

1988 April 20

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ELENI PANTELI CONSTANTI AND OTHERS,

*Applicants*

5

v.

1. THE REPUBLIC OF CYPRUS,  
2. THE PORTS AUTHORITY OF CYPRUS,

*Respondents.*

10 AND AS AMENDED BY ORDER OF THE COURT DATED 10.11.1979,  
ELENI PANTELI CONSTANTI AND OTHERS,

*Applicants.*

v.

15 1. THE REPUBLIC OF CYPRUS, THROUGH  
THE COUNCIL OF MINISTERS,  
2. THE PORTS AUTHORITY OF CYPRUS,

*Respondents.*

(Cases Nos. 220/79, 221/79, 222/79, 223/79,  
79/83 & 80/83).

20 *The Cyprus Ports Authority—The Cyprus Ports Organization Law, 1973 (Law  
38/73)—Section 16—The Order of the Council of Ministers of 31.7.76,  
Number 168—The agreement envisaged by section 16(2)—Must be in  
writing.*

*Revisional jurisdiction Practice—Recourse for annulment—Parties—*

*Compulsory acquisition of immovable properties by British Administration before Independence for purpose which was never carried out - Recourse challenging omission of respondents to offer back the properties—As, in the light of section 16 of the Cyprus Ports Organization Law, 1973 (Law 38/73), the Order of the Council of Ministers 168 of 31.7.76 in conjunction with the evidence, the Cyprus Ports Authority, created after Independence, in virtue of the said law, the second respondents have nothing to do with the properties in question, they were wrongly joined as parties.*

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Certain properties of the applicants were compulsorily acquired by the British Administration before the establishment of the Republic, for the purpose of improving and extending the then Limassol port (hereinafter referred to as the old port).

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As in fact such properties were never used for the purpose for which they had been acquired, the applicants filed these recourses, challenging the omission of the respondents to offer back to the applicants the said properties.

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The question that arose for determination was whether respondents 2, a Public Corporation created by the Cyprus Ports Organization Law, 1973 (Law 38/73), were rightly joined as parties to the recourses.

Held, *dismissing the recourses as against respondents 2*: (1) The evidence showed that the properties in question had never been transferred to respondents 2.

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(2) Having regard to the wording of section 16\* of the Law and of Order 168 of 31.7.76 of the Council of Ministers respondent 1 were under no duty to transfer in the name of respondent 2 all or any of the property compulsorily acquired by the British Administration.

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(3) Moreover, the evidence showed that the properties in question were never made a part of the Old Port of Limassol.

(4) In enacting section 16(2) of the Law the Legislator intended that the agreement envisaged by it must be in writing.

(5) The conclusion is that respondents 2 have nothing to do with the property in question.

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*Recourse against respondent 2 dismissed. Costs against applicants.*

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\* Quoted at pp. 815-817 post.

**Recourses.**

5. Recourses against the omission of the respondents to return to applicants properties compulsorily acquired by the British Administration before the establishment of the Republic for the purpose of improving and extending the Limassol port.

*M. Kyriakides with I. Avraamides*, for the applicants.

*M. Chappa (Mrs.)*, for respondents No. 1.

*N. Papaefstathiou*, for respondent No. 2.

*Cur. adv. vult.*

10 DEMETRIADES J. read the following judgment. These cases  
 15 présent common questions of law and facts and by them the applicants challenge the omission of the respondents to return to them properties which were compulsorily acquired by the British Administration before the establishment of the Republic, for the purpose of improving and extending the then Limassol port (hereinafter referred to as the old port) and which were never used for that purpose.

The properties of the applicant, the subject of these recourses, are described in the attached schedule.

20 The second respondent is a Public Authority established in 1973 by the Cyprus Ports Organization Law, 1973 (Law 38/73), for the purpose of the running and management of the ports of the Republic and by way of preliminary objection it challenges the right of the applicants to join it in the recourses as respondent, on  
 25 the ground that the properties, the return of which is claimed by the applicants, was never transferred by the Republic into its name.

30 The facts that led to these proceedings are in brief the following: The British Administration had decided to improve and extend the old port of Limassol and in furtherance of its intentions proceeded to acquire a number of immovable properties situated

in the vicinity, amongst which the properties of the applicants. The ownership of the properties of the applicants was transferred into the name of the then Government in 1957.

However, the project, both during the British Administration and later after the establishment of the Republic, was not carried out. In fact, the Republic constructed an entirely new harbour to the west of the old one. 5

As the purpose for which the properties were acquired did not materialize, the applicants in the first four recourses, as these appear in the heading of the Ruling, applied to the 2nd respondent in 1978 claiming the return of their properties, on the ground that they were not used for the purpose for which they had been acquired. As a result the second respondent informed them that as it was a newly established Authority, it was unable to trace the necessary material and suggested to the applicants to apply to the Ministry of Communications and Works. 10 15

Similar letters were in 1980 addressed to respondent No. 2 by the applicants in the last two recourses to which the latter replied that the properties in question had not been transferred to the Authority by the Republic and that they ought to apply to the Ministry of Communications and Works. 20

The applicants in all cases then filed the present recourses against the omission of both respondents to offer back to them the aforesaid properties.

After several applications for the amendment of the grounds of law and for discovery of documents and further and better particulars, which were opposed, it was decided that the objection of respondent No. 2, whether it should remain a party to the proceedings, ought to be heard as a preliminary point and the cases were heard on this preliminary point, the first respondent taking no part in these proceedings. 25 30

The legislation relevant to these proceedings is the Cyprus

Ports Organization Law, 1973 (Law 38/73), section 16 of which reads as follows:

5 "16.-(1) Τηρουμένων των διατάξεων του εδαφίου (2) άμα τη καθιδρύσει του Οργανισμού το Υπουργικόν Συμβούλιον, διά διατάγματος αυτού δημοσιευομένου εν τη  
10 επισήμω εφημερίδι της Δημοκρατίας, μεταβιβάζει τω Οργανισμώ εις ημερομηνίαν καθοριζομένην εν τω τοιούτω διατάγματι (εν τοις εφεξής αναφερομένην ως ' η καθωρισμένη ημερομηνία ' ) τα εν τω τοιούτω διατάγματι περιγραφόμενα περιουσιακά στοιχεία και υποχρεώσεις των υφισταμένων προ της ενάρξεως ισχύος του παρόντος Νόμου λιμένων:

15 Νοείται ότι τηρουμένων των διατάξεων του εδαφίου (2) το Υπουργικόν Συμβούλιον κέκτηται εξουσίαν εκάστοτε μετά την καθωρισμένην ημερομηνίαν, διά διατάγματος αυτού δημοσιευομένου εν τη επισήμω εφημερίδι της Δημοκρατίας, να μεταβιβάξη τω Οργανισμώ εις ημερομηνίαν καθοριζομένην εν τω τοιούτω διατάγματι οιαδήποτε επι-  
20 πρόσθετα ή έτερα τοιαύτα στοιχεία ή υποχρεώσεις περιγραφόμενα εν τω διατάγματι.

(2) Προ εκάστης εκδόσεως διατάγματος δυνάμει του εδαφίου (1) δέον όπως συναφθή σύμβαισις μεταξύ του Υπουργικού Συμβουλίου και του Οργανισμού ήτις να περιλαμβάνη, μεταξύ άλλων, τα εξής:

25 (α) Περιγραφήν των μεταβιβαζομένων τω Οργανισμώ περιουσιακών στοιχείων και υποχρεώσεων ως και την αξίαν των στοιχείων τούτων και του ποσού των υποχρεώσεων άτινα ήθελον καθορισθή κατόπιν προσηκούσης αποτιμήσεως,

30 (β) τον τρόπον και τον χρόνον της μεταβιβάσεως των ως άνω στοιχείων και υποχρεώσεων, και

(γ) πρόνοιαν περί αντιπαροχής και του τρόπου και χρό-

νου καταβολής αυτής εν σχέσει προς οιανδήποτε τοιαύτην μεταβίβασιν.

(3) Τα εν οιωδήποτε διατάγματι εκδοθέντι δυνάμει του εδαφίου (1) περιγραφόμενα περιουσιακά στοιχεία ή υποχρεώσεις περιέρχονται τω Οργανισμώ δυνάμει των διατάξεων του παρόντος Νόμου. 5

(4) Εάν εντός τριών ετών από της εν διατάγματι εκδομένω δυνάμει του εδαφίου (1) καθοριζομένης ημερομηνίας το Υπουργικόν Συμβούλιον ικανοποιηθή ότι οιοδήποτε περιουσιακόν στοιχείον ή υποχρέωσις εσφαλμένως περιήλθε τω Οργανισμώ δυνάμει των διατάξεων του παρόντος άρθρου, τούτο δύναται να ανασκαλέση ή τροποποιηθή το εν λόγω διάταγμα καθ ήν έκτασιν αφορά εις την τοιαύτην εσφαλμένην μεταβίβασιν." 10

(16.-(1) Subject to the provisions of sub-section (2), upon establishment of the Organization the Council of Ministers shall by an order to be published in the official Gazette of the Republic transfer to the Organization on a date specified in that order (hereinafter referred to as 'the vesting day') the assets and liabilities of the ports existing prior to the commencement of this Law as described in that order: 15 20

Provided that subject to the provisions of sub-section (2) the Council of Ministers may from time to time after the vesting day by order to be published in the official Gazette of the Republic transfer to the Organization on a date to be specified in such order any additional or other assets or liabilities described in the order. 25

(2) Before the issue of an order under sub-section (1) an agreement shall be entered into between the Council of Ministers and the Organization which shall include, inter alia, the following: 30

(a) description of the assets and liabilities to be transferred

to the Organization and the value of such assets and the amount of liabilities as would be determined after a proper valuation;

5      (b) the manner and the time of the transfer of the above assets and liabilities; and

(c) provision for repayment in connection with any such transfer and the method and time thereof.

10      (3) The assets or liabilities described in an order made under sub-section (1) shall vest in the Organization by virtue of the provisions of this Law.

15      (4) *If within three years from the date specified in an order issued under sub-section (1) the Council of Ministers is satisfied that any asset or liability was wrongly transferred to the Organization under the provisions of this section it may revoke or vary the said order to the extent that it relates to any such wrong transfer.*"

20      The applicants called one witness, who is a Senior Clerical Officer posted at the Ministry of Communications and Works. The respondent, on the other hand, called two witnesses, both of whom are employed by them.

25      What comes out from the evidence of these witnesses, including the documents which they produced and are exhibits before me, is that no written agreement was ever entered between the Council of Ministers and the respondents in the terms provided by subsection 2 of section 16 of the Law and that there is no decision by the Board of the respondents by which any agreement reached was ratified by it. What is clear from the evidence of the witnesses is that before the establishment of the respondent, the Government of the Republic instructed a firm of experts to carry  
30      out a valuation of the properties which were to be transferred into the name of the respondents. The properties of the applicants were not amongst those for which the experts were asked to carry

out a valuation.

After the valuation of the properties was completed by the experts, the Council of Ministers, apparently on the basis of some sort of agreement reached between it and the respondents, issued on the 31st July, 1976 Order No. 168, which reads: 5

"Το Υπουργικόν Συμβούλιον ασκούν τας εις αυτό ανατιθεμένας εξουσίας δυνάμει του εδαφίου (1) του άρθρου 16 του περί Οργανισμού Λιμένων Κύπρου Νόμου του 1973 δια του παρόντος διατάγματος μεταβιβάζει από της 1ης Αυγούστου, 1976, τα εν τω Πρώτω Μέρει του Πίνακος περιγραφόμενα περιουσιακά στοιχεία και τας εν τω Δευτέρω Μέρει του Πίνακος περιγραφόμενας υποχρεώσεις εις τον Οργανισμόν Λιμένων Κύπρου. 10

## ΠΙΝΑΞ

### ΜΕΡΟΣ Ι 15

#### Περιουσιακά στοιχεία

Οι εν τη Δημοκρατία λιμένες Αμμοχώστου, Λεμεσού, Λάρνακος, Πάφου, Κυρηνείας, Καραβοστασίου, Βασιλικού, Ζυγίου και Λατσιού, μεθ όλων των εν αυτοίς ακινήτου ιδιοκτησίας και εγκαταστάσεων ως και της εν αυτοίς κινητής ιδιοκτησίας συνισταμένης εις πλωτά μέσα και άπαντα τον μηχανικόν εξοπλισμόν ξηράς. 20

### ΜΕΡΟΣ ΙΙ

#### Υποχρεώσεις

Άπασαι αι υποχρεώσεις της Δημοκρατίας αι αναληφθείσαι υπ αυτής, εν σχέσει προς τους λιμένας και την λειτουργίαν αυτών." 25

("The Council of Ministers, in the exercise of the powers



vested in it by sub-section (1) of section 16 of the Cyprus Ports Organization Law of 1973, transfer, by the present order, as from the 1st August, 1976, the properties described in the First Part of the Schedule and the liabilities described in the  
5 Second Part of the Schedule, to the Cyprus Ports Authority.

## SCHEDULE

### PART I

#### Properties

10 The ports of the Republic at Famagusta, Limassol, Larnaca, Paphos, Kyrenia, Karavostassi, Vassilico, Zigi and Latsi with all the immovable properties and plant situated within them as well as the movable properties lying in them consisting of navigable assets and all land mechanical equipment.

### PART 2

15 Liabilities

All liabilities of the Republic undertaken by it in connection with the ports and their operation."

20 It is the case for the applicants that the transfer of immovable property including that of the applicants' from the Council of Ministers into the name of the second respondents has not been made in accordance with the provisions of subsection (2) of section 16 of the Law, that is on the basis of a written agreement in which a description of the properties which were transferred was given, but that in view of the Order of the Council of Ministers  
25 which was issued on the 31st July, 1976 (Order No. 168/76) the properties of the applicants should be considered as having been transferred to the 2nd respondent. For this reason, counsel for the applicants submitted the second respondent must remain a party  
30 to the proceeding since this respondent is entitled to be registered as the owner of the said properties.

The argument of counsel for the second respondent is that since the properties were never transferred to his clients, they should have never been joined as respondents.

It is perhaps necessary to mention here that although the first respondent did not take part in these proceedings, through their counsel informed the Court that the properties of the applicants were never transferred by them into the name of the second respondent. 5

Having considered the evidence, oral and documentary, before me, I find that the properties of the applicants have never been transferred by the first respondents into the name of the second respondents. Having also regard to the wording of section 16 of the Law and of the Order, I find that the first respondents were under no duty to transfer into the name of the second respondents all or any of the properties which were compulsorily acquired by the British Administration for the purpose of enlarging and improving the Old Port of Limassol, a project that was never carried out. 10 15

I further find that there is no evidence before me that the properties of the applicant, after these were compulsorily acquired, were transferred and registered as part of the Old Port of Limassol. Although subsection (2) of section 16 of the Law does not specifically provide that the "agreement" envisaged by it must be in writing, it is my view that in the light of its provisions it was the intention of the legislator that any agreement reached between the two respondents ought to have been set down in writing and its terms and conditions approved both by the Council of Ministers and the Board of the second respondents, something that was never done and thus the confusion now created. 20 25

Having reached my above conclusions, I find that the second respondents have nothing to do with the properties which before they were compulsorily acquired belonged to the applicants and, therefore, they ought not to be joined as parties to these proceedings. 30

For the above reasons the preliminary point raised by the second respondents succeeds and the recourses should proceed between the applicants and the Council of Ministers only.

5                      Recourses against the second respondents are dismissed and the applicants to pay their costs in these proceedings.

Costs to be assessed by the Registrar.

*Order and order as to costs accordingly.*

### SCHEDULE

10                      The properties, the return of which is claimed by the applicants, are: -

Case No. 220/79 - Property under Registration No. 27468  
Sheet/Plan LIX/2.31.1.

15                      Case No. 221/79 - Property under Registration No. 31918  
Sheet/Plan LIX/2.2.1.

Case No. 222/79 - Property under Registration No. 33210  
Sheet/Plan LIX/2.2.1.

Case No. 79/83 - Property under Registration No. 33922,  
Sheet/Plan LIX/2.1. aiii.

20                      Case No. 80/83 - Property under Registration No. 33807,  
Sheet/Plan LIX/2.2.1.