

No. 12 of 1970

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL MALTA

B E T W E E N

FRANCESCA AQUILINA (Wife of
Michele Aquilina)

Appellant

AND

DOCTOR VINCENZO DEPASQUALE

Respondent

UNIVERSITY OF LONDON
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CASE FOR THE RESPONDENT

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RECORD

1. This is an appeal brought by the above-named Appellant against a judgment of Her Majesty's Court of Appeal (Civil Jurisdiction) of Malta (Mamo Cremona and Flores, J.J.) dated the 28th October 1968 reversing a judgment of the Civil Court First Hall (Magri J.) dated the 31st October 1967. The said judgment was on a question reserved by the said Judge sitting as Chairman of the Land Arbitration Board on the 15th December 1965, to himself as a Judge of Her Majesty's Civil Court, pursuant to section 24 of the Land Acquisition (Public Purposes) Chapter 136 of 1935 (hereinafter called "the Ordinance").

2. The issue raised by this appeal turns on the true construction and effect of the Ordinance, as it affects land which at the material time was rural land and not so situate as to be deemed a building site by virtue of section 17 of the Ordinance. The issue is whether for the purpose of assessing the compensation payable on the compulsory

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purchase of such land, the land is to be valued having regard to any potential of the land for building purposes or without regard to any such potential.

Page 2,
lines 6
to 17

3. The land in question consists of two adjoining plots of land described in the Writ of Summons and which were at the material time agricultural land owned by the Appellant.

Plaintiff's
Exhibits
"AA" and
"BB"

4. By a Declaration published in the Government Gazette on the 16th August 1960 pursuant to section 3 of the Special Development Act, 1956, an area of land including the land in question was declared to be a Special Development Area. By virtue of section 4 (3) of the said Act the date of the publication of such a Declaration is the material time with reference to which land included in the Special Development Area falls to be valued for the purpose of assessing the compensation payable under the Ordinance on a subsequent compulsory acquisition thereof. 10 20

5. By a subsequent Declaration or Declarations pursuant to section 3 of the Ordinance, the Governor declared that the two plots of land in question were required for a public purpose. By virtue of section 5 of the Ordinance, the Commissioner of Land has power to acquire land required for a public purpose, inter alia, by the absolute purchase thereof.

Page 2,
lines 18
to 24

6. By a Notice to Treat subsequently served on the Appellant pursuant to section 11 of the Ordinance, the sums of £220. 8. Od. and £12. 5. Od were offered as compensation for the absolute purchase of the said plots. 30

Page 2
lines 24
to 29

7. The Appellant did not accept the said offer and claimed compensation at the rate of £600 for every 68½ square canes (a considerably higher rate).

Page 2
lines 29
to 33

8. The Commissioner of Land subsequently applied to the Land Arbitration Board (hereinafter called "the Board") for an Order (inter alia) assessing the relevant compensation. 40

9. At the hearing of the said application the question at issue in this appeal arose. The powers of the Board are set out in section 23 of the Ordinance. By section 24 thereof it is provided that all other questions arising out of the proceedings shall be reserved by the Chairman (who by virtue of section 21 must be one of Her Majesty's Judges) for decision by him sitting as a Judge of Her Majesty's Civil Court First Hall. The Board was of opinion that the said question exceeded its competence and accordingly by its decision dated the 15th December 1965 the said question was reserved pursuant to the said section 24.

Page 2,
lines 44
to Page 3,
line 11.

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10. The said question was reserved in the following terms :-

"Whether for the purposes of the valuation of the land to be compulsorily acquired and in particular for the determination or otherwise of its potential value the provision of section 25 (1) (b) of Chapter 136 is to be considered by itself or whether it should be interpreted in conjunction with the provision of 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 compulsorily 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" ".

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Page 2,
lines 34
to 44.

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11. The reference in the said question to "a building site in terms of the law" is a reference to section 17 of the Ordinance. Accordingly the provisions of the Ordinance referred to in the said question (as amended and as in force at the material time) are as follows :-

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"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.

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"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 sub-section (2) of this section, within a distance of not more than 100 yards of a built-up area, measured along the axis of the street.

(2) In determining whether land is a building-site by reason of the fact that it is situate within a distance of not more than 100 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.

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(3) Land falling within the definition of subsection (1) or (2) of this section shall be deemed to be a building-site to a maximum depth of 12 canes.

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

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.....

(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:

provided that"

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Pages 1
to 4.

12. For the purpose of bringing the said question so reserved as aforesaid before the Court these proceedings were commenced by the Respondent as the Acting Commissioner of Land by Writ of Summons on the 12th January 1966.

Page 2,
lines 6
and 12,
page 3,
lines 25,
26 and 32.

13. The land in question was described in the Writ as agricultural land and was therein stated to be rural land and not a "building-site". The Appellant has not disputed these statements:

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the arguments and judgments have all been directed to the question whether or not, on these facts, the potentiality of the land for building purposes is a factor to be taken into account for the purposes of the valuation.

14. In his submissions before the learned Judge the Respondent relied on the express terms of section 16 of the Ordinance and submitted that section 25 (1) (b) was to be construed as subject to section 16.

Pages 8 to 10.

15. In her submissions to the learned Judge the Appellant referred to the principle of reinstating the owner of land in the financial position he was in before compulsory acquisition. Her main argument was that section 16 should not be so construed as to conflict with that principle: it should be so construed as to allow the potentiality of rural land for development for building purposes to be taken into account.

Pages 11 to 14.

16. The judgment of Magri J., was given on the 31st October 1967. He found for the Appellant. He referred to the principle that in valuing land for the purposes of compulsory purchase the potentiality of the land for development must be taken into account, as well as the nature of the land. This principle was to be found in :

Pages 16 to 24.

Page 19, line 40 to page 20, line 5.

(1) Case law before the introduction of the Ordinance

Page 20, lines 21 to 43.

(2) Italian Case law

Page 20, line 44 to page 21 line 4.
Page 21, lines 5 to 18

(3) Halsbury's Laws of England Hailsham Edition

(4) The Case of First Hall in Re: "Rosanna Vella v. Group Captain Colin Hugh Deakin E.R.D. Nomine" determined on the 20th January 1961 (hereinafter referred to as the Rosanna Vella Case).

Defendant's Exhibit "B" Exhibit pages 21 to 25.

and

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Defendant's
Exhibit "A"
Exhibit
pages 10
to 20.

Page 23,
line 21
to page
24 line 3.

Pages 27
to 33

Page 29,
line 44 to
page 30,
line 44.

Page 30,
line 45 to
page 32,
line 10.

Page 32,
lines 11 to
27.

Page 32,
line 31 to
page 33,
line 8.

Pages 45
to 61.

(5) The Parliamentary Debates preceding Act XXVII of 1956 (whereby section 17 of the Ordinance was amended)

Having regard to this principle the learned Judge held that section 25 (1) (b) should not be construed as subordinated to section 16 as claimed by the Respondent and that by virtue of section 25 (1) (b) factors other than the nature of the land, including its potential value in the open market, should be taken into account in the assessment of compensation. 10

17. On the 23rd November 1967 the Respondent filed a Petition of Appeal against the said Judgment. The main grounds of appeal were that the judgment ignored section 17 of the Ordinance, was contrary to the clear and categorical provisions of sections 16 and 17 and failed to give due weight to the introductory words of section 25 (1). On the authorities relied on by the learned Judge the Respondent submitted: 20

(1) That the Case law before the introduction of the Ordinance, the Italian Case law and Halsbury's Laws of England, Hailsham Edition were applicable to legislation which contained nothing resembling sections 16 and 17 of the Ordinance and were therefore irrelevant. 30

(2) That the Rosanna Vella Case was a decision on a different issue.

(3) That the legislator's intent as expressed in the Parliamentary Debates was irrelevant if not expressed in the statute particularly if the words of the statute excluded that intent; and that the inference drawn by the learned Judge from the Parliamentary Debates was not in fact justified by the words used in Parliament. 40

18. The appeal was heard before the Court of Appeal (Civil Jurisdiction) Mamo, Cremona and Fores J J) and a single judgment was given on the 28th October 1968 allowing the appeal.

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19. The main grounds of the Judgment of the Court of Appeal were :

Pages 56 to 61.

(1) That sections 16 and 17 are special provisions within the meaning of section 25 (1).

Page 56, line 36 to page 57 line 20.

(2) That section 17 is an exhaustive definition of "building-site".

Page 57, line 29 to page 58, line 40.

10 (3) That the effect of section 16 is that land which is not a "building-site" within section 17 must be valued without regard for its potential value for building purposes.

Page 57, lines 25 to 29 and page 59 lines 1 to 19.

(4) That the precedents relied on by the learned Judge were unhelpful because they did not apply to laws containing the provisions of sections 16 and 17 of the Ordinance.

Page 60, lines 22 to 29.

and

20 (5) That Parliamentary Debates cannot be relied on to control or set aside what the law expressly provides.

Page 60, lines 30 to 40.

20. On the 25th November 1968 the Court of Appeal (constituted as aforesaid) granted the Appellant conditional leave to appeal to the Privy Council and final leave on the 3rd November 1969.

Pages 66 and 71.

21. The Respondent humbly submits that the decision of the Court of Appeal should be affirmed on the following grounds :-

R E A S O N S

30 (1) THAT in cases where section 16 applies, section 25 (1) (b) has effect subject to the limitation imposed by section 16, either because section 16 is a "special provision" within section 25 (1) (as held by the Court of Appeal) or because this is the only possible relationship between the two provisions.

40 (2) THAT in the case of rural land, section 16 applies if the land is not a building site.

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- (3) THAT in the case of rural land to which section 16 applies, the effect of the section is that the land must be valued without regard for its potentiality for development for other purposes.

SYDNEY TEMPLEMAN

JOHN HOPLING.

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- and -

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Respondent

CASE FOR THE RESPONDENT

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