite possible that when trunk road 'A' was planned it was envisaged that a bridge would be constructed, *eventually*, at the point where the said trunk road crosses over the river. But it is, nevertheless, a fact that the trunk road in question was completed and opened to the public in 1957 and it was crossing the river–which does not run perennially–not by means of a bridge but by means of a dip of the road down to the river-bed, known as an "Irish bridge"; it was only in 1960 that plans for the construction of a proper bridge, in the place of the "Irish bridge", were completed; and such construction was finished in 1961.

As it appears from the judgment under appeal the trial Court has treated the construction of the trunk road in 1957 and of the bridge in 1961 as forming together part of the same undertaking in respect of which the properties of the Appellants had been acquired, and as the bridge was completed in 1961 the trial Court proceeded to hold that the surplus land ought to have been offered back to the Appellants in 1962, *i.e.* a year after the completion of the works, as provided for under section 13 (1) of Cap 226

In our view the learned trial Judges ought not to have treated the construction of the bridge in 1961 as part of the works carried out in relation to the undertaking in respect of which the properties of the Appellants were acquired, and which was the construction of new main roads—in the present instance trunk road 'A' Had this bridge been an essential prerequisite for the use of the relevant trunk road—in other words had the river been one flowing all, or most of, the time—we might have agreed with the trial Court But it is quite clear that the trunk road was put in full use in 1957 with an "Irish bridge" The bridge constructed four years later might well have been part of the overall development project, and it was certainly an improvement of the trunk road in question, but it should not, and could not, have been treated as part of the relevant undertaking, when examining at what time the relevant works had been completed so as to set in motion the duty to dispose of the surplus land under the provisions of section 13 of Cap 226

It is most significant that in December, 1957, a map—which is in evidence—was prepared by Government showing the new completed trunk road 'A' and *the surplus land to be disposed of*, and it is a fact that such land coincides with the land which was offered to the Appellants in 1962

On the basis of the material before the Court we have reached the conclusion that, under section 13 (1) of Cap 226, the surplus land in question ought to have been offered back to the Appellants at the end of 1958 at the latest, *i.e.* one year after the completion in 1957 of trunk road 'A', and that, therefore, the time material for the purposes of the determination of the price to be paid by the Appellants for such land was the end of 1958

This being so it may well be that in the circumstances—if the view might be taken that section 23 (2) of Law 15/62 applies

only to land becoming surplus after the enactment of such Law—the provisions of section 13 of the repealed Cap. 226 apply to the present matter directly, by virtue of section 10 of the Interpretation Law (Cap. 1), and not by virtue of their re-enactment by means of section 23 (2) of Law 15/62; in practice, however, the result is the same.

We pass on next to the issue of the constitutionality of the application, to the circumstances of the present cases, of section 13 (2) (c) of Cap. 226, as construed by the trial Court, in a manner upheld already in this judgment.

In our opinion, there is nothing in Article 23 of the Constitution which could be held to exclude the application of the aforementioned provision to the present cases, which are instances of offers back of surplus land resulting fron an acquisition which took place before 1960, and where the determination of the price to be paid for the land offered back will be made by reference to the year 1958 when the said offers ought to have been made; the price of the land offered back has, indeed, to be determined judicially after 1960, but this is to be done with reference to the factual and legal context which existed before 1960, as if the matter had been determined then. Nor, in the circumstances, can we find any contravention, either, of Article 28 of the Constitution—which was also touched upon in argument by counsel for Appellants.

In the result this appeal succeeds to the extent that the price of the land concerned has to be determined by reference to values at the end of 1958. As neither side has put before the trial Court valuations in relation to the said point of time it follows that there is not sufficient material before this Court to enable it to make a finding of its own about the price to be paid by the Appellants. So, there is only one way of dealing with the matter and that is to order a rehearing of these references, after the parties have placed before the District Court the required material.

In the result the orders made in the references in question are set aside and an order for the retrial of such references is hereby made.

Regarding costs we have decided to make no order as to costs in this appeal and the costs of the trial Court todate will have to be costs in the cause.

Appeal allowed. Orders made in references set aside; order made for the retrial of such references. Order for costs as aforesaid.