[HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, JJ.]

D. J. DEMADES & SONS LTD.,

Appellants-Claimants,

v.

THE REPUBLIC OF CYPRUS,

Respondent-Acquiring Authority.

(*Civil Appeal No.* 5200).

Compulsory acquisition — Compensation — Assessment—Enhancement in the value of the land resulting from acquisition—Date by reference to which increase in the value of the land is to be assessed—Section 10(a) and (f) of the Compulsory Acquisition of Property Law, 1962 (Law 15/62).

Street widening scheme—Sections 12 and 13 of the Streets and Buildings Regulation Law, Cap. 96—Hardship caused by street alignment—Proviso to s. 13 of the Law.

Compulsory acquisition—Compensation—Assessment—Costs incurred by claimant in formulating claim—To be paid by acquiring authority.

Costs—Discretion of Court—Compulsory acquisition case—Costs incurred by claimant in formulating claim—To be paid by Acquiring Authority.

By means of an order of acquisition the respondent (Acquiring Authority) acquired compulsorily a piece of land of an extent of 2,500 sq. ft. for the purpose of widening and keeping in proper repair the main Famagusta—Nicosia road. Part of the area compulsorily acquired was affected by a street widening scheme dated October, 1958, of a total extent of 1,000 sq. ft.

In proceedings for assessment of compensation the trial Judge found that an area of 1,000 sq. ft. has been ceded by virtue of a street widening scheme and that the loss of the claimant for the remaining 1,500 sq. ft., leaving aside the question of betterment was £180.- After finding that in consequence of the notice to acquire, the sanctioning of the acquisition and the implementation of the order in some parts of

the road, the remaining property of the claimants had, at the time of the trial gained in value by at least 10%, compared to the value it had at the time the notice of acquisition was published, the trial Court held that the gains of the claimants from this acquisition more than set off their loss and they were not entitled to compensation.

The owner appealed. Counsel for the appellant mainly contended:

(a) That the trial Court wrongly decided that the value of the enhancement should be determined as at the date of trial.

(b) That in so far as the notice and the order of acquisition related to the compulsory acquisition of 2,500 sq. ft. and the same area was described in the notice of reference filed by the acquiring authority the decision of the trial Court to consider the area of 1,000 sq. ft. as having been ceded by virtue of a street widening scheme was based upon irrelevant considerations.

Counsel argued in this connection that once the scheme in question was not implemented it is clear, reading the provisions of sections 12 and 13 of the Streets and Buildings Regulation Law, Cap. 96, that the property remains in the ownership of the owner until the time when he will decide to apply for a permit under section 13.

Section 10(a) and (f) of the compulsory acquisition of Property Law, 1962 (Law 15/62) provides as follows:

"10(a) The value of the property shall ..... 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(f) In the case of property of which a part only is acquired under this Law, account shall be taken of the increase or decrease, if any, in the value of other property held by the owner together with the part so acquired, which will occur by reason of the acquisition".

Held, (1) that the conclusion of the trial Court that section 10(f) of Law 15/62 "encompasses all gains resulting to the

owner because of the enhancement of his remaining lands on account of the acquisition crystallising by the date compensation has to be assessed was correct; and that the decision of the trial Court was not contrary to the provisions of Law 15/62 or to Article 28 of the Constitution because it did not result in unequal treatment between the parties to a reference.

(2) That this Court agrees with the conclusion of the trial Court that no hardship would be suffered by the owners even upon the implementation of the street widening scheme (p. 207 post).

(3) That in the particular circumstances of this case the legal and other fees properly incurred by the claimants in preparing their claim for compensation should be awarded to them by the Acquiring Authority.

Appeal dismissed.

Cases referred to:

Birmingham Corporation v. West Mid. Baptist [1969] 3 All E.R. 172 at p. 178;

Wilson v. Liverpool City Council [1971] 1 All E.R. 628;

Misirlizade v. Municipality Nicosia (1976) 1 C.L.R. 413;

Myers v. Milton Keynes Development Corporation [1974] 2 All E.R. 1096 at p. 1098;

Rugby Joint Water Board v. Foottit [1972] 1 All E.R. 1057;

Christodoulides v. Mayor etc. of the Municipal Corporation of Famagusta (1963) 2 C.L.R. 35;

London County Council v. Tobin [1959] 1 All E.R. 649 at pp. 652, 653, 654.

Appeal.

Appeal by claimants against the judgment of the District Court of Nicosia (Pikis, Ag.P.D.C.) dated the 24th May, 1973 (Reference No. 50/70) whereby their claim for compensation due to compulsory acquisition of part of their property was dismissed.

A. Dikigoropoullos, for the appellants.

K. Michaelides, for the respondent.

Cur. adv. vult.

The judgment of the Court was delivered by:-

HADJIANASTASSIOU, J.: This is an appeal by the claimants, D. J. Demades & Sons Ltd. of Nicosia from the judgment of an acting President of the District Court of Nicosia dated May 24, 1973, in which the claim of the said company was dismissed because they were not entitled to compensation as the gains of the claimants from the acquisition more than set off their loss.

The facts are these:-

The acquiring authority is the municipal corporation of Nicosia and because part of the property of the claimants was required for the purpose of widening and keeping in proper repair the main Famagusta - Nicosia road which had been completed and opened to the public in the month of September, 1963, a notice of acquisition was published in the official Gazette of the Republic on March 19, 1964 giving full particulars of the property intended to be acquired.

On the expiration of the period specified in that notice the acquiring authority published an order of acquisition on January 14, 1964. The area compulsorily acquired is coloured green and red on the plan accompanying the report of the acquiring authority and has a width of 12 - 13 ft. adjoining the main Nicosia - Famagusta road. In consequence of that acquisition that road would have been widened from 48 - 60 ft. It is pertinent to state also that part of the area compulsorily acquired was affected by a street widening scheme dated October, 1958, of a total extent of 1,000 sq. ft. and a width of 5 - 7 ft. coloured green on the above mentioned plan.

The learned trial Judge had before him the reports of Mr. Mavroudis for the claimants and that of Mr. Vasiliou for the acquiring authority. Mr. Mavroudis on the one hand valued the property and assessed the compensation payable to the claimants in the sum of £395, that is to say, the price of 2,500 sq. ft. at 158 mils per square foot.

Mr. Mavroudis in giving evidence before the Court, conceded that no hardship would be suffered by the claimants in the event of the implementation of the aforesaid street widening scheme in view of the extent of the remain-

ing land. There is no doubt that in making the valuation, both experts relied on the fact that the subject property was land ripe for immediate development, and that its value was directly based on the development potential, the realization of which was depended on the implementation of the street widening order. With this in mind, the trial Judge made these observations at p. 32:-

> "If the implementation of such order would cause no hardship to the owners, a view shared by both experts, (as he put it) it is difficult to argue that deprivation of that part of the property albeit earlier than might be planned, would give the owner a right to compensation".

Then the Judge by way of illustration used figures and said:-

> ".....if the value of the land to the owner was £100.- after the implementation of the scheme, it would still be worth £100.- if the same area is taken away from the owner by an act of acquisition".

Looking at the report of Mr. Mavroudis and the evidence he has given in Court, it appears that he based his valuation on the analysis of four sales of comparable property, one of them being the purchase of the subject property by the claimants in September, 1964. Two of the sales relied upon for comparison were sales of building sites, but were not comparable in all respects to the subject property, a big plot of land in undivided form. It is true, of course, that it gives some indication of the value of the land in the area, but once it was not considered by the Court as being comparable in all respects, we think it could still be taken into consideration as helping the expert to make a final calculation only. The price fetched from the sale of the third comparable property, plot 536, again a big plot of approximately five donums in extent, does indicate a difference, all other things being equal, between the value of a big plot of land not divided into building sites and the value of single building sites. This is understandable, the Judge said, considering the costs involved to divide land into building sites. And we have no doubt that Mr. Mavroudis had this in mind in considering it as being a comparable property with the one acquired by the acquiring authority. The fourth sale relied upon

for compensation purposes took place after the publication of notice to acquire. We, therefore, find ourselves in agreement with the learned judge that in principle there is no objection to the ascertainment of the value of land by reference to transactions after the date of publication of the notification with this proviso, that they can be suitably adjusted to market conditions on the day of such notification so that no element of value unascertainable or unforeseeable at the date of notification is taken into consideration. On this point see Cripps on Compulsory Acquisition of Land, 11th ed. at p. 899.

Mr. Mavroudis stated in evidence that in preparing his valuation report, he took into consideration that between the years 1962 - 1964 there was no definite increase in land values in the area, or, as he put it, there was no uniform increase in the values of land, except possibly for a small increase. Therefore, the sales relied upon afforded ample room for comparison. In cross-examination this expert conceded or admitted that during the hearing of Reference 30/70 which was heard at the Nicosia District Court, he testified that the value of land in the area per square foot was between 110 - 120 mils, a view which he retracted at first in his evidence in chief. His explanation, of course, was that his view regarding the aforesaid reference was erroneous on account of a wrong assumption he made, that is to say, that the subject property was sold before 1964, though as a question of fact it was sold in 1963, and he was unaware of it. Pressed further in cross-examination, he agreed that if there was no error in making that assumption, then the value of the land would have been between 115 - 120 mils per sq. ft. He added further that if the contents of *exhibit* 1 (his own report) was correct and the land was in point of fact sold in September or October, 1964, then he was still of the view that the land compulsorily acquired would be between 115 and 120 mils per square foot.

There was further evidence in support apparently of the report of Mr. Mavroudis by Mr. Ioannis Demades, the Managing Director of the claimant's company that the land in question was purchased on September 28, 1964 and that a transfer was effected a few days later, that is to say, on October 1, 1964.

The learned trial Judge goes on:-

> ".....once the factual background of the assumptions of Mr. Mavroudis has been cleared, it is evident that in his opinion the value of the land acquired was, at most, 120 mils per sq. ft., a view that coincides with the evidence of the valuer for the Acquiring Authority Mr. Vasiliou, who testified that the value of land was, at the material date, between 110 - 120 mils per square foot".

Analysing the evidence of Mr. Vasiliou, the expert for the municipal corporation, the trial Judge said that a fair inference from the evidence is that, "whereas the per square foot value of building sites in that area, was in the region of 158 mils, in the case of undivided plots this figure should be scaled down to make allowance for the cost involved to divide the land into building sites, a cost that may come, in his estimate, to 30 per cent of the value of the whole".

The trial Judge, having considered the evidence before him as to the question of valuation, made by both experts, said in his judgment:-

> "In making my assessment, I must take into consideration all available data that qualified the value of the land in the area, all those factors that were likely to influence a prudent, willing vendor in fixing a price for his land and a purchaser in making an offer to buy, including the intrinsic circumstances of each plot. One can only consider the sale of one or more plots of land as being directly comparable, and, therefore, determining the value of similar property only, after one decides, in the light of the available material, that such sale or sales disclose an unbending trend in the values of land in the area".

Finally the trial Judge, having in mind the principles that should guide the Court in approaching the question of compensation for the compulsory acquisition of land, and having quoted a number of cases decided by this Court, reached this conclusion:

> "In the light of the evidence before the Court, I find that the value of the land compulsorily acquired was

120 mils per sq. ft. Therefore, the loss of the claimant on account of severance, leaving aside for the moment the question of betterment, comes to £180".

The next question is whether there was actually a betterment due to the acquisition. It was all along the case for the acquiring authority that the compensation payable to the claimants on account of severance was extinguished because of the material benefits that would accrue to the owners in view of the enhancement of the value of their remaining land resulting from the acquisition. On the contrary, Mr. Mavroudis expressed a different view and made it clear that the acquisition was in no way enhancing the value of the remaining land, the reason being as he put it that the road was not actually being widened and inevitably no increase could have resulted from the said acquisition. He even went further and expressed the view that the increase of values of land in the area was due to the construction of the new Famagusta - Nicosia road that preceded the acquisition, the establishment of the industrial estate, and general increase in land values.

With respect to this witness, who no doubt has been a land valuer for a long time, he gave the impression that he was prejudiced unduly in favour of his client, because when he was pressed in cross-examination to explain the reasons why on other occasions he gave a different version he finally conceded that in the course of hearing Reference No. 30/70 he did express the opinion that in view of the widening of the road, properties in that area rose in value by some 10 per cent. In fact, he made another admission that in a valuation he made regarding property in the same area (*exh.* 3) because of the same reasons properties have risen in value by 7½ per cent.

We take the opportunity in approving and endorsing the observations made by the trial Judge that the opinion of Mr. Mavroudis on the subject of betterment was considerably shaken by the fact that it was contradicted by what he testified and said on more than one occasion, and that no satisfactory explanation has been given for the change of his stand in earlier cases.

Finally, the trial Judge, having considered the submissions of counsel, and particularly that the value of any

enhancement should be determined as at the date on which notice of the acquisition is published and not at any subsequent stage or date, and having addressed his mind to a number of authorities, decided by this Court and by the Higher Courts of England, he concluded his judgment as follows:-

> "I accept the evidence of Mr. Vasiliou and find that in consequence of notice to acquire and sanctioning of the acquisition, and the implementation of the order in some parts of the road, the remaining property of the claimants has gained in value by at least 10%, compared to the value it had at the date notice to acquire was published. This being so, the gains of the claimants from this acquisition, more than set off their loss, and in my judgment they are entitled to no compensation. I, therefore, direct that the subject property does vest in the Acquiring Authority without the payment of any compensation. There will be no order as to costs".

The first contention of counsel was (a) that the trial Judge wrongly decided, once he accepted the evidence of the valuer of the acquiring authority that questions of injurious affection and/or enhancement in the value of the land are matters pertaining to the value of the land and that he could assess the value taken as at one date and the value of the remainder as at a different date; and (b) that he misdirected himself as to the law applicable and has wrongly applied and interpreted same because his decision is contrary to the principles enunciated by Lord Reid in *Birmingham Corporation v. West Mid. Baptist* [1969] 3 All E.R. 172 at p. 178 letters F - G, where it was stated that "It could not be right to value one element of the value to the owner, the market value of the land, as at one date and to value the other elements, consequential losses as at a different date"; and (c) that by comparing s. 10(e) of Cap. 226 with s. 10(f) of Law 15/62 (which repealed the earlier law) it shows that it was the intention of the legislature that the assessment should be made as at the date on which notice to treat is published on all matters.

Furthermore, counsel complained that the observations made in *Wilson v. Liverpool City Council*, [1971] 1 All E.R. 628 (relied upon by the trial Judge) do not apply to

the provisions of the Compulsory Acquisition of Property Law 1962 (15/62) and that the said case was based on the principles of common law which lay down that all elements must be assessed as at the date of trial.

We think that in order to resolve the problem before us, we would reiterate what has been said in a number of cases, and recently in *Osman Misirlizade of Nicosia v. The Municipality of Nicosia* reported in (1976) 1 C.L.R. 413 that with regard to compensation for acquisition of land, section 10 of Law 15/62 introduces the one principle that permeates all aspects of statutory compensation which is the need to ensure equivalence between the loss to the claimants and the compensation to be awarded. This principle which has been judicially formulated has one aim only behind it, which is that at the root of statutory compensation lies the need to make a just equation of loss and compensation.

With this in mind and before dealing further with our own law, we shall turn to consider the authorities quoted in the case in hand. It is true that in the case of *West Midland Baptist* (*supra*) when the House of Lords delivered its judgment, the question was whether compensation should be assessed according to cost at date of notice to treat on the date when work could reasonably begin. Lord Reid, dealing with this question, having reviewed at length the law as it existed before this decision, said at p. 178:-

> "I can find no substantial reason given for taking the date of the notice to treat other than that it was the most convenient date to take, and that it was so near to the date of the actual taking that assessment as at the date of the notice to treat would do no substantial injustice to either party. Moreover, this so-called principle does not appear to have been applied to every element of the value of the land to the owner. It has certainly been regarded as applying to that element which consists of the market value of the land taken. But there is little or no indication that it was regarded as applicable to the other elements in an owner's claim. These might include costs of removal, loss of profit or other consequential loss and there appears to be no suggestion in the authorities that these elements in the value of the land to the owner must be

valued as at the date of the notice to treat. The actual costs or losses following on actual dispossession have been taken, and that appear to be the accepted practice today with regard to claim under r. (6). But this would be quite illogical if it were an absolute rule that the value of the land to the owner must be assessed as at the date of notice to treat, for it has been said again and again from an early date that there is only one subject for compensation—the value of the land to the owner. And it could not be right to value one element of the value to the owner, the market value of the land, as at one date, and to value the other elements, consequential losses, as at a different date. So it appears to me that the so-called principle rests on very unstable foundations".

This in our view shows that the law which was in existence for about one hundred years, with the judgment of the House of Lords, has changed and as we understood the judgment of Lord Reid it is that it has always been the law to value injurious affection and consequential enhancement as at the date of agreement or as at the date of trial, whichever may be the case.

In *Wilson* (*supra*) the question before the Court was whether because of a development scheme the increase in value of the lands in assessing compensation should be disregarded. There is no doubt that this case has been decided after the *West Midland Baptist* case. Lord Denning M.R. dealt with the position which was before the decision in the House of Lords, and said at p. 630:-

"On this point it is necessary to keep in mind the changing law. In 1867 in *Penny v. Penny* [1868] L.R. 5 Eq. 227 at 236, Sir William Page-Wood VC said:- '...every man's interest shall be valued, *rebus sic stantibus,* just as it occurs at the very moment when the notice to treat was given'. That was accepted as correct for the next 100 years. The valuation was always made as at the date of the notice to treat. Just 100 years later in 1967 the Court of Appeal threw great doubt on that proposition. In *West Midland Baptist (Trust) Association (Incorporated) v. Birmingham City Corpn.* [1968] 1 All E.R. 205 at 214 Salmon L.J. said:-

'...I have grave doubts whether the open market prices prevailing at the date of the service of the notice to treat form the correct basis for assessing compensation...'.

Sachs L.J. agreed ([1968] 1 All E.R. at 224) with that view. Sellers L.J. thought ([1968] 1 All E.R. at 211), that it was not open to the Court of Appeal to change the law, but 'The House of Lords may have greater freedom'. Those doubts were expressed on the 27th October, 1967".

Lord Denning, dealing with the decision of the tribunal said at pp. 633 - 634:-

"The tribunal applied the principle which was stated by Lord MacDermott in *Pointe Gourde Quarrying and Transport Co. Ltd. v. Sub-Intendent of Crown Lands* [1947] A.C. at 572:

'It is well settled that compensation for the compulsory acquisition of land cannot include an increase in value which is entirely due to the scheme underlying the acquisition'.

The principle goes back to *Fraser v. City of Fraserville* ([1917] A.C. 187) in which the Privy Council said: ([1917] A.C. at 194).

'...the value to be ascertained is the value to the seller of the property in its actual condition at the time of expropriation with all its existing advantages and with all its possibilities, excluding any advantage due to the carrying out of the scheme for which the property is compulsorily acquired...'.

The question has arisen whether that principle applies to cases under the Land Compensation Act 1961. That Act contains an elaborate provision about prospective development. It sets out in a schedule the circumstances in which no account it to be taken of any increase in value due to the prospect of development: See s. 6(1) and Part I of Sch. I. It is suggested that that provision contains a code which defines exhaustively the increases which are not to be taken into

account, so that any other increase is to be taken into account; and, accordingly, there is no room for the *Pointe Gourde* ([1947] A.C. 565) principle. But this court has rejected that argument. In *Viscount Camrose v. Basingstoke Corpn.* ([1966] 3 All E.R. 161), we held that the *Pointe Gourde* principle still applies to development which is not mentioned in Sch. 1 to the 1961 Act. Counsel for the claimants recognises that that decision is binding on this court but he may desire to challenge it in the House of Lords. Accepting the decision, however, he says that the *Pointe Gourde* principle does not apply here. The principle only applies, he says, when the scheme is precise and definite; and is made known to all the world. He referred us to the cases in Chancery on building schemes, such as *Elliston v. Reacher* ([1908] 2 Ch. 374, and *Reid v. Bickerstaffe* ([1909] 2 Ch. 305).

I do not accept counsel's submission. A scheme is a progressive thing. It starts vague and known to few. It becomes more precise and better known as time goes on. Eventually it becomes precise and definite, and known at all. Correspondingly its impact has a progressive effect on values. At first it has little effect because it is so vague and uncertain. As it becomes more precise and better known, so its impact increases until it has an important effect. It is this increase, whether big or small, which is to be disregarded as at the time when the value is to be assessed.

The tribunal gave an excellent reasoned decision. I find no fault in it".

In a recent case, *Myers v. Milton Keynes Development Corporation,* [1974] 2 All E.R. 1096, Lord Denning, M.R. dealing with the assessment of compensation because of compulsory purchase in pursuance of a development scheme, said at p. 1098:-

"On 17th March 1970 the development corporation published a master plan which contained its proposals for the development of the area. It included the compulsory acquisition of the Walton Manor estate. On the next day, 18th March, 1970, the corporation gave a notice to treat to Mr. Myers for the purchase

of the estate; or rather, by agreement, a notice to treat was deemed to be served on that day. On the same day, 18th March, 1970, vacant possession was given. The value is to be assessed as at that date: See *Birmingham City Corpn. v. West Midland Baptist (Trust) Association (Inc.)* [1969] 3 All E.R. 172.

In assessing the value, it is important to consider what would have happened if there had been no scheme, but instead the area had been allowed to develop without it. This was a matter of controversy. But it would seem likely that Bletchley would have developed as the major town in the area, and that the surrounding villages would have developed into modest satellite towns around Bletchley".

Later on his Lordship said at p. 1099:-

"*The conflict as seen by the Lands Tribunal*
The Lands Tribunal stated:

'...a conflict does arise in the instant case, between the *Pointe Gourde Quarrying and Transport Co. Ltd. v. Sub-Intendent of Crown Lands* ([1947] A.C. 565) principle and the assumed planning permission, and this conflict has to be resolved'.

What is this conflict? The *Pointe Gourde* principle was stated by Lord Macdermott ([1947] A.C. at 572) in these words:

'It is well settled that compensation for the compulsory acquisition of land cannot include an increase in value which is entirely due to the scheme underlying the acquisition'.

In applying that principle, the member of the Lands Tribunal thought that he had to disregard altogether the scheme for the new town.

The assumed planning permission is given by s. 15(1) of the Land Compensation Act 1961 which says:

'...it shall be assumed that planning permission would be granted, in respect of the relevant land... such as would permit development thereof in accordance with the proposals of the acquiring authority'.

In applying that assumption, the member of the Lands Tribunal thought that he had to have regard to the scheme so as to see what were the proposals of the acquiring authority. So there was the conflict as the member saw it. The *Pointe Gourde* principle required him to disregard the scheme. Section 15 required him to have regard to it by making an assumption in accordance with it.

Faced with this conflict, the member thought that it was to be resolved by asking these two questions and answering them in this way: (1) Was the assumed planning permission derived directly from the scheme? To which the answer was clearly: Yes, it was. (2) If so, could planning permission for the proposals have reasonably been expected to be granted in the absence of the scheme? If it could have been expected, then planning permission was to be assumed. If it could not have been, then planning permission was not to be assumed.

The member answered the second question by finding that planning permission could not reasonably have been expected to be granted in the absence of the scheme. So he held that planning permission was not to be assumed. He found in terms -

'that the subject land is deemed to be without the benefit of a planning permission for development, and therefore as having an existing use value only'.

I am afraid that the member of the Lands Tribunal misdirected himself about the law. Both counsel before us agreed that it was so. He read s. 15 as if there were written into it the words about 'reasonably expected to be granted'. Those words are to be found in other places in the statute, such as ss. 14(3), 16(2) and 17(4). But they are not in s. 15. And there is no justification for writing them into that section.

Furthermore, both counsel agreed that there was no conflict, such as the member thought, between the *Pointe Gourde* principle and s. 15. The two can and should be reconciled by tackling the valuation in this way. (1) Determine what was the nature of the pro-

perty to be valued. In this case it was the freehold of the Walton Manor estate. (2) Determine the extent of the interest to be valued. In this case it was the freehold of the Walton Manor estate, with the benefit of the planning permission assumed under s. 15. (3) Ascertain the value of that interest. It is at this stage, in evaluating the interest, that the *Pointe Gourde** principle applies. '(That) principle', said Lord Cross of Chelsea, '...does not affect the interest to be valued, but only its value when ascertained' (see *Rugby Joint Water Board v. Foottit* ([1972] 1 All E.R. 1057 at 1095)). It applies so as to ensure that any increase in value due to the scheme is to be left out of account. The result is that the assumed planning permission is to be taken into account. It is not to be ignored, as the Lands Tribunal thought. It is a way in which the landowner can be compensated for the potentialities of his land".

The next question is whether the trial Judge has misinterpreted the principle formulated in *East Midland Baptist* case (*supra*).

Having considered the argument of counsel, we are of the view that not only the learned Judge did not misinterpret the effect of the principle in that case, but he understood it clearly and he intended to lay down what was the law in England and what is the law in Cyprus. We agree that s. 10(a) of our Law 15/62 says in clear and unambiguous language that "the value of the property shall...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"; and paragraph (f) is in these terms:-

> "In the case of property of which a part only is acquired under this Law, account shall be taken of the increase or decrease, if any, in the value of other property held by the owner together with the part so acquired, which will occur by reason of the acquisition";

That this is so appears from the judgment where the very same point was argued by counsel before the trial

* [1947] A.C. 565.

Judge and we take the opportunity to state that in his well written judgment, the trial Judge has answered lucidly the legal points, and we endorse and approve it as a correct statement of the law once the Judge gave an excellent reasoned decision.

The trial Judge, in answering the contentions of counsel, said at pp. 41 - 42 of his judgment:-

> "In fact, both under the provisions of Cap. 226 (section 10(e)-) and under the provisions of Law 15/62 (section 10(d)-), the Court is required to take into account, *inter alia,* in computing the compensation payable, any enhancement brought about to adjacent property of the owner, on account of the acquisition. Section 10(d), Law 15/62, speaks of improvements in the value of land on account of the acquisition and it would, I believe, be impermissible to construe this provision of the Law, as restricting a betterment levy to enhancements in the value of land brought about solely by the execution of acquisition works. I use the term 'betterment levy', not in its accepted connotation, but as referring to the resulting increase of the remaining land because of the acquisition. If this was intended by the legislator it would not be difficult to say so and specify that the benefits must result from the execution of acquisition works and not from the acquisition. Reading section 10(f) in the light of the words used, the context in which it appears in the light of framework of the scheme of compensation envisaged by section 10—Law 15/62, I find that it encompasses all gains resulting to the owner because of the enhancement of his remaining lands on account of the acquisition crystallising by the date compensation has to be assessed. Compensation in the context of section 10(f) is a composite notion encompassing both the benefits or injury brought about by the publication of notice to acquire, order for acquisition and the implementation of the order".

We would, therefore, dismiss this contention of counsel because the decision of the Court is neither contrary to the provisions of the Law 15/62 nor of Article 28 of the Constitution because in our view it does not result in unequal treatment between the parties as to the reference.

The next complaint of counsel is that in so far as the notice and the order of acquisition related to the compulsory acquisition of 2,500 sq. ft., and the same area was described in the notice of reference filed by the acquiring authority, it becomes clear that the decision of the trial Court to consider the area of 1,000 sq. ft. as having been ceded by virtue of a street widening scheme was based upon irrelevant considerations. Furthermore, counsel argued, once the scheme in question was not implemented, it is clear, reading the provisions of ss. 12 & 13 of Cap. 96 that the property remains in the ownership of the owner until the time when he will decide to apply for a permit under s. 13.

There is no doubt that the object of statutory compensation, as it had been repeated in a number of cases, is and remains to ensure equation of loss and compensation, and as a result a claimant will be entitled to no compensation under the proviso to s. 13 unless he can establish that in the event of any order being implemented he will suffer hardship if no compensation is paid to him. This is made clear in a case to which we will be referring in a moment but before we would like to add that the principle of equality was reiterated in a recent decision of the House of Lords, where it was clearly and unambiguously stated that the right of an owner is to be put, so far as money can do, in the same position as if the owner's land had not been taken from him. (See *Rugby Joint Water Board v. Foottit*, [1972] 1 All E.R. 1057). We go further and state that it was reasonable to assume that any prospective purchaser interested in the land when making an offer to buy, or even the claimants themselves, if they minded to develop the land personally, would take it for granted that the area available for development would exclude the portion of the land affected by the street alignment scheme. It has been known for a long time, and one can reach the view that the claimants would suffer no loss by the compulsory acquisition of the relevant portion of the land if they will be entitled to no compensation in the event of the widening order being implemented. It is to be added that a claim for compensation may be sustained where the value of the land is not directly based on this development potential, as well as in those cases where it is established that, though the value of the land is directly based on its development

potential, the loss resulting from the acquisition is substantial in relation to the total of the different holding.

We must also add that so far as the question of hardship under the proviso to s. 13 of Cap. 96 is concerned, there is a decision of this Court in 1963 in *Eleni Iordani Christodoulides v. The Mayor, Deputy Mayor, Councillors and Townsmen of the Municipal Corporation of Famagusta* (1963) 2 C.L.R. 35, and we do not think it necessary to dwell on this point any further.

In the present case, the trial Judge reached the conclusion that in the light of the evidence, no hardship would be suffered by the owners even upon the implementation of the scheme, and reached the conclusion that their claim for compensation for the 1,000 sq. ft. could not be entertained by the Court. As we find ourselves in agreement with this conclusion of the Court for the reasons we have advanced, we dismiss this contention of counsel also.

It has been said in a number of cases that the Court shall have full power to determine by whom and to what extent the costs are to be paid, but wide though the discretion is, it is a judicial discretion, and must be exercised on fixed principles, that is according to rules of reason and justice. In the particular circumstances of this case, we have decided to exercise our discretion and have come to the conclusion that the legal and other fees properly incurred by the claimants in preparing their claim for compensation should be awarded to them by the acquiring authority.

In *London County Council v. Tobin*, [1959] 1 All E.R. 649, (relied upon by counsel) Morris, L.J., dealing with the very same point which is before us, had this to say at p. 652:-

> "After a notice to treat is served the acquiring authority wish to know what claims are made on them. If they deem the claims to be reasonable they will meet such claims and no reference will be necessary. If legal or other assistance is necessary, and if, in consequence, expense is properly incurred, then, in my judgment, it is appropriate to include the expense as one item and the claim for compensation".

Later on he added this at p. 653:-

> "The incurring of the expense would be a direct consequence of being dispossessed and of being asked to state the amount of the compensation claimed on account of such dispossession. It is to be observed that no question is raised in regard to the fees of a valuer or surveyor. But if such fees, which include fees for assessing the loss of goodwill, are to be regarded as claimable as compensation, it seems difficult to understand why legal or accountancy fees (always provided they are deemed necessary and are properly incurred) should not similarly be regarded as items claimable as compensation".

Wynn-Parry J., dealing with the same problem said at p. 654:-

> "In compiling the claim the claimant has to incur legal costs. In order to arrive at a true figure of the loss which he has incurred, he is forced to include the amount of such legal costs, otherwise his claim is for less than the loss which he has suffered. On what principle can it be said that, if there should be a reference, the amount of his loss is to be reduced for the purposes of the reference by the whole of the amount of the legal costs which he has incurred?"

Having considered the matter, and fully aware of the discretionary power of the Court, we would reiterate that with regard to this particular case we are prepared to award an amount of £50 for costs, and we would, therefore, partly allow the appeal on the question of costs.

Appeal dismissed on the merits and partly allowed on the costs.

Appeal dismissed.
Order for costs as above.