[TRIANTAFYLLIDES, J.]

1962
Jan. 29
1964
Sept. 11, 15
1965
Mar. 27

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

COSTAS M. PIKIS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH:

1. THE COUNCIL OF MINISTERS,
2. THE MINISTER OF INTERIOR,
3. THE DIRECTOR OF LANDS AND SURVEYS DEPARTMENT,

Respondent.

(Case Nos. 104/61 and 197/62 Consolidated).

COSTAS M. PIKIS
and
THE REPUBLIC OF CYPRUS THROUGH
1. THE COUNCIL OF MINISTERS,
2. THE MINISTER OF INTERIOR,
3. THE DIRECTOR OF LANDS AND SURVEYS DEPARTMENT

Land—Acquisition of land—Claim for offering back to Applicant for sale land compulsorily acquired prior to Independence—Refusal or omission by competent authority to deal with such claim—Refusal amounts to contravention of constitutional rights of Applicant safeguarded under Article 29.1—Applicant entitled to a remedy under Article 146.

On the 5th April, 1961, counsel for the Applicant wrote to the Director of Lands and Surveys a letter *(Exhibit 1)* calling him to offer back for sale the property of Applicant which was compulsorily acquired by the Government in 1952—under the provisions of the Land Acquisition Law (then Cap. 233); the claim was made under Article 23(5) of the Constitution, on the ground that such property had been compulsorily acquired in 1952 for purposes of public health and "three years had since elapsed without the purpose of such acquisition having been attained".

On the 18th July, 1961, a reply *(exhibit 2)*, was given to Counsel for Applicant stating that the provisions of Article 23(5) did not apply to acquisitions made before the 16th August, 1960, and, that, in any case, even if they did apply, the purpose of the acquisition had been attained and, therefore, there could be no question of offering back the area concerned to its previous owner.

As a result, Applicant instituted Case No. 104/61 on 18th September, 1961.

Case No. 197/62 came to be filed as follows:-

On the 23rd June, 1962, counsel for Applicant addressed a letter *(exhibit 17)* to the Director of Lands and Surveys calling upon him to offer to Applicant for sale the property in question under "the Compulsory Acquisition Law 1962 and the Land Acquisition Law, Cap. 226".

On the 27th June, 1962, the Director of Lands and Surveys after referring to Case 104/61 replied to the letter of Applicant's Counsel of the 23rd June, 1962 and wrote *(exhibit 18)* "therefore either your letter has been written in error or, if there is any hidden purpose for which it was written or you wish to raise any new point other than the issues raised in the recourse, you must apply to the Court for discussion of the matter, if you are entitled to do so". In effect no reply was given to Counsel's request for the property to be offered.

There followed further exchange of communication and on the 17th August, 1962, the Director wrote a letter *(exhibit 21)* stating that he had nothing to add to the letter of the 27th June, 1962, *(exhibit 18)* and as a result, recourse 197/62 was filed on the 8th September, 1962.

Held, 1. On the reply of the Director of Lands and Surveys of the 18th July, 1961:-

(a) Without deciding in this Case whether or not Article 23(5) of the Constitution can apply to the case of a compulsory acquisition, which though it was completed before the 16th August, 1960, its purpose has not yet been attained even after the said date—and *Kamklides and The Republic* (2 R.S.C.C. p. 49 at p. 57) seems to point to such a conclusion—I have no doubt that it was correctly stated in *exhibit* 2 that no question of return of the property could have arisen under Article 23(5), in any case, even if it were applicable, for the simple reason that the purpose of the acquisition of the property of Applicant was attained well within three years after the compulsory acquisition in 1952. It cannot be disputed that the property was acquired in order to prevent building development thereon, in view of the fact that it was adjacent to the Leper Farm, and such purpose was fully attained and continued being attained from the date of the acquisition until the date of the move of the Leper Farm to a new site near Larnaca, through the mere fact of the acquisition.

II. On the refusal of Respondent to deal with the matter raised by the letter of Applicant's Counsel of 23rd June, 1962 (exhibit 17):-

(a) We are not faced with a failure to reply, from which a refusal to grant what has been claimed may be presumed, and in which case the Applicant having, as he has indeed, proceeded in respect of the substance of the matter, no question of separate relief for contravention of Article 29 could arise, (assuming always, without deciding it, that Applicant has not suffered any material detriment as a result of the failure itself to comply with Article 29(1)). This is a case where there has only been a refusal to attend to and decide on Applicant's request, without the possibility arising of implying also a refusal of the substance of such request. This Case is, therefore, different from *Kyriakides and The Republic* and any other case where failure to reply to a written request may be deemed to amount to refusal of the request itself, on its merits. *Kyriakides and The Republic*, 1 R.S.C.C. p. 66, distinguished.

(b) The refusal to consider Applicant's request, in the circumstances in which it has taken place, is not a new confirmation of a past decision of Government in the matter, but a *novus actus* with its own legal consequences, because it was the first time that Applicant was putting forward his claim under the relevant legislation. Refusal to consider it resulted in preventing Applicant from pursuing his claim further in the administrative field, causing him, thus, in any case, the detriment that would ensue if it was rejected on the merits.

(c) The refusal of Respondent to deal with the matter raised by the letter of counsel for Applicant dated the 23rd June, 1962, is hereby annulled and Recourse 197/62 succeeds to that extent only.

(d) The Respondent has now to attend to and decide on the claim contained in such letter. Actually this result would follow in any case once recourse 104/61 has been determined through the dismissal of Applicant's claim challenging the validity of *exhibit* 2; the reason for Respondent's refusal to deal with the substance of *exhibit* 17 has disappeared and the Respondent has to proceed to deal with the substance of the claim in *exhibit* 17.

(e) In this Judgment I have reached the conclusion, as already stated, that Respondent has refused to consider the claim contained in *exhibit* 17. Even if Respondent's response to the said claim were to be found (contrary to my view) to amount only to an omission to consider such claim, contrary to Article 29(1), and not to a refusal to consider it, then for the same reasons again Applicant would have been entitled to a remedy under Article 146 for the redress of such omission and Respondent would again have to proceed to attend to and decide on the substance of Applicant's claim. In effect, it makes no real difference for the outcome of this Case whether Respondent's failure to deal with the merits of the claim in *exhibit* 17 is to be taken to be either a refusal or an omission.

(f) As nothing has been established in the proceedings to show that the Ministry of Interior or the Council of Ministers have in any way refused, contrary to Article 29(1), to deal with the claim of Applicant contained in *exhibit* 17 or that they have even come to know of his claim, Applicant succeeds, to the extent to which he has succeeded for an infringement of Article 29(1), only as against "the Republic, through the Director of Lands and Surveys", and all references to Respondent in the proceedings must be understood in this limited sense. The Greek Communal Chamber, as an Interested Party, is also not responsible in any way.

III. As regards costs:

Regarding costs and bearing in mind that Applicant has been only partly successful in these proceedings as well as that these proceedings have been prolonged considerably through the devious procedural course followed by Applicant, through no fault of Respondent, I have decided not to make any order as to costs and that each party should bear its own costs. The same applies to the Interested Party.

Order in terms.

Observation: In conclusion I would observe that I feel that the result reached in this Judgment, apart from being in my opinion the correct one from the point of view of the legal and factual considerations as they exist, is also the right one from the point of view of practical administrative

propriety, in the sense that it is proper for the appropriate authorities to deal first with Applicant's claim as contained in *exhibit* 17, before any judicial pronouncement on the merits of such claim is made, if it ever has to be made. After all it must not be lost sight of that it is for the Government to govern and for the Court only to control, to the extent necessary, and it is not up to the Court to determine in the first instance matters of administration before Government has itself dealt with such matters on the merits;— and in order not to anticipate the future administrative action in the matter I am not deciding any of the other issues raised in the proceedings.

Order in terms.

Cases referred to:

Kaniklides and The Republic (2 R.S.C.C. p. 49 at p. 57);

Panayi v. Fraser (1963) 2 C.L.R. 356;

Ex parte Samuel (3 R.S.C.C. p. 76);

Kyriakides and the Republic, (1 R.S.C.C. p. 66 at p. 77);

Xenophontos and The Republic (2 R.S.C.C. p. 89 at p. 92).

Recourse.

Recourse against the decision or act of the respondent not to offer to applicant for sale immovable property acquired from him.

A. Triantafyllides with Lellos Demetriades, for the Applicant.

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

G. Tornaritis, for the Interested Party, the Greek Communal Chamber.

Cur. adv. vult.

The following judgment was delivered by:—

TRIANTAFYLLIDES, J.: The salient facts leading up to these proceedings, as they are to be found on the material before the Court, are as follows:—

On the 12th April, 1951, a certain N. J. Crayford, a lay worker at the Leper Farm, which was then situated at Palou-

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riotissa in the outskirts of Nicosia, wrote to the then Director of Medical Services pressing for the purchase of an area of land adjoining the Farm because "otherwise it will be sold for building sites which are directly overlooking the Farm and most unhealthily situated".

From subsequent correspondence between appropriate authorities, which is in evidence in these proceedings, it appears that the acquisition of the area in question was treated as a matter of public health.

On the 24th October, 1951, a notice under sections 2, 3 and 5 of the Land Acquisition Law (then Cap. 233), was published under Not. 545 in Supplement No. 3 of the official Gazette, in which it was stated that having been represented to the then Governor that it was "desirable in the public interest to acquire certain lands adjacent to the Leper Farm... for purposes of public health" he declared "the acquisition of the said lands to be an undertaking of public utility" and authorized its carrying out entrusting its supervision to the Director of Land Registration and Surveys.

On the 27th February, 1952, a notice to treat for the acquisition under section 6 of Cap. 233, was published under Not. 98 in Supplement No. 3 of the official Gazette, by the then Commissioner of Nicosia and Kyrenia, who after referring to the notice published by the Governor earlier, as aforesaid, proceeded to specify the area to be acquired as follows: "All that area of private land situated at Palouriotissa in the District of Nicosia, being plot No. 81 of the Government Survey Plan No.XXI, 55.4.II, containing 5 donums, 2 evleks and 2100 square feet or thereabouts...belonging to Mr. Costas Pikis of Nicosia...". The area is delineated in red on the relevant survey plan, *exhibit* 23 in this Case.

On the 7th May, 1952, a notice under section 7 of Cap. 233 was published under Not. 188 in Supplement No. 3 of the official Gazette, by the Governor, sanctioning the acquisition of the property of Applicant.

As no agreement was reached with Applicant regarding the compensation to be paid to him an application was made (No. 46/52) to the Nicosia District Court, on the 2nd August, 1952, for the matter to be referred to arbitration.

Before the conclusion of the arbitration an agreement was reached by which it was agreed that, instead of monetary

compensation, two areas of Government land would be given to Applicant in exchange for his area which was the subject of the acquisition. These areas are both situated at Strovolos and are delineated in red on the relevant survey maps, exhibits 24 and 25 in this Case. It is in evidence that at the time these properties were of equivalent value with the property of the Applicant. This agreement was made a joint award of the Arbitrators on the 27th February, 1953. Since then Applicant has disposed, through sale by way of building sites, of one of the said areas which was given to him, as above.

The Leper Farm moved from its original site to a new site near Larnaca in 1955. Until then no works of any kind were carried out on the area which had been acquired from Applicant.

In 1956 a Teachers' Training College started being erected on the old site of the Leper Farm and it was completed in 1959, when the ex-property of Applicant was fenced in, together with the site of the ex-Leper Farm, as grounds of the College.

No building of such College was actually erected on the area acquired from Applicant but only an access road, passing over a small part of such area and leading to the College, was constructed and it still exists to-day.

After the establishment of the Republic the said College and its grounds were ceded to the Greek Communal Chamber and are now the Paedagogical Academy.

The area which was acquired from Applicant is still registered in the name of the Cyprus Government under a registration dated the 9th March, 1953, which was made pursuant to the compulsory acquisition.

On the 5th April, 1961, counsel for the Applicant wrote to the Director of Lands and Surveys a letter (*exhibit* 1) calling him to offer back the property in question to Applicant under Article 23(5) of the Constitution, on the ground that such property had been compulsorily acquired in 1952 for purposes of public health and "three years had since elapsed without the purpose of such acquisition having been attained".

On the 18th July, 1961, a reply (*exhibit* 2) was given to

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counsel for Applicant stating that the provisions of Article 23(5) did not apply to acquisitions made before the 16th August, 1960 and, that, in any case, even if they did apply, the purpose of the acquisition had been attained and, therefore, there could be no question of offering back the area concerned to its previous owner.

On the 18th September, 1961, Applicant instituted recourse 104/61, by which a declaration is sought annulling the Respondent's refusal, as contained in *exhibit* 2, to offer back to Applicant his said property. The said recourse is based solely on Article 23 of the Constitution, and particularly paragraphs 4 and 5 thereof. It came up for hearing before the Supreme Constitutional Court and on the 31st March, 1962, while it was partly heard, an adjournment was sought and granted, as counsel for Applicant, in the light of what had transpired till then in the proceedings, wished to apply for leave to amend the Application.

By the 8th January, 1963, when recourse 104/61 had come up for hearing once more, the application for amendment had not yet been filed by counsel for Applicant; instead on the 8th September, 1962, Applicant filed another recourse, 197/62, in respect of the same property.

Case 197/62 came to be filed as follows:—

On the 23rd June, 1962, counsel for Applicant addressed a letter to the Director of Lands and Surveys (*exhibit* 17) calling upon him to offer to Applicant for sale the said property under "the Compulsory Acquisition Law 1962 and the Land Acquisition Law, Cap. 226".

On the 27th June, 1962 a most unsatisfactory—from a proper administration point of view—reply was given to counsel for Applicant (*exhibit* 18); the Director of Lands and Surveys, after referring to Case 104/61, wrote "therefore either your letter has been written in error or, if there is any hidden purpose for which it was written or you wish to raise any new point other than the issues raised in the recourse, you must apply to the Court for discussion of the matter, if you are entitled to do so". In effect no reply was given to counsel's request for the property to be offered back.

This provoked a further letter from counsel for Applicant dated 20th July, 1962 (*exhibit* 20) stating that if what was stated in the letter of the 27th June, 1962, was to be repeated

in any future reply of the Director or if no reply would be received from him by the 25th July, then it would be deemed that the Director refused to offer back the property in question to Applicant.

On the 26th July, 1962, the Director wrote a letter (*exhibit* 19) stating that he could not reply before obtaining legal advice and on the 17th August, 1962, he wrote (*exhibit* 21) stating that he had nothing to add to the letter of the 27th June, 1962.

After this last communication of the Director of Lands and Surveys recourse 197/62 was filed on the 8th September, 1962.

In view of the filing of recourse 197/62 and the reiterated intention of counsel for Applicant to file an application for amendment in recourse 104/61, the hearing on the 8th January, 1963, was adjourned further and on the 1st March, 1963, the said application having been filed in the meantime, it was directed that Cases 104/61 and 197/62 should be consolidated and new pleadings in the consolidated proceedings were ordered. It was also directed that the Greek Communal Chamber be joined as an Interested Party.

Eventually these two Cases came up for hearing on the 11th and 15th September, 1964, and judgment was reserved.

In these proceedings Applicant complains, first, against the refusal to offer back to him the property in question, as such refusal is contained in the letter of the 18th July, 1961 (*exhibit* 2).

Such letter was written in reply to a claim for the return of such property made by counsel for Applicant by letter of the 5th April, 1961 (*exhibit* 1). Both *exhibit* 1 and *exhibit* 2 were based on Article 23(5) of the Constitution.

In my opinion the said refusal, as contained in *exhibit* 2, amounts to a decision within the ambit of Article 146(1) and, therefore, it is a proper subject of recourse under such Article; it is not a new confirmation of any already adopted course of action of the administration but a decision specifically taken on a claim by Applicant that Article 23(5) should be applied in his favour.

In the new Application filed in the consolidated proceedings on the 11th April, 1963 (in the place of the separate Applica-

tions which had originally been filed in these consolidated Cases) Applicant's complaint against *exhibit* 2 is included, by means of claims for relief (a) and (b), but Article 23(5) is not relied upon in the grounds of law in support of the motion for relief. At the hearing, however, counsel for Applicant has sought to rely on such Article, by way of an additional ground of law.

In my opinion the decision contained in *exhibit* 2 is a valid one, for the following reasons:—

Without deciding in this Case whether or not Article 23(5) of the Constitution can apply to the case of a compulsory acquisition, which though it was completed before the 16th August, 1960, its purpose has not yet been attained even after the said date—and *Kaniklides and the Republic* (2 R.S.C.C. p. 49 at p. 57) seems to point to such a conclusion—I have no doubt that it was correctly stated in *exhibit* 2 that no question of return of the property could have arisen under Article 23(5), in any case, even if it were applicable, for the simple reason that the purpose of the acquisition of the property of Applicant was attained well within three years after the compulsory acquisition in 1952. It cannot be disputed that the property was acquired in order to prevent building development thereon, in view of the fact that it was adjacent to the Leper Farm, and such purpose was fully attained and continued being attained from the date of the acquisition until the date of the move of the Leper Farm to a new site near Larnaca, through the mere fact of the acquisition.

These proceedings, therefore, in so far as they relate to *exhibit* 2, have to be determined against Applicant; thus, in effect, recourse 104/61 is dismissed.

Applicant complains, next, in these proceedings against the refusal or omission of Respondent to offer back to him for sale the area concerned, as such refusal or omission is contained in the letters of the Director of Lands and Surveys, of the 27th June, 1962, and 26th July, 1962 (*exhibits* 18 *and* 19) (see claims (*c*) and (*d*)).

The above two letters have been already referred to in this Judgment as part of the correspondence which commenced by a letter of counsel for Applicant dated the 27th June, 1962, (*exhibit* 17), claiming that the area in question should be

offered for sale to Applicant under the provisions of the Compulsory Acquisition Law, 1962 (Law 15/62) and of the Land Acquisition Law, Cap. 226, and ended by a letter of the Director of Lands and Surveys dated the 17th August, 1962 (*exhibit* 21).

The letter of the 27th June, 1962 (*exhibit* 18) was not an answer to, or decision on, the substance of the claim of Applicant contained in the letter dated 23rd June, 1962 (*exhibit* 17). Being couched in rather evasive terms, it failed to deal at all with the substance of the claim of Applicant. The letter of the 26th July, 1962 (*exhibit* 19) was only a notice that reply to a further letter of counsel for Applicant, dated the 20th July, 1962 (*exhibit* 20), by which Applicant's claim in *exhibit* 17 was being reiterated, would be delayed in view of the need to seek legal advice. The last letter of this correspondence, the letter of the Director of Lands and Surveys, dated the 17th August, 1962, (*exhibit* 21) carried the matter no further because the Director, having delayed his reply, as above, ended up by saying only that he had nothing to add to his letter of the 27th June, 1962, (*exhibit* 17) which, as already stated, was not an answer to, or decision on, the substance of Applicant's claim.

In the light of the foregoing, I am not prepared to hold that either *exhibit* 18 *or* 19, relied upon by Applicant, or even the last reply, *exhibit* 21, amounts to a refusal or omission to offer for sale to Applicant the area concerned. The mere fact that Applicant's counsel has chosen to say in his letter of the 20th July, 1962 (*exhibit* 20) that unless he had a reply by the 25th July, he would take it that there was a refusal in the matter on the part of Government, is not sufficient to change the true position, which is that Respondent, because recourse 104/61 was pending, refrained—in a manner amounting, in my opinion, to a refusal to do so—from dealing with the substance of Applicant's claim contained in *exhibit* 17.

The said area was compulsorily acquired before the coming into existence of the Republic of Cyprus. The last existing Lands Office registration relating to it (in respect of which a title-deed is *exhibit* 26) is in the name of the Government of Cyprus and is dated the 9th March, 1953. It is, therefore, a registration in the name of the Government of the ex-Colony of Cyprus. The subject-matter of this registration has become, as from the 16th August, 1960, the property of the

Republic of Cyprus by virtue of section 1(1) of Annex E of the Treaty of Establishment of 1960 which was signed on the 16th August, 1960, on the occasion of the coming into being of the Republic.

I do not have to determine in this Case to what extent such Treaty has constitutional force as part of the Law of Cyprus (this appears to have been assumed or left open, and not directly considered and decided, in *Panayi v. Fraser* Civil App. 4421*; also it was held that the Treaty is not part of the Constitution itself, in *Ex parte Samuel*, 3 R.S.C.C. p. 76). As the Republic became entitled to the ownership of the area in question by virtue of Section 1(1) of Annex E of the Treaty it must pay due regard to the rights, if any, of other persons in respect of such property, such rights having been expressly saved by paragraph 3 of the same section 1 of Annex E.

Applicant's claim as contained in the letter of the 23rd June, 1962 (*exhibit* 17), though not expressly referring to Annex E of the Treaty of Establishment, identified the area in question sufficiently for the appropriate authorities to be in a position to ascertain that this was property which had devolved upon the Republic under section 1(1) of Annex E, and, therefore, to appreciate, also, that Applicant's claim was a claim of right in respect of such property; a right, possibly, saved under section 1(3) of Annex E—and I said "possibly" because it is not my intention in this Judgment to determine whether or not Applicant's claim is in fact well-founded under the relevant legislation or section 1(3) of Annex E or otherwise.

In the circumstances, the Administration had before it a claim which was not prima facie frivolous and, therefore, meriting action on its part in the form of consideration thereof and decision thereon.

Article 29 of our Constitution provides as follows:—

> "1. Every person has the right individually or jointly with others to address written requests or complaints to any competent public authority and to have them attended to and decided expeditiously; an immediate notice of any such decision taken duly reasoned shall be given to the person making the request or complaint

*(1963) 2 C.L.R. 356.

and in any event within a period not exceeding thirty days.

2. When any interested person is aggrieved by any such decision or when no such decision is notified to such person within the period specified in paragraph 1 of this Article, such person may have recourse to a competent court in the matter of such request or complaint".

This right, laid down as a Fundamental Right and Liberty by Article 29(1), is one of the basic rights of any person living under the Rule of Law. As explained by Svolos and Vlachos in their commentaries on "The Constitution of Greece" (1955) Part I, volume B, p. 152 (in relation to Article 9 of the Greek Constitution to which our Article 29 is similar) the right in question is derived both from Anglo-Saxon and French sources of law—such as the English Bill of Rights of 1689, where, under article 5, is safeguarded "the right of the subjects to petition the King"; the First Amendment of the U.S.A. Constitution, made by the American Bill of Rights, of 1791, whereby is provided for "the right of the people .... to petition the Government for a redress of grievances"; the French Constitution of 1791 whereby is guaranteed, in Article I(2), "la liberté d' adresser aux autorités publiques des pétitions".

As stated in the above commentaries (at p. 185) the existence of this right is a benefit for the citizen, in securing easy satisfaction of his rights.

Paragraph 2 of Article 29 lays down that a person who is aggrieved by either a decision reached on a request or complaint made under paragraph 1 of Article 29 or who has received no notification of a decision within the prescribed period has a recourse to court. This paragraph 2 is not intended to prescribe the remedy by way of recourse, as such, —as this is left to the provisions of the Constitution about the Judicial Power—but is intended to ensure that there exists a right of recourse, in other words to render unconstitutional any legislation or other measure excluding such recourse.

In matters in the sphere of administrative law this right of recourse is to be found under Article 146(1) (see *Kyriakides and The Republic*, 1 R.S.C.C. p. 66 at p. 77).

The purpose of paragraph 2 of Article 29 being what it has been stated to be, such paragraph cannot be treated as excluding a right of recourse in a case where there is a contravention of paragraph 1 of Article 29, other than as envisaged in paragraph 2 thereof, as, for example, a direct refusal to attend to and decide on a written request addressed to a competent public authority, and not merely a failure to reply. In my opinion against such refusal a recourse would lie under Article 146 provided the jurisdictional requirements of such Article were satisfied. That a failure to comply with the requirements of paragraph 1 of Article 29 may, in a proper case, give rise to a recourse under Article 146, seems to have been recognized in the process of reasoning of the judgment in *Xenophontos and the Republic* (2 R.S.C.C. p. 89 at p. 92).

In this connection it must be borne in mind that Article 29 is a provision in Part II of the Constitution, on Fundamental Rights and Liberties, and Article 35 in Part II, too, provides that the "legislative, executive and judicial authorities of the Republic shall be bound to secure, within the limits, of their respective competence, the efficient application of the provisions" of such Part II.

In the matter under consideration there has been a written request by Applicant, through his counsel, to competent authority, the Director of Lands and Surveys, for the offer back to Applicant of his previously compulsorily acquired property, and as already stated such request was not frivolous on the face of it, irrespective of whether it was validly made.

The Director of Lands and Surveys was a competent authority because in the notification published on the 24th October, 1951, in the official Gazette, as aforesaid, he had been entrusted with the supervision of the relevant undertaking. Even if the Director did not have competence to deal fully with the matter raised himself, he had sufficient prima facie competence to be regarded as "competent public authority" for the purposes of Article 29(1); he had a duty to refer the matter further to any other also competent authority.

As indicated earlier in this Judgment, in my opinion the Respondent in this Case has refused to attend to and decide on Applicant's request as contained in the letter of the 27th June, 1962 (*exhibit* 17). Such refusal is direct and not only implied; it is not deduced from failure to reply but from

written replies. If *exhibits* 18, 19 *and* 21 are read together there can be no doubt on this point.

Moreover, it is not a refusal to grant Applicant's request, but a refusal to deal with it at all. This in my view is a clear failure to accord to Applicant what he was entitled to under Article 29(1) and, thus, his rights safeguarded thereunder have been contravened.

What has to be decided is to what remedy, if any, is Applicant entitled to in the circumstances.

In the Case of *Kyriakides and The Republic*, referred to earlier, the Court held (at p. 77):

> "In the opinion of the Court paragraph 2 of Article 29 gives, *inter alia*, an aggrieved person a right of recourse to a competent court in respect of the failure to furnish him with a reply in accordance with paragraph 1 of such Article. It is clear that, where the competent public authority, which has failed to reply as above, is one of those referred to in paragraph 1 of Article 146, then this Court is the competent court in question and proceedings lie before it under Article 146 in respect of such failure itself to reply.
>
> Where, however, a person who has not received a reply as provided under Article 29, has proceeded under Article 146 in respect of the substance of the matter for which a reply had been sought then it cannot be said that such a person continues any longer to have 'any existing legitimate interest', as provided by paragraph 2 of Article 146, unless as a result of such failure itself he has suffered some material detriment which would entitle him to a claim for relief under paragraph 6 of Article 146 after obtaining a judgment of this Court under paragraph 4 of the same Article.
>
> Therefore such a person cannot, as a rule, claim under Article 146 a distinct and separate decision of this Court in respect of the failure to comply with Article 29 when he has proceeded in respect of the substance of the matter for which a reply had been sought".

That case was a recourse by which Applicant was complaining, *inter alia*, that a District Officer had failed to reply, contrary to Article 29, to applications for a permit to possess

a firearm and for the issue of a copy of a game licence. By the same recourse the Applicant had proceeded in respect of the substance of the matters for which a reply had been sought, by treating the silence of the District Officer as a refusal of the permit and copy of licence requested, and this view was accepted by the Court.

The position, however, in the sub judice Case is different. We are not faced with a failure to reply, from which a refusal to grant what has been claimed may be presumed, and in which case the Applicant having, as he has indeed, proceeded in respect of the substance of the matter, no question of separate relief for contravention of Article 29 could arise (assuming always, without deciding it, that Applicant has not suffered any material detriment as a result of the failure itself to comply with Article 29(1)). This is a case where there has only been a refusal to attend to and decide on Applicant's request, without the possibility arising of implying also a refusal of the substance of such request. This Case is, therefore, different from *Kyriakides and The Republic* and any other case where failure to reply to a written request may be deemed to amount to refusal of the request itself, on its merits.

In the present Case Applicant, being the owner from whom the area concerned has been compulsorily acquired and having addressed a written request to competent public authority, has an existing legitimate interest in the respect of his constitutional right guaranteed under Article 29(1). Such right has been infringed by the refusal to attend to or decide on Applicant's request. The said refusal was an act made by a person exercising executive or administrative authority and as this act amounted to an infringement of a constitutional right of Applicant, contrary to Article 29(1), such act was made contrary to a provision of the Constitution. It follows from the above that Applicant is entitled to a remedy under Article 146.

The refusal to consider Applicant's request, in the circumstances in which it has taken place, is not a new confirmation of a past decision of Government in the matter, but a *novus actus* with its own legal consequences, because it was the first time that Applicant was putting forward his claim under the relevant legislation. Refusal to consider it resulted in preventing Applicant from pursuing his claim further in the administrative field, causing him, thus, in any case, the

detriment that would ensue if it was rejected on the merits.

Recourse 197/62, which is that part of these proceedings which refers to the response of Respondent to Applicant's request contained in the letter of the 23rd June, 1962 (*exhibit* 17), is clearly within time, under Article 146(3), as it was filed on the 8th September, 1962, and Respondent's last reply is dated 17th August, 1962.

It is true that due to the subsequent interlocutory proceedings a consolidation has taken place of recourse 197/62 with recourse 104/61 and a new Application was filed incorporating both previous Applications, on the 11th April, 1963, but that new Application, in the consolidated proceedings, cannot be treated as being itself a new recourse filed on the 11th April, 1963, and as being, therefore, out of time. It is a pleading filed in proceedings which were still continuing and which were filed in time.

In reaching the decision that Applicant is entitled to a remedy under Article 146 in relation to the refusal of Respondent to deal with *exhibit* 17, I have borne in mind the dicta in *Xenophontos and The Republic*, above, to the effect that for redress to be open to an Applicant under Article 146 in respect of a contravention of Article 29(1) it is necessary for the subject-matter of the written request or complaint made under Article 29 to be within the jurisdiction of the Court under Article 146. I am of the opinion that the subject-matter of *exhibit* 17 is within such jurisdiction because whatever decision is to be taken in future by Respondent, in accordance with the legislation properly applicable, it will be a decision taken by an organ of the Republic acting in the sense of Article 146, irrespective of the fact that the compulsory acquisition in question took place before the creation of the Republic—and in an analogous situation in *Kaniklides and The Republic*, above, it was found that competence under Article 146 existed. What matters is the nature of the decision to be taken on the claim of Applicant contained in *exhibit* 17, at the time when it is to be taken, and not the date of the acquisition giving rise to such claim; even such acquisition had it taken place after the 16th August, 1960, would have been itself, by its very nature, a matter within the ambit of the competence under Article 146.

It is to be noted that Applicant in these proceedings has not actually sought to annul the administrative action taken

in relation to *exhibit* 17 on the ground that it contravened Article 29(1). This, however, cannot prevent an administrative court, such as this Court, from administering justice in the matter as it deems proper. Applicant has challenged the validity of the said action under Article 146 and it is open to this Court to annul such action on any ground of law, even if not raised by the parties, if in the opinion of the Court such course is properly called for. This is a necessary corollary of the nature of the competence of an administrative court on a recourse for annulment (see Tsatsos on the Recourse for Annulment to the Council of State 2nd edition pp. 225-226).

The reason for which the Director of Lands and Surveys has refused at the time to deal with Applicant's request appears to have been the fact that recourse 104/61 was then pending. But the fact that a recourse is pending in a matter is not either an obstacle to the taking of, or a justification for the refusal to take, any course of action that is necessary in the interests of proper administration. In the present instance what was called for, in the interests not only of proper administration but by express constitutional provision, was a consideration of and decision on the substance of the claim of Applicant, either in the negative or in the affirmative—and I am making no finding at all as to what the correct decision in the matter should be.

Moreover, the subject-matter of recourse 104/61, the rejection of a claim under Article 23(5), though relating to the same property, was different than the claim contained in *exhibit* 17, and case 104/61 could not have been affected by a decision as to whether Applicant was or was not entitled to have the same property offered back to him under ordinary legislation, except to the extent of rendering case 104/61 superfluous if Applicant's claim in *exhibit* 17 were to be met.

In the light of all the foregoing, the refusal of Respondent to deal with the matter raised by the letter of counsel for Applicant dated the 23rd June, 1962 (*exhibit* 17) is hereby annulled and recourse 197/62 succeeds to that extent only.

The Respondent has now to attend to and decide on the claim contained in such letter. Actually this result would follow in any case once recourse 104/61 has been determined through the dismissal of Applicant's claim challenging the validity of *exhibit* 2; the reason for Respondent's refusal to

deal with the substance of *exhibit* 17 has disappeared and the Respondent has to proceed to deal with the substance of the claim in *exhibit* 17

In this Judgment I have reached the conclusion, as already stated, that Respondent has refused to consider the claim contained in *exhibit* 17. Even if Respondent's response to the said claim were to be found (contrary to my view) to amount only to an omission to consider such claim, contrary to Article 29(1), and not to a refusal to consider it, then for the same reasons again Applicant would have been entitled to a remedy under Article 146 for the redress of such omission and Respondent would again have to proceed to attend to and decide on the substance of Applicant's claim In effect, it makes no real difference for the outcome of this Case whether Respondent's failure to deal with the merits of the claim in *exhibit* 17 is to be taken to be either a refusal or an omission.

As nothing has been established in the proceedings to show that the Ministry of Interior or the Council of Ministers have in any way refused, contrary to Article 29(1), to deal with the claim of Applicant contained in *exhibit* 17 or that they have even come to know of his claim, Applicant succeeds to the extent to which he has succeeded for an infringement of Article 29(1), only as against "the Republic, through the Director of Lands and Surveys", and all references to Respondent in the proceedings must be understood in this limited sense The Greek Communal Chamber, as an Interested Party, is also not responsible in any way

In conclusion I would observe that I feel that the result reached in this Judgment, apart from being in my opinion the correct one from the point of view of the legal and factual considerations as they exist is also the right one from the point of view of practical administrative propriety, in the sense that it is proper for the appropriate authorities to deal first with Applicant's claim as contained in *exhibit* 17 before any judicial pronouncement on the merits of such claim is made, if it ever has to be made After all it must not be lost sight of that it is for the Government to govern and for the Court only to control, to the extent necessary and it is not up to the Court to determine in the first instance matters of administration before Government has itself dealt with such matters on the merits,—and in order not to anticipate the

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Mar. 27
—
COSTAS M. PIKIS
and
THE REPUBLIC OF CYPRUS THROUGH
1. THE COUNCIL OF MINISTERS,
2. THE MINISTER OF INTERIOR,
3. THE DIRECTOR OF LANDS AND SURVEYS DEPARTMENT

future administrative action in the matter I am not deciding any of the other issues raised in the proceedings.

Regarding costs and bearing in mind that Applicant has been only partly successful in these proceedings as well as that these proceedings have been prolonged considerably through the devious procedural course followed by Applicant, through no fault of Respondent, I have decided not to make any order as to costs and that each party should bear its own costs. The same applies to the Interested Party.

Case No. 104/61 *dismissed.*

Case No. 197/62 *succeeds in part.*

Order as to costs as aforesaid.