

1966
Dec. 3

COSTAS CLERIDES
AND OTHERS
(No. 2)
and
THE REPUBLIC
OF CYPRUS
THROUGH
THE COUNCIL
OF MINISTERS

[TRIANTAFYLLOIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

COSTAS CLERIDES AND OTHERS (No. 2),

Applicants.

and

THE REPUBLIC OF CYPRUS, THROUGH
THE COUNCIL OF MINISTERS,

Respondent.

(Case No. 121/65).

Acquisition of Land—Requisition of Land—The Compulsory Acquisition of Property Law, 1962 (Law No. 15 of 1962) sections 4 and 6—The Requisition of Property Law, 1962 (Law No. 21 of 1962) section 4—The Villages (Administration and Improvement) Law, Cap. 243, sections 2, 22(c) and 37(1)—Compulsory acquisition of property—Requisition of the same property—Both orders intended to serve one and the same purpose—The former on a permanent basis—The latter (i.e. order of requisition) for a limited period of time—This is a factual nexus—But not a legal nexus—Therefore, the requisition order cannot be said to be bad in law merely because of the invalidity of the order of acquisition—Renewal of the requisition order by the Minister of Interior, (not by the Council of Ministers)—Power of the Council of Ministers properly delegated to the Minister in view of section 3 of the Statutory Functions (Conferment of Exercise) Law, 1962 (Law No. 23 of 1962) which is: ‘Ο Περί Έκχωρήσεως τής Ένασκήσεως τών Έξουσιών τών Άπορρεουσών Εκ τινος Νόμου, Νόμος τοῦ 1962 (Νόμος άρ. 23 τοῦ 1962).

Compulsory Acquisition—Invalidity of order of compulsory requisition—Is not in itself sufficient reason invalidating an otherwise valid order of requisition of the same property for the same object—See, also, under Acquisition of Land above—See, also, under Requisition of Land, Villages, Improvement Boards, herebelow.

Requisition of Land—Order of requisition by the competent organ viz. the Council of Ministers—Renewal of that Order by the

Minister of Interior—Delegation of powers properly made under section 3 of Law No. 23 of 1962, supra—Requisition Order—Its validity not effected by the invalidity of an order of acquisition of the same property—See, also, above.

Delegation of powers—Delegation of statutory powers—Law No.23 of 1962, supra—See above.

Statutory Powers—Delegation—See above.

Statutes—Statutory Powers—Delegation—See above.

Villages—The Villages (Administration and Improvement) Law, Cap. 243, section 2, 22 (c) and 37 (1)—Improvement Boards—Compulsory Acquisition—An Improvement Board is empowered under section 37 (1) to acquire compulsorily immovable property within the Improvement Area—Property outside the Improvement Area can be acquired by a Board only by agreement between the owner thereof and the Board—Section 37 (1) has not been repealed by the Compulsory Acquisition of Property Law 1962 (Law No. 15 of 1962) supra—Though no doubt it has to be read together with the latter Law.

Improvement Boards—Improvement Areas—See above.

Decision on Legal Issues.

Decision on certain legal issues raised by counsel for the Applicants in a recourse against the validity of an order of acquisition.

L. Clerides, for the Applicants.

K. Talarides, Counsel of the Republic, for the Respondent.

K. Michaelides, for the Interested Party (The Improvement Board of Kalopanayiotis).

Cur. adv. vult.

The following Decision was delivered by:—

TRIANAFYLLIDES, J.: When this Case came up for hearing, argument was heard, first, on certain legal issues raised by counsel for Applicants and the Court will now proceed to give its Decision thereon.

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It is useful to state, at the outset, some basic facts:-

On the 20th May, 1965, there was published in the official Gazette (under Not. 276 in Supplement No. 3) a Notice of compulsory acquisition, under section 4 of the Compulsory Acquisition of Property Law 1962 (Law 15/62), in respect of a quantity of 25,000 gallons of water, daily, from the spring known as "Pikromiloudhia" (or "Pikromiloudhi") which is situated in the vicinity of Kakopetria.

The acquiring authority, which published the said Notice, was the Improvement Board of Kalopanayiotis—now an Interested Party in these proceedings—and the reasons for the acquisition were stated to be the securing, improvement and distribution of water supplies for domestic purposes in the Kalopanayiotis Improvement Area.

On the 10th June, 1965, there was published in the official Gazette (under Not. 348 in Supplement No. 3), an Order of requisition, under section 4 of the Requisition of Property Law, 1962 (Law 21/62) in respect of the same property, as described in the aforesaid Notice of acquisition, and for the same reasons. This Order of requisition was made by the Council of Ministers.

On the 5th July, 1965, the Applicants filed the present recourse against both the said Notice of acquisition and the said Order of requisition.

On the 14th December, 1965, the Applicants withdrew this recourse in so far as it related to the Notice of acquisition pending a decision by the Council of Ministers on the sanctioning or not of the making of the relevant Order of acquisition.

On the 27th January, 1966, there was published, by the Improvement Board of Kalopanayiotis, in the official Gazette (under Not. 40 in Supplement No. 3), an Order of acquisition, under section 6 of Law 15/62, in respect of the same property and for the same reasons, as set out in the Notice of acquisition published earlier, as aforesaid, on the 20th May, 1965.

Against this Order of acquisition the Applicants have filed a separate recourse, No. 24/66, which is still pending

As the "Pikromiloudhia" spring is situated in a State forest, and as there does not appear to exist any registered

title, in respect of such spring, in the name of Applicants, the question arose—having been raised by counsel for Respondent—as to whether or not the Applicants in this recourse do possess any legitimate interest, in the sense of Article 146(2) of the Constitution.

Counsel were heard, specially, on the above question, and, at the end of the hearing—(after counsel for Applicants had explained the nature of the right of the Applicants to the water of this spring, which flows into the Karkotis river, the waters of which are used for irrigation purposes by the Applicants)—counsel for Respondent stated that he abandoned his objection regarding the absence of a legitimate interest of Applicants, entitling them to file the present recourse, with the reservation, however, that he was making this statement for the purposes of the present proceedings only.

On the material before the Court, I am satisfied that the course taken by counsel for Respondent was the proper one in the circumstances.

The first of the legal issues raised by counsel for Applicants was the contention that the Order of compulsory acquisition made by the Improvement Board of Kalopanayiotis is not one that such Board is empowered to make, and that, therefore, in the circumstances, the requisition Order, expediting the use by the Improvement Area of Kalopanayiotis of water-supplies from the said spring—pending the completion of the compulsory acquisition proceedings—could not lawfully have been made.

As mentioned, already, the question of the validity of the Order of acquisition is the subject-matter of other proceedings (recourse 24/66) and it will have to be finally decided in those proceedings.

In view, however, of the legal issue raised, as above, by counsel for Applicants, the question of whether or not the Improvement Board of Kalopanayiotis was empowered to acquire compulsorily water from the spring concerned is a matter which has to be gone into in the present proceedings, also.

The powers of an Improvement Board to acquire property by compulsory acquisition are set out in section 37(1) of the Villages (Administration and Improvement) Law, Cap.

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243; this provision does not seem to have been repealed by Law 15/62, though, no doubt, it has to be read together with it. Under section 37(1) a Board is empowered to acquire compulsorily immovable property *within the Improvement Area*—(and by definition in section 2 “immovable property” includes “water”).

Water or water rights *without the Improvement Area* can be acquired by a Board only by agreement between the owner thereof and the Board, (see section 22(c) of Cap. 243).

It appears, thus, to me, as at present advised, that, as the water of the spring in question, which is the subject-matter of the Order of compulsory acquisition made by the Improvement Board, is clearly not being acquired by agreement with the owners thereof (and, at this stage, and for the purposes of this recourse, the Applicants have to be regarded as the owners of the water, irrespective of any later, final, decision in, other proceedings, on this issue), and as the spring in question lies outside the Improvement Area of Kalopanayiotis, it was not within the powers of the Improvement Board of Kalopanayiotis to acquire compulsorily water from the said spring. It is, therefore, proper, for the purposes of this Case, to assume, at this stage, that the Order of acquisition made by the Improvement Board of Kalopanayiotis, and consequently also the relevant Notice of acquisition which preceded it, were steps which could not have been lawfully taken by the said Improvement Board.

The question has now to be answered as to whether or not, in the circumstances, the Order of requisition, which is the subject-matter of this recourse, was lawfully made.

It is not alleged that the requisition Order has not been validly made, in the sense that it was an Order which the Council of Ministers could not legally make under Law 21/62, or that it is not in compliance with any of the provisions of such Law.

There can be no doubt, indeed, that both the Order of requisition and the Order of acquisition were intended to serve one and the same purpose; the former for a limited period of time, in the immediate future, and the latter on a permanent basis, from a point of time in the future onwards. This is a factual nexus, but not a legal one, too. The acquisition Order has been made under Law 15/62; and the re-

quisition Order under Law 21/62. In the absence of express provision to that effect in Law 21/62, I fail to see how the requisition Order can be looked upon as being bad in law, merely because of the invalidity of the acquisition Order, made under Law 15/62, and intended to serve eventually and permanently the same object which the requisition Order was intended to serve immediately and *pro tempore*.

Nor can I accept the related submission of counsel for Applicants to the effect that in a case where the same object is being pursued by means of a requisition Order and an acquisition Order, then they have to be made both by one and the same organ. There is nothing to this effect either in the Constitution or in the relevant legislation. On the contrary, in view of the fact that, under Article 23 of the Constitution, the category of organs empowered to make requisition Orders is not as wide as that of the organs empowered to make acquisition Orders, I can see nothing wrong if an object, which, in the long run, is to be permanently attained through compulsory acquisition by a certain organ which is not itself empowered to resort to requisition, is, in a proper case, pursued *pro tempore* by means of a requisition Order, made by a different organ which is empowered to make such an Order in the particular circumstances of the matter, as is the case in the present instance.

There remains, of course, the question of whether or not the Council of Ministers, in making the requisition Order, has been led to act under a fundamental misconception regarding the possibility of compulsory acquisition by the Improvement Board of Kalopanayiotis. On the basis, however, of the material at present before the Court, and without having before me, at this stage, the relevant minutes or decision of the Council of Ministers, as well as the relevant submission to the Council, it is not possible or proper to decide whether or not such a misconception has, indeed, led in a decisive manner to the making of the requisition Order by the Council of Ministers, or whether the requisition Order would have been made, *in any case*, in order to ensure, for the immediate future, and pending any more permanent steps being taken, better domestic water-supplies for the Kalopanayiotis Improvement Area. I think this matter can be, conveniently, dealt with when the issue—which has not been argued yet in this Case—as to whether or not the Council of Ministers has exercised in a valid manner its relevant

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discretionary powers, will be gone into, later on in these proceedings.

Counsel for Applicants has pointed out, next, that the requisition Order, as made, was only for a period of twelve months from the date of its publication viz. the 10th June, 1965. Its duration has been extended for another period of twelve months by an Order published in the official Gazette (under Not. 255 in Supplement No. 3) on the 19th May, 1966, not by the Council of Ministers, but by the Minister of Interior, and counsel for Applicants has argued that such Order is not a valid one. He has submitted that it was not possible in this Case to delegate the discretion of extending the duration of the effect of the requisition Order to the Minister of Interior and that, in any case, it appears that the extension was made as a matter of course, without the Minister having exercised properly any discretion in the matter.

This recourse has been made against, only, the validity of the requisition Order, itself, as originally made. The Order extending the effect of the requisition Order for a further period of twelve months is relevant in these proceedings only to the extent to which it keeps the subject-matter of this recourse alive and, thus, the interest of Applicants in the water-supplies concerned continues to be affected. But the validity of the Order of extension, as such, is beyond the scope of this recourse, as the motion for relief stands framed to-date.

If Applicants wished to challenge the validity of the Order extending the duration of the original requisition Order, they ought to have challenged it, as such, by recourse; and they have not done so.

But even assuming that in the present proceedings this Court could examine the validity of the extension Order, it would appear that the power to extend the duration of the requisition Order could properly be delegated to the Minister of Interior in view of section 3 of the Statutory Functions (Conferment of Exercise) law 1962 (Law 23/62) and in view of there being nothing in Law 21/62 prohibiting such a course; and the fact that such a delegation has been made does not appear to be disputed.

I do not think, either, that in extending the duration of the original requisition Order the Minister of Interior had to exercise the relevant discretion all over again. All he had to do was to be satisfied that the object of the requisition needed yet to be served; and we know from the record of this Case that until the original twelve months of the duration of the requisition Order had expired it had not yet been possible, due to non-completion of necessary works, to convey water from the spring in question to Kalopanayiotis. There was nothing more natural, in the circumstances, than to decide on the extension of the duration of the requisition Order.

For all the foregoing reasons, I cannot, on any of the legal issues raised by counsel for Applicants, annul, at this stage, the requisition Order, the subject-matter of these proceedings, and this recourse will have to proceed to trial on the remaining issues.

Order in terms.

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