1979 June 5

[TRIANTAFYLLIDES, P., STAVRINIDES AND HADJIANASTASSIOU, JJ.]

THE REPUBLIC OF CYPRUS,
Appellant-Acquiring Authority,

v.

ANDREAS MICHAEL CHACHOLIADES,
Respondent-Claimant,

(*Civil Appeal No.* 5238).

and

ANDREAS MICHAEL CHACHOLIADES,
Appellant-Claimant,

v.

THE REPUBLIC OF CYPRUS,
Respondent-Acquiring Authority,

(*Civil Appeal No.* 5247).

Compulsory acquisition—Valuer—Evidence—Expert evidence—Hearsay—Admissibility.

Compulsory acquisition—Compensation—Assessment—Principles applicable.

Compulsory acquisition—Compensation—Interest on the amount of compensation—Principles applicable—Owner awarded less compensation by Court than the amount offered by Acquiring Authority—No interest could be awarded.

By means of a notice and order of acquisition dated the 1st April, 1968 and the 21st February, 1969, respectively, the acquiring authority in these appeals acquired compulsorily a piece of land, the property of the appellant in Civil Appeal No. 5247 ("the claimant"), for purposes incidental to the construction and servicing of the sea port of Larnaca.

In proceedings for the assessment of compensation payable

to the claimant, instituted by the Acquiring Authority on November 15, 1971, the trial Court had before it the valuation report of the expert valuer of the claimant which was to the effect that the property of the claimant was worth £21,910 on the day the notice of acquisition was published; and the valuation report of the expert valuer of the Acquiring Authority which was to the effect that the value of such property was £7,700.

The valuation report of the Acquiring Authority was filed on the 8th September, 1972 and that of the claimant on the 25th November, 1972.

The trial Court, though not bound to accept the valuation of either expert, agreed with the valuation of the Acquiring Authority's expert and awarded to the claimant the sum of £7,685 as compensation with 7% interest as from the 21st February, 1969, the date of the order of acquisition. The trial Court rejected the valuation of the claimant's expert having found that his opinion was not based on his own personal findings but on hearsay evidence.

The claimant appealed contending that the trial Court erred in law and in fact in rejecting the evidence of his expert valuer as being hearsay evidence; and the Acquiring Authority, also, appealed, contending that the award of interest to the claimant was wrong in law and in principle in view of the provisions of the Compulsory Acquisition of Property Law, 1962 (Law 15/62) and because the sum of £7,685, which was awarded to him, was not higher than the sum offered by the Acquiring Authority.

Held, on the appeal of the claimant, after stating the principles governing assessment of compensation, that an expert may not give hearsay evidence stating the details of any transaction not within his personal knowledge in order to establish them as matters of fact; (reasoning in *English Exporters* v. *Eldonwall* [1973] 1 All E.R. 726 adopted and applied); that once the trial Court has listened to the divergence of the views of the two valuers it rightly decided to prefer the evidence of the valuer of the Acquiring Authority; that the trial Court rightly came to the conclusion that the value of the land, being a question of fact, was the sum of £7,685; and that, accordingly, the appeal of the claimant must fail.

Held, on the appeal of the Acquiring Authority, that if an owner having rejected the offer made to him, does not succeed, through proceedings in Court, in increasing to an appreciable extent the amount of the compensation then he can hardly complain that he has been, in the meantime, kept out of his money due to the conduct of the Acquiring Authority; (see *Republic* v. *Savvides and Others* (1975) 1 C.L.R. 12 at pp. 28–30); that once the amount of compensation offered by the acquiring authority was the sum of £7,700 and the trial Court awarded the sum of £7,685, no interest could be awarded to the claimant; and that, accordingly, the appeal of the acquiring authority must be allowed.

Appeal of the claimant dismissed. Appeal of the Acquiring Authority allowed.

Cases referred to:

Tull's Personal Representatives v. *Secretary of State for Air* [1957] 1 All E.R. 480 at p. 482;

Horn v. *Sunderland Corporation* [1941] 1 All E.R. 480 at p. 495;

Munton v. *Greater London Council and Another* [1976] 2 All E.R. 815 at pp. 818–819;

Moti and Another v. *The Republic* [1968] 1 C.L.R. 102 at p. 114;

Misirliade v. *The Municipality of Nicosia* (1976) 1 C.L.R. 413 at p. 422;

Republic v. *Savvides and Others* (1975) 1 C.L.R. 12 at pp. 28–30;

English Exporters v. *Eldonwall* [1973] 1 All E.R. 726.

Appeals.

Appeals by the acquiring authority and the claimant against the judgment of the District Court of Larnaca (Pikis, P.D.C. and Artemides, D.J.) dated the 6th October, 1973, (Ref. No. 21/71) whereby the claimant was awarded the sum of £7,685.—, with interest thereon of 7% per annum, as compensation for the acquisition of his property.

G. M. Nicolaides, for the appellant–acquiring authority in Civil Appeal 5238.

L. Papaphilippou, for the respondent–claimant.

L. Papaphilippou, for appellant–claimant in Civil Appeal 5247.

G.M. Nicolaides, for respondent–acquiring authority.

Cur. adv. vult.

TRIANTAFYLLIDES P.: The Judgment of the Court will be delivered by Mr. Justice Hadjianastassiou.

HADJIANASTASSIOU J.: In these two consolidated appeals, the appellant in Civil Appeal No. 5238, the acquiring authority, appeals against the judgment of the trial Court of Larnaca awarding to the respondent interest at 7% on the amount of compensation awarded to him, and claims that the interest was wrong in principle, once the sum awarded to him was not higher than the sum offered to him by the acquiring authority. The appellant in Civil Appeal 5247, Andreas Michael Chacholiades appeals against the judgment of the trial Court of Larnaca given on the 6th October, 1973, whereby it was adjudged that judgment be entered for the claimant in the sum of £7,685.— as compensation for the compulsory acquisition of his land with interest at 7% per annum, complaining that the award of that sum was wrong in law, and because it cannot be considered as being a just and equitable compensation.

The Facts.

On 18th April, 1968, notice was given of the intention of the acquiring authority to acquire the land of the appellant compulsorily. This was finalized by an order of acquisition on 21st February, 1969. The acquisition was effected for purposes incidental to the construction and servicing of the sea port of Larnaca. The matter was referred to the Court by the acquiring authority filing a notice of reference dated November 15, 1971. The valuation reports by the acquiring authority were not filed until much later, on September 8, 1972, and by the claimant on November 25, 1972. There is no doubt that there are vast differences between the valuation report of the claimant which was prepared by Mr. Kimonis, a private valuer, and that of the acquiring authority prepared by Mr. Anastassiou, a valuer in the Lands Department of Larnaca.

The property of the claimant is of an extent of 2 domums 2,500 sq. ft.—plot No. 92 block 'C'. Mr. Kimonis, in order to arrive at his valuation, treated the said property as one building site, and having compared it to a number of other building sites in the area, of ordinary extent, he arrived at the conclusion that the property of the claimant was worth on the day the notice of acquisition was published, £21,910.—, being a just and equitable compensation. It is also necessary to add that Mr. Kimonis

had ignored the differences in extent between the property in question and the plots to which he compared them with. He found no discernable differences on account of that factor, and one is tempted to say that the per square foot value of his comparable properties was adopted without any adjustment as per the square foot value of the subject property.

It is equally true to state that Mr. Kimonis formed his opinion as to the correct value of the land by assuming that between the years 1965 and 1968, land values in the area surrounding the subject property rose by 130% with the result of making a number of unfounded adjustments to the price of his comparable properties, and made an effort to bring up to date and relate the prices of earlier years to the relevant date. In forming that opinion, the trial Court found that he mostly relied on a consideration of information contained in the valuation report of the acquiring authority in another reference, and clearly his opinion was based not on his own personal findings, but on heatsay evidence.

On the contrary, the valuer of the acquiring authority relied on a combination of the development and direct comparison methods of valuation. Mr. Anastassiou stated that in his opinion it would be disadvantageous to the owner to sell the property in question in an undivided form for a number of reasons. He further added that there was no demand for the purchase of big plots and that was to be inferred from the absence of any sale of a big plot of land in the vicinity. In addition, he added that there was almost a total absence of demand for big plots of land for the purpose of major building development, i.e. big blocks of flats or hotels during that period. Mr. Anastassiou made it also quite clear that it would be altogether fallacious to compare the per square foot value of the subject property, a big plot of land, to the per square foot value of ordinary building sites for which there was demand in the area, as it may be inferred from the several sales of single building sites cited to the trial Court.

2. *Findings of the trial Court.*

The trial Court, having considered the valuation reports of both experts, and having scrutinized everything before it with great care, reached the conclusion that the valuation report of Mr. Anastassiou should be preferred, and had this to say:-

"We agree with Mr. Anastassiou, in the light of the evidence, that properties situated on the main road were dearer in value than building sites in the immediate vicinity of the subject property, and further find that plots 442 and 447, of block 'D', relied upon by Mr. Kimonis for comparison are, on account of the distance that separates them from the subject property and their proximity to the centre of the town, not a safe guide to go by in valuing the subject property. We agree with the finding of Mr. Anastassiou that the margin of annual increase in the value of properties in the area was in the region of 5 per cent, although one must not make much of such annual increase, in the light of evidence, giving us an accurate indication of the ruling prices in the area at the relevant date..."

Finally, the Court reached this conclusion:

"Though we are not bound to accept the valuation of either expert, our task being to award fair and reasonable compensation in all the circumstances of the case, doing justice to the loss of the claimant, without imposing an unreasonable burden on the public (see *Ali and Another* v. *Vassiliko Cement Works Ltd.*, (1971) 1 C.L.R. 146), we find none the less ourselves in agreement with the valuation of Mr. Anastassiou and find that the value of land on the day notice to acquire was published, was £7,685.—."

3. *Grounds of Law.*

Counsel for the appellant in support of his grounds of law, argued very ably indeed that the trial Court erred in law and in fact (a) in rejecting the evidence of Mr. Kimonis—the expert of the appellant—as being hearsay evidence; (b) that the Court was wrong in its findings that the property in question was not situated in one of the best residential areas of Larnaca, and that there was no demand for the purchase of big plots in the vicinity; and (c) that the Court wrongly decided that the sum of £7,685 awarded to the appellant could be considered in law as just and equitable compensation.

4. *The Law.*

Time and again we said that the basis of assessment, both in England and in Cyprus, of compensation to be paid by the acquiring authority is the value of the land to the owner, and

includes compensation for disturbance and for severance or other injurious affection. The owner, of course, has a right to a money payment not less than the loss imposed on him, but on the other hand no greater. He is entitled to the value of the land at the time of the valuation, subject to the exclusion of works carried out after the notice to treat, and adding to the burden of the undertakers or authority, and to the exclusion of works by statutory provision, but also subject to works deemed to be carried out. The owner is also entitled to the potentialities or possibilities of development of the land, subject to any restrictions, and to the possibility of the removal of those restrictions and subject, of course, to the benefit of restrictions, removed. The measure of the value of the land to be taken is the amount which the land might be expected to realize if sold by a willing seller in the open market, excluding purchasers for certain purposes, but this provision does not affect the right to compensation for severance or other injurious affection to land not taken, or compensation for disturbance from the land taken additional to the market value. The rules for assessing compensation in England appear in section 5 of the Land Compensation Act, 1961, and rule 5(2) says that:-

"(1) No allowance shall be made on account of the acquisition being compulsory:

(2) The value of land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise; and

.....

(6) The provisions of rule (2) shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of land."

It appears that this section 5 and the following other provisions of this part of the Act in England, contain substantive provisions for determining the amount of compensation, which, however, far-reaching though they are, do not constitute a comprehensive code. They apply rather than lay down two underlying general principles, viz., first, that, in the words of Denning, L.J., (as he then was), in *Tull's Personal Representatives* v. *Secretary of State for Air*, [1957] 1 All E.R. 480, at p. 482, "Compensation is to be compensation for the loss sustained, no

more and no less", and, secondly, that changes in value due to "the scheme" are to be ignored.

Although this section 5 is silent as to the time as at which compensation is to be ascertained, yet, it has for long been accepted that the date is the date of service of the notice to treat: See *Horn* v. *Sunderland Corpn.*, [1941] 1 All E.R. 480–495. Scott, L.J., delivering the second judgment, said at p. 495 regarding the date of the service of the notice to treat:–

> "There is one further principle which has some slight relevance to the question before us, and that is the moment of time at which the price of the land to be taken has to be ascertained. It is when the notice to treat was given. As Wood, V.C., said in *Penny* v. *Penny*, [1868], L.R. 5 Eq. 227 at p. 236:
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> 'The scheme of the Act I take to be this, that 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' ".

The principles of assessment of statutory compensation have occupied the time of the Courts both in England and in Cyprus on a number of occasions. In *Horn* v. *Sunderland Corporation* (*supra*), Scott, L.J., said at pp. 495–497:–

> "It may be convenient to summarise the legal principles on which I base my conclusion that the official Arbitrator was right (subject to one very improbable possibility) on the facts before him in refusing to add any claim for disturbance to the price he awarded for the value of the land itself. (1) Prima facie, the purchase price for the land to be taken pursuant to the notice to treat is the market value of the land, and whether to an unwilling or willing seller is, for this principle so far as concerns that value, irrelevant. (2) The estimation of that value must take into account future and potential value, including what is known as 'special adaptability'. (3) It must be ascertained as at the moment when the notice to treat was given. (4) The rule of market value necessarily presupposes the presence of the seller in the market, there offering his land for sale in a normal state for that market—namely, in a condition to attract the ruling price there. If its state is better than normal, it should attract a better price. If it is worse than normal, or if the

buyer will have to spend money in order to bring it up to normal, the seller must expect a reduction on the normal price. (5) In the case of a sale by private treaty or auction, the seller cannot put in his pocket more than the net market value. He can recover no loss to which he is put by his decision to part with his land. (6) On a compulsory sale, however, the principle of compensation will include in the price of the land, not only its market value, but also personal loss imposed on the owner by the forced sale, whether it be the cost of preparing the land for the best market then available or incidental loss in connection with the business he has been carrying on, or the cost of re-instatement. Otherwise, he will not be fully compensated. (7) Here we come to the other side of the picture. 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. The enunciation of this principle—the most fundamental of all—is easy enough. Its justice is self-evident, 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."

Then, the learned Justice, having illustrated those difficulties, said:-

"Suppose, however, that his land has potential building value. As a result of the statutory compulsion by the notice to treat, he is forthwith put in a position where he is entitled as at that moment to be paid the present building value of the land. If the land is 'ripe for development', that value will represent a sum of money many times as great as the agricultural value. If he had sold voluntarily, he would have had to set off his 'disturbance' loss against the purchase price in order to ascertain the net price realised. How can it be said that by the compulsory acquisition he has been caused a loss which is not fully compensated by the present payment of full building value? In my opinion, there is nothing in either Act to give him anything further.

I think that it is a false interpretation of the Acts to suppose that, in all circumstances, and whatever the evidence, such a loss must, as a matter of law, be added to the actual price of the land in order to ascertain its legal price under the Act. Where, by reason of the notice to treat, an owner is enabled to effect an immediate realization of prospective building value, and thereby obtains a money compensation which exceeds both the value of the land as measured by its existing user and the whole of the owner's loss by disturbance, to give him any part of the loss by disturbance on top of the realisable building value is, in my opinion, contrary to the statutes."

In a recent case, in *Munton* v. *Greater London Council and Another*, [1976] 2 All E.R. 815, the principle enunciated in *Horn* v. *Sunderland Corporation* (*supra*) was adopted and followed.

Lord Denning M.R., delivering the first judgment of the Court of Appeal said at pp. 818-819:-

"The question has arisen as to what is the proper compensation to be paid to Mr. Munton. The borough say that it is only the £3,400 assessed by the district valuer in 1971, whereas Mr. Munton claims that it is the £5,100 which was the value when the borough went into occupation. The President of the Lands Tribunal has held that it is £5,100. The borough appeal to this Court.

Before I deal with the facts of the case, I will consider two points of law which were discussed before us. The first is whether, in order to be binding, there must be a memorandum in writing sufficient to satisfy s. 40 of the Law of Property Act 1925. Now on this point, a compulsory purchase differs from an ordinary contract of sale and purchase. Two propositions are settled. First, when a notice to treat is given it binds the local authority to purchase and the owner to sell at a price to be ascertained: See *Mercer* v. *Liverpool, St. Helen's & South Lancashire Railway Co.* [1904] A.C. 461."

Then Lord Denning turned to a new point and said:

"Since those Acts, the practice always has been for the compensation for disturbance to be assessed separately

from the value of the land. That is as it should be. The value of the land can be assessed whilst the owner is still in occupation. The compensation for disturbance cannot properly be assessed until he goes out. It is only then that he can tell how much it has cost him to move, such as to get extra premises or to move his furniture. The practice is warranted by two cases in this Court: *Harvey* v. *Crawley Development Corpn.* [1957] 1 All ER 504, and *Minister of Transport* v. *Lee*, [1965] 2 All ER 986.

In my opinion that is quite a proper view for the local authority to agree in the first place with the owner on the value of the house itself and to leave till later the compensation for disturbance. That can be assessed later when the local authority go into occupation and the house-owner moves.

There is one other point I must mention. It is the effect of *Birmingham Corpn.* v. *West Midland Baptist (Trust) Association Inc.*, [1969] 3 All E.R. 172. Previously for over 100 years the value was taken at the date of the notice to treat. But when inflation came on us, the House of Lords altered that old rule. They held that in the absence of agreement, the valuation was to be taken at the date when the acquiring authority entered into possession of the property. But if there had been a binding agreement beforehand as to the value, tha would no doubt prevail."

Finally, having dealt with the facts of that case, and having raised the question whether the claimant was entitled to £3,400, or whether he was entitled to £5,100 as from the date of entering into possession, Lord Denning concluded as follows:-

"The one question is, was there a firm agreement on the price before the borough entered into possession? Throughout this correspondence the solicitors and surveyors for the house-owner put into their letters the words 'subject to contract'. In my opinion those words have a decisive effect. They mean: 'Although this figure is there and we agree it, it is not to be regarded as binding. It is only a provisional figure subject to further negotiation. It is not binding.' The principle was discussed recently in *Tiverton Estates Ltd.* v. *Wearwell Ltd.*, [1974] 1 All E.R. 209. It is of the greatest importance that no doubt should

be thrown on the effect of those words. We were referred to *Michael Richards Properties* v. *St. Saviour's* [1975] 3 All E.R. 416, which was decided by Goff J. He will deal with it. It is to my mind a very special case on its own facts. I know that in these cases of compulsory purchase there is no contract prepared or signed, but only a conveyance. So the words 'subject to contract' have no real application. But nevertheless they have, I think, the effect of preventing there being any firm agreement on the price. In my view the words used so constantly, 'subject to contract', mean that the figure of £3,400 was not agreed so as to be binding. It was only a provisional figure.

Apart from this, there are letters of 28th February and 6th May 1972 in which the house-owner was saying, 'Please re-house me quickly before other people', and the borough were saying to him, 'If we are going to re-house you prematurely there will have to be some reduction on the figure which we were going to pay and it will have to be re-negotiated.' Those letters show me that the figure was not regarded as fixed and binding.

In this respect therefore on the effect of the words 'subject to contract' I agree with the President of the Lands Tribunal. There was nothing equivalent to a contract for a price binding on the parties before the borough entered into possession. So the ordinary law applies. The value is to be taken as at the date of entering into possession, £5,100. I think the president was right and I would dismiss the appeal accordingly."

In Cyprus the basis of assessment of compensation to be paid by the acquiring authority, is also the value of the land to the owner, and includes compensation for disturbance and for severance or other injurious affection. Our law, the Compulsory Acquisition of Property Law, 1962, (Law 15/62), provides, *inter alia*, rules for the assessment of compensation, and s. 10 says that:-

"The compensation payable in respect of the compulsory acquisition of any property shall be assessed in accordance with the following rules:-

(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;

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

(c) in the case of immovable property which, at the date of publication of the notice of acquisition, was in the possession of the acquiring authority under the provisions of any law relating to the requisition of property, compensation shall be estimated without regard to any increase in value on account of works made or constructed on, or development or improvement of, or additions to, the immovable property aforesaid during the period it has so been taken possession of; and

.....

(g) account shall be taken of the damage, if any, to be sustained by the owner by reason of the severance of the property acquired under this Law from other property held together with the property acquired."

It has been said in a number of cases that the principle of equivalence remains at the root of statutory compensation and in *Yiannis Anastassi Moti and Another* v. *The Republic of Cyprus*, (1968) 1 C.L.R. 102, Mr. Justice Josephides, speaking for the Court of Appeal, had this to say at p. 114:–

"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 *Kirzis* case above)..."

In *Osman Misirlizade* v. *The Municipality of Nicosia*, (1976) 1 C.L.R. 413, having delivered the judgment of the Court and having dealt with a number of cases, I said at p. 422:-

"I now turn to deal as to which is the best method of valuation. No doubt it has been said in a number of cases that the direct comparison system, when adopted, remains and is still the best method of valuation. No doubt, such method reduces speculation to the minimum and makes the forecast that one makes in retrospect of the price the subject property would fetch if sold in the circumstances and conditions contemplated by our legislation. I think I would go further and lay stress on the point that the very idea of comparison presupposes the existence of lands comparable, but I would at the same time warn that again there are inherent risks in comparing properties which are dissimilar in size and character and that a valuer even with a lot of experience will continue to face those problems...

In reaching the above conclusion, I adopt and follow what has been stated by Lord Denning M.R. in *Myers* case, [1974] 2 All E.R. 1096, that different valuers may take different views about the best method of valuing the land in the hypothetical circumstances which have to be imagined, and in the event of any divergence of views of valuers called to give expert evidence, the tribunal must decide, and certainly is entitled to decide whose evidence it prefers and determine the value as a question of fact."

Then, in dealing with the complaint of counsel that the trial Court failed to grant interest on the sum awarded to the appellant, having quoted the decision of the Full Bench viz., the case of the *Republic of Cyprus* v. *Christakis A. Savvides and Others*, (1975) 1 C.L.R. 12, and in allowing the appeal, I had this to say at p. 437:-

"Having considered and reviewed the authorities at length, and particularly the case of the *Republic v. Savvides and Others*, (*supra*) on the question what is just and equitable compensation to be awarded by the trial Courts in cases

of compulsory acquisition, I think there is hardly any room for complaint by the claimant of the property in question that he has been kept out of his money due to the conduct of the acquiring authority. If anything more is to be said, it is that he ha· himself to blame because although the acquiring authority acted with a commendable speed and presented its report, it took the claimant a very long time to prepare his own report which was finally filed in Court on October 4, 1969, and he was seeking a much higher amount of compensation than was offered to him by the acquiring authority.

On the other hand, and in fairness to the claimant, I would add, that in the particular circumstances of this case and of the then prevailing conditions, and having regard to the principles formulated judicially that the trial Court was entitled to award interest, in my view, as it appears from the whole tenor of the judgment, the Court has failed to address its mind to the question of awarding interest. I would even go further and say that the trial Court did not even address its mind to the authorities that the awaid of interest on the amount awarded for compulsory acquisition of property is part and parcel of what is known as just and equitable compensation.

For these reasons, this Court can, and will interfere, because it is satisfied that the Judges were wrong in not considering the question of awarding interest to the owner of the land in question. It seems to me that they have not given weight at all to this important point, and as I said earlier, have not even exercised their discretionary power in deciding whether to grant or not to grant interest. For these reasons I consider that it is the duty of this Court to interfere in order to do justice in the case in hand. I would, therefore, once the Judges have gone wrong in not awarding interest, reverse their decision, and order that interest should be paid by the acquiring authority on the amount awarded by the trial Court at 7 per cent as from October 4, 1969, when the report of the expert was filed in Court."

As we have said earlier, in spite of the fact that different valuers may take different views about the best method of

valuing the land, in the present case the trial Court, having listened to the divergence of the views of the two valuers called to give expert evidence, in our view, was entitled to decide whose evidence it prefers and rightly determined the value of the land as a question of fact.

Having considered very carefully the interesting argument put forward by counsel on the question of hearsay evidence, we are of the view that the opinion of the expert Mr. Kimonis that there was an annual increase in that area of 130% is not justified and cannot be relied upon once it was based on hearsay evidence. That this is the correct view and we find ourselves in agreement with the finding of the trial Court, one finds support in the judgment of Megarry, J. in *English Exporters* v. *Eldonwall*, [1973] 1 All E.R. 726, where he expressed the view that an expert may not give hearsay evidence stating the details of any transaction not within his personal knowledge in order to establish them as matters of fact. Megarry, J. dealing with that question had this to say at pp. 730, 732 and 733:-

> "As is usual in these cases, a number of comparables was adduced. Eight were put forward by the landlords: the tenants put in none of their own. As is also far from unknown, some of the comparables were less comparable than others, and some turned out to be supported only by hearsay evidence, or by evidence that was in other respects less than cogent. There was no formal process of a ruling being made to exclude those comparables which were supported only by hearsay evidence; but I was discouraging, and in the event counsel for the landlords, though rueful, did not seriously argue the point, or press it. I nevertheless think that I ought to make more explicit the reasons for my having been discouraging, for in my experience the status of hearsay evidence of comparables in valuation cases is a matter that is often misunderstood, and not only by valuers. For all I know, that misunderstanding may in recent years have been fostered by a passage in Woodfall's Law of Landlord and Tenant (27th Edn (1968), vol. 2 p. 1350 para. 2495), to which counsel for the tenants very properly referred me. There, the editors take the view that when a valuer is giving his opinion on rental value under the Act of 1954—
>
> 'he should state his reasons for holding that opinion

even if this involves reference to comparisons of which he only knows at second-hand, that surely going to weight rather than admissibility.'

There are further passages amplifying that view, but I think that this is a sufficient indication of the general import of a paragraph which seems to contend that valuers are entitled to give hearsay evidence of comparables.....

It therefore seems to me that details of comparable transactions upon which a valuer intends to rely in his evidence must, if they are to be put before the Court, be confined to those details which have been, or will be, proved by admissible evidence, given either by the valuer himself or in some other way. I know of no special rule giving expert valuation witnesses the right to give hearsay evidence of facts: and notwithstanding many pleasant days spent in the Lands Tribunal while I was at the Bar, I can see no compelling reasons of policy why they should be able to do this. Of course, the long-established technique in adducing expert evidence of asking hypothetical questions may also be employed for valuers. It would, I think, be perfectly proper to ask a valuer 'If in May 1972 no 3, with an area of 2,000 square feet, was let for £10,000 a year for seven years on a full repairing lease with no unusual terms, what rent would be appropriate for the premises in dispute?' But I cannot see that it would do much good unless the facts of the hypothesis are established by admissible evidence; and the valuer's statement that someone reputable had told him these facts, or that he had seen them in a reputable periodical would not in my judgment constitute admissible evidence.

On principle, therefore, I would not accept the proposition in Woodfall; (Woodfall's Law of Landlord and Tenant (27th Edn. 1968) vol. 2, p. 1350, para. 2495) and in this I do not think I would be alone. To the end of the passage in question, Woodfall very properly appends a footnote which reads: 'See, however *Wright* v. *Sydney Municipal Council* (1916) 16 SRNSW 348'. The case cited seems to me to provide much support for the views that I have expressed; and Woodfall does not attempt to discuss or refute the decision.....

Putting matters shortly, and leaving on one side the matters that I have mentioned, such as the Civil Evidence Act 1968 and anything made admissible by questions in cross-examination, in my judgment a valuer giving expert evidence in chief (or in re-examination)—

(a) may express the opinions that he has formed as to the values even though substantial contributions to the formation of those opinions have been made by matters of which he has no first-hand knowledge;

(b) may give evidence as to the details of any transactions within his personal knowledge, in order to establish them as matters of fact; and

(c) may express his opinion as to the significance of any transactions which are or will be proved by admissible evidence (whether or not given by him) in relation to the valuation with which he is concerned; but

(d) may not give hearsay evidence stating the details of any transactions not within his personal knowledge in order to establish them as matters of fact.

To those propositions I would add that for counsel to put in a list of comparables ought to amount to a warranty by him of his intention to tender admissible evidence of all that is shown on the list."

5. *Conclusion.*

In the light of the judgment of Megarry, J., (as he then was) in *English Exporters* (*supra*), we would adopt and apply its reasoning to the present case, and for the reasons we have given earlier, we dismiss this contention of counsel, viz., that the trial Court erred in law in deciding that the evidence of Mr. Kimonis was based on hearsay evidence. Regarding the factual issues raised and argued by counsel, we regret that we have to dismiss them, because as we have said earlier in this judgment, once the trial Court has listened to the divergence of the views of the two valuers who have expert evidence on the value of the land in question, in our view, the Court rightly decided to prefer the evidence of Mr. Anastassiou and rightly came to the conclusion that the value of the land, being a question of fact, was

the sum of £7,685, as compensation for the compulsory acquisition of the land of the appellant.

For the reasons we have given at length, we dismiss the appeal No. 5247. No order as to costs.

6. *Appeal No.* 5238.

Turning now to appeal No. 5238, the question is whether in the particular circumstances of this case, the award of 7% per annum on the amount of £7,685 is wrong in principle.

Counsel for the appellant authority, in his able argument in support of his ground of law, argued that the award of interest to the respondent is wrong in law and in principle in view of the provisions of Law 15/62 and because the sum of £7,685 awarded to him is not higher than the sum offered by the acquiring authority.

The learned trial Judge, in dealing with the question of interest, and having addressed his mind to a number of cases, said at pp. 40-41:-

> "The purpose of awarding interest is to ensure that what the owner is paying today, is no less than what he would have received had the payment of compensation coincided with the order of acquisition, that virtually takes away his rights of ownership.
>
> It is our considered view that interest is recoverable under the provisions of section 10(1) of Law 15/62.
>
> When interest is awarded, notionally the claimant is treated as having been paid at the date of acquisition and any claim for the requisition of his land, unless it exceeds the interest recoverable, cannot be entertained because so to do would lead to the compensation of the claimant twice for the same thing."

Then the learned President continued:-

> "This is a perplexing question, as we are, as already indicated, confronted with conflicting judicial precedents, the area of conflict centring around the percentage of interest and in particular whether it should, in the absence of evidence that the loss exceeds the margin of 4% per

annum, be 4%. However, the case of *Moti* is distinguishable from the present case as the observations made regarding the quantum of interest are of direct relevance only in cases of unreasonable delay to sanction the acquisition, whereas the pronouncements in *Ali's* case regarding interest related to the interest recoverable from the date of the order of acquisition till payment. The way we comprehend the *ratio decidendi in Ali's* case, (1971) 1 C.L.R. 146, on that aspect of the case concerning interest, is that current rates of interest should be the guide to the factual ascertainment of the loss suffered by the owner. If we may say so with respect, this is a very realistic approach, ensuing equivalence. The percentage adopted by the Supreme Court in the case of *Ali*, viz., 7%, is, as it appears from the evidence adduced, very much within the range of current rates of commercial interest and should be upheld as a norm to guide the Court in its task."

7. *The Law.*

Time and again we said in a number of cases that "the notion of 'just and equitable' compensation is wide enough as to include the notion of 'complete compensation' in Greece and of 'just compensation' in the U.S.A.; and an award of interest may be found appropriate depending on the circumstances of a particular case in order to render the compensation 'just and equitable', because of the 'reality of the matter' (see the H. Cousins & Co. Ltd. case, *supra*) and because, also, of 'basic equitable principles of fairness' (see *United States* v. *Fuller*, 35 L. Ed. 2d, 16 at pp. 19–20)

The rate at which interest may be awarded is, again, a matter which has to be left to the discretion of the Court assessing the compensation; but, in our opinion, the rate of interest prevailing at the material time could be a relevant consideration (see *Jefford and Another* v. *Gee*, [1970] 2 W.L.R. 702; the *Funabashi*, [1972] 2 All E.R. 181, and *Creamer and Others* v. *General Carriers S.A.* [1974] 1 All E.R. 1)."

In *The Republic of Cyprus* v. *Christakis A. Savvides and Others*, (1975) 1 C.L.R. 12, Triantafyllides, P., dealing with the question

of the interest and in what circumstances it should be awarded, said at pp. 28–30:-

"It would not be feasible, or proper, for us to lay down in this judgment rules covering all possible situations in which interest may or may not be awarded in cases of assessment of the compensation for compulsory acquisition; until, and unless, this matter is regulated by statutory provision (see, for example, the Federal Declaration of Taking Act, 1931, in the U.S.A.) the said rules will have to be developed by means of caselaw; but we may, in this respect, mention some of the factors which appear to us to be relevant to the matter in question:

One such factor is delay in the assessment of the compensation payable, which has occurred due to the conduct of the acquiring authority. When the Order of Acquisition is published the acquiring authority should be in a position to make a formal offer of compensation to the owner of the affected property, so that if no agreement can be reached proceedings for the assessment of the compensation by a civil Court can be instituted either by the acquiring authority or the owner; and, of course, any delaying of the normal course of such proceedings, attributable to the conduct of either side, will have to be duly weighed, too.

Another relevant factor is the extent of the difference, if any, between the amount of compensation offered and the amount of compensation assessed by a Court in case the offer is refused; if an owner, having rejected the offer made to him, does not succeed, through proceedings in Court, in increasing to an appreciable extent the amount of the compensation then he can hardly complain that he has been, in the meantime, kept out of his money due to the conduct of the acquiring authority.....

On the other hand, if it turns out that the offer made by the acquiring authority was appreciably below the, eventually, judicially assessed value of the acquired property, then, obviously, its owner has been prevented by the conduct of such authority from receiving earlier the compensation due to him.

Another factor which might, conceivably, be taken into

account in deciding about an award of interest, would be the whole or a part of the delay caused by an unsuccessful exercise of the right of recourse, by the affected owner, under Article 146 of the Constitution, as regards the Order of Acquisition; the refusal of interest in this connection should not be regarded as penalizing the owner for having exercised the right of recourse, but as a course of avoiding, in a proper case, to burden unjustifiably the acquiring authority with the amount of such interest.

A further relevant consideration would be the extent of the effective enjoyment, by its owner, of the expropriated property, between the date of the Notice of Acquisition and the date of the assessment of compensation in respect thereof, for example by way of receipt of rents; likewise, there has to be borne in mind whether during the above period the acquiring authority has entered upon the property and if so if this was done under an Order of Requisition (entailing the payment of compensation) or otherwise.

In the light of all the foregoing and of the particular circumstances of the present case (as set out already at the beginning of this judgment) we are of the view that it was lawfully and properly open to the trial Court, in the exercise of its discretion, to award interest on the amount of compensation, as it has done, especially as the compensation assessed by it was considerably more than what had been originally offered by the appellant; it is true, indeed that the compensation assessed by the trial Court was, also, considerably less than what had been demanded by the respondents and had we been trying this case, as a Court of first instance, we might have awarded lower interest or we might have awarded it on only part of the judicially assessed compensation; but the matter of the award of interest being a matter of discretion, we are not prepared to say, in this particular case, that we have been satisfied that we should interfere on appeal with the exercise, in this respect, of the discretion of the trial Court."

For the reasons we have given at length, and in the light of the observations of the learned President, we have decided to allow the appeal, once the amount of compensation offered by

the acquiring authority was the sum of £7,700, and the learned trial Judge awarded the sum of £7,685.

With this in mind, we think that this is a case which falls within the four corners of the aforesaid case, and we would allow the appeal, but we are not making any order as to costs.

Appeal of acquiring Authority allowed. Appeal of claimant dismissed. No order as to costs.