

1980 August 11

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SASA P. THEODORIDOU,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE COUNCIL OF MINISTERS,

*Respondent.*

(Case No. 339/78).

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5 *Compulsory acquisition—Road construction—Modern trunk road—  
Propriety of plans had to be examined as a balanced whole  
and not from angle of the interests of individual owners—Objec-  
tions of applicant duly inquired into in the light of the very nature  
of the project and purpose of acquisition—Sub judice decision a  
duly reasoned one, its reasoning appearing in the file.*

10 *Administrative Law—Administrative decision—Due reasoning—Found  
in the material in the file—A proper reasoning as it reveals the  
mind of the administration and affords to this Court the opportunity  
for judicial review.*

15 This recourse was directed against the decision of the respond-  
ents to acquire compulsorily a part of applicant's property,  
which consisted of a house and the usual yard around it. The  
part affected by the acquisition was of a triangular shape and  
was one meter wide on the one side and half a meter on the other  
side. The reasons which rendered the acquisition necessary were  
the improvement, straightening and asphaltting of the new  
Nicosia-Limassol road.

20 The applicant, as well as other property-owners whose proper-  
ties were acquired for the same purpose, objected to the acquisi-  
tion and their objections were examined and dismissed by the

Council of Ministers after considering a relevant submission\* by the Minister of Communications and Works. This submission contained, also, the views of the District Officers, Nicosia, Larnaca and Limassol and the views of the Director of the Department of Public Works which were to the effect that the delineation of the new road was the result of a very comprehensive technical and economic study by foreign experts in co-operation with the Department of Public Works and that it was considered the ideal one and could not be changed. 5

*On the contentions of Counsel for the applicant that the sub judice decision was not duly reasoned and that the respondents did not carry out a due inquiry before taking it:* 10

*Held*, that the material before the Council of Ministers i.e. the studies of the experts and the views expressed by the various officials involved in this project show that the case of each objector, including the one under consideration, was duly inquired into in the light of the very nature of the project and the purpose for which the acquisition was made; that the propriety of the plans for this modern trunk-road with four lanes of traffic, had to be examined as a balanced whole and not from the angle of the interests of individual owners which might, if they were to be met, lead to destruction of the very purpose intended to be served by such plans; that the *sub judice* decision is duly reasoned; that its reasoning is to be found in the material in the file expressly referred to in the decision of the Council of Ministers by which the objection of the applicant along with the other objections were dismissed, and it is in all respects a proper reasoning as it reveals the mind of the administration and affords to this Court the opportunity for judicial review; and that, accordingly, the recourse must be dismissed. 15  
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*Application dismissed.*

### **Recourse.**

Recourse against an order of compulsory acquisition affecting applicant's property situated at Aglandjia.

*A. Markides*, for the applicant. 35

*Cl. Antoniadis*, Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

\* The relevant part of the submission is quoted at pp. 400-401 *post*.

A. LOIZOU J. read the following judgment. By the present recourse the applicant seeks a declaration of the Court that the order of acquisition published in Part II of Supplement No. 3 to the Official Gazette of the Republic of the 3rd March, 1978, under Notification No. 198, whereby part of her property under Registration No. B. 766 of plot 749, block "B", of Aylandjia village, Nicosia, was affected, is null and void and of no legal effect whatsoever.

The grounds of law relied upon by the applicant are:

10 "1. That the *sub judice* act and/or decision is void having been taken in excess and/or abuse of power especially as

(a) it is not duly and/or at all reasoned;

15 (b) the respondents did not carry out a due inquiry before it was issued;

(c) facts which should have been taken into consideration were not so taken.

20 It was evident that the very purpose of public benefit could be served by the acquisition of part of a field situated opposite the house of the applicant, a fact which would have less financial consequences to the Republic. That by the acquisition the luxurious house, built only in 1972, suffers immense damage and that by the said acquisition a question of safety

25 for those using the said house arises.

(d) no due weight was given to the facts mentioned in sub-paragraph (c) hereinabove referred to and facts and/or factors were taken into consideration which should not have been taken.

30 2. The act and/or decision challenged by this recourse is null and void as being contrary to Article 28 of the Constitution".

The applicant is the owner of the aforementioned property which consists of a house and the usual yard around it. A  
35 Notice of Acquisition was published in Supplement No. 3 to the Official Gazette of the 12th September, 1975, under Notification

No. 674 which affected part of the said property of the applicant. The applicant submitted an objection to the said Notice and on the 24th March, 1977, a new Notice of Acquisition under Notification No. 233, was published in Part II of Supplement No. 3, to the Official Gazette No. 1342 of that date. The purpose of public benefit for which the property to be acquired was required, was stated to be the creation and development of public roads in the Republic and the reasons for which same was necessary were the improvement, straightening and asphaltting of the new Nicosia-Limassol road.

The applicant by letter dated the 31st March, 1977, objected to the said acquisition which objection, together with all other objections, was examined by the Council of Ministers at its meeting of the 16th February, 1978, upon a submission made to it by the Minister of Communications and Works. In the said submission reference was made to the number of objections filed with regard to the property intended to be acquired in all three districts as the new Nicosia-Limassol road would go through them and it went on to say the following:

“4. The objectors put forward various grounds in support of their objections and mainly that:

(a) They are affected adversely by the intended acquisition.

(b) The line of the road can be moved elsewhere.

(c) A great damage is caused to tree plantations or their buildings and generally to their ownership.

5. The District Officers of Nicosia, Larnaca and Limassol affirmed that in certain cases the damage to be caused will be great but they recommend the dismissal of all the objections as the objectors will be compensated both for the damage to be caused and for the acquisition of their affected properties in due course. Copies of the views of the District Officers, Nicosia, Larnaca and Limassol are attached hereto as Annex ‘C’.

6. The Director of the Department of Public Works mentions that the alignment of this road cannot be changed as the said alignment was chosen as technically the best, after a study of many alternative

solutions. It should be noted that the final study for its construction was made by the Consultant Engineers Louis Berger, International Inc., after authorization of the Council of Ministers and with the consent of the International Bank of Reconstruction and Development in co-operation with the Public Works Department.

With regard to the remaining allegations of the objectors, the Director of the Public Works Dept. believes that they are unjustified for the reasons he sets out in the copy of his views attached as Annex 'D'.

1. The Attorney-General of the Republic is of the opinion that the Council may, in this case, dismiss the submitted objections and proceed with the issue of the relevant orders of acquisition.
8. The Council of Ministers is asked that after taking into consideration all circumstances dismiss the objections set out in Annex 'B' against the intended acquisition for the alignment, straightening and asphaltting of the New Road, Nicosia—Limassol and approve for publication in the Official Gazette of the Republic, the orders of acquisition for the districts of Nicosia, Larnaca and Limassol, as well as Annex 'E' which are based on a previous one.

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With regard to the applicant, the District Officer of Nicosia in his report of the 2nd July, 1977, Annex “C”, had this to say: “By this acquisition a narrow strip at the front of the aforesaid plot will be affected for the widening of the Nicosia—Limassol avenue. No further nuisance will be caused to the said newly built house of the objector as same is already adjacent to the said avenue. There are no reasons for upholding the objection”.

The Director of the Public Works Dept. in his report, Annex “D”, after stating that the delineation of the new road is the result of a very comprehensive technical and economic study by foreign experts in co-operation with the Department of Public Works and is considered the ideal one, refers to the various objectors and with regard to the applicant says that the strip of acquisition which is necessary affects the front part of the plot without affecting the house itself.

The property of the applicant affected is of a triangular shape being on the one side one meter wide and on the other side half a meter.

The Council of Ministers at its meeting of the 12th February, 1978, had this to say in its decision No. 16.611:

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“The Council (a) studied thoroughly the objections attached to the submission as Annex ‘B’ on behalf of the persons mentioned therein against the intended acquisition of certain immovable properties situated in the districts of Nicosia, Larnaca and Limassol and having taken into consideration all, in general, circumstances, decided to dismiss them; and (b) decided, taking into consideration all circumstances to approve under section 6, of the Compulsory Acquisition of Property, Law No. 15 of 1962, the issuing of the orders of acquisition attached to the submission as Annex ‘E’ for the acquisition of the immovable properties in the districts of Nicosia, Larnaca and Limassol, described in the Schedules of the Notices of Acquisition, published under Notifications 233, 235 and 234, in part II of the 3rd Supplement to the Official Gazette of the Republic No. 1342, dated 24th March, 1977, which is necessary for the purposes connected with the improvement, straightening and asphaltting of the new Nicosia–Limassol road”.

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It was argued on behalf of the applicant that the contents of para. 6 of the submission to the Council of Ministers hereinabove set out, constitute the main reasoning of the *sub judice* order, its effect being that even if one of the objections was accepted, it would have as a consequence the slight or serious change of the alignment of the road and it was the suggestion of the submission that such a change could not be effected at all. It was urged that from this reasoning it could be deduced that all objections were in advance dismissed irrespective of their individual merits. It was also contended that the statement in para. 6 of the submission that the alignment of the new road was the result of a comprehensive technical and economic study by foreign and local experts, left no room for a proper inquiry of the very issues raised by the objection of the applicant and precluded an answer to the questions that would arise if the applicants’ objection was accepted, namely, to what degree and how the alignment of the new road was affected and which would

have been the financial consequences as a result of such acceptance.

I am afraid I cannot subscribe to that view. The material before the Council of Ministers i.e. the studies of the experts and the views expressed by the various officials involved in this project show that the case of each objector, including the one under consideration, was duly inquired into in the light of the very nature of the project and the purpose for which the acquisition was made. One should not lose sight of the fact that that purpose was the construction and alignment of a major road which could not be given a snake like shape because of the hardship that might be caused to one affected owner of property or another. The suggestion that the field opposite the house of the applicant if utilized, could constitute a less onerous deprivation than the deprivation entailed in the proposed acquisition of the property of the applicant, cannot really be accepted, in view of the fact that next to the field there were buildings on the other side of the road that technically might have to be also affected if the alignment of the road was moved to that side.

Moreover, the *sub judice* decision is duly reasoned. Its reasoning is to be found in the material in the file expressly referred to in the decision of the Council of Ministers by which the objection of the applicant along with the other objections were dismissed, and it is in all respects a proper reasoning as it reveals the mind of the administration and affords to this Court the opportunity for judicial review.

It was also suggested by counsel for the applicant in his address in reply and same was supported by an affidavit of her architect, that by the proposed acquisition part of the absorption pit of the house will be affected, that considerable cost would be incurred to remedy this and that these matters were not duly taken into consideration by the respondents. Without touching the question that this matter was never raised in the objection of the applicant, I can only say that this is really a matter that goes to the value of the land acquired and the compensation payable for it, rather than to the issue of the validity of the *sub judice* order. The propriety of the plans for this modern trunk-road with four lanes of traffic, had to be examined as a balanced whole and not from the angle of the interests of individual owners which might, if they were to be met, lead to destruc-

tion of the very purpose intended to be served by such plans. This concludes the questions raised by this recourse as the ground about discrimination has not been pursued.

For all the above reasons this recourse is dismissed, but in the circumstances I make no order as to costs.

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*Application dismissed. No order  
as to costs.*