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VASSILIKO
CEMENT
WORKS LTD.

v.

IOANNIS
LAMBROU
VIOLARIS

[TRIANTAFYLIDIS, P., A. LOIZOU, MALACHTOS, JJ.]

VASSILIKO CEMENT WORKS LTD.,

Appellant-Acquiring Authority,

v.

IOANNIS LAMBROU VIOLARIS,

Respondent-Claimant.

(Civil Appeals Nos. 5162 & 5164).

and

HELLENIC MINING COMPANY LTD.,

Appellant-Acquiring Authority,

v.

LAMBROS MICHAEL VIOLARIS,

Respondent-Claimant.

(Civil Appeal No. 5220).

*Statutes—Repeal by implication—Principles applicable—
Section 9(10) of the Cement Industry (Encouragement
and Control) Law, Cap. 130 and s. 26 of the Mines
and Quarries (Regulation) Law, Cap. 270 not repealed
by implication, by means of the Compulsory Acquisition
of Property Law, 1962 (Law 15 of 1962).* 5

*Compulsory Acquisition—Compensation—Assessment—Purpose
of acquisition—Mining—Mineral contents of land—Can
have no bearing on the shaping of market value condi-
tions—Section 26 of the Mines and Quarries (Regula-
tion) Law, Cap. 270.* 10

*Interest—Compulsory acquisition—Increase of interest from
4 to 7 per cent.*

*Cement Industry (Encouragement and Control) Law, Cap.
130—Section 9(10) not repealed by implication by means
of the Compulsory Acquisition of Property Law, 1962
(Law 15 of 1962).* 15

*Mines and Quarries (Regulation) Law, Cap. 270—Section 26
not repealed by implication by means of the Compul-*

sory Acquisition of Property Law, 1962 (Law 15 of 1962).

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5 *Compulsory Acquisition—Compensation—Assessment—Purpose of acquisition—Cement and mining industries—Award of double the amount of compensation possible—Section 9(10) of the Cement Industry (Encouragement and Control) Law, Cap. 130 and s. 26 of the Mines and Quarries (Regulation) Law, Cap. 270.*

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10 The Acquiring Authorities in these appeals acquired compulsorily land for the purposes of the Cement Industry (Encouragement and Control) Law, Cap. 130 and the Mines and Quarries (Regulation) Law, Cap. 270. The trial Court in assessing the compensation, payable to the claimants, did by virtue of s. 9 of Cap. 15 130 (*supra*) and s. 26 of Cap. 270 (*supra*) award double the amount of compensation. The acquiring authorities appealed against that part of the judgment relating to the award of double the amount of compensation and the claimant in Civil Appeal 5164 appealed against the 20 whole of the judgment except that part thereof referring to the payment of double compensation.

25 The only issue in the appeals of the Acquiring Authorities was whether s. 9 of Cap. 130 and s. 26 of Cap. 270 were repealed by necessary implication by means of a subsequent enactment, namely the Compulsory Acquisition of Property Law, 1962 (Law 15 of 1962). On the other hand the claimants' appeal (No. 5164) was based on the following grounds:

30 (a) That the assessment of the trial Court was wrong in the sense that it failed to take into account other comparable sales and the increase in the value of land since the previous sales.

35 (b) That the trial Court erred in not taking into consideration, in ascertaining the value of the land, other factors such as the value of the minerals extracted and/or found in the land, subject-matter of the acquisition.

(c) That the trial Court erred in allowing 4 per cent interest and not 7 per cent.

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Section 10(a)(b) of the Compulsory Acquisition of Property Law, 1962 (*supra*) provides as follows :

“10. The compensation payable in respect of the compulsory acquisition of any property shall be assessed in accordance with the following rules : 5

(a) The value of the property shall, subject as hereinafter provided, be taken to be the amount which the property, if sold in the open market on the date of the publication of the relative notice of acquisition by a willing seller, might be expected to realize; 10

(b) no allowance shall be made on account of the acquisition being compulsory, except where such acquisition is made for mining purposes.”

Held, (1) with regard to the appeal of the Acquiring Authorities : 15

1. The relevant provisions of the Cement Industry (Encouragement and Control) Law, Cap. 130 and of the Mines and Quarries (Regulation) Law, Cap. 270 can be reconciled with the relevant provisions of the Compulsory Acquisition of Property Law, 1962 (Law 15 of 1962) and it cannot be said that the subsequent provision (Law 15 of 1962) repeals the previous ones by implication, as they are, neither inconsistent with nor repugnant to each other, nor are they incapable to stand together. (Dictum of Farwell J. in *Re Chance* [1936] Ch. 266 cited with approval). 20 25

2. It had to be assumed that Parliament knew the existing state of law even in technical matters (see Halsbury's Laws of England, 3rd Ed. vol. 36, paragraph 609, p. 404) and that the principle of “*Generalia Specialibus non derogant*” applies to the present case, as it should not be held that the earlier and special legislation was indirectly repealed, altered or derogated from, by force of such general words without any indication of a particular intention to do so (see the *Vera Cruz* [1884] 10 App. Cas. 59). If anything is to be said, is that by the exception created by paragraph (b) of s. 10 of Law 15/62, there is an intention to the contrary. 30 35 40

3. Moreover, we do not think that either s. 9(10) 40

of Cap. 130 or s. 26 of Cap. 270 should be treated as having ceased to be in force, by virtue of Article 188 of the Constitution, because of the requirement in Article 23.4(c) of the Constitution that the compensation to be assessed has to be just and equitable.

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Held, (II) with regard to the Appeal of the Claimant.

1. The trial Court ascertained the value of the land by relying on the direct comparison method of valuation and after sifting the evidence and dealing with the authorities on the question of valuation and the principles governing compensation. We see no reason to interfere with the findings of the trial Court and the conclusions drawn therefrom. The first ground of appeal, therefore, fails.

2. Regarding the second ground of appeal we are of opinion that the mineral contents of land, of interest only to a limited number of persons holding a licence to exploit mineral resources, can have no bearing in the shaping of market value conditions.

3. Regarding the complaint of the award of 4 per cent interest in this instance, in contradistinction to civil appeal No. 5220 where 7 per cent interest was allowed, we feel that as a matter of uniformity it should be increased to 7 per cent as well.

*Appeals of Acquiring Authorities dismissed.
Appeal of claimant allowed.*

Cases referred to :

Ali and Another v. Vassiliko Cement Works, Ltd. (1971)
1 C.L.R. 146;

Re Chance [1936] Ch. 266;

Vera Cruz [1884] 10 App. Cas. 59.

Appeals.

Appeals by the Acquiring Authorities against that part of the judgments of the District Courts of Larnaca (Pikis, Ag. P.D.C. and Artemides, D.J.—Ref. No. 2/69) and Limassol (Pikis, Ag. P.D.C. and Hadjitsangaris, S.D.J.—Ref. No. 16/71), given on the 3rd February, 1973 and 23rd June, 1973, respectively, relating to the award of

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double the amount of compensation and appeal by one of the claimants against the whole of the said judgments except that part thereof relating to the award of double compensation.

G. Polyviou with K. Michaelides and E. Chrysostomidou, (Mrs.), for appellants-acquiring authorities in Civil Appeals Nos. 5162 and 5220. 5

A. Emilianides, for appellant-claimant in Civil Appeal No. 5164.

A. Emilianides, for respondent-claimant in Civil Appeal No. 5162. 10

M. Christofides, for respondent-claimant in Civil Appeal No. 5220.

Cur. adv. vult.

The facts sufficiently appear in the judgment of the Court : 15

TRIANTAFYLLIDES, P. : The judgment of the Court will be delivered by Mr. Justice A. Loizou.

A. LOIZOU, J. : This is our judgment in respect of three appeals heard together as they presented common questions of law and fact. 20

Civil Appeal No. 5162 has been filed by the Acquiring Authority against the judgment of the District Court of Larnaca and is against that part of the judgment which relates to the award of double the amount of compensation, by virtue of section 9 of the Cement Industry (Encouragement and Control) Law, Cap. 130, (hereinafter referred to as "The Cement Law"), and by which they were adjudged to pay to the claimant the sum of £577. 25
500 mils with interest thereon at the rate of 4 per cent annum, as from the 15th November, 1968, till final payment, as compensation in respect of the property, subject matter of the acquisition, plus £75 costs. 30

Civil Appeal No. 5164 has been filed by the claimant against the whole of the same judgment, except the part that refers to the payment of double compensation, and is in effect a cross-appeal to the first one. 35

The third one is Civil Appeal No. 5220 filed by the

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Acquiring Authority against that part of the judgment of the District Court of Limassol which relates to the award of double the amount of compensation, under section 26 of the Mines and Quarries (Regulation) Law, 5 Cap. 270, (hereinafter referred to as "The Mines Law"). By the said judgment they had been adjudged to pay to the claimant the sum of £1,512, with interest thereon at 7 per cent per annum as from 21.5.1971 till final payment, plus £80 costs.

10 The Acquiring Authority in the first appeal is the Vassiliko Cement Works Ltd., the holders of a licence under The Cement Law. The subject property, under Plot 185, Registration No. 1615 in the village of Kalavassos (hereinafter referred to as "the first property"), 15 is a field of an extent of 11 donums and 2 evleks, with a number of trees standing thereon.

The Acquiring Authority in Civil Appeal No. 5220, is the Hellenic Mining Co. Ltd., holders of a mining lease and operating under The Mines Law, and the 20 subject property is a field under Plot 307/1, Registration No. 8723, of an extent of 18 donums.

The trial Court, after meticulously going through the evidence, assessed the market value of the first property, at £20.500 mils per donum, plus £53 the value of the 25 trees. It approached this issue by relying on the direct comparison method of valuation by reference to transactions that took place before the date of publication of the Notice of Acquisition and suitably adjusting these prices paid thereunder to the market conditions prevail- 30 ing on that date. They felt, rightly so in our view, free on the authority of *Ali and Another v. Vassiliko Cement Works, Ltd.* (1971) 1 C.L.R. 146, where the Court was concerned to decide very similar issues, that they were not of necessity bound to accept the opinion of either 35 expert, the province of the Court being to award, in the light of the evidence, fair compensation doing justice to the loss suffered by the claimant, without imposing an unreasonable burden on the Acquiring Authority. In this respect, they accepted the evidence of the expert valuer 40 for the Acquiring Authority, but considered that the subject property should be valued in the light of the sale prices of three plots cited as comparable by him,

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alongside, however, with the sale price of another plot for which the valuer did not have the opportunity to make a study of the circumstances under which same was sold. Whilst referring to *Ali's* case (*supra*), it may be useful to say that one of the two members of the trial Court held that the acquisition was for mining purposes, but the provision for doubling the value was no longer in force, because of section 10(b) of the Compulsory Acquisition of Property Law, 1962, (Law 15/62) and refused to make such allowance, whereas the other member took the view that the acquisition was not for mining purposes. The Supreme Court on appeal (see page 154 of the report), does not appear to have decided expressly whether or not the view that the doubling of the compensation had been done away, was correct.

The trial Court also assessed at £756 the market value of the second property, as on the date of the publication of the Notice of Acquisition. It accepted the evidence of the valuer of the Acquiring Authority who had, again, adopted the method of direct comparison duly modified in the light of the intrinsic circumstances of the subject property.

The aforesaid amounts, in both instances, were doubled by the trial Court, the first, in view of the provisions of section 9(10) of The Cement Law, and the second, in view of the provisions of section 26 of The Mines Law.

The main ground of appeal argued on behalf of the Acquiring Authorities is that the trial Court erred in law by holding that the compensation to be paid for the compulsory acquisition of the land, the subject matter in both references, should be double their market value.

The arguments advanced are that the trial Court should not have disregarded the fact that the acquisitions in question were made under the provisions of the Compulsory Acquisition of Property Law, 1962 and not under the provisions of The Cement Law, or The Mines Law and that it wrongly interpreted section 10(b) of Law 15/62, as meaning that any special rules adopted in any other enactment for the assessment of the compensation payable for land expropriated for the purpose of exploiting mineral resources are duly safeguarded because Law 15/62

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is a very special law and section 10 thereof sets out the Rules for the assessment of compensation. It was further argued that some allowance may be made where an acquisition is made for mining purposes but that does not mean that the relevant provisions of the two aforesaid Laws are imported therein as part of the new law. Finally, the reference in Article 23.4 (a) of the Constitution that compulsory acquisition will be regulated by a general law to be enacted within a year from the date of the coming into operation of the Constitution, does not mean a general law in contradistinction to special laws, but means a comprehensive law of a very special application. Therefore, the principle of "*Generalia specialibus non derogant*" does not apply in this case.

15 The Compulsory Acquisition of property is, since 1962, regulated by the Compulsory Acquisition of Property Law, 1962, (Law 15/62). This was the law envisaged by Article 23.4 (a) of the Constitution which contained a directive to the legislature, that the latter was bound to comply therewith, for the acquisition of property, unlike the situation that existed before Independence, where different procedures existed under different laws. It also sets out in section 10 thereof, the rules for the assessment of compensation payable in respect of the compulsory acquisition of any property. Section 10(a) and (b) of this Law, reads as follows :

30 "(a) The value of the property shall, subject as hereinafter provided, be taken to be the amount which the property, if sold in the open market on the date of the publication of the relative notice of acquisition by a willing seller, might be expected to realize;

35 (b) no allowance shall be made on account of the acquisition being compulsory, except where such acquisition is made for mining purposes."

In the list of laws repealed by this Law, the relevant provisions in neither of the aforesaid two laws are mentioned as expressly repealed. It has, therefore, to be examined whether these provisions, and in particular the provision that the compensation payable for acquisitions made for the purposes of either law, should be double,

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has been by necessary implication, repealed by Law 15/62.

As stated in Halsbury's Laws of England, 3rd Ed. Vol. 36, paragraph 709 —

“Repeal by implication is not favoured by the Courts for it is to be presumed that Parliament would not intend to effect so important a matter as the repeal of a law without expressing its intention to do so. If, however, provisions are enacted which cannot be reconciled with those of an existing statute, the only inference possible is that Parliament, unless it failed to address its mind to the question, intended that the provisions of the existing statute should cease to have effect, and an intention so evinced is as effective as one expressed in terms. The rule, is, therefore, that one provision repeals another by implication if, but only if, it is so inconsistent with or repugnant to that other that the two are incapable of standing together. If it is reasonably possible so to construe the provisions as to give effect to both, that must be done; and their reconciliation must in particular be attempted if the later statute provides for its construction as one with the earlier, thereby indicating that Parliament regarded them as compatible, or if the repeals expressly effected by the later statute are so detailed that failure to include the earlier provisions amongst them must be regarded as such an indication.”

It was accepted by all that the acquisitions in question were regularly made under the provisions of Law 15/62. This is a general law, not because it is described as such in Article 23.4 (a) of the Constitution, but because of its very nature; it defines the purpose for which property may be acquired, the procedure to be followed for the purposes of acquisition, the rules for the assessment of compensation, as well as such matters as the vesting, use and disposal of property acquired. In contradistinction, The Cement Law and The Mines Law, are special laws because problems relating to the cement industry, mining and quarrying, are specially dealt with therein, and they are authorizing the respective acquisition of property by the two acquiring authorities, and that power

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has been saved by section 2(e) of Law 15/62. The provisions regarding acquisitions and in particular the procedure to be followed in respect thereof, must be taken to have been repealed by necessary implication, but not the provisions governing the amount of compensation payable. Section 10(a) and (b) hereinabove reproduced verbatim, sets out the relevant underlying principle of compensation under our law, namely, the market value, the value that the land would fetch in the open market by a willing seller. It specifically excludes allowance that could be made on account of the acquisition being compulsory, except where such acquisition is made for mining purposes. In other words, this latter provision constitutes an exception to the rule.

Therefore, the specific provisions made for exceptional allowance in respect of compensation to be paid normally for the expropriation of land, must be taken not to be affected by Law 15/62, because they constitute the statutory regulation of what this allowance that by exception are allowed to be made in cases of acquisitions for mining purposes. The two provisions, therefore, can be reconciled and it cannot be said that the subsequent provision repeals the previous ones by implication, as they are, neither inconsistent with nor repugnant to each other, nor are they incapable to stand together. As stated by Farwell J. in *Re Chance* [1936] Ch. 266, at p. 270, "if it is possible, it is my duty so to read the section... as not to effect an implied repeal of the earlier act" and it is in this spirit that we have approached the present question.

In addition, it had to be assumed that Parliament knew the existing state of law even in technical matters. (See Halsbury's Laws of England, (*supra*), paragraph 609, p. 404), and that the principle of "*Generalia specialibus non derogant*" applies to the present case, as it should not be held that the earlier and special legislation was indirectly repealed, altered or derogated from, by force of such general words without any indication of a particular intention to do so. (See the *Vera Cruz* [1884] 10 App. Cas. 59). If anything is to be said, is that by the exception created by paragraph (b) of section 10 of Law 15/62, there is an intention to the contrary.

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Moreover, we do not think that either section 9(10) of the Cement Law or section 26 of The Mines Law should be treated as having ceased to be in force, by virtue of Article 188 of the Constitution, because of the requirement in Article 23.4 (c) of the Constitution that the compensation to be assessed has to be just and equitable. What in effect takes place by applying section 10(b) of Law 15/62 in conjunction with sections 9(10) or 26, above, is that what would be otherwise just and equitable compensation, assessed under the provisions of section 10 of Law 15/62, is doubled because of the factor being taken into account that property is compulsorily acquired, and the measure of allowance to be made in respect of such factor is prescribed, in cases such as the present ones, by legislation still in force, namely, sections 9(10) and 26.

Therefore, the appeals by the Acquiring Authorities, fail.

It remains to consider the cross appeal of the claimant-owner of the first property. He complains—(a) that the assessment made by the trial Court was wrong in the sense that it failed to take into account other comparable sales and the increase in the value of land since the previous sales; (b) that it erred in not taking into consideration, in ascertaining the value of the land, other factors such as the value of the mineral extracted and/or found in the land, subject matter of the acquisition, and (c) that the trial Court erred in allowing 4 per cent interest and not 7 per cent, as held by the Supreme Court in the case of *Ali & Another (supra)*.

As already indicated, the trial Court ascertained the value of the land by relying on the direct comparison method of valuation. After dealing with the authorities on the question of valuation and the principles governing compensation, they say —

“Enough has already been said indicating that the safest method of valuation is that of direct comparison. By having recourse to this method, it can be legitimately argued that such elements as chance and speculation are substantially minimised and the notional task of finding the value of land at the relevant date is made to rest on as secure founda-

tions as one can devise. Care must be taken in making comparisons to ensure that there exist solid grounds for comparison and that similarities between two or more plots are real and not superficial.

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5 Having sifted the evidence as well as we could,
we find that Mr. Mavroudis was right in relying on
the sale price of these three plots adjacent to the
subject property, as a yardstick whereby to measure
the compensation payable to the claimant. His study
10 would be fuller and more comprehensive had he con-
sidered alongside with the other three plots, the sale
of plot 249 situate nearby. We agree on the whole
with the way Mr. Mavroudis analyses the price of
the comparable plots and we accept that there was
15 room for adjusting their saleprice to 1968 reality.
Demand for the purchase of land in the area was
restricted and it is virtually admitted that the
Acquiring Authority were practically the only persons
showing, over the years, interest to buy land in the
20 area. There is no suggestion and no evidence in that
matter that there came about any dramatic increase
in the value of land from 1966 - 1968 and we accept
the adjustment made by Mr. Mavroudis as duly
reflecting the range of increase in the value of land
25 from 1966 - 1968."

We see no reason to interfere with these findings of the trial Court and the conclusions drawn therefrom.

Regarding the second ground there was the evidence of Mr. Michaelides, a mineralogist and business consultant who has made a valuation of the subject property on the basis of quarry material to be extracted for industrial uses. This valuation was made, of course, on the assumption that the task of the Court was to find the value of the minerals, which is not the case,
30 and not the price that the property was likely to command if sold in the open market.
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We cannot subscribe to the approach of the claimant as the mineral contents of land, of interest only to a limited number of persons holding a licence to exploit mineral resources, can have no bearing on the shaping of market value conditions. The exploitation of minerals is a matter of special privilege granted under particular
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laws. The law already takes cognizance of the character of acquisition for mining purposes and special provisions are made which obviously take into consideration the possibility of manufacturers reaping profits from the exploitation of such wealth.

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Finally, with regard to the 4 per cent interest allowed in this instance, in contradistinction to civil appeal No. 5220 where 7 per cent interest was allowed, we feel that as a matter of uniformity it should be increased to 7 per cent as well. The trial Court seems to have reviewed its approach of the matter when delivering its judgment in the second appeal.

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For all the above reasons, the appeals by the Acquiring Authorities are dismissed and the cross-appeal is allowed and the judgment of the Court in Ref. No. 2/69 is varied to the extent that the interest adjudged is increased from 4 per cent to 7 per cent.

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Regarding the question of costs in these appeals, there will be an order that the Appellant-Acquiring Authority should pay the costs of respondent in Civil Appeal No. 5220, but in view of the substantial failure of the cross-appeal, the Acquiring Authority should pay half the costs of the respondent in Civil Appeal No. 5162.

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With regard to Civil Appeal No. 5164, there will be no order as to costs.

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Appeals dismissed.
Cross-Appeal allowed.
Order for costs as above.