1975
Oct. 20

REPUBLIC
OF CYPRUS

v.

ELENI L.
MANTOVANI

[TRIANTAFYLLIDES, P., STAVRINIDES, A. LOIZOU, JJ.]

THE REPUBLIC OF CYPRUS,

Appellant-Acquiring Authority,

v.

ELENI L. MANTOVANI,

Respondent-Claimant.

(Civil Appeal No. 5425).

Compulsory acquisition—Compensation—Assessment—Made on basis of the development method—Commission of estate agent and possibility of the imposition of a condition under s. 9(1) of the Streets and Buildings Regulation Law, Cap. 96 not taken into account in assessing the compensation—Assessment set aside.

In this appeal the Acquiring Authority challenged the assessment of compensation made by the Court below in respect of the compulsory acquisition of property of the respondent-owner.

The assessment of compensation by the trial Court was made on the basis of the development method, that is by envisaging the future sub-division of the property into five building sites.

Counsel for the appellant argued that though the Court below properly adopted the development method of valuation, failed to take fully into consideration certain factors which were very material in relation thereto.

His first submission, in this respect, was that though the trial Court found that there existed an established policy of the Larnaca Municipality to impose a condition, under section 9(1) of the Streets and Buildings Regulation Law, Cap. 96, regarding the widening of any adjoining street (in this case of Ploutarchou Street) when granting a permit for the sub-division into building sites of an area of land, nevertheless in the present case, because there had not yet been published a street-widening scheme in relation to Ploutarchou street, it refused to take into consideration the extent of the part of the land of which a future developer would be de-

prived by means of a condition imposed under the said section 9(1).

The second submission of counsel was that the trial Court refused to deduct an amount equal to 3 per cent of the value of the prospective building sites, which, according to evidence adduced at the trial, would be, *normally, the commission payable to an estate agent* for the purpose of selling the sites; the Court failed to make such a deduction because it found as a fact that in this particular case it could be said that the respondent, as the owner, could have found, as on past occasions, purchasers directly, without using the services of an estate agent; thus, the Court proceeded to deduct only an amount of 1 per cent of the value in view of advertisement expenses to be incurred by the owner in trying to sell in future the sites.

Held, (I) with regard to the first submission:

It was legitimate and necessary, in cases of this nature, to take into account the possibility of the imposition of a condition under s. 9(1) of Cap. 96 (see in this respect Modern Methods of Valuation of Land, Houses and Buildings by Lawrence, Rees and Britton, 5th ed. at p. 165).

Held, (II) with regard to the second submission:

1. We are in agreement with counsel for the appellant that the trial Court in applying the development method of valuation had to take into account the development expenses which would have been incurred, by a *notional willing purchaser in the open market of the* respondent's property, for the purpose of its development by dividing it into building sites, and not only those to be incurred by the owner herself (*Maori Trustee* v. *Ministry of Works* [1958] 3 W.L.R. 536 at p. 545 per Lord Keith of Avonholm).

2. Among the incidental costs of development are included the costs of advertising and commission on sales payable to agents; and such commission ought to have been deducted in the present case (*Lawrence supra* at p. 171).

Appeal allowed.

Cases referred to:

Ali v. *Vassiliko Cement Works Ltd.* (1971) 1 C.L.R. 146, at p. 155;

The Commissioner of Limassol v. *Kirzi*, 24 C.L.R. 197, at p. 204;

Maori Trustee v. *Ministry of Works* [1958] 3 W.L.R. 536, at pp. 542, 545.

Appeal.

Appeal by the acquiring authority against the judgment of the District Court of Larnaca (Pikis, P.D.C. and Artemis, D.J.) dated the 28th March, 1975, (Reference No. 22/74) by virtue of which the compensation payable for the acquisition of claimant's property was assessed at C£18,016.

N. Charalambous, Counsel of the Republic, for the appellant-acquiring authority.

A. Demetriou, for the respondent-owner.

The facts sufficiently appear in the judgment of the Court delivered by:

TRIANTAFYLLIDES, P.: In this appeal the appellant, the acquiring authority, challenges the assessment of compensation, made by the District Court of Larnaca, in respect of the compulsory acquisition of property of the respondent, the owner; the extent of the said property (plot 437, Block E, at Ploutarchou street, in Larnaca) is 3 donums and 1072 sq. ft.; and it is situated in a very good residential area of Larnaca town.

The compensation awarded by the trial court is C£18,016, with 7 per cent interest from the date of the publication of the order of acquisition, on August 14, 1970, till final payment.

The assessment of the compensation was made, as it appears from the judgment before us, on the basis of the development method, that is by envisaging the future subdivision of the property into five building sites.

The trial court did not wholly accept the evidence of either of the two valuers who testified before it—one on behalf of the appellant and the other on behalf of

the respondent—and proceeded to reach its own conclusions, as it was entitled to do (see *Ali* v. *Vassiliko Cement Works Ltd.* (1971) 1 C.L.R. 146, 155); so the value of the property was assessed, by the trial court, at the rate of 700 mils per sq. ft., and there were made by it the necessary adjustments on the basis of the development method of valuation.

It has been submitted by counsel for the respondent that in reaching its conclusion as regards the rate of 700 mils per sq. ft. the trial court made an erroneous computation of the relevant data before it, and he invited us to hold that such error is obvious on the face of the record and it should be corrected by us. We cannot agree with him on this point, because it seems to us that the said rate was not fixed on the basis of a mere mathematical calculation, but it is the result of a consideration of the totality of the evidence before the trial court; and we see no sufficient reason for which to interfere with its finding in this respect.

What has, on the other hand, been argued by counsel for the appellant is that the court below, though it properly adopted the development method of valuation, failed to take fully into consideration certain factors which were very material in relation thereto (and we were referred, in this connection, to *The Commissioner of Limassol* v. *Kirzi*, 24 C.L.R. 197, 204):

The first submission, in this respect, of counsel for the appellant was that though the trial court found that there existed an established policy of the Larnaca Municipality to impose a condition, under section 9(1) of the Streets and Buildings Regulation Law, Cap. 96, regarding the widening of any adjoining street (in this case of Ploutarchou street), when granting a permit for the sub-division into building sites of an area of land, nevertheless in the present case, because there had not yet been published a street-widening scheme in relation to Ploutarchou street, it refused to take into consideration the extent of the part of the land of which a future developer would be deprived by means of a condition imposed under the said section 9(1).

We are of the opinion that it was legitimate and necessary, in a case of this nature, to take into account

the possibility of the imposition of a condition as aforesaid; it might be useful to mention, in this respect, that in Modern Methods of Valuation of Land, Houses and Buildings by Lawrence, Rees and Britton, 5th ed., there is mentioned the following (at p. 165):-

> "The prospect of profitable development of any particular piece of land within the conditions imposed, or likely to be imposed, by the planning authority will depend largely on local circumstances, and past evidence of trends of development in the neighbourhood will have to be taken into account. The valuer has also to consider general trends affecting development in the country as a whole."

Some support for the above view is to be found, too, in *Maori Trustee* v. *Ministry of Works,* [1958] 3 W.L.R. 536, 542.

Counsel for the appellant has complained, further, that the trial court refused to deduct an amount equal to 3 per cent of the value of the prospective building sites, which, according to evidence adduced at the trial, would be, normally, the commission payable to an estate agent for the purpose of selling the sites; the court failed to make such a deduction because it found as a fact that in this particular case it could be said that the respondent, as the owner, could have found, as on past occasions, purchasers directly, without using the services of an estate agent; thus, the court proceeded to deduct only an amount of 1 per cent of the value in view of advertisement expenses to be incurred by the owner in trying to sell in future the sites.

We are in agreement with counsel for the appellant that the trial court in applying the development method of valuation had to take into account the development expenses which would have been incurred, by a notional willing purchaser in the open market of the respondent's property, for the purpose of its development by dividing it into building sites, and not only those to be incurred by the owner herself. We may usefully refer, again, to the *Maori Trustee* case, *supra,* where Lord Keith of Avonholm, in delivering the judgment of the Privy Council, stated the following (at p. 545):-

"At the hearing before their Lordships' Board in the present case appellant's counsel were faced with the difficulty that, on their submission, the land, on the assumption of its being retained for sales in subdivision by the owner, should be assessed at a higher value than if it were sold to a hypothetical purchaser for similar development. In their Lordships' view it is impossible that the land should have two values, on the hypothesis required by the statute that it is sold in the open market by a willing seller. Both Kitto J. and Taylor J. in the case just cited dealt with this point in a manner that seems to their Lordships unexceptionable. The land in the hands of the owner is just capital for whatever purpose he chooses to put it. And if he chooses to employ his capital in a subdivisional scheme the profit he will make cannot in anticipation be taken to increase the value of the land before that profit has been realized. As Kitto J. among other passages puts it: 'There simply cannot be a difference between the price which would be agreed upon between a businesslike purchaser and a businesslike vendor and the amount which a businesslike owner would treat himself as leaving invested in the land in the event of his deciding to retain it'; or as Taylor J. says: 'The land at the relevant time was worth no more in the hands of the appellant than it would have been in the hands of some other owner who had acquired it with a view to subdivision'. The matter may be stated in another way. If the owner be regarded as a hypothetical purchaser of the land to be valued wishing to buy it for subdivision, he would not be expected to pay more for it than any other purchaser buying for the same purpose."

Also, reference may be made to Lawrence, *supra* (at p. 171), where, among the incidental costs of development, are expressly mentioned the costs of advertising and commission on sales payable to agents; and such commission ought to have been deducted in the present case.

We agree, however, with counsel for the respondent that once there is to be deducted the 3 per cent commission of an estate agent, then there should not, also,

be made the 1 per cent deduction for advertisements, because the advertising would be done by the estate agent and the relevant expense would be covered by the commission to be paid to him.

What has given us great difficulty in this case is the fact that, on the basis of the evidence on record, we cannot determine with certainty—(so as to be in a position to adjust ourselves, in accordance with the foregoing, the compensation payable to the respondent)—whether the valuer of the appellant, when he assumed that Ploutarchou street, which is about 20 feet wide at present, would have to be widened, according to standard practice, to about 35 feet, by means, *inter alia,* of a condition imposed under section 9(1) of Cap. 96, has made his relevant calculations in a manner burdening equally with the consequences of such widening both the property of the respondent and the land on the opposite side of the street; and in the present case there is agreement between the parties (and there is, moreover, nothing on record to indicate that we should take the contrary view) that the proper course would be for the said widening to burden equally both sides of the street.

We have, therefore, decided that the better course for us is to send this case back to the trial court so that it may deal with the above factual issue, and then proceed to make a new assessment of the compensation due to the respondent, in the light of what we have held in this judgment; and in so doing the trial court may, of course, hear, to the extent that it may deem necessary, any further evidence, and, also, recall any witness.

This appeal is, therefore, allowed accordingly.

We have decided, however, that we should not make any order as to the costs of this appeal.

Appeal allowed.
No order as to costs.