

YOUKSEL NIAZI MANIERA,

Appellant-Claimant,

v.

REPUBLIC OF CYPRUS,

Respondent-Acquiring Authority.

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YOUKSEL
NIAZI
MANIERA
v.
REPUBLIC
OF CYPRUS

(Civil Appeal No. 4735).

*Compulsory Acquisition—Compensation—“Injurious affection”—
Compensation awarded for reduction of the rental value of
the first floor space after the lapse of 15 years as from the
acquisition—Cost of possible necessary rebuilding of frontal
wall after the said period of 15 years disallowed—The Com-
pulsory Acquisition of Property Law 1962 (Law No. 15 of 1962).*

*“Injurious affection”—Compensation—Compulsory acquisition—
See supra.*

The facts sufficiently appear in the judgment of the Court
allowing the appeal with costs.

Appeal.

Appeal by claimant against the judgment of the District
Court of Famagusta (Ioannides, Ag. P.D.C. and Pierides,
Ag. D.J.) dated the 16th May, 1968 (Ref. Nos. 33/65 &
31/65 consolidated) by virtue of which the compensation
payable for the acquisition of her property at Famagusta
was assessed at £730.450 mils.

A. Triantafyllides, for the appellant.

M. Papas, for the respondent.

Cur. adv. vult.

The judgment of the Court was delivered by :—

VASSILIADES, P. : The appellant is the registered owner
of immovable property in Famagusta, consisting of a
two-storeyed house with a small frontage strip for a flower
garden (registration No. 6987, dated 14.2.55; plot 256, block A).
The property is situate in a developing area on the main
road to Larnaca. The house consists of two flats; it is
a fairly new building constructed on plans providing

for additions on top of the present building ; and the site has ample size permitting future additions. In conformity with the relevant building regulations, the house was placed 10 ft. back from the site boundary to the road.

A few years after the construction of the house, and when the two flats (ground and first floor) were already in use as private residences, the public authority concerned decided to add a public pavement to the road and published in the official *Gazette* of November 25, 1960, the required notice to treat for the compulsory acquisition of part of the frontage strip and flower garden, 100 sq. ft. in extent. The acquisition would necessitate the removal of the fencing wall and the water-meter installation a few feet back and would bring the house nearer a busy public road. It would also necessitate, in future, the setting back of the whole of the front wall of the building and the loss of floor space and size of the front rooms on all floors.

No agreement having been reached between the public authority and the appellant for the amount of the compensation payable in respect of the expropriation of the strip of land in question and the consequential injurious effect on the property as a whole, the statutory notices were published in January 1963. The public authority offered the sum of £45 as compensation, which the owner of the property rejected as completely inadequate.

The sum of £45 offered, consisted of two items :—

- (a) £19.500 mils for the 100 sq. ft. of land at 195 mils per square foot ; and
- (b) £25.500 mils, cost of replacing the boundary wall and the water meter.

It was added to the offer that “ about 10% for betterment (to the property) was ignored in order to set off any probable injurious affection which may be caused to the remainder of the property in future ”.

The matter eventually reached the District Court of Famagusta under the relevant provisions of the Compulsory Acquisition of Property Law, No. 15 of 1962, on the application of the expropriating authority, who filed the present reference (No. 33/65) in the name of the Republic of Cyprus, the respondent herein. In due course, the acquiring

authority (hereinafter referred to as "the respondent") filed a valuation in support of the offer of £45 ; and the expropriated owner (hereinafter referred to as "the appellant") filed her statement of claim together with a qualified valuer's assessment of the damage to her property, estimated at a total of £1,690, plus interest, valuation expenses, and costs. In his report, appellant's valuer explained how he reached the figure of £1,690 and the reasons in support of his valuation. He found the compensation payable to the appellant in six items as follows :

	£ mils
(1) Value of land, 100 sq. ft. at 281 mils ..	28.000
(2) Cost of removal of the fencing wall and the water meter	120.000
(3) Loss in reduction of the rental value of the ground floor flat	575.000
(4) Loss in reduction of the rental value of the first floor flat, due to reduction of space "after 15 years"	250.000
(5) Loss in reduction of rental value of third floor flat (meaning second) "to be built"	300.000
(6) Estimated cost of £1,000 to cover "necessary re-building of front wall etc., after 15 years at 6%" (0.4173 y.p. × £1,000)	417.000
	1,690.000
	1,690.000

The report contains particulars, calculations and explanations into which we find it unnecessary to enter for the purposes of this judgment. They have been considered in the decision of the District Court which led to the award.

The reference was heard by the District Court on June 8, 9 and 22, 1967 ; four witnesses were called by the appellant ; and the authority's valuer was called for the respondent. The trial Court's decision was delivered on May 16, 1968, together with the decision in another reference, concerning the adjacent house, which was heard together. The trial Court found the compensation payable to the appellant at £730.450 mils. They reached that figure after dealing with the evidence before them and comparing the views of the two valuers in respect of the different items in the

two valuations. The trial Court found the compensation of £730.450 mils in four items as follows :

	<i>£ mils</i>
(1) Value of land at 214 1/2 mils per sq. foot (instead of £28 claimed)	21.450
(2) Cost of removal of the fencing wall and water meter (as claimed)	120.000
(3) " Injurious affection to the remainder " (instead of £1,125 claimed)	529.000
(4) Valuation fees (instead of £85 claimed)	60.000

The trial Court's award was challenged by the appellant on two grounds :

- (1) that the District Court erred in rejecting appellant's claim in loss of rental value due to future reduction of floor space of the first floor and the claim of the present value of the expenditure which will be required after 15 years for the rebuilding of the front wall of the building ;
- (2) that the assessment of the District Court for reduction of the rental value of the ground floor at 10% is contrary to the evidence, which indicates the injurious affection of that item at 20%.

The learned counsel for the respondent public authority contended that the District Court's assessment of 10% loss of rental value, which was confined to such loss in respect of the ground floor, should not be disturbed. He conceded that there may be a loss of a similar nature regarding the present first floor and an eventual second floor, but as such a loss was not concretely established by the evidence, counsel contended, the District Court rightly rejected the respective items in the claim.

The District Court in this connection took the view that—

" The claimants might in future find it necessary to effect some structural alterations to their buildings, and this will necessitate a rebuilding of the front wall, in order to bring it to a distance of ten feet from the new road-boundary, with consequent loss of floor space. The claimant should be entitled to an allowance on that, but as we have no evidence before us in this respect, we cannot assess it. Therefore, the claim under these two items (ii) and (iii) (items (4) and (6) of the appellant's valuer's valuation as above given) must fail."

With all respect, we find ourselves unable to accept that view as to "item (ii)". On the evidence before them the District Court found £259 compensation for the ground floor; and £270 for reduction of the rental value of the future second floor (making up the total of £529 awarded by the District Court for injurious affection). Such compensation was found on the whole evidence before the Court; mainly that of the qualified valuers. Considering the amount awarded for "injurious affection" in respect of the ground floor and the future second floor (£259 and £270 respectively), we think that an amount of £250 is a fair and reasonable compensation in respect of the first floor ("item (ii)").

Without going into detail, which we find unnecessary to do in view of the valuers' report and evidence on the record, and in view of the contents of the carefully considered award of the District Court, we may say that (subject to the above) we have not been persuaded that the award should be altered. Adding £250 to the amount of £730.450 mils awarded, we reach the figure of £980.450 mils; and allowing the appeal to that extent, we increase the amount of the award to the round figure of £980.

Considering the circumstances in which the appellant found it necessary to institute the proceedings in the instant reference and all other relevant matters regarding costs, we think that the appellant is entitled to her costs throughout the proceedings in the District Court and in this appeal.

Appeal allowed; award increased to £980, with costs in the proceedings before the District Court and in the appeal.

*Appeal allowed with costs
here and in the Court below.*