

The Court of
Appeal
Malta.

(Public Purposes) (Amendment) Act 1956 (No. XXVII of 1956), and the Civil Code of Malta. The material provisions are as follows:-

Record,
(Contd.)

LAND ACQUISITION (PUBLIC PURPOSES)
ORDINANCE 1935

2....."agricultural or rural land" does not include the domestic garden of a house or building or any other land within the precincts of a house or building nor a building site nor waste land but includes farmhouses, buildings intended mainly for the keeping of store cattle or other domestic animals, and other structures of a kindred nature /added by the Land Acquisition (Public Purposes) (Amendment) Ordinance 1946/.....

10

"built-up area" means any area which for a continuous stretch of one hundred and fifty yards of its frontage on either side of the street, if the street is developable or three hundred yards if the street is developable on one side only, is at least fifty per centum occupied by buildings. /Substituted by s.2 of the Land Acquisition (Amendment) Act 1956/.....

20

16. Any land which is not a building site shall be valued for the purpose of determining the compensation payable in the case of its compulsory acquisition as rural land or as waste land, as the case may be. /Words underlined substituted by the Land Acquisition (Public Purposes) (Amendment) Ordinance 1947/

17. (1) Land shall be deemed to be a building site for the purposes of this Ordinance if it has a frontage on an existing street and is situate within a built-up area, or, subject to subsection (2) of this section, within a distance of not more than one hundred yards of a built-up area, measured along the axis of the street.

30

(2) In determining whether land is a building-site by reason of the fact that it is situate within distance of not more than one hundred yards of a built up area regard shall be had to the probable immediate expansion of the built-up area in the direction of the land in question.

40

(3) Land falling within the definition of sub-section (1) or (2) of this section shall be deemed to be a building-site to a maximum depth of twelve canes. /Substituted by s.6 of the Land Acquisition (Public Purposes) (Amendment) Act 1956/

The Court of Appeal
Malta.

Record,
(Contd.)

10 25. (1) Without prejudice to any special provision contained in this Ordinance, compensation shall be assessed in accordance with the following rules -

(a) no allowance shall be made on account of the acquisition being compulsory;

(b) the value of the 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.....

20 /Words underlined substituted by the Land Acquisition (Public Purposes) (Amendment) Ordinance 1962/

THE SPECIAL DEVELOPMENT AREAS ACT 1956
(No. IX of 1956)

3. (1) Where the Government has earmarked an area within these Islands for public acquisition with a view to its development for a public purpose other than that merely of town planning the Governor may declare such an area to be a Special Development Area for the purposes of this Act

30 4. (3) The value of any such land or building which the Government acquired by absolute purchase shall, for the purposes of the compensation payable under the Land Acquisition (Public Purposes) Ordinance (Chapter 136) but notwithstanding anything to the contrary contained in that Ordinance, be the value of the land or building as at the date of publication in the Government Gazette of the declaration made as provided in section 3 of this Act.

The Court of
Appeal
Malta.

THE LAND ACQUISITION (PUBLIC PURPOSES)
AMENDMENT ACT 1956
(No. XXVII of 1956)

Record,
(Contd.)

7. (1) The amendments of the principal law made by section 2 (so far as they relate to the definition of "built-up-area") and by section 6 of this Act shall apply to all land acquired after the commencement of this Act -

(b) notwithstanding section 3 of the Special Development Areas Act 1956 (Act No. IX of 1956) or any declaration made thereunder prior to the commencement of this Act:

10

and nothing in that Act or any such declaration shall in respect of any land affected thereby but acquired after the commencement of this Act be construed as in any way requiring or enabling such land to be considered as a building site for the purpose of the assessment of compensation unless that land is a building site within the meaning of the amendments of the principal law made by this Act.

20

THE CIVIL CODE OF MALTA (CAP 23)

358. No person can be compelled to give up his property or to permit any other person to make use of it, except for a public purpose, and upon payment of a fair compensation.

4. The Appellant was at all material times the owner of two adjacent plots, the first a plot of land in the parish limits of Birkirkara of an area of 2 tmien 4 sghan 5.6 kejllet bounded on the northwest by property of the Parish Church of Birkirkara, on the southwest by property of W.J. Parnis England Ltd., on the east by property of Paul Micallef and on the south by the other plot, the second plot being in the parish limits of Msida and of Gzira, of an area of 9.2 kejllet bounded on the south by property of Francis Bezzina Wettinger and others, on the north by property of the Government of Malta and on the south east by the first plot. The same considerations apply to each plot.

30

p.2,11.6-17

Ex X BB & E

40

pp.8,11.28-30
& 44,11.11-14

5. On 16th August 1960 the Governor under the provisions of the Special Development Areas Act

5.

The Court of
Appeal Malta
Record, (Contd.)

1956 declared as a special development area an area including the Appellant's land.

Ex BB

5. By Notice to treat the competent authority offered the Appellant as compensation for her land the sums of £220. 8. 0. and £12. 5. 0.

p.2,11.19-22

10 6. The Appellant rejected the offer and claimed that on the basis of a sale by her of adjacent land on the open market the compensation should be based on a figure of £600 for each $68\frac{1}{2}$ square canes.

p.2,11.24-29

20 7. The Respondent referred the matter to the Land Arbitration Board and the Board on 15th December 1965 reserved for the decision of the Chairman of the Board sitting as Judge of Her Majesty's Civil Court, First Hall the question whether for the purposes of the valuation of land to be acquired compulsorily and in particular for the determination or otherwise of its potential value the provision of section 25(1)(b) of the Land Acquisition (Public Purposes) Ordinance 1935 should be considered by itself or whether it should be interpreted in conjunction with section 16 of the same law and in particular whether this latter section should be exclusively applied in the sense that if the land to be acquired is not a building site in terms of the law then the land should necessarily be considered solely as "rural or waste land as the case may be" independently of its potential value as a building site.

pp.3,11.2-11
& 17,11.10-27

30 8. The contentions of the parties before the Civil Court First Hall are set out in Nos. 6, 7 and 8 of the Record.

pp.8-15

9. The Civil Court First Hall upon the grounds set out in the judgment decided the issue against the Plaintiff Respondent and made the declaration set out in paragraph 1 hereof.

p.23,1.39-
p.24,1.3

40 10. The Respondent on 23rd November 1967 appealed to the Court of Appeal, Malta the contentions of the parties there being set out in Nos. 11 and 13 of the Record.

pp.27-33

pp.27-33 &
34-43

11. On 28th October 1968 the Court of Appeal upon the grounds set out in their Judgment allowed the appeal and reversed the Judgment appealed from.

pp.45-61

12. From the Judgment of the Court of Appeal Malta the Appellant now appeals with the leave of that Court to Her Majesty in Council and humbly submits that the Judgment of the Court of Appeal Malta be reversed and that her said appeal be allowed for the following among other

REASONS

10

(1) BECAUSE the proper principle of compensation for the compulsory acquisition of land is that the owner should have the right to be put so far as money can do it in the same position as if his land had not been taken from him.

(2) BECAUSE if this principle is to be limited the limitation should be expressed by the compensating statutory provisions in clear terms, and no such clear terms are to be found in the Land Acquisition (Public Purposes) Ordinance 1935 as amended or in the other relevant legislation.

20

(3) BECAUSE the expression "valued ... as rural land or as waste land" in section 16 of the said Ordinance does not connote that in valuing land on either of those bases the potentiality of the land for development must be excluded or that development would be prohibited or impossible or valueless.

(4) BECAUSE any person seeking to buy land as rural land or as waste land in the open market would have to meet any competition afforded as to price from those who wished to buy the land for development.

30

(5) BECAUSE 'the open market' in section 25 of the 1935 Ordinance is the market for land in general and not, as the Court of Appeal Malta held, the market for land for a particular purpose as a building site or as rural land.

(6) BECAUSE section 17 of the said Ordinance (as amended) deals only with land which is to be deemed to be a building-site and does not prohibit land which is in fact a building site but does not fall within the classes in that section being valued as a building site under section 16 of that Ordinance.

40

7.

(7) BECAUSE section 7(1)(b) of the Land Acquisition (Public Purposes) Amendment Act 1956 has no application where the land in question is a building site independently of section 3 of the Special Development Areas Act 1956 or any declaration made thereunder.

The Court of
Appeal
Malta.

Record,
(Contd.)

Derek Walter Smith

Alistair Dawson

12 OF 1970

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL MALTA

BETWEEN:-

FRANCESCA the Wife of
Michele AQUILINA

Appellant

- and -

DOCTOR VINCENZO DEPASQUALE

Respondent

CASE ON BEHALF OF THE APPELLANT

Graham Page & Co.,
49/55 Victoria Street,
London, S.W.1.
