[VASSILIADES, P., TRIANTAFYLLIDES, JOSEPHIDES, JJ.]

YIANNIS ANASTASSI MOTI AND ANOTHER,

Appellants (Claimants),

v.

THE REPUBLIC OF CYPRUS,

Respondent (Acquiring Authority).

(Civil Appeal Nos. 4613 & 4614) (Consolidated).

Compulsory Acquisition of land—Compensation—Assessment—Methods of valuation—Residual or development method and the direct comparison system—The former method of valuation can be in a proper case resorted to—When there are, however, concurrent sales of comparable properties the best method to be employed is the direct comparison of the sale price of such properties with that of the land acquired—Such concurrent sales afford the best evidence as to the market value of the land to be ascertained—What is a comparable sale—The sale of an undivided share in a plot cannot be fairly taken as a comparable sale—See, also, herebelow.

Compulsory Acquisition of land—Compensation—Whether over and above the market value of the property acquired, compensation or interest should be paid for the delay to sanction the acquisition—Having regard to the provision in Article 23.4(c) of the Constitution for the payment of "just and equitable compensation", the provisions of section 10(λ) of the Compulsory Acquisition of Property Law, 1962 (Law No. 15 of 1962) for the payment of compensation "for any other matter not directly based on the value of the property acquired" should be construed to include compensation for unreasonable delay in the sanctioning of the requisition—Such as the one which occurred in the present case—Where the "notice to treat" (now notice of acquisition) was published in November 1956 and the "order of acquisition" was not published until six years and three months later viz. on the 28th February, 1963—The principle of equivalence—It is at the root of the statutory compensation for compulsory acquisition of property—Article 23.4(c) of the Constitution—The Compulsory Acquisition of Property Law, 1962 (Law No. 15 of 1962), sections 4, 6(1), 7(2), 9, 10(α) (λ) and 23(1)(a)—The Land Acquisition Law Cap. 233 (1949

Edn.) as amended by Law 26 of 1952 (Now Cap. 226 of the 1959 Edn.), sections 3, 5 and 6—The Compensation Assessment Tribunal Rules, 1956, rule 19(3)—See, also hereabove and herebelow.

Compulsory Acquisition of Land—Valuation—Trees standing on land acquired—Value thereof should not be taken in consideration in assessing the market value of the land acquired in the present case—Because such land was a building land ripe for immediate development and it should be valued as such and not as a farm— If, however, the value of the land as agricultural land plus the value of the trees standing thereon exceeds the value of the land taken as building land then the owner is entitled to the difference—See, also, above and herebelow.

Constitutional Law—Compulsory acquisition—Payment of "just and equitable compensation"—Article 23.4(c) of the Constitution—See above.

Acquisition of land—See under Compulsory Acquisition and Constitutional Law, above.

Land—Acquisition of—See above.

Principle of equivalence—Such principle is at the root of the statutory compensation for compulsory acquisition of property—See above.

Valuation—Methods of—See above.

Assessment—See above.

Words and Phrases—"Just and equitable compensation" in Article 23.4(c) of the Constitution—"Any other matter not directly based on the value of the property acquired" in section 10(λ) of the Compulsory Acquisition of Property Law, 1962 (Law No. 15 of 1962)—Cfr: Formerly rule 6 of section 2 of the English Acquisition of Land (Assessment of Compensation) Act, 1919, now rule 6 of section 5 of the English Land Compensation Act, 1961.

Trial of cases for the assessment of compensation—Observations of the Court with regard to the time unduly taken and to the documentary evidence produced at such trials—Delays deprecated.

These are two consolidated appeals against the determinations made by the District Court of Famagusta of the

compensation payable for the compulsory acquisition of the appellant's lands.

The appeals were argued on two main grounds:

(*a*) that the assessment of compensation for the land taken was not based on comparable sales: and

(*b*) that the trial Court failed to award any compensation or interest for the delay of the acquiring authority to sanction the acquisition and pay compensation within a reasonable time after the notice to treat, which was published on the 29th November, 1956.

It was common ground that the lands taken were ripe for development and that the basis for their valuation should be the market value of such lands on the date of the publication of the aforesaid notice to treat in November, 1956. This "notice to treat" (which corresponds now to the "notice of acquisition," *infra*) was published under section 6 of the Land Acquisition Law, Cap. 233 (1949 Edn.) as amended by Law No. 26 of 1952 (now Cap. 226 of the 1959 Edn.); but the sanctioning of the acquisition was not made until some 6 1/4 years later when an "order of acquisition" was published on the 28th February, 1963, under the provisions of sections 6 and 23 of the new Law, the Compulsory Acquisition of Property Law, 1962 (Law No. 15 of 1962), enacted on the 1st March, 1962. It was laid down in the new Law No. 15 of 1962 for the first time that no order of acquisition could be made if more than 12 months had elapsed since the date of the publication of the former "notice to treat" and now "notice of acquisition", (sections 4 and 6(1) of the said new Law); and it was further provided that where no order of acquisition is published within the aforesaid period of 12 months of the date of the notice of acquisition the intended acquisition shall be deemed to have been abandoned (section 7(2)). The previous Law in force did not contain any time limit. But under the provisions of section 23(1)(*a*) of the new Law No. 15 of 1962, the Acquiring Authority was given 12 months from the date of the enactment of the Law (*viz.* 1st March, 1962) to decide and publish the order of acquisition of properties in respect of which the notice to treat had been published, as in the present case, prior to that Law No. 15 of 1962. On the very last day of the time limit laid down by the Law, namely on the 28th February,

1963, the Acquiring Authority published, as stated above, the order of acquisition in respect of the lands taken from both the appellants; this was 6 years and 3 months after the original "notice to treat", or "notice of acquisition" as now termed in the new Law; and notwithstanding that the advocate acting for the first appellant from the outset wrote repeatedly to the Government informing them that his client was indebted in the sum of £1900 and his property, including the land taken, was mortgaged, that he was paying £171 annual interest on the mortgage debt and that he was being pressed by his creditor.

Article 23.4(*c*) of the Constitution provides that any movable or immovable property may be compulsorily acquired, *inter alia*, upon payment of a "just and equitable compensation to be determined in case of disagreement by a civil Court"; and section 10(1) of the new Law No. 15 of 1962 *(supra)*, made pursuant to Article 23 of the Constitution, provides that: "The provisions of paragraph (*a*) shall not affect the assessment of compensation for any other matter not directly based on the value of the property acquired". Paragraph (a), on the other hand, provides that the value of the property shall be the market value of such property.

One of the grounds of appeal of the second appellant was that the trial Court, in assessing the compensation failed to take into consideration "thirty to forty orange trees" standing on his land, valued at £40 each. It should be noted that the Authority's expert in valuing the appellants' land relied exclusively on six "comparable sales" as he put it. Whereas the appellants' expert relied on the "residual or development method".

In setting aside the determinations appealed against, the Court:-

Held, I. As to the first question i.e. the market value of the properties:

(1)(*a*) In valuing land capable of sub-division into building plots, the residual or development method of valuation can be properly resorted to (*Commissioner of Limassol* v. *Marikka N. Kirzi* (1959) 24 C.L.R. 197; *Maori Trustee* v. *The Ministry of Works* [1958] 3 W.L.R. 536).

(*b*) When there are, however, concurrent sales of com-

parable properties the best method to be employed is the direct comparison of the sale price of such properties with that of the land acquired, because such concurrent sales afford the best evidence as to the market value of the land to be ascertained. But when this is not available the residual method could be resorted to (see *Kirzi* case, *supra*).

(2) The Authority's expert relied exclusively on six comparable sales as he put it. But two of these six sales were sales of undivided shares; we do not think that the sale of an undivided share in a plot can be fairly taken as a comparable sale. As to the four other sales they were sales in respect of fields ripe for development all of which, except one, were situate at a great distance from the lands acquired, and they were all four back sides, whereas the plots of the appellants are front plots abutting on Salamis Avenue.

(3) Applying the principles laid down by Zekia J. (as he then was) in the *Kirzi's* case *supra*, at p. 204, we are of the view that the more appropriate method of valuation in these cases was the direct comparison system which might be adopted by comparing the sale price of approved building sides near the land acquired, after making the necessary adjustments so that they be accepted as concurrent sales of comparable properties.

(4) For these reasons we set aside the assessment of the market value of the appellants' lands in both cases made by the trial Court and we direct that such value be reassessed by the District Court on the principles enunciated above.

(5) *Trees:* (*a*) One of the grounds of appeal of the second appellant was that the trial Court, in assessing the compensation failed to take into consideration "30/40 orange trees" standing on his land, valued at £40 each. This item was not included in the appellant's Statement of Claim and, consequently the trial Court was justified in not taking it into consideration.

(*b*) But assuming that such an item formed originally part of the second appellant's claim, we do not think that on the statutory principles of assessment, the appellant would be entitled to an additional sum for his orange trees.

The appellant's land was a building land ripe for immediate development and it should be valued as such and not as a farm. On the basis of agricultural user of the land, the trees have an independent value which cannot be the case if the land is regarded as building land (see *Horn* v. *Sunderland Corporation* [1941] 1 All E.R. 480, at pp. 483-489).

(*c*) In the present case the value of the appellant's land as building land ripe for development must exceed the sum of the value of the land as agricultural land plus the orange trees. If, however, the sum of these last two items exceeds the value as building land, then the appellant would be entitled to the difference (see *Horn's* case, *supra*, at p. 480).

(*d*) The statutory compensation cannot and must not exceed the owner's total loss, for, if it does, it will transgress the principle of equivalence which is at the root of "statutory compensation, which lays down that the owner shall be paid neither less nor more than his loss" (per Scott L.J. in *Horn's* case, *supra,* at p. 496).

Held, II. As to the second question i.e. whether or not the appellants are entitled to any compensation or interest for the delay of the Acquiring Authority to sanction the acquisition and pay compensation :-

(1) We have already referred to the principle of equivalence which is at the root of statutory compensation (see Horn's case, *supra*). On the American authorities "just compensation" means the full and perfect equivalent in money of the property taken (*The Monogahella Navigation* v. *United States* (1893) 148 U.S. 312, 326). "The right to just compensation could not be taken away by statute or be qualified by the omission of a provision for interest where such an allowance was appropriate in order to make the compensation adequate....." (*Seabord Air Line R. Co. v. United States* 261 U.S. 299); and the owner "is entitled to such addition (to the value of the property at the time of the taking) as will produce the full equivalent of that value paid contemporaneously with the taking" (*Jacobs* v. *U.SA.* (1933) 290 U.S. 13; 78 Law. ed. 142).

(2) Construing section 10(1) of our Law (*supra*) in the light of the provisions of Article 23.4(*c*) of the Constitu-

tion, which provides for the payment of "just and equitable compensation" (*supra*), we are of the view that the owner of land is entitled to the payment of compensation for the loss arising directly out of the delay in the sanctioning of the acquisition, such as the delay which occurred in the present cases.

(3) In all the circumstances of this case, we are of the view that, having regard to the provision in Article 23.4(c) of the Constitution for the payment of "just and equitable compensation" (*supra*), the provisions of section 10(1) of the Law No. 15 of 1962 *(supra)*, for the payment of compensation "for any other matter not directly based on the value of the property acquired", should be construed to include compensation for unreasonable delay in the sanctioning of the acquisition, such as the one which occurred in the present case.

(4) We hold that such compensation should take the form of legal interest at the rate of 4 per cent per annum on the assessed market value of the property acquired and on the damage for injurious affection, unless the owner's loss due to the delay exceeds that rate of interest, *e.g. where he has* to pay a higher rate on a mortgage debt on the property acquired.

(5) As already stated 6 years and 3 months elapsed from the date of the notice to treat (28th November, 1956) to the date of the order of acquisition (28th February, 1963). Of this period, we think that (as now provided in the Law) one year would be reasonable, and that the remaining period of 5 years and 3 months is unreasonable delay for which the land owners should be compensated. We accordingly *award* to the appellants compensation under this head (section 10(1) of the Law) as follows:

(*a*) To the first appellant we award the sum of £898 representing the interest which he had to pay on his mortgage debt for 5 years and 3 months at £171 per annum. We direct that this sum be paid to the first appellant now.

(*b*) To the second appellant: We direct that interest at 4% per annum for a period of 5 years and 3 months be added (i) on the market value of the property acquired from him, and (ii) on the amount of compen-

sation for injurious affection; which will be assessed by the trial Court at the retrial of the case.

(6) In the result the appeals are allowed, judgment of the District Court set aside and both cases remitted back to the District Court of Famagusta for reassessment of the market value of the lands taken. Costs of the first hearing before the District Court and of this appeal shall be costs in cause.

(7) We hereby direct, under rule 19(3) of the Compensation Assessment Tribunal Rules, 1956, that each party shall, within six weeks from today, file in the District Court afresh full particulars of the evidence of the expert witness he proposes to call at the hearing for the determination of compensation on the basis laid down in this judgment.

Appeals allowed.
Orders in terms.

Per curiam: From cases which come before us on appeal it seems to us that trials of cases for the assessment of compensation are far too protracted having regard to the issues before the trial Courts. Normally, the statement of the expert's evidence which has to be filed under the Rules prior to the hearing should be adequate to support the parties' case, and we do not think that the hearing of such cases should, in the ordinary course, take all that long.

Cases referred to:

Commissioner of Limassol v. *Marikka Kirzi* (1959) 24 C.L.R. 197, at pp. 203, 204;

Maori Trustee v. *The Ministry of Works* [1958] 3 W.L.R. 536;

Horn v. *Sunderland Corporation* [1941] 1 All E.R. 480, at pp. 483-489, and at p. 496;

Harvey v. *Crawley Development Corporation* [1957] 1 All E.R. 504;

The Monogahella Navigation v. *United States* (1893) 148 U.S. 312, 326;

Seabord Air Line R. Co. v. *United States* 261 U.S. 299;

Jacobs v. *U.S.A.* (1933) 290 U.S. 13; 78 Law. ed. 142.

Appeal.

Appeal by claimants against the judgment of the District Court of Famagusta (Hadjianastassiou, P.D.C. & Loizou, D.J.) dated the 4th February, 1967 (Reference Nos. 1/64 & 2/64 — consolidated) by virtue of which the compensation payable for the acquisition of their lands was determined.

P. HadjiPetrou with *A. Hadjioannou* and *A. Pouyouros*, for the first appellant.

A. Michaelides, for the second appellant.

N. Antoniou, for the respondent.

Cur. adv. vult.

VASSILIADES, P.: The judgment of the Court will be delivered by JOSEPHIDES, J.

JOSEPHIDES, J.: These are two consolidated appeals against the determinations made by the District Court of Famagusta of the compensation payable for the acquisition of the appellants' lands.

The appeals were argued on two main grounds-

(a) that the assessment of compensation for the land taken was not based on comparable sales; and

(b) that the trial Court failed to award any compensation or interest for the delay of the acquiring authority to sanction the acquisition and pay compensation within a reasonable time after the notice to treat.

By a notice made under the provisions of sections 2, 3 and 5 of the Land Acquisition Law, Cap. 233, and Law 26 of 1952, and published in the Gazette of the 25th November, 1954, the then Governor of the Colony of Cyprus declared the carrying out of the improvement and development of the Famagusta port to be an undertaking of public utility and authorised the carrying out of the said undertaking. About two years later by a notice (to which I shall refer as the "notice to treat"), made under the provisions of section 6 of the same Laws, the Governor gave notice that, *inter alia*, the appellants' lands (which will be described in detail below), were required for the aforesaid undertaking of public utility and that the Government was willing to treat for the acquisi-

tion of the said lands. The aforesaid notice to treat was published in the Gazette of the 29th November, 1956, supplement 3, under No. 1185, but the sanctioning of the acquisition was not made until some 6 1/4 years later when an "order of acquisition", under the provisions of sections 6 and 23 of the new Law, the Compulsory Acquisition of Property Law, 1962 (No. 15 of 1962), was published in the Gazette on the 28th February, 1963.

Description of property acquired.

(1) *First appellant:* Civil Appeal 4613, Reference No. 1 of 1964; Area acquired: 2 evleks, 3550 sq. ft. plus 2 evleks, 1400 sq. ft. for the construction of a service road, total : 1 donum, 1 evlek, 1350 sq. ft.—out of plots 57 and 58, sheet/plan 33/3.E.2, block "C", at Ayios Loukas quarter, Famagusta town, garden-land.

(2) *Second appellant :* Civil Appeal 4614, Reference No. 2/64; Area acquired: 1050 sq. ft. plus 5450 sq. ft. for the construction of a service road, total 6500 sq. ft. — out of plot 56, sheet/plan 33/3.E.2, block "C", at Ayios Loukas quarter, Famagusta town, garden-land.

It was common ground that the lands taken were ripe for development and that the basis for their valuation should be the market value of such lands on the date of the publication of the notice to treat in November, 1956.

The first appellant claimed as compensation in respect of the market value of his land and the delay in the sanctioning of the acquisition the sum of £9,190 and the Acquiring Authority offered the sum of £740, relying on their expert's valuation at £300 per donum based on comparable sales as follows:

(a) value of land at £300 per donum	£403
(b) cost of road	£500
	£903
Less 4% enhancement of remaining property	£163
Authority's valua ion	£740

The trial Court, considering that the part of the land

acquired was the front part abutting on the main road, doubled the market value of the land as assessed by the Authority's expert and awarded compensation on the basis of £600 per donum. On this basis the compensation eventually awarded by the trial Court to the first appellant was £1,306.256 mils. There is no dispute as to the cost of construction of the road.

The second appellant claimed the sum of £5,700.- in respect of the market value of his land and the delay in the sanctioning of the acquisition, and the Acquiring Authority offered the sum of £345 as follows:

(a) value of land at £300 per donum	£128	
(b) cost of construction of road	£300	
	£428	
Less 3% enhancement of remaining property	84.500	mils
	£343.500	mils
Valued at the round figure of	£345.-	

The trial Court on the same basis of £600 per donum, determined by them in respect of the first appellant, eventually awarded the sum of £614.583 mils compensation to the second appellant.

In both cases the trial Court did not deduct any sum from the amount of compensation assessed in respect of any betterment of the remaining part of the property which was not acquired.

The land acquired from the first appellant formed part of two plots (plots 57 and 58), and the land acquired from the second appellant formed part of a plot (plot 56), all situate in Ayios Loukas quarter, Famagusta, and abutting on Salamis Avenue. Before the acquisition plots 57 and 58 had a frontage of about 260 feet, and plot 56 a frontage of 170 feet, on Salamis Avenue, but due to the acquisition and the creation of a protective strip, the properties no longer abut directly on Salamis Avenue but through a service road of a width of 60 feet, to be constructed at the common boundary of the appellants' lands, that is, 30 feet on either side of the said boundary. It was the view of the Acquiring Authority's

expert that, although the building line of these properties would have to be moved a little backwards, the shape would not change but would rather improve because it would be made square; and that by reason of the acquisition and the consequential creation of the new port access road and the round-about near the appellants' lands, the value of the remaining part of their lands would be greatly increased.

The Authority's expert in valuing the appellants' lands stated that he relied exclusively on six comparable sales. These sales were fields, undivided into building sites, but ripe for development. The four plots (plots 63, 57, 120 and 205) were situate within a radius of a mile, that is, plot 63 is about a mile away from the appellants' lands, plot 57 (of sheet/plan 24/59.E.2, block "D") just under a mile, plot 120 about half a mile away; and plot 205 is the nearest, but not on Salamis Avenue, and the plan shows that it is a back plot with a narrow access road. The sale of plot 58 refers to the sale of the one-seventh undivided share forming part of the same plot acquired. The sale of plot 59 (adjoining the lands acquired) is in respect of one-third undivided share.

We do not think that the sale of an undivided share in a plot can be fairly taken as a comparable sale. We would also observe that the Authority's expert relied exclusively on fields ripe for development all of which, except one, were situate at a great distance from the lands acquired; that he did not relay on any sale of approved building site nearby, either full building site of about 5600 sq. ft., or half building site of about 2800 sq. ft.; that the three plots under valuation are front plots abutting on Salamis Avenue while nearly all the comparable sales relied upon by the Authority's expert were back sites; and that approved building sites near the lands acquired appear to have been sold at prices far in excess of his assessment of the lands acquired at 21 mils per square foot (£300 per donum). In the course of his evidence he conceded that two approved building sites (plots 219 and 918) on the Larnaca main road were sold at 205 mils per square foot.

The appellants' expert in valuing the lands acquired relied on the residual or development method. Having considered his valuation we agree with the trial Court's criticism that "no amount is mentioned for the market value of the land, no L.R.O. transfer fees, no profit or risk and no com-

pensation fixed separately for the acquired land and/or for severance and injury to the remaining lands due to the acquisition". Furthermore, most of the comparable sales relied upon by him (plots 629, 680, 446 and 612) either do not show the exact area sold (pages 123-4 of the evidence), or the land sold included buildings, and in the case of one plot it was situate in another area altogether. In short, the appellants' expert failed to follow a recognised method of valuation and his assessment cannot possibly be relied upon.

Under the provisions of sections 9 and 10 of the Compulsory Acquisition of Property Law, 1962, in valuing land capable of sub-division into building plots, the residual or development method of valuation can be properly resorted to (*Commissioner of Limassol* v. *Marikka N. Kirzi* (1959) 24 C.L.R. 197; *Maori Trustee* v. *The Ministry of Works* (1958) 3 W.L.R. 536). When there are, however, concurrent sales of comparable properties the best method to be employed is the direct comparison of the sale price of such properties with that of the land acquired, because such concurrent sales afford the best evidence as to the market value of the land to be ascertained. But when this is not available the residual method could be resorted to (see *Kirzi* case above).

In this connection we would quote with approval the following extracts from the judgment of Zekia J. (as he then was) in the *Kirzi* case (at page 203):

> "On the other hand we fully realise the great margin of error inherent in the residual method and the necessity o check the results whereever possible with alternative methods, such as the direct comparison method. We are indeed inclined to think that the more appropriate method in this case was the direct comparison system which might be adopted by comparing the sale prices of the pieces of land nearer in size to the land in question, namely, plots 219, 223 and 233 after making the necessary adjustment so that they might be accepted as concurrent sales of comparable properties. At any rate it seems to us the Tribunal might at least use for checking the result of their calculations the sale prices of the alleged comparable properties, plots 219 and 223, after the necessary adjustment. The following passage from Modern Method of Valuation, 4th Edition, p.132,

under the heading "The Residual or Development Method" is worth quoting:

" 'It is obvious that a method such as this, in which a number of different factors are employed, each dependent on the judgment of the individual valuer, is likely to involve a wide margin of error. In practice, a valuation based on the residual or development method should be checked whereever possible by prices realised on actual sales of comparable properties'.

"As we do not know however if the required material for making such adjustment was available before the Tribunal or not we do not think that we can go any further. We agree with the Tribunal that they are not bound as a matter of law to adopt one or the other system so long as they cannot be considered as erroneous tests and indeed, unless a method adopted necessarily leads to the violation of the provisions of the law regulating the assessment of compensation (section 11 of the Land Acquisition Law), we fail to see how we can say that by adhering to a particular method the decision of the Tribunal becomes erroneous in point of law". (At page 203).

"There appears to be no omission on the part of the Tribunal in making the required deductions from the gross realisation of the subdivided plots of the land in question. Deductions regarding costs of the work to be carried out for a division as well as for profit and risk and for deferment allowance and other incidental expenses have been made from the gross value of all the building plots composing the land in question. It is not within the provinces of this Court to question the amount of discount made under various sub-heads which is supported by evidence unless it is so low as to amount to not making any allowance under the particular subhead at all. To what extent a land ripe for development is similar to one or is dissimilar from other pieces of land regarding position and condition etc. for the purpose of comparison is a question of degree which has been regarded by authorities as a question of fact. The same applies to rates and percentages employed in deductions and adjustments". (at page 204).

Applying these principles, we are of the view that the more

appropriate method of valuation in this case was the direct comparison system which might be adopted by comparing the sale price of approved building sites near the land acquired, after making the necessary adjustments so that they may be accepted as concurrent sales of comparable properties.

For these reasons we set aside the assessment of the market value of the appellants' lands in both cases made by the trial Court and we direct that such value be reassessed by the District Court on the principles enunciated above.

Trees : One of the grounds of appeal of the second appellant (Civil Appeal 4614 — Reference No. 2/64) was that the trial Court, in assessing the compensation failed to take into consideration "30/40 orange trees" standing on his land, valued at £40 each. It should, however, be stated that this item was not included in the appellant's statement of claim and, consequently, the trial Court was justified in not taking it into consideration. But, assuming that such an item formed originally part of the second appellant's claim, we do not think that on the statutory principles of assessment, the appellant would be entitled to an additional sum for his orange trees. The appellant's land was a building land ripe for immediate development and it should be valued as such and not as a farm. On the basis of agricultural user of the land, the trees have an independent value which cannot be the case if the land is regarded as building land (see *Horn* v. *Sunderland Corporation* [1941] 1 All E.R. 480 at pages 483-489). In the present case the value of the appellant's land as building land ripe for development must exceed the sum of the value of the land as agricultural land plus the orange trees. If, however, the sum of these two items exceeds the value as building land, then the appellant would be entitled to the difference (see *Horn* case at page 480). The statutory compensation cannot and must not exceed the owner's total loss, for, if it does it will put an unfair burden upon the public authority or other promoters, who on public grounds have been given the power of compulsory acquisition, and it will transgress the principle of equivalence which is at the root of "statutory compensation, which lays it down that the owner shall be paid neither less nor more than his loss" (per Scott L.J. in *Horn's* case, at page 496).

The *second question* for determination is whether the

appellants were entitled to any compensation or interest for the delay of the Acquiring Authority to sanction the acquisition and pay compensation.

The trial Court in an exhaustive and careful judgment, relying on the English authorities construing a provision similar to section 10(1) of our Compulsory Acquisition of Property Law, 1962 (formerly rule 6 of section 2 of the English Acquisition of Land (Assessment of Compensation) Act, 1919, now rule 6 of section 5 of the English Land Compensation Act, 1961), and on their interpretation of the expression "just and equitable compensation" in Article 23.4 (c) of our Constitution, held that no interest or other compensation could be awarded to the appellants for the delay in the sanctioning of the acquisition and payment of compensation. They did so as they were of the view that this matter did not come within the ambit of "any other matter not directly based on the value of the property acquired" in section 10(1) of our Law. This provision was construed in the English cases to mean "any loss or expense which is the natural and reasonable consequence of the compulsory acquisition" (see *Harvey* v. *Crawley Development Corporation* [1957] 1 All E.R. 504). But, in fact, the English Courts did not have to consider the question of the payment of compensation for delay in the sanctioning of the acquisition.

Article 23.4 *(c)* of our Constitution provides that any immovable property may be compulsorily acquired upon payment of a "just and equitable compensation to be determined in case of disagreement by a civil Court"; and section 10 (l) of Law 15 of 1962, made pursuant to the provisions of Article 23, provides that—"the provisions of paragraph *(a)* shall not affect the assessment of compensation for any other matter not directly based on the value of the property acquired". Paragraph *(a)* provides that the value of the property shall be the market value of such property.

We have already referred to the principle of equivalence which is at the root of statutory compensation (see *Horn* case, *supra*). On the American authorities "just compensation" means the full and perfect equivalent in money of the property taken (*The Monogahella Navigation* v. *United States* (1893) 148 U.S. 312, 326). "The right to just compensation could not be taken away by statute or be qualified by the omission of a provision for interest where such an allowance

was appropriate in order to make the compensation adequate ....." (*Seaboard Air Line R. Co.* v. *United States*, 261 U.S. 299); and the owner "is entitled to such addition (to the value of the property at the time of the taking) as will produce the full equivalent of that value paid contemporaneously with the taking" (*Jacobs* v. *U.S.A.* (1933) 290 U.S. 13; 78 Law. ed. 142).

Construing section 10(1) of our Law in the light of the provisions of Article 23.4 *(c)* of our Constitution, which provides for the payment of "just and equitable compensation", we are of the view that the owner of land is entitled to the payment of compensation for the loss arising directly out of the delay in the sanctioning of the acquisition, such as the delay which occurred in the present case. As usual, the enunciation of such a principle is easy enough, but its application to varying facts is apt to be difficult. It is not easy to spell out of it a general criterion which will afford a practical test in all cases. For this purpose we shall consider the case of the two appellants separately.

The material dates are the following: The notice to treat under section 6 of the old Law, Cap. 233, was published in November 1956. Although the advocate for the first appellant wrote repeatedly to the Government informing them that his client was indebted and his property, including the land taken, was mortgaged, that he was paying interest on the mortgage debt and that he was being pressed by the creditor, no action was taken either by the former Government of the Colony of Cyprus until August 1960, nor later by the Government of the Republic of Cyprus until February 1963. The new Law 15 of 1962 was enacted on the 1st March, 1962 and it was therein laid down for the first time that no order of acquisition could be made if more than 12 months had elapsed since the date of the publication of the former notice to treat and now "notice of acquisition", (section 4 and 6(1) of the new Law); and it was further provided that where no order of acquisition is published within 12 months of the date of the notice of acquisition the intended acquisition shall be deemed to have been abandoned (section 7(2)). This provision shows that the acquiring authority has 12 months within which to make up its mind to order the acquisition or not. The previous law in force did not contain any time limit. Fortunately, with the new Law we shall not have to deal with a delay exceeding 6 years, as in the present case.

To revert to the facts of this case, under the provisions of section 23(1) *(a)* of the new Law 15 of 1962, the Acquiring Authority was given 12 months from the date of the enactment of the Law to decide and publish the order of acquisition of properties in respect of which the notice to treat had been published prior to Law 15 of 1962. On the very last day of the time limit laid down by the Law, namely, on the 28th February, 1963, the Acquiring Authority published the order of acquisition in respect of the lands taken from both appellants; this was 6 years and 3 months after the original notice to treat, or notice of acquisition as now termed in the new Law. If this was a new acquisition under the provisions of the new Law, the Acquiring Authority had one year's grace within which to sanction the acquisition or not, and after the 31st March, 1963 (i.e. one month after the publication of the order of acquisition), under the provisions of section 9 of the Law, the claimant (appellant) was entitled to apply to the Court for the determination of the compensation payable to him without waiting for the Acquiring Authority to do so, but he could not apply before that date.

In the case of the first appellant he had to pay interest on his mortgage debt of £1900 from the 16th May, 1956, at the rate of 9% per annum, i.e. £171 per annum interest. This was within the knowledge of the Acquiring Authority since the year 1957 when the correspondence began between this appellant's advocate and the authority. Deducting the one year's grace, which the new Law gives for the acquisition of the property after the publication of the notice of acquisition, there remains an unreasonable and unjustified delay of 5 years and 3 months during which the Acquiring Authority failed to sanction the acquisition, and the first appellant had to pay interest to his creditor at the rate of £171 per annum, that is a total sum of £898.-

It is true that there was nothing in the old Cap. 2[illegible] to prevent the appellant from selling his land after the notice to treat in November 1956, but that is, we think, only theoretical, and we have to look to the realities of the case. With the statutory notice to treat hanging over him he could not possibly improve his land or deal with it at all satisfactorily, and he might, possibly (though it is by no means certain), take steps either to compel the Acquiring Authority to complete the acquisition or abandon it. That he has not done, although in February 1960, he applied to the Governor of the

Colony for a "fiat" to institute proceedings against the Government (Acquiring Authority), which "fiat" does not appear to have been given to him.

The second appellant found himself in the same position as the first appellant as a result of the delay of the Acquiring Authority in sanctioning the acquisition, except that his property was not mortgaged and he did not have to pay any interest.

In all the circumstances of this case, namely, the unjustified delay in the sanctioning of the acquisition and the common ground that the market value of the lands taken has to be assessed on the basis of the 1956 prices (the date of the notice to treat), pursuant to the provisions of section 10*(a)* of the Law, we are of the view that, having regard to the provision in the Constitution for the payment of "just and equitable compensation", the provisions of section 10(λ) of the Law, for the payment of compensation "for any other matter not directly based on the value of the property acquired", should be construed to include compensation for unreasonable delay in the sanctioning of the acquisition, such as the one which occurred in the present case. We hold that such compensation should take the form of legal interest at the rate of 4 per cent per annum on the assessed market value of the property acquired and on the damage for injurious affection, unless the owner's loss due to the delay exceeds that rate of interest, e.g. where he has to pay a higher rate on a mortgage debt on the property acquired.

As already stated, a period of 6 years and 3 months elapsed from the date of the notice to treat (28.11.1956) to the date of the order of acquisition (28.2.1963). Of this period, we think that (as now provided in the Law) one year would be reasonable, and that the remaining period of 5 years and 3 months is unreasonable delay for which the land owners should be compensated. We accordingly *award* to the appellants compensation under this head (section 10(1) of the Law) as follows:-

(a) To the first appellant (Ref. 1/64): We award the sum of £898.- This represents the interest which he had to pay on his mortgage debt for 5 years and 3 months at £171 per annum. This is a case where the owner's loss, due to the delay, exceeds the rate of 4 per cent per annum. Considering the cir-

cumstances of this case we direct that the above sum of £898.- be paid to the first appellant (Ref. 1/64) now, without waiting for the result of the retrial ordered herein.

(b) To the second appellant (Ref. 2/64): We direct that interest at the rate of 4 per cent per annum for a period of 5 years and 3 months be added *(i)* on the market value of the property acquired from him, and *(ii)* on the amount of compensation for injurious affection (except the cost of construction of the service road), which will be assessed by the District Court at the retrial of the case.

In the result the appeals are allowed and the judgment of the District Court set aside and both cases (Ref. 1/64 and Ref. 2/64) are remitted to the District Court for the reassessment of the compensation payable to the appellants (claimants) in respect of the market value of the lands taken from them and of the injurious affection of the remaining property. The interest directed by this Court under paragraph *(b)* above, in respect of the delay in the sanctioning of the acquisition, is to be added on the compensation which will be assessed by the District Court in the case of the second appellant (Ref. 2/64). As these cases have been pending for a very long time, we direct that the retrial be fixed at an early date.

Costs of the first hearing before the District Court and of this appeal shall be costs in cause.

We hereby direct, under rule 19(3) of the Compensation Assessment Tribunal Rules, 1956, that each party shall within six weeks from today, file in the District Court afresh full particulars of the evidence of the expert witness he proposes to call at the hearing for the determination of compensation on the basis laid down in this judgment.

Before concluding we desire to make certain observations with regard to the time taken and the documentary evidence produced at the trial of cases for the assessment of compensation. From cases which come before us on appeal it seems to us that such litigation is far too protracted having regard to the issues before the trial Court. Normally, the statement of the expert's evidence which has to be filed under the Rules prior to the hearing should be adequate to support

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the parties' case, and we do not think that the hearing of such cases should, in the ordinary course, take all that long.

Appeals allowed. Judgment of District Court set aside. Order of retrial at an early date as above. Order for payment to the first appellant (Ref. 1/64) of £898.- compensation for delay.

Appeals allowed.
Orders in terms.