1988 October 17

(A. LOIZOU, P. SAWIDES & KOURRIS, JJ.)

DEMETRIS SOTERIOU AND OTHERS,

Appellants-Applicants,

v.

THE REPUBLIC OF CYPRUS,

Respondent-Acquiring Authority.

(Civil Appeal No. 7155).

Compulsory acquisition — Compensation — Betterment — Construction of a road by mistake on part of property not included in the relevant notice of acquisition — Revocation of such notice and publication of a new one in respect of area on which the road had been constructed — But for the new notice and the order of acquisition that followed, the road would not have been a public road — The road was the product of trespass — No betterment could emanate in respect of remaining part of property from such a construction — The betterment emanated from the new notice of acquisition.

Appellants are the co-owners in equal shares of a plot of land at Ayia Napa village.

On 22nd June, 1979, there was published a notice of acquisition of part of appellants' aforesaid property as indicated on the Lands Office plans, for the construction of a public road.

The road was eventually constructed, but, after such construction, it was found out that the construction was effected on a part of appellants' land, which had not been included in the aforesaid notice of acquisition.

As a result the said notice was revoked and a new notice was published in respect of that part of the property on which the road had been actually constructed.

In assessing the compensation for the acquisition, the trial Court accepted the evidence of the expert for the acquiring authority and

assessed the betterment to the south part of appellants' remaining property at 35% of the compensation agreed by the parties as regards the acquired part and the injurious affection to the north part of the remaining property

In the course of this appeal, there were raised two issues, i e

(a) Any betterment to the south part was due to the construction of the road which had been completed prior to the acquisition, and

(b) The trial Court erroneously accepted the evidence of the said valuer

Held, *dismissing the appeal*

(1) Such road could not be considered as a public road but it was the product of trespass on appellants' property and thus an illegal road which, had there not followed a proper acquisition order, it could have been destroyed by the owners of the properties and in any event could not have given a right of access to the appellants through the adjoining properties As such it would not be considered in law as having added a betterment to the remainder of the property

(2) There is no reason to interfere with the findings as to the credibility of the expert evidence

Appeal dismissed with costs

Appeal.

Appeal by claimants against the judgment of the District Court of Famagusta (Papadopoulos, P D C and Eliades, D J) dated the 21st April, 1986 (Ref No 4/83) whereby the compensation payable for immovable property belonging to applicants and compulsorily acquired was assessed at £21,527 less 35% betterment of the remaining part of claimants' property

Y Kalli (Miss) for A Poetis, for the appellants.

G Erotocritou (Mrs), Senior Counsel of the Republic, for the respondent

Cur adv vult

A LOIZOU P· The judgment of the Court will be delivered by Mr Justice Savvides

SAVVIDES J This is an appeal against the judgment of the Full Court of Larnaca whereby in Ref 4/83 the compensation payable for immovable property belonging to the appellants and

compulsorily acquired by the respondent was assessed at £21,527 less 35% betterment of the remaining part of appellants' property.

Appellants are the co-owners in equal shares of a plot of land No. 20/5/2 of Sheet/Plan 42/20 E.I. at Ayia Napa village of an extent of five donums, three evleks and 2,300 square feet. On 22nd June, 1979, a notice of acquisition was published in the official Gazette of the Republic under Not.658 in Supplement No. III, of part of appellants' aforesaid property as indicated on the Lands Office plans, for the construction of a public road from Xylophagou to Ayia Napa. As a result of such notice the Government entered upon the property of the appellants and started constructing the part of the road passing through appellants' property. After the construction of the road was completed it was found out that there was a mistake in that the area, part of appellants' property, used for the construction of the road was not the one described in the notice of acquisition. As a result by order published on 8th October, 1982 in the official Gazette under Notification 1051 the previous notice of acquisition was revoked. A new notice of acquisition was published under Notification 1046 in Supplement No. III of the official Gazette of the 8th October 1982 in respect of the part of the property over which the road was constructed. Also an order of requisition of such property was made and published in the same Gazette under Notification 1063. An order of acquisition of the said property was made and published in Supplement No. 3 of the official Gazette of the 23rd September, 1983, under Notification 1082. As a result of the acquisition order and the construction of the road appellants' property was divided into three parts; the part covered by the road of an extent of two donums, a part to the north of an extent of 1 evlek and 900 square feet, of a triangular shape, and a part of three donums and 2700 square feet, to the south.

Appellants filed an application to the Court for the assessment of the compensation payable for the acquisition of part of their property and later filed a valuation of their expert according to which the value of the part acquired is assessed at £19,277 (at £8,000 per donum) plus injurious affection to the part north of the road amounting to £2,250 (90% of its value) plus 20% injurious affection to the remainder to the south of the road amounting to £5,100 thus giving the amount of compensation payable as being £26,627.

According to the valuation of the expert of the respondent the value of the part acquired is given as £15,663 (at £6,500 per donum) plus injurious affection to the part north of the road at £1,422 (70% of its value) plus betterment to the remainder in the south of the road at £8,287 (40% of its value) leaving a balance of the round figure of £8,800 as the amount of compensation payable.

In the course of the hearing it was agreed by both experts that the reasonable amount of compensation payable in respect of the value of the part acquired as well as the injurious affection to the part north of the road should be assessed at £21,527 (at £8,000 per donum) and the only issue on which there was disagreement was any betterment to the remainder of the property, the part south of the road. In the opinion of appellants' valuer there was no betterment to such remainder whereas respondents' valuer insisted on a betterment at the range of 35%.

The trial Court, having heard the evidence of both valuers, accepted that of respondent' s valuer and assessed the amount of compensation payable at £21,527 less betterment due to the construction of the road of 35% to the remainder (the part south of the road).

Counsel for appellants raised a number of grounds of appeal on the findings of the trial Court as to the existence of any betterment and its extent. His main argument was that the road had already been constucted in 1979 by virtue of the acquisition in 1979 which was subsequently revoked in 1982. Therefore, assuming that there was any betterment such betterment was not the result of the acquisition as no new situation arose in 1982 bringing about any betterment to the property as it stood at the time of the acquisition. He further contended that in any event in the light of the evidence before the Court there was no betterment to the extent of 35% or at all.

As to the first contention of counsel for appellants that the betterment, if any, had already accrued as a result of the existence of the road which had been constructed by virtue of a previous acquisition, we find ourselves unable to agree with him. The previous acquisition as it appears from the relevant publications was for another part of appellants property and also of all other properties over which the road was to be constructed, a mistake which when detected necessitated the revocation of the previous

acquisition and the making of a new acquisition in respect of the correct position of the road. Therefore, such road without the acquisition order published on 23rd September, 1983 which sanctioned the notice published on 8th October, 1982, could not be considered as a public road but it was the product of trespass on appellants' property and all other properties mentioned in the revocation order and thus an illegal road which, had there been no proper acquisition order, it could have been destroyed by the owners of the properties and in any event could not have given a right of access to the appellants through the adjoining properties. As such it would not be considered in law as having added a betterment to the remainder of the property.

We come next to consider the contention of counsel for appellants that the percentage of betterment found by the trial Court was wrong.

The trial Court in assessing the expert evidence before it accepted the evidence of Mr. HadjiYiakoumis, respondent' s expert, in preference to that of the expert witness of the appellants.

After analyzing such evidence the court concluded as follows:

«Έχω πεισθεί πέρα από κάθε λογική αμφιβολία πως η μαρτυρία του κ. Χ'' Γιακουμή βασίζεται πάνω σε γεγονότα επιστημονικά αποδεκτά και οι προσαρμογές του έγιναν με μια προσπάθεια να είναι όσο το δυνατό πιο δίκαιος χωρίς υπερβολή και χωρίς καμμιά διάθεση να αδικήσει οποιοδήποτε. Δέχομαι τη μαρτυρία ως προς την υπεραξία εξ ολοκλήρου σαν μια θετική, επιστημονική, λογική και δίκαιη εκτίμηση.»

and in English:

«I have been convinced beyond any reasonable doubt that the evidence of Mr. HjiYiakoumis is based on facts scientifically acceptable and his re-adjustments were made in an effort to be as fair as possible without exaggeration and without any intention to cause injustice to anyone. I accept his evidence as to the betterment, in its totality, as a positive, scientific, reasonable and just valuation.»

We had the opportunity of examining the valuation of both experts and their evidence before the trial Court in support of their respective valuations as it appears in the record and have paid due attention to the arguments advanced by learned counsel for the

appellants. On the material before us we have reached the conclusion that the findings of the trial Court are reasonable and based on the proper assessment of the evidence before it. Therefore, we find no reason to disturb such findings.

In the result the appeal fails and is hereby dismissed with costs in favour of the respondent.

Appeal dismissed with costs.