

[TRIANTAFYLLOIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

COSTAS CLERIDES AND OTHERS (No. 1).

Applicants.

and

THE REPUBLIC OF CYPRUS, THROUGH
THE COUNCIL OF MINISTERS,

Respondent.

(Case No. 121/65).

1966
July 6
—
COSTAS CLERIDES
AND OTHERS
(No. 1)
and
THE REPUBLIC
OF CYPRUS
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*Immovable Property—Compulsory acquisition—Requisition—
Article 23, paragraph 8 (d) of the Constitution—The Requisition
of Property Law, 1962, section 8—Recourse against order
or requisition of a spring—Application for a provisional order
that the order of requisition, subject matter of the recourse,
be suspended pending final determination of the case—
Principles laid down in Georghiades (No. 1) and The Republic
(1965) 3 C.L.R. 392, applied—Provisional Order made suspend-
ing in part the effect of the order of requisition.*

*Administrative Law—Acts or decisions subject matter of a recourse
under Article 146 of the Constitution—Provisional orders
suspending effect of—Principles upon which such orders may
be granted—Provisional order suspending in part the effect
of the decision complained of in a case where the order of
requisition is a severable one as it is the present case—See,
also, under Immovable Property above and under Practice
below.*

*Practice—Provisional Orders in recourses under Article 146 of
the Constitution—Principles applicable—Provisional order
suspending in part an administrative decision where that
decision is severable—Liberty to apply for a variation of
the provisional order—See, also, under the headings above.*

Cases referred to :

*Cleanthis Georghiades (No. 1) and The Republic (1965)
3 C.L.R. 392, principles laid down as to provisional
orders, applied.*

Application for a provisional order.

Application for a provisional order to suspend the effect of an order of requisition pending the hearing of a recourse against the validity thereof.

L. Clerides, for the Applicants.

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

K. Michaelides, for the Interested Party, (The Improvement Board of Kalopanayiotis).

Cur. adv. vult.

The following Decision was delivered by:—

TRIANTAFYLLIDES, J.: In this Case counsel for Respondent, as well as counsel for the Interested Party, gave notice in writing (see *exhibit 1*) on the 20th June, 1966, to counsel for Applicants, informing him in accordance with the arrangement reached before the Court in the present Case on the 16th July, 1965, that it was intended to convey to Kalopanayiotis as from the 27th June, 1966 25,000 gallons of water per day from the "Pikromiloudhi" spring, in conformity with the Order of requisition which is the subject-matter of this recourse.

The aforesaid arrangement of the 16th July, 1965 amounts to certain statements which were made before the Court while it was dealing with an application that a provisional order be made in these proceedings restraining the carrying out of any excavations, or doing anything else, in relation to the aforesaid spring until the final determination of this recourse. It was stated then to the Court that the preliminary work necessary before any water could be conveyed from such spring to Kalopanayiotis would take some time, and that it was most unlikely that any water would actually be taken from the spring to Kalopanayiotis before the summer of 1966. In view of that counsel for Applicants did not insist any longer on the application for a provisional order and such application was dismissed, the Applicants being at liberty to file a new application for a provisional order on being notified in advance of the intention to start conveying water to Kalopanayiotis from the spring in question.

So, when *exhibit 1*, above, was written to Applicants, through their counsel, they filed a fresh application for a

provisional order, on the 25th June, 1966, whereby it is sought that an order be made that no water shall be taken from the spring in question to Kalopanayiotis until the final determination of this recourse

Prior to dealing with the present application for a provisional order the Court has had the benefit of hearing argument by counsel on certain preliminary legal issues arising in this recourse, and though the Decision thereon has been and still remains reserved, this has assisted the Court to look at the question, of the making or refusing the provisional order applied for, in its proper context

There can be no doubt that there are serious legal issues to be resolved in this recourse, but, at present, I am not in a position to hold that on anyone of them the sub judice Order of requisition appears to be so flagrantly illegal as to necessitate the prevention of its taking effect at all

I have duly borne in mind whatever has been sworn, on behalf of Applicants, in the affidavit of the 23rd June, 1966, and whatever has been submitted by counsel for the parties

No evidence has been adduced by any party, though there are some factual issues which are in dispute; but such issues do not prevent the Court, at this stage, from evaluating sufficiently the relevant general aspects of this Case with a view to deciding the application for a provisional order

What is being sought by means of such application is that the Order of requisition, which is the subject-matter of this recourse, should not be given effect to pending the determination of this Case

Provisional orders are not granted as a matter of course in proceedings such as the present; the relevant principles have been set out in *Georghuades (No 1) and The Republic* ((1965) 3 C L R 392) and need not be reiterated again

In the light of all the material before the Court and bearing in mind, inter alia, that, irrespective of any dispute as to exact figures, it does appear that the output of the spring concerned has been considerably increased, by means of recent works carried out by Respondent in relation to the Order of requisition, that once the said Order takes effect the Applicants will be entitled to compensation therefor

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(see Article 23(8)(d) of the Constitution and section 8 of the Requisition of Property Law, 1962); that, on the other hand, as stated by counsel for Respondent, the minimum needs of Kalopanayiotis for the coming months can be met if a quantity of 15,000 gallons per day is taken from the aforesaid spring; that the water of such spring is used by Applicants for irrigation purposes; and that the effect of the Order of requisition in question is by its very nature a severable one. I have decided to grant a provisional order suspending in part the effect of the said Order of requisition by restraining Respondent, and anyone acting under its authority, including the Interested Party, from taking more than 15,000 gallons of water per day from the spring concerned until the future determination of these proceedings: and it is hereby ordered accordingly.

All parties shall be at liberty to apply at any time, on good ground being shown, for a variation of the provisional order made by this Decision.

Order in terms.