

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IOANNIS IOANNIDES,

Applicant,

and

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IOANNIS
IOANNIDES
v.
NICOSIA
MUNICIPALITY

THE NICOSIA MUNICIPALITY, LEGALLY REPRESENTED
BY THE MUNICIPAL COMMITTEE OF NICOSIA,

Respondent.

(Case No. 162/65).

Immovable Property—Acquisition of land—Order of compulsory acquisition of part of Applicant's property—Validity—Article 23.4 of the Constitution and the Compulsory Acquisition of Property Law 1962 (No. 15 of 1962)—Order in the public interest—Not contrary to the provisions of Article 23.4 of the Constitution and of Law No. 15 of 1962, particularly section 3 thereof—Nor contrary to the notions of proper administration.

Constitutional and Administrative Law—Constitution of Cyprus, Article 146—Competence—Competence under Article 146—Propriety or validity of the 1950 street-widening scheme affecting part of Applicant's property—Cannot be inquired into as competence under Article 146 not extending to final acts or decisions which took place before independence.

Compulsory Acquisition—See above under Immovable Property.

Street-Widening Scheme—Scheme effected prior to Independence (in the instant case in 1950)—Validity—Cannot be challenged under Article 146 of the Constitution—See above under Constitutional and Administrative Law.

Costs—No costs awarded against an unsuccessful Applicant—Bona fide claim.

The Applicant in the instant recourse complains against the order of compulsory acquisition of part of his property, the object of which was to join up two streets (Dorians Street and Amalia Street).

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Applicant's main submission was that the *sub judice* order was contrary to the public interest, in that the street created as a result of the acquisition was only 10 feet wide which did not, and could not, constitute properly a public street. The proper width for a public street, counsel argued, is 30 feet and therefore it is not to the public interest and benefit to have at the particular spot a street only 10 feet wide. Counsel's argument aimed at establishing that the order complained of was contrary to the provisions of Article 23.4 of the constitution and the Compulsory Acquisition of Property Law, 1962 (Law 15/62)—particularly section 3 thereof—as well as in excess and abuse of the Respondent's relevant powers. Counsel for Applicant further invited the Court to annul the compulsory acquisition order in question on the ground that it was a step, furthering, contrary to the notions of proper administration, the process of creating a street of normal width, through depriving, without compensation, the Applicant of the part of his adjacent property which is affected by the 1950 street-widening scheme, whereas the proper course would have been to acquire compulsorily the said part of Applicant's property. Counsel for Applicant has submitted that in the circumstances, in 1950, the machinery of a street-widening scheme was improperly resorted to.

Held, I. On the validity of the 1950 street-widening scheme:

(1) I cannot in this recourse inquire into the propriety or validity of such a step which was taken in June, 1950, ten years before the coming into operation of the Constitution on the 16th August, 1960; this Court's competence by virtue of Article 146 of the Constitution, under which this recourse has been made, does not extend beyond the 16th August, 1960, in respect of final acts or decisions which took place before such date (see, inter alia, *Nemitsas Industries Ltd.*, and *the Municipal Corporation of Limassol*, reported in this vol. at p. 134 *ante*).

(2) Nor could the question of the validity of the 1950 street-widening scheme be treated as relevant to the validity of the *sub judice* order, because the two things are entirely independent of each other and they do not form together, in any sense, a composite administrative action.

(3) The said scheme was in force, and its existence could properly, in my opinion, be taken into account by the

Respondent, when it decided 'on the compulsory acquisition which is the subject-matter of these proceedings; it could validly rely on the fact that part of Applicant's property, affected by the 1950 street-widening scheme, would eventually provide the needed width for the narrow part of Dorians Street between plots 229 and 42; thus, it was not deemed necessary to acquire it compulsorily, too.

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(4) For the above reasons. I cannot find that the Order of compulsory acquisition attacked by this recourse is contrary to the notions of proper administration.

Held, II. On the validity of the sub judice order:

(1) The order of compulsory acquisition complained of does not result in *creating now* a street of sub-normal width: it only results in *joining an existing* narrow street, which is now a cul-de-sac, with Amalia Street, which runs past it a few feet away from its dead end part. The said cul-de-sac is part of the western part of Dorians Street and by means of the compulsory acquisition in question, and the resulting joinder of such part with Amalia Street, the two parts of Dorians Street—lying to the east and west of Amalia Street—are joined together in one whole (as it appears clearly shown on the map, *exhibit 1*); with the result that communications in this area are improved.

(2) In the light of the foregoing there can be no doubt that the *sub judice* order is to the public benefit and in the public interest. It may not be as much beneficial as it would have been had the part of the Applicant's property, which is affected by the 1950 street-widening scheme, been also compulsorily acquired, so as to turn the narrow part of Dorians Street, between plots 229 and 42, into a street of sufficient width. But this Court cannot, in the exercise of its revisional jurisdiction under Article 146 of the Constitution, dictate to the Respondent to what extent it should serve the public interest by means of compulsory acquisition.

(3) In the circumstances I cannot find that the *sub judice* order is not to the public benefit; thus, I cannot hold that it is contrary to Article 23.4 of the Constitution and Law 15/62, or in abuse or excess of powers, on the ground of the absence of the element of public benefit.

Held, III. With regard to costs:

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Regarding costs, I have decided not to award any costs against the Applicant, though he has lost his case, because I find this recourse to be a *bona fide* step by a citizen in an effort to seek redress against what he thought to be an improper act of the Respondent; and even though it has been found that the Applicant was wrong to seek the redress he has claimed, I do not think that he should be penalized with costs for doing so.

*Application dismissed. Order
for costs as aforesaid.*

Cases referred to:

*Nemitsas Industries Ltd., and The Municipal Corporation of
Limassol, reported in this Part at p. 134 ante.*

Recourse.

Recourse against the validity of an order of compulsory acquisition whereby part of Applicant's property of an area of 75 square feet was compulsorily acquired.

G. *Ladas*, for the Applicant.

K. *Michaelides*, for the Respondent.

Cur. adv. vult.

The following Judgment was delivered by:

TRIANAFYLLIDIS, J.: In this Case the Applicant attacks the validity of an Order of compulsory acquisition published on the 15th July, 1965, (in Supplement No. 3 to the official *Gazette*, under Not. 436). The relevant Notice of acquisition was published, earlier, on the 17th June, 1965 (in Supplement No. 3 to the official *Gazette*, under Not. 365).

By virtue of the said Order of acquisition part of the Applicant's property — which is shown as plot 42 on the relevant survey map (see *exhibit 1*) — was acquired compulsorily. Such part is about 75 square feet in area and it is a narrow strip of land (coloured red on *exhibit 1*) which projects from the southern boundary of plot 42 and joins up with plot 229 across Dorians (or Doricon) street, in Nicosia.

As it appears from the relevant decision of the Respondent — the acquiring authority — dated the 26th February, 1965 (see

exhibit 5) the object of the compulsory acquisition in question was to join up Dorians Street with Amalia Street. At the particular spot – where plots 229 and 42 are to be found at opposite sides of the western part of Dorians Street – Amalia Street runs across Dorians Street and the aforesaid strip of land, the subject-matter of the compulsory acquisition, prevented the western part of Dorians Street from joining up with Amalia Street, and with the eastern part of Dorians Street beyond it.

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The part of Dorians Street which is to be found between plots 229 and 42 is about 10 feet wide; prior to the compulsory acquisition complained of it was in fact a narrow cul-de-sac. Otherwise the width of Dorians Street, in both its parts eastern and western, appears to be about 25–30 feet.

The southern end of the property of the Applicant, plot 42, is affected by a new street alignment (marked on *exhibit 1* with a blue line). The relevant street-widening scheme was published on the 29th June, 1950; so, eventually, the narrow part of Dorians Street, between plots 229 and 42, will become as wide as the remaining parts of such street.

The main submission, in these proceedings, of counsel for Applicant has been that the *sub judice* Order of compulsory acquisition is contrary to the public interest, and, therefore, not to the public benefit, because, as a result thereof, the aforementioned narrow part of Dorians Street, the cul-de-sac between plots 42 and 229, will be turned into a very narrow street, by being joined with Amalia Street; counsel for the Applicant has submitted that the said narrow part, being only 10 feet wide, does not, and cannot, constitute properly a public street; he has argued that the proper width for a public street is 30 feet and that, therefore, it is not to the public interest, and benefit, to have at the particular spot a street only 10 feet wide. It appears that by means of the above arguments counsel for Applicant was aiming at establishing that the compulsory acquisition in question is contrary to the provisions of Article 23.4 of the Constitution and the Compulsory Acquisition of Property Law (Law 15/62) – particularly section 3 thereof – as well as in excess and abuse of the Respondent's relevant powers.

Counsel for the Applicant has explained that, in objecting against the compulsory acquisition of the part of the property of

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the Applicant which has been acquired by means of the *sub judice* Order, he does not dispute the public benefit purpose behind the joining together of the western part of Dorians Street with Amalia Street, but he contends that the Respondent ought to have, also, acquired compulsorily the part of Applicant's property — plot 42 — which is affected by the 1950 street-widening scheme, so as to turn the narrow part of Dorians Street — between plots 229 and 42 into a street of proper width, like the rest of Dorians Street

There does not appear to exist any legislative provision fixing the minimum width of a public street. Counsel for Applicant has, however, called a witness, Georghios Kypreos, a land valuer and estate agent, who has worked for over 35 years in the Lands and Surveys Department, and who has stated that, according to his recollection, when streets were being approved their width was being fixed, at first, at 20–25 feet, and later, for the last ten years, the width of streets in Nicosia and its suburbs has been fixed at 35 feet. He has produced a leaflet entitled “Notes on the Design of Roads in Built Up Areas”, which was issued by the Planning and Housing Department in 1955, and which appears to fix the minimum width of a street in a residential area — like Dorians Street — at between 30 and 34 feet, depending on its length (see *exhibit 4*). So there can be little doubt that the narrow part of Dorians Street between plot 229 and 42 is, indeed, nowhere near being wide enough for the purposes of a modern street.

But, in determining this Case, it must not be lost sight of that the said narrow part of Dorians Street was already a street on the date of the making of the Order complained of. According to the evidence of witness Pavlos Polycarpou, an officer of the Nicosia Lands Office, who was called by the Applicant, the aforesaid part was entered in the relevant Lands Office records as a street as far as back as June 1950. At the time a large area of land — plot 41, appearing on the survey map *exhibit 3* — was divided into building plots, one of which is now plot 229, and, at the same time, the narrow strip of land between plots 229 and 42 was entered as a street in the relevant Lands Office records, and I cannot in this recourse inquire into the propriety or validity of such a step which was taken in June 1950, ten years before the coming into operation of the Constitution on the 16th August, 1960, this Court's competence by virtue of Article 146 of the Constitution, under

which this recourse has been made, does not extend beyond the 16th August, 1960, in respect of final acts or decisions which took place before such date (see, *inter alia*, *Nemitsas Industries Ltd., and The Municipal Corporation of Limassol*, (reported in this vol. at p. 134 *ante*).

So, the Order of compulsory acquisition complained of does not result in *creating* now a street of sub-normal width; it only results in *joining an existing* narrow street, which is now a cul-de-sac, with Amalia Street, which runs past it a few feet away from its dead end part. The said cul-de-sac is part of the western part of Dorians Street and by means of the compulsory acquisition in question, and the resulting joinder of such part with Amalia Street, the two parts of Dorians Street — lying to the east and west of Amalia Street — are joined together in one whole (as it appears clearly shown on the map, *exhibit 1*); with the result that communications in this area are improved.

In the light of the foregoing there can be no doubt that the *sub judice* Order is to the public benefit and in the public interest. It may not be as much beneficial as it would have been had the part of the Applicant's property, which is affected by the 1950 street-widening scheme, been also compulsorily acquired, so as to turn the narrow part of Dorians Street, between plots 229 and 42, into a street of sufficient width. But this Court cannot, in the exercise of its revisional jurisdiction under Article 146 of the Constitution, dictate to the Respondent to what extent it should serve the public interest by means of compulsory acquisitions.

In the circumstances I cannot find that the *sub judice* Order is not to the public benefit; thus, I cannot hold that it is contrary to Article 23.4 of the Constitution and Law 15/62, or in abuse or in excess of powers, on the ground of the absence of the element of public benefit.

Applicant's counsel has, also, invited this Court to annul the compulsory acquisition Order in question on the ground that it is a step furthering, contrary to the notions of proper administration, the process of creating a street of normal width, between plots 229 and 42, through depriving, without compensation, the Applicant of the part of his adjacent property which is affected by the 1950 street-widening scheme, whereas the proper course would have been to acquire compulsorily the said part of Applicant's property. Counsel for Applicant

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has submitted that, in the circumstances, in 1950, the machinery of a street-widening scheme was improperly resorted to.

In the present recourse I cannot go into the validity of the 1950 street-widening scheme (see *Nemitsas Industries Ltd. and the Municipal Corporation of Limassol, supra*).

Nor could the question of the validity of the 1950 street-widening scheme be treated as relevant to the validity of the *sub judice* Order, because the two things are entirely independent of each other and they do not form together, in any sense, a composite administrative action.

The said scheme was in force, and its existence could properly, in my opinion, be taken into account by the Respondent, when it decided on the compulsory acquisition which is the subject-matter of these proceedings; it could validly rely on the fact that the part of Applicant's property, affected by the 1950 street-widening scheme, would eventually provide the needed width for the narrow part of Dorians Street between plots 229 and 42; thus, it was not deemed necessary to acquire it compulsorily, too.

For the above reasons, I cannot find that the Order of compulsory acquisition attacked by this recourse is contrary to the notions of proper administration.

In the result, this recourse fails and it is dismissed accordingly. Regarding costs, I have decided not to award any costs against the Applicant, though he has lost this Case, because I find this recourse to be a *bona fide* step taken by a citizen in an effort to seek redress against what he thought to be an improper act of the Respondent; and even though it has been found that the Applicant was wrong to seek the redress he has claimed, I do not think that he should be penalized with costs for doing so.

Application dismissed. Order for costs as aforesaid.