1965
Feb. 15
June 3,
Oct. 18,
Nov. 18
1966
May 24
CHRYSOCHOU BROS
and
1. THE CYPRUS TELECOMMUNICATIONS AUTHORITY
2. THE REPUBLIC OF CYPRUS, THROUGH THE COUNCIL OF MINISTERS

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHRYSOCHOU BROS.

Applicants,

and

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

Respondents.

(*Case No. 105/63*).

Immovable Property—Compulsory Acquisition of land—Recourse against acquisition of Applicants' immovable property—Validity of the order for acquisition as sanctioned and made—Order of acquisition annulled as made contrary to well-established principles of Administrative Law and in abuse and excess of powers—The Compulsory Acquisition of Property Law, 1962 (Law 15 of 1962), sections 2 (1) and 6 (3) (b), the Telecommunications Service Law, Cap. 302, (as amended), sections 5 and 29 and the Constitution of Cyprus, Article 23 (4) (b)—See, also, herebelow.

Administrative Law—Proper administration—Compulsory acquisition of immovable property—Proper exercise of the relevant discretionary powers, by acquiring authorities, in accordance with the notions of proper administration—Principles to be regarded as applicable in Cyprus and regulating the matter—See, also, herebelow.

Acquisition of land—Compulsory acquisition of—Principles applicable—See above and herebelow.

Administrative Law—Composite administrative act—Order of compulsory acquisition of land—Made by respondent 1, the acquiring authority—Sanctioned by the Council of Ministers, respondent 2, under section 6 (3) of the aforesaid law 15 of 1962,(supra)*—Validity of such act—For its validity to be upheld such act has to be valid to both its essential components—* Viz. *the action taken by CYTA, respondent 1, and the action taken by the Council of Ministers, respondents 2—See, also, above and herebelow.*

Administrative act—Composite act—See above.

Composite act—Validity—See above.

Administrative Law—Administrative decisions—Decision which has never been duly decided upon at the proper time—Decision taken without sufficient deliberations and without sufficient exercise of the relevant discretionary powers—And in a manner inconsistent with the Constitution, the relevant legislative provisions and all notions of proper administration—See, also, above and herebelow.

Collective organ—Essential formalities necessary for the proper functioning of a public collective organ—See, also, immediately, above.

Discretionary powers—Improper exercise of—Abuse and excess of powers—See, above and herebelow.

Proper Administration—Principles or notions of proper administration—See above and herebelow.

Records—Minutes—Lack of proper records or minutes criticized.

Compulsory Acquisition of property—Principles applicable—The requirements of proper administration and the proper use of discretionary powers render it imperative that a compulsory acquisition should not be ordered if its objects can be achieved in any less onerous manner-And that it should only be resorted to if it is absolutely necessary to do so—After exhausting the alternative possibilities of achieving its objects by purchasing other suitable land which is voluntarily offered for sale—Moreover, before resorting to compulsory acquisition of a particular property, the acquiring authority must exhaust the possibility of acquiring compulsorily other suitable land—The acquisition of which will entail a deprivation less onerous than the deprivation entailed by the proposed acquisition—See, also, above, and herebelow.

Compulsory Acquisition—Discretion—Extent of the area required—Such extent is a matter for the discretion of the acquiring authority—But in the present instance the part of land acquired is so manifestly beyond the requirements stated in the relevant Notice of acquisition—That the acquisition as decided upon, is invalid and in abuse and excess of powers.

Abuse and excess of powers—See above.

Excess and abuse of powers—See above.

The applicants in the instant recourse complain against the compulsory acquisition of their property by respondent 1, the Cyprus Telecommunications Authority (hereafter referred to as CYTA), with the sanction of respondent 2, the Council of Ministers. The purpose of the acquisition was to secure *access to the rear yard of the premises of respondent 1.* The notice of intended acquisition was published on the 12.4.62 by respondent 1, under section 4 of the Compulsory Acquisition of Property Law, 1962 (Law 15/62) ; and the sub judice order of acquisition was published by respondent 1, under section 6 of the same Law, on the 28.3.63, with the sanction of the Council of Ministers, respondent 2, under sub-section (3) of the said section 6.

Upon publication of the aforesaid notice of acquisition, the lawyer acting for applicants wrote to CYTA, on the 24th April, 1962, with copies to the Council of Ministers (respondents 2) and others, objecting against the proposed acquisition ; he pointed out that what was described in the relevant plan as " a private road " was really part of the parking place of the applicants' cinema, which space was absolutely necessary for the purposes of such cinema and that reduction of the said parking place, through acquisition of the part specified in the aforesaid notice of acquisition, *would have catastrophic consequences for the applicants'* cinema business ; he, further, suggested that CYTA (respondent 1) should try and acquire, for its purposes, other neighbouring land, the acquisition of which would not entail as grave consequences as those to be entailed in relation to the cinema business of applicants through reduction of the parking place available for their cinema.

Eventually the matter came before the Council of Ministers, which under section 6 (3) of Law 15 of 1962 (*supra*), was the appropriate organ to sanction such compulsory acquisition. On the 7th March, 1963, the Council of Ministers decided to reject the objection of applicants and sanctioned the making of the Order of compulsory acquisition, which, under section 6 of the said Law, was thus published by CYTA in the Official Gazette on the 28th March, 1963.

The recourse against that order was filed on the 11th June, 1963.

The Court in annulling the *sub judice* Order of compulsory acquisition :—

Held, I. With regard to the formal defects and the lack of proper deliberations of the collective organ concerned :—

(1) The *sub-judice* order complained of is a composite administrative act in that it has been made by respondent 1, the acquiring authority, but it has been sanctioned by respondent 2, under section 6 (3) of Law 15/62. For its validity to be upheld, in the circumstances of this Case, such act has to be valid with regard to both its essential components, *viz.* the action taken by respondent 1 and, also, the action taken by respondent 2; (see also the Conclusions from the Jurisprudence of the Council of State in Greece 1929–1959 p. 244).

(2) (*a*) Though under the provisions of sections 5 and 29 of the Telecommunications Service Law, Cap. 302, (as amended by Laws 20/60 and 34/62) and, also, of section 2 (1) of Law 15/62, it is most clear that it is the Authority itself, *i.e.* the Board of CYTA, which is the acquiring authority in a case such as the present one, and though under Article 23 (4) (*b*) of the Constitution " a decision of the acquiring authority " is envisaged in relation to a compulsory acquisition, no contemporaneous decision of the CYTA Board exists; not even any relevant minutes of such Board have been kept in this matter until the 14th June, 1963, which is *two and a half months after the completion* of the *sub judice* compulsory acquisition through the publication of the Order of acquisition on the 28th March, 1963.

(*b*) In spite of some belated efforts by the Board of CYTA to meet the vacuum in its minutes, the fact remains that no contemporaneous decision or minutes of such Board exist in relation to anything done in the matter of the compulsory acquisition in question.

(3) It, thus, appears clearly that the Board of CYTA has, right down to the making of the Order of acquisition, never dealt with, and considered formally and fully, the matter of the compulsory acquisition of the property of applicants, *and never reached or recorded any formal decision thereon*, but the matter was being handled personally by the then Chairman of CYTA. Consequently the said Board has never functioned properly as an acquiring authority, in the sense of the relevant legislative provisions ; through merely being kept informed of what the Chairman was doing in

the matter and, possibly, approving informally, again, his actions—without recording anything in its minutes—it cannot be held to have exercised its relevant discretionary powers sufficiently or properly, and it has failed to conform to the minimum standard of essential formalities necessary for the valid functioning of a public collective body ; it does not seem that either the Notice of acquisition or the Order of acquisition were ever decided upon by the Board, as such, (as envisaged by Article 23 (4) (*b*) of the Constitution).

(4) (*a*) I have, therefore, reached the conclusion that the compulsory acquisition of applicants' property has never been duly decided upon, at the proper time, by respondent 1, *i.e.* by its Board ; it was only dealt with by such Board informally, without a sufficient exercise of the relevant discretionary powers, and in a manner inconsistent with the Constitution, the relevant legislative provisions, and all notions of proper administration.

(*b*) It follows, that the sub judice acquisition Order has to be declared to be *null and void* and of no effect whatsoever.

(5) Even the sanction of the Council of Ministers, respondent 2, has to be treated as being vitiated by the failure of CYTA, respondent 1, to deal properly with the matter of the requisition. A proper decision of respondent 1 is a prerequisite and condition precedent for the granting of the sanction of the Council of Ministers, respondent 2, under section 6 (3) (*b*) of the aforesaid Law 15/62 (*supra*) ; the Council of Ministers, relying on the presumption of regularity, must have regarded the letter of the then Chairman of CYTA, dated the 15th December, 1962, (accompanying the submission of the matter to the Council of Ministers)—as having been written after due process in the Board and, thus, it decided to grant its sanction on incorrect premises.

II. With regard to the principles applicable in making acquisition orders:—

(1) In this connection it is useful to bear in mind that the requirements of proper administration and the proper use of the relevant discretionary powers render it imperative that a compulsory acquisition should not be ordered if its object can be achieved in any less onerous manner ; and it should only be resorted to if it is absolutely necessary to do so and after exhausting the alternative possibility of achieving

its object by means of purchasing other suitable property which is voluntarily offered for sale by its owner. Moreover, before resorting to compulsory acquisition of a particular immovable property the acquiring authority must exhaust the possibility of acquiring compulsorily other suitable immovable property the acquisition of which will entail a deprivation less onerous than the deprivation entailed in the proposed acquisition ; (See Conclusions from the Jurisprudence of the Greek Council of State 1929–1959 p.87) and the above principles render all the more striking the already found, in this Judgment, lack of proper consideration of the matter by the Board of CYTA.

(Decisions 300/1936, 1023/1949, 608/1955 92/1957 of the Greek Council of State and the case of *Venglis* and T*he Electricity Authority* (1965) 3 C.L.R. 252, cited with approval.)

(2) I am, also, of the view (see, *inter alia,* the letter of the Chairman of CYTA, exhibit 9—which is the same as Appendix I to Exhibit 10 (*a*)—as well as his letter, exhibit 17) that, when the compulsory acquisition of part of Applicants' property was decided upon, due regard was not paid at all to the onerous consequences which such acquisition would have entailed for Applicants, in view of the vital use which was being served by such part in relation to the cinema business of Applicants—and I do accept that it was a very vital use indeed ; as a result no due regard was paid, either, *to the possibly serious compensation aspect involved in such* acquisition. Thus, the onerous consequences of the acquisition, both for the Applicants and for the finances of CYTA, were not weighed as against the possibility of acquiring, even compulsorily if necessary, a part of any other of the adjoining properties, which could suitably serve more or less the needs in question of CYTA—as *e.g.* part of plot 179—and the acquisition of which might not entail the same onerous consequences.

(3) On the basis of the foregoing I have reached the conclusion that the sub judice Order of acquisition has to be annulled as made contrary to well-established principles of Administrative Law (and, thus, contrary to law—see *PEO and Board of Films Consors and another,* (1965) 3 C.L.R. 27 and *in abuse and excess of powers, in that it was made without* sufficient study of possible alternatives, especially from the point of view of the possibility of acquiring access through any

other suitable property, either by means of voluntary sale or, if by compulsory acquisition, with less onerous consequences than those existing in the case of the acquisition of applicants' property.

(4) In addition to the grounds, on which the sub judice acquisition Order has already been found, in this Judgment, to be a proper subject for annulment, there are two more grounds which lead to the same result :—

(A) (*a*) First, I am of the opinion that the Order of acquisition, as sanctioned and made, had not chosen the less onerous way of achieving the purpose of the acquisition; on the material before me, I do fail to see why it was necessary to acquire ownership of part of the property of applicants in order to secure a section of the access to the rear of the premises of CYTA, when for the remainder, and larger section, of such access only a right of way was acquired over the "private road" of applicants, all the way to Katalanos Street. The less onerous method, that of acquiring only a right of way over the area which was compulsorily acquired, should have been resorted to ; and I am not convinced at all by respondents' argument that the area which was acquired, had to be acquired, because if only a right of way over it had been acquired it could have been blocked at night by parked cars of cinemagoers ; exactly the same risk of blocking exists, in any case, in relation to the part of the " private road" of the applicants over which only a right of way was acquired, and which is part of the parking space of the cinema; so it was pointless to ensure that the access would not be blocked for part of its length only; the acquisition ought to have been limited to what was absolutely necessary for the purpose of securing access, i.e. the acquisition of a right of way over the area concerned, and should it have proved that this right of way was being unlawfully interfered with, then resort could be had, not to a greater than necessary, extent of acquisition, but to the legal remedies available before Courts of law for protecting a right of way against interference.

(*b*) I find, thus, that the Order of acquisition offends against the aforesaid principles of Administrative Law and was made in abuse and excess of powers in that it did not adopt the less onerous manner of securing access to the premises of CYTA over the property of applicants.

(B) Secondly, the compulsory acquisition, as sanctioned and made, has exceeded by far the requirements specified in the Notice of Acquisition, which are, as already stated, " Space necessary " for securing a " road " leading from the rear gate of the premises of CYTA to the "private road" of applicants. Such " private road ", as it appears from *exhibit* 3 (*a*), is about 20 feet wide. I, therefore, do not see why the road which was to link the rear gate of the premises of CYTA with this " private road " should have been about 50 feet wide, as the part coloured red, which was compulsorily acquired, appears to be on *exhibit* 3 (*a*). Bearing fully in mind that the extent of the area necessary for the acquisition is a matter within the discretion of the acquiring authority, I still think that in the present instance the part acquired is so *most manifestly beyond* the requirements stated in the Notice of acquisition, that I have to find that the acquisition, as decided upon, is invalid and in abuse and excess of powers. From all the material before me in this Case, I have, indeed, been led to the conclusion that under the cloak of securing a right of way, respondent No. 1 has proceeded, in a manner inconsistent with the Notice of acquisition, to acquire, in effect, space necessary for enlarging the rear yard of its premises, for parking and other purposes, thus acting in excess and abuse of its relevant powers.

Cases referred to :

Decision No. 300/1936 of the Greek Council of State;

Decision No. 1023/1949 of the Greek Council of State;

Decision No. 608/1955 of the Greek Council of State;

Decision No. 92/1957 of the Greek Council of State;

Venglis and The Electricity Authority (1965) 3 C.L.R. p. 252;

PEO and Board of Films Censors and another (1965) 3 C.L.R. 27.

Recourse.

Recourse against an order of compulsory acquisition whereby Applicants' property–described in the notice of compulsory acquisition published under Not. 169 in Supplement No. 3 to the official Gazette of the 12th April, 1962–was compulsorily acquired by Respondent 1 with the sanction of Respondent 2.

A. Triantafyllides with *E. Odysseos*, for the Applicants.

A. Hadji Ioannou, for Respondent 1.

K. Talarides, L. Loucaides and *M. Spanos*, advocates of the Republic, for Respondent 2.

Cur. adv. vult.

The following Judgment was delivered by:-

TRIANTAFYLLIDES, J.: In this Case the Applicants seek a declaration that the Order of compulsory acquisition, published under Not. 155 in Supplement No. 3 to the official Gazette of the 28th March, 1963, whereby Applicants' property—described in the Notice of compulsory acquisition published under Not. 169 in Supplement No.3 to the official Gazette of the 12th April, 1962—was compulsorily acquired by Respondent 1, the Cyprus Telecommunications Authority (CYTA), with the sanction of Respondent 2, the Council of Ministers, is null and void and of no effect whatsoever.

The relevant facts, as found by me on the basis of the material before the Court, are as follows:-

The Applicants are a partnership and they are the owners-managers of the "REX" cinema at Morphou, which is built on the property of Applicants which is coloured blue on the survey map, *exhibit* 4; on this map the building of the said cinema is marked out in red lines as a rectangle.

The two parallel red lines appearing on the said map, next to the rectangle of the cinema, indicate a "private road" of Applicants which runs through their property. This "private road" and all the area of Applicants' property, around the cinema, are being used for the purpose of access to the cinema and for parking purposes; actually it became necessary for Applicants to acquire neighbouring land and include it in their holdings around the cinema in order to meet the requirements for parking space for the cinema, as laid down by the appropriate authorities.

The area coloured red on the map (*exhibit* 4) is the part of Applicants' property which has been compulsorily acquired by means of the sub judice Order of acquisition; by virtue of the same Order a right of way was also compulsorily acquired over the said "private road" of Applicants.

The part coloured yellow on the same map are the premises of CYTA, where it is to be found the Morphou Telephone Exchange; it is in relation to such premises that the compulsory aquisition complained of has been effected.

The said promises of CYTA were bought by it sometime in 1961; from the report of the Chief Engineer of CYTA, dated the 2nd March, 1961, in relation to the suitability of the said premises for the purposes of CYTA, it appears that, at the time, securing access to the rear yard of such premises, by means of the "private road" of Applicants, was already being contemplated (see *exhibit* 16).

On the 19th June, 1961, the lawyer of CYTA wrote a letter to the Applicants stating that CYTA was considering the compulsory acquisition of part of the Applicants' property, at the rear of its premises, in order to ensure better access thereto; by means of the said letter the Applicants were invited to discuss the matter with the General Manager of CYTA, with a view to an agreed arrangement in such matter (see *exhibit* 6).

On the 4th July, 1961, Applicants wrote back saying that they were prepared to grant a passage through their property; they proposed two alternatives, quoting in each case the price they were claiming (see *exhibit* 7).

On the 14th September, 1961, the lawyer of CYTA replied that the price demanded by Applicants was excessive (see *exhibit* 8).

In the meantime there took place, also, personal discussions between Applicants and the then General Manager of CYTA (who was its Chairman too) Mr. G. Charalambous, but such discussions turned out to be inconclusive.

Then, on the 12th April, 1962, a Notice of intended compulsory acquisition was published under Not. 169 in Supplement No. 3 to the official Gazette; it was published by CYTA under section 4 of the Compulsory Acquisition of Property Law, 1962 (Law 15/62); it referred to plans —which are *exhibits* 3(*a*) *and* 3(*b*) in these proceedings— by means of which the subject-matter of the intended compulsory acquisition was defined; the part coloured red on *exhibits* 3(*a*) *and* 3(*b*) is the same as the part coloured red on *exhibit* 4, i.e. the part of Applicant's property which was compulsorily acquired, eventually.

It is to be noted that the part to be acquired was described in the Notice of acquisition as "Space necessary for securing own road from the rear gate of the yard of the premises" of CYTA at Morphou to the aforementioned "private road" of Applicants. This part, as delineated on *exhibit* 3(*a*), joins up with the said "private road" along a front about 50 feet wide; it is about 32 feet long at one end and about 16 feet long at the other end, where the rear gate of the CYTA premises is.

By the same Notice of acquisition it was stated that a right of way was to be acquired along the "private road" of Applicants up to the nearest public street—which is, as it appears on *exhibits* 3(*b*) *and* 4, Katalanos Street.

The reason for the acquisition was stated to be the securing of access for the vehicles, servants and other persons coming to the premises of CYTA at Morphou.

Upon publication of the Notice of acquisition, the lawyer of Applicants wrote to CYTA, on the 24th April, 1962—with copies to the Council of Ministers, to the Minister of Communications and Works, to the Appropriate Authority for building permits in Morphou and to the Mayor of Morphou—objecting against the proposed acquisition (see *exhibit* 2); he pointed out that what was described as a "private road" was really part of the parking space of the cinema, which space was absolutely necessary for the purposes of such cinema; he explained that reduction of the said parking space, through acquisition of the part specified in the Notice of acquisition, would have catastrophic consequences for the cinema business of the Applicants; he suggested that CYTA should try and acquire for its purposes, other neighbouring land, the acquisition of which would not entail as grave consequences, as those to be entailed in relation to the cinema business of Applicants through reduction of the parking space available for their cinema.

Eventually the matter of the compulsory acquisition in question came before the Council of Ministers, which under section 6(3) of Law 15/62, was the appropriate organ to sanction such compulsory acquisition. The relevant submission to the Council of Ministers is *exhibit* 10(*a*). It is dated 29th January, 1963, and there are several Appendices thereto.

Appendix 'I' is a letter of the aforesaid Mr. Charalambous, the Chairman of CYTA, dated the 15th December, 1962, addressed to the Council of Ministers and setting out the case for the compulsory acquisition; in such letter the allegation of Applicants that the area to be acquired was needed by them as a parking space was rejected as "untenable" and it was alleged that the acquisition would "in no way affect their interests".

Appendix II is the letter addressed, as aforesaid, by the lawyer of CYTA on the 19th June, 1961, to Applicants (*exhibit* 6).

Appendix III is the reply of Applicants to *exhibit* 6, and is dated the 4th July, 1961, (see *exhibit* 7).

Appendix IV is the aforementioned letter of the lawyer of Applicants (see *exhibit* 2) objecting to the acquisition and dated the 24th April, 1962.

Appendix V is the draft Order of acquisition for which the sanction of the Council of Ministers was being sought.

The submission, *exhibit* 10(*a*), was made by the Ministry of Communications and Works.

On the 7th February, 1963, the Council of Ministers decided to seek further information from the Ministry of Communications and Works (see the minutes *exhibit* 11) and such information was supplied by a Note dated the 20th February, 1963 (see *exhibit* 12).

In this Note it is stated, inter alia, that the Chairman of CYTA had reported "that the land to be acquired is absolutely essential and that there is no alternative land to be used for the proper operation of the Authority's installations including maintenance workshops and a garage for vehicles used by gangs engaged on the proper running of the telecommunications services of the centre".

On the 7th March, 1963, the Council of Ministers decided to reject the objection of Applicants and sanctioned the making of the Order of compulsory acquisition (see *exhibit* 13).

Such Order of acquisition, under section 6 of Law 15/62, was published by CYTA in Supplement No. 3 to the official Gazette of the 28th March, 1963 under Not. 155.

This recourse was filed on the 11th June, 1963.

It was fixed originally for Presentation before me, under the Supreme Constitutional Court Rules, but such Presentation was not completed, due to procedural changes in the meantime; so, when on the 27th August, 1964, it was fixed for hearing before me, it was directed that, as the Presentation proceedings had commenced before the same Judge who was to hear the Case, such proceedings should be deemed to form part of the said hearing. In effect, the proceedings at the Presentation stage consisted of submissions of the counsel for the parties, which were repeated during the hearing of this Case, and, also, of the production of three documentary exhibits which are *exhibits* 1, 2 and 3 in these proceedings.

The sub judice Order of acquisition is a composite administrative act, in that it has been made by Respondent 1, the acquiring authority, but it has been sanctioned by Respondent 2, under section 6(3) of Law 15/62. For its validity to be upheld, in the circumstances of this Case, such act has to be valid with regard to both its essential components, viz. the action taken by Respondent 1 and, also, the action taken by Respondent 2; (see also the Conclusions from the Jurisprudence of the Council of State in Greece 1929–1959 p.244).

In approaching the question of the validity of the Order of acquisition we are at once faced with a most unfortunate lack of proper minutes and records of the acquiring authority, CYTA.

Though under the provisions of sections 5 and 29 of the Telecommunications Service Law, Cap. 302, (as amended by Laws 20/60 and 34/62) and, also, of section 2(1) of Law 15/62, it is most clear that it is the Authority itself, i.e. the Board of CYTA, which is the acquiring authority in a case such as the present one, and though under Article 23(4)(b) of the Constitution "a decision of the acquiring authority" is envisaged in relation to a compulsory acquisition, no contemporaneous decision of the CYTA Board exists; not even any relevant minutes of such Board have been kept in this matter until the 14th June, 1963, which is *two and a half months after the completion* of the sub judice compulsory acquisition through the publication of the Order of acquisition, on the 28th March, 1963.

Even then, on the 14th June, 1963, all that was recorded in the minutes of the Board of CYTA (see item 35/63(b) in *exhibit* 22) was that the Chairman was authorized to sign a certain "document"; such document was not specified in the said minutes, but, according to the evidence of Mr. S. Kokkinides, the Secretary of CYTA, it is *exhibit* 21, which was an undertaking given by CYTA to the Government of the Republic in relation to certain financial aspects of the matter.

Then, on the eve of last day of hearing of this Case, on the 17th November, 1965, the Board reverted to its above minutes of the 14th June, 1963 and proceeded to clarify and supplement them, see *exhibit* 23; (actually the item in the minutes of the 14th June, 1963, referred to in the minutes of the 17th November, 1965, is "30/63(b)" which relates to a totally irrelevant matter; so it must be taken that it was intended to refer to the correct item "35/63(b)"). It is stated in the minutes of the 17th November, 1965, that on the 14th June, 1963, the Board "approved and/or ratified any decision or act of the former Board or Chairman or other Officer of the Authority made in furtherance and/or for obtaining the acquisition Order"; it is further recorded that "no formal decision of the former Board could be traced in the minute books relating to the said acquisition—although the matter was brought and discussed before the Board—and the matter was left to be handled by the Chairman". Finally, on the 17th November, 1965, the Board of CYTA proceeded to approve and ratify again what had been done in the matter.

In spite of the above belated effort of the Board of CYTA to meet the vacuum in its minutes, the fact remains that no *contemporaneous* decision or minutes of such Board exist in relation to anything done in the matter of the compulsory acquisition in question.

Mr. Kokkinides has testified, on this point, that early in 1961 the then Chairman Mr. Charalambous had raised the matter of the acquisition of the property of Applicants before the Board, that he had stated that he was about to secure new premises for CYTA at Morphou and that at the rear of such premises there was a space which he intended to acquire compulsorily for the purposes of the new premises, and that nothing was entered at the time in the minutes

"because the Chairman said that this was a matter he could pursue himself and the Board authorized him to do so. No decision was taken by the Board in the matter . Regarding the space which was eventually compulsorily acquired the Chairman said at the time that he was going to acquire it by any means ." Mr. Kokkinides added that after receiving a relevant communication from the Ministry of Communications and Works in November, 1962 (*exhibit* 19)—regarding the procedure to be followed in the acquisition—the Board authorized the Chairman to proceed and take all necessary steps, but again no minutes were kept at all.

In answer to the Court Mr. Kokkinides stated that: "At the time, in 1961 and 1962, when the then Chairman raised the question of the acquisition of the property of the Applicants before the Board of the Authority and when nothing was entered in the relevant minutes, minutes were being kept for other matters dealt with by the Board of the Authority. There were, however, many matters which came before the Board and which were not recorded in such minutes. Things which the Chairman was under the impression that he could pursue himself without putting them formally before the Board were not recorded in the minutes and the acquisition was such a matter".

It, thus, appears clearly that the Board of CYTA has, right down to the making of the Order of acquisition, never dealt with, and considered formally and fully, the matter of the compulsory acquisition of the property of Applicants, and never reached or recorded any formal decision thereon, but the matter was being handled personally by the then Chairman of CYTA. Consequently the said Board has never functioned properly as an acquiring authority, in the sense of the relevant legislative provisions; through merely being kept informed of what the Chairman was doing in the matter and, possibly, approving informally, again, his actions—without recording anything in its minutes—it cannot be held to have exercised its relevant discretionary powers sufficiently or properly, and it has failed to conform to the minimum standard of essential formalities necessary for the valid functioning of a public collective body; it does not seem that either the Notice of acquisition or the Order of acquisition were ever decided upon by the Board, as such, (as envisaged by Article 23(4)(b) of the Constitution).

I have, therefore, reached the conclusion that the compulsory acquisition of Applicants' property has never been duly decided upon, at the proper time, by Respondent 1, i.e. by its Board; it was only dealt with by such Board informally, without a sufficient exercise of the relevant discretionary powers, and in a manner inconsistent with the Constitution, the relevant legislative provisions, and all notions of proper administration.

It follows, that the sub judice acquisition Order has to be declared to be null and void and of no effect whatsoever.

Even the sanction of the Council of Ministers, Respondent 2, has to be treated as being vitiated by the failure of Respondent 1 to deal properly with the matter of the acquisition. A proper decision of Respondent 1 is a prerequisite and condition precedent for the granting of the sanction of Respondent 2, under section 6(3)(b) of Law 15/62; the Council of Ministers, relying on the presumption of regularity, must have regarded the letter of the then Chairman of CYTA, dated the 15th December, 1962—which is Appendix I to the submission *exhibit* 10(*a*)— as having been written after due process in the Authority and, thus, it decided to grant its sanction on incorrect premises.

Let us, next, proceed to examine the issue of the validity of the Order of acquisition, from some other aspects, too:-

In this connection it is useful to bear in mind that the requirements of proper administration and the proper use of the relevant discretionary powers render it imperative that a compulsory acquisition should not be ordered if its object can be achieved in any less onerous manner; and it should only be resorted to if it is absolutely necessary to do so and after exhausting the alternative possibility of achieving its object by means of purchasing other suitable property which is voluntarily offered for sale by its owner. Moreover, before resorting to compulsory acquisition of a particular immovable property the acquiring authority must exhaust the possibility of acquiring compulsorily other suitable immovable property the acquisition of which will entail a deprivation less onerous than the deprivation entailed in the proposed acquisition; (see Conclusions from the Jurisprudence of the Greek Council of State 1929–1959 p.87):- and the above principles render all the more striking the already found, in this Judgment, lack of proper consideration of the matter by the Board of CYTA.

The adoption of the said principles can be seen in the following Decisions of the Greek Council of State:

In Decision 300/1936 it was held that it is not permissible to take away from a private individual, through compulsory acquisition more than what is indispensably necessary for the achievement of the relevant public utility purpose and it is, thus, not proper for the acquisition to go to the extent of taking away ownership if the said purpose may be achieved by less onerous means, such as the acquisition of a servitude on the property concerned; the question, however, of the necessary extent of the acquisition is, as a rule, a matter within the discretion of the acquiring authority.

In Decision 1023/1949 it was held that the principles of proper administration and of lawful use of discretionary powers demand that the Administration should not resort to the very onerous method of compulsory deprivation of ownership, before it exhausts the possibilities of either using for the relevant purpose State land or of finding property which is being voluntarily offered by its owner and which is more or less equally suitable for the purpose concerned; and if State land is not available and it has been established that it is not possible to secure the necessary land by means of an ordinary purchase, then the Administration has to choose for compulsory acquisition, out of the suitable properties, the one the acquisition of which entails less onerous consequences, both from the point of view of the use being served by the *property to be acquired and from the point of view* of the interests of the fiscus.

In Decision 608/1955 it was held that the Administration *should not resort to the extremely onerous measure of deprivation* of ownership, except only in case of absolute necessity.

In Decision 92/1957 it was held that the Administration when exercising its discretionary powers and choosing for acquisition a property as suitable to serve a particular lawful public utility purpose has, among other things, to examine if there are other properties equally suitable for the purpose of acquisition, and has o prefer the property the acquisition of which will entail for its owner a deprivation of ownership less onerous in comparison to the cases of owners of other properties which may be equally suitable for the purpose of the acquisition.

All the above decisions propound widely-accepted principles of Administrative Law which are, in my opinion, to be regarded as applicable to compulsory acquisition of immovable property in Cyprus, (see also *Venglis and Electricity Authority* (1965) 3 C.L.R., p.252) in that they regulate the proper exercise of the relevant discretionary powers in accordance with the notions of proper administration; it is to be borne in mind, in this respect, that the relevant constitutional provisions (Article 23 in Cyprus and Article 17 in Greece) are provisions *in pari materia.*

Let us now examine, in the light of the aforesaid principles, what was done in relation to the compulsory acquisition of the Applicants' property:–

Have alternatives to the acquisition in question been duly considered?

Mr. G. Charalambous, the at the time Chairman of CYTA, who dealt with the matter, was not called to testify, by Respondents; in the absence of any proper contemporaneous minutes of the Board of CYTA, this Court has to base itself on the other material which is available, including the evidence before it. Ac ually Mr. V. Papadopoullos, a CYTA Engineer who dealt with the matter at the time, has testified that alternatives in relation to the other adjoining properties, were studied—on the relevant survey map—and the conclusion was reached that the most practical and useful measure would be to acquire the Applicants' property.

On closer examination, however, it does not appear to this Court at all that there took place indeed a real and sufficient study of possible alternatives to the compulsory acquisition of Applicants' property, as required by the relevant principles:–

First, no report or other record of such a study exists.

It appears, next, both from the relevant report of CYTA's Chief Engineer, which was made to its Chairman with a view to the purchase of the Morphou premises of CYTA (see *exhibit* 16), as well as from the evidence of Mr. S. Kokkinides, which was referred to earlier in this Judgment, that access through the property of Applicants was being contemplated right from the very beginning, at the time of the purchase of the said premises of CYTA.

Also, Mr. V. Papadopoullos, has stated in evidence that. as far as he knew, none of the owners of the properties adjoining the premises of CYTA at Morphou was approached in order to find out what would be his demands if it was decided to acquire his property for the purpose of securing access to the said premises.

The Applicants have called —on this issue of alternatives to the acquisition—a witness, Mr. Y. Mavroudes, who described possible alternative ways of securing access to the rear of the premises of CYTA at Morphou, through other adjoining properties.

Mr. Papadopoullos, who heard in Court the evidence of Mr. Mavroudes, told the Court that one of the alternatives proposed by Mr. Mavroudes, viz. sucuring access from the 25th March Street, by means of creating—through acquisition of a part of a neighbouring property—a passage, to the rear of the CYTA premises, along the side of such premises, had been examined at the material time as an alternative solution and was found to be impracticable; but he conceded that another alternative—a rather obvious one in my opinion —which was pointed out by Mr. Mavroudes, viz. securing access to the rear of the CYTA premises from Katalanos Street, through acquiring part of plot 179—which is a yard with semi-ruined buildings—had not been studied, as such, prior to the acquisition. Mr. Papadopoullos proceeded to add that this alternative had been considered since the evidence of Mr. Mavroudes; but he could say nothing more against it than:-"it would not give us sufficient freedom of movement, as the one we have ensured through the acquisition of the property of Applicants".

I have watched carefully the evidence of Mr. Papadopoullos and in the light of everything else before the Court, I cannot accept that a sufficient study of other possible alternatives, for ensuring the access required, was made; any such study that may have been made was not as careful and comprehensive as is required for the purposes of the proper exercise of the relevant discretionary powers, but perfunctory. The "private road" of Applicants presented itself as a ready-made access and the area concerned was acquired to complete such access; as Mr. Papadopoullos has said in evidence:- "The area coloured red on *exhibit* 4"— i.e. the part of Applicants' property which was acquired—"had to be acquired

so as to gain access on the main road, and by main road there I mean the road delineated in red and appearing on *exhibit* 4", i.e. the "private road"; and he added: "We treated it as a road though we were told that it was a private road".

I am, also, of the view (see, inter alia, the letter of the Chairman of CYTA, *exhibit* 9—which is the same as Appendix I to *exhibit* 10(a)— as well as his letter, *exhibit* 17)that, when the compulsory acquisition of part of Applicants' property was decided upon, due regard was not paid at all to the onerous consequences which such acquisition would have entailed for Applicants, in view of the vital use which was being served by such part in relation to the cinema business of Applicants—and I do accept that it was a very vital use indeed; as a result no due regard was paid, either, to the possibly serious compensation aspect involved in such acquisition. Thus, the onerous consequences of the acquisition, both for the Applicants and for the finances of CYTA, were not weighed as against the possibility of acquiring, even compulsorily if necessary, a part of any other of the adjoining properties, which could suitably serve more or less the needs in question of CYTA—as e.g. part of plot 179—and the acquisition of which might not entail the same onerous consequences.

On the basis of the foregoing I have reached the conclusion that the sub judice Order of acquisition has to be annulled as made contrary to well-established principles of Administrative Law (and, thus, contrary to law—see *PEO and Board of Films Censors and another,* (1965) 3 C.L.R., p.27) and in abuse and excess of powers, in that it was made without sufficient study of possible alternatives, especially from the point of view of the possibility of acquiring access through any other suitable property, either by means of voluntary sale or, if by compulsory acquisition, with less onerous consequences than those existing in the case of the acquisition of Applicants' property.

The above defects vitiate necessarily also the relevant sanction of the Order of acquisition by the Council of Ministers, which must have acted, in the circumstances, on incorrect premises to a large extent, particularly as it was led to believe that no other suitable alternatives to the proposed acquisition existed (see *exhibit* 12) and the onerous consequences of such acquisition, as alleged by Applicants, were brushed aside by the Chairman of CYTA in his letter to the Council of Ministers (Appendix I to *exhibit* 10(a)).

In addition to the grounds, on which the sub judice acquisition Order has already been found, in this Judgment, to be a proper subject for annulment, there are two more grounds which lead to the same result:–

First, I am of the opinion that the Order of acquisition, as sanctioned and made, has not chosen the less onerous way of achieving the purpose of the acquisition; on the material before me, I do fail to see why it was necessary to acquire ownership of part of the property of Applicants in order to secure a section of the access to the rear of the premises of CYTA, when for the remainder, and larger section, of such access only a right of way was acquired over the "private road" of Applicants, all the way to Katalanos Street. The less onerous method, that of acquiring only a right of way over the area which was compulsorily acquired, should have been resorted to; and I am not convinced at all by Respondents' argument that the area which was acquired, had to be acquired, because if only a right of way over it had been acquired it could have been blocked at night by parked cars of cinemagoers; exactly the same risk of blocking exists, in any case, in relation to the part of the "private road" of the Applicants over which only a right of way was acquired, and which is part of the parking space of the cinema; so it was pointless to ensure that the access would not be blocked for part of its length only; the acquisition ought to have been limited to what was absolutely necessary for the purpose of securing access, i.e. the acquisition of a right of way over the area concerned, and should it have proved that this right of way was being unlawfully interfered with, then resort could be had, not to a greater than necessary extent of acquisition, but to the legal remedies available before Courts of law for protecting a right of way against interference.

I find, thus, that the Order of acquisition offends against the aforesaid principles of Administrative Law and was made in abuse and excess of powers in that it did not adopt the less onerous manner of securing access to the premises of CYTA over the property of Applicants.

Secondly, the compulsory acquisition, as sanctioned and made, has exceeded by far the requirements specified in the Notice of Acquisition, which are, as already stated, "Space necessary" for securing a "road" leading from the rear gate of the premises of CYTA to the "private road"

of Applicants. Such "private road", as it appears from *exhibit* 3(a), is about 20 feet wide. I, therefore, do not see why the road which was to link the rear gate of the premises of CYTA with this "private road" should have been about 50 feet wide, as the part coloured red, which was compulsorily acquired, appears to be on *exhibit* 3(*a*). Bearing fully in mind that the extent of the area necessary for the acquisition is a matter within the discretion of the acquiring authority, I still think that in the present instance the part acquired is so *most manifestly beyond* the requirements stated in the Notice of acquisition, that I have to find that the acquisition, as decided upon, is invalid and in abuse and excess of powers. From all the material before me in this Case, I have, indeed, been led to the conclusion that under the cloak of securing a right of way, Respondent No. 1 has proceeded, in a manner inconsistent with the Notice of acquisition, to acquire, in effect, space necessary for enlarging the rear yard of its premises, for parking and other purposes, thus acting in excess and abuse of its relevant powers.

In the result, for all the several reasons set out in this Judgment, the sub judice Order of acquisition, as sanctioned and made, is declared to be null and void and of no effect whatsoever. It is now up to Respondents to approach afresh the matter in the light of this Judgment. If for any proper reason the part of the Applicants' property which has been compulsorily acquired by the just annulled Order, is necessary in any way for the operations of CYTA, and its acquisition is warranted in the light of the relevant legislation and principles governing such a matter, let the authorities concerned take properly recorded and reasoned action. On the other hand it may be found, on a proper reconsideration of the whole matter, that either the purposes of CYTA can be served otherwise than by interfering with Applicants' property, or that only a right of way over such property suffices. I am not expressing any view whatsoever as to what the future course of action of the authorities concerned should be; I am only, for guidance, pointing out some of the courses open to them.

Regarding costs I have decided to award to Applicants £90 costs to be borne as to two thirds by Respondent 1 (in view of its being the party primarily to blame in this matter) and as to one third by Respondent 2.

Sub judice acquisition
Order annulled.
Order for costs as aforesaid.