

1966
June 13, 27
—
CHARALAMBOS
PISSAS (No 1)
and
THE ELECTRICITY
AUTHORITY
OF CYPRUS

[TRIANTAFYLIDIS, J]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

CHARALAMBOS PISSAS (No 1.)

Applicant

and

THE ELECTRICITY AUTHORITY OF CYPRUS,

Respondent

(Case No 16/66)

Administrative and Constitutional Law—Recourse under Article 146 of the Constitution—Time within which such recourse may be made—Article 146, paragraph 3 of the Constitution—When time begins to run—Publication—Time runs from the date of the publication in cases where the act or decision complained of was published—But publication in the sense of Article 146, paragraph 3 (supra) must be a proper publication—And a publication good for the purposes of a particular enactment e.g. the Compulsory Acquisition of Property Law 1962 (Law 15/62) as in the instant case is not necessarily good to set in motion the time prescribed in Article 146 paragraph 3 (supra)—In the instant case the publication in the official Gazette of the Republic of a Notice and Order of compulsory acquisition wherein the name of the owner-applicant was not mentioned was held although it may be a good publication for the purposes of the aforesaid Law No 15 of 1962 not to be a proper publication so as to set in motion the time prescribed in paragraph 3 of Article 146 of the Constitution—And that therefore the time for the filing of the present recourse began to run not as from the aforesaid publication but from the date when the owner-applicant actually came to know of the decision of the respondents to acquire compulsorily his property—See further herebelow

Compulsory Acquisition of Land—Notice and Order of acquisition under the aforesaid Law No 15 of 1962 (supra) published in the official Gazette of the Republic—Such publication, although may be a good publication for the purposes of the statute was held not to amount to a sufficient publication

for the purpose of Article 146, paragraph 3, of the Constitution—See, also, under Administrative and Constitutional Law above.

Administrative and Constitutional Law—Recourse under Article 146—Time—Within which the recourse may be made—Provisions of paragraph 3 of Article 146 of the Constitution are mandatory and they have to be given effect to in the public interest.

Paragraph 3 of Article 146 of the Constitution reads as follows :—

“ 3. Such a recourse shall be made within seventy-five days of the date when the decision or act was published or, if not published and in the case of an omission, when it came to the knowledge of the person making the recourse.”

The applicant, by his present recourse challenges the validity of a Notice of Acquisition and of the Order of Acquisition made in respect of part of his property. The said Notice was published in the *Official Gazette* on the 8th November, 1962, and the said order was published, likewise, on the 21st March, 1963. Applicant's name is not mentioned at all in either the Notice of Acquisition or the Order of Acquisition. It appears, furthermore, that until applicant was served on the 12th November, 1965, with notice of the proceedings for the assessment of the relevant compensation in reference before the District Court of Nicosia No. 51/65, he had no intimation whatsoever that it was intended by the respondent to acquire compulsorily part of his property as aforesaid. The recourse was filed on the 22nd January, 1966.

On the issue, raised by the Court of its own motion, whether this recourse is out of time, the Court held that, although the publication of the said Notice and Order may be a good publication for the purposes of the said Law No. 15/62, *supra*, (a question left open for the time being), it was not, however, a proper notice sufficient to set in motion the time prescribed by para. 3 of Article 146 of the Constitution (*supra*).

Cases referred to :

Moran and the Republic, 1 R.S.C.C. 10 :

Markoullides and the Greek Communal Chamber, 4 R.S.C.C. 7 :

Venglis and the Electricity Authority of Cyprus, (1965) 3 C.L.R.

252:

Decisions of the Greek Council of State : No. 597/1931
and 242/1954.

1966
June 13, 27

—
CHARALAMBOS
PISSAS (No. 1)
and
THE ELECTRICITY
AUTHORITY
OF CYPRUS

1966
June 13, 27

CHARALAMBOS
PISSAS (No. 1)
and
THE ELECTRICITY
AUTHORITY
OF CYPRUS

Recourse.

Recourse against the validity of a notice of compulsory acquisition and of the subsequent order of compulsory acquisition by virtue of which Respondent has acquired an area of 288 sq. feet at the back of the property of Applicant at Ayios Dhometios.

C. J. Myrianthis for the Applicant.

G. Cacoyiannis with *M. Ioannou* for Respondent.

Cur. adv. vult.

The following Decision was delivered by:-

TRIANAFYLLIDES, J.: At the commencement of the hearing of this Case the Court raised, of its own motion, the issue of whether or not this recourse is out of time, in view of paragraph 3 of Article 146 of the Constitution. This course was adopted by the Court because the provisions of the said paragraph 3 are mandatory and they have to be given effect in the public interest (see *Moran and The Republic*, 1 R.S.C.C. p. 10, *Markoullides and The Greek Communal Chamber*, 4 R.S.C.C. p. 7 and, also, Tsatsos on Recourse for Annulment to the Greek Council of State, 2nd edition, p. 49).

After hearing counsel on the above issue, the Court has reserved its Decision thereon until today.

By the motion for relief in the Application, the Applicant challenges the validity of the Notice of acquisition and of the Order of Acquisition made in the course of the compulsory acquisition of part of his property at Ayios Dhometios (plot 219, block B, plan XXI. 45.W.2) by Respondent.

The said Notice was published in the official Gazette on the 8th November, 1962 (Not. 553 in supplement 3) and the said Order was published, likewise, on the 21st March, 1963 (Not. 146 in supplement No. 3).

Paragraph 3 of Article 146 reads as follows:-

“Such a recourse shall be made within seventy-five days of the date when the decision or act was published or, if not published and in the case of an omission, when it came to the knowledge of the person making the recourse”.

In view of the wording of such paragraph, I am of the opinion that, once there has been publication of an act, time begins to run, for the purposes of the said paragraph, from such publication, irrespective of when the act or decision in question came to the knowledge of the person concerned.

In Greece the position is not the same because there the provision corresponding to paragraph 3 of Article 146, section 49 (1) of Law 3713/1928, provides that time commences to run from the communication or publication of the act concerned or from the time when the person concerned has come to know thereof; as a result, it has been held by the Greek Council of State that in case of an individual act or decision, though there may have been publication, time does not run until there has been also communication of such act or decision to the person directly affected thereby; but time commences to run from publication as against other persons who may be interested in the said act or decision (see Stassinopoulos on the Law of Administrative Disputes, 1964, p. 206); and it has been held, further, in Greece that an Order of compulsory acquisition is an individual act which has to be communicated to the owner of the property so acquired, as a person directly affected thereby, before the relevant period of limitation might begin to run. (See Decisions 597/1931 and 242/1954 of the Greek Council of State).

In Cyprus, however, where the relevant provision (Article 146 (3)) is not the same in its material parts as the relevant Greek provision (section 49 (1) of Law 3713/1928), there is no room, in my opinion, for the application of the aforesaid principles, as evolved in Greece. and, therefore, it has to be held that time, in the present Case, began to run from the publication of the relevant Order of acquisition—provided there has been proper publication—even though it does not appear to be disputed that Applicant only came to know, for the first time, of the compulsory acquisition of his property by Respondent, on the 12th November, 1965, when he was served with notice of proceedings in reference 51/65. filed with the District Court of Nicosia for the purpose of the determination of the compensation payable to Applicant in respect of such acquisition. Therefore, if it is found that there has been proper publication of the Order of acquisition, in the sense of Article 146(3), then this recourse is out of time, because it was only filed on the 22nd January, 1966,

1966
June 13, 27

—
CHARALAMBOS
PISSAS (No. 1)
and
THE ELECTRICITY
AUTHORITY
OF CYPRUS

much more than 75 days after the publication of the Order of acquisition on the 21st March, 1963.

In deciding the issue whether there has been proper publication for the purposes of Article 146(3), I take the view that this is not the same as the issue of whether or not there has been proper publication of the Notice and Order of acquisition for the purposes of the Compulsory Acquisition of Property Law, 1962, (Law 15/62)—and I am leaving the latter issue open in this Decision.

Publication for the purpose of setting in motion the time within which a recourse may be filed has to be such publication as would state in full and clearly the contents of the act or decision concerned. This principle has been adopted in Greece (see Conclusions from the Jurisprudence of the Greek Council of State, 1929–1959, p. 251) and is, in my opinion, equally applicable in Cyprus because the relevant Greek and Cyprus provisions are, in this respect, in *pari materia*, and such principle is a widely accepted principle of Administrative Law in relation to computing the time within which a recourse, such as the present one, may be made, after publication.

We have, therefore, to see whether in the present Case the publication in the official Gazette of the Order of acquisition was such as to amount to sufficient publication for the purpose of the time prescribed under Article 146 (3) commencing to run.

Such Order of acquisition refers to the earlier Notice of acquisition, for the description of the property concerned, and they have to be read together so that one may understand the contents of the said Order.

In the Notice of acquisition the property of Applicant is identified by means of a description sufficient to identify such property in relation to Land Office records. But, the name of the owner of such property—Applicant's name—is not mentioned at all, in either the Notice of acquisition or the Order of acquisition. Furthermore, it appears that, until Applicant was served with notice of the proceedings in reference 51/65, as aforesaid, he had no intimation whatsoever that it was intended by Respondent to acquire compulsorily part of his property, nor was any proposal made to him, as is usually made in such cases, for the purpose of purchasing such property by voluntary transaction, if possible. Applicant had really no reason to expect that a Notice of acquisition,

and later an Order of acquisition, were going to be published in the official Gazette in relation to part of his property in question.

Though a Notice of acquisition is because of its nature a notice *in rem* (see *Venglis and The Electricity Authority of Cyprus*, (1965) 3 C.L.R. p. 252), it cannot be lost sight of that an Order of acquisition is, indeed, an individual act directly affecting the owner concerned. In the particular circumstances of this Case, I cannot accept that the publication, out of the blue, of the relevant Order of acquisition, without stating therein—either directly or, at least, by reference to the Notice of acquisition—the name of the Applicant, of the owner of the property acquired, amounts to such clear and full publication of the fact that it was Applicant's land which was being compulsorily acquired, as to be deemed to be sufficient publication for the purposes of Article 146(3). Thus, in my view, time did not begin to run under Article 146(3) until the 12th November, 1965, when Applicant came actually to know of the compulsory acquisition in question, for the first time, in the circumstances stated earlier in this Decision. It follows, thus, that this recourse is not out of time.

In reaching the above conclusion, I must make it clear that I cannot accept the view that once there has been publication of an Order in the official Gazette, in conformity with the provisions of a particular enactment. then, necessarily, that amounts also to sufficient publication for the purposes of Article 146(3); there may be such publication as would comply with all that is laid down in a particular enactment for the purposes of the inherent validity of an Order and, yet, it may not amount to publication which gives to the person affected by the act or decision concerned a full and clear picture of the contents of such Order, as envisaged by a provision in the nature of Article 146 (3).

This Case will have, now, to proceed to hearing on the merits. The costs of the hearing, at which the question of the recourse being, possibly, out of time was argued, and the costs of today are to be costs in cause.

*Order, and order as to costs,
in terms.*