

1966
July 26

[VASSILIADES, J.]

IN THE MATTER OF ARTICLES 23 AND 146
OF THE CONSTITUTION

ANDREAS
MARKANTONIS
and

ANDREAS MARKANTONIS.

1. THE REPUBLIC
OF CYPRUS,
THROUGH
THE COUNCIL
OF MINISTERS
2. THE MUNICIPALITY
OF NICOSIA

Applicant.

and

1. THE REPUBLIC OF CYPRUS, THROUGH THE
COUNCIL OF MINISTERS.
2. THE MUNICIPALITY OF NICOSIA,

Respondents.

(Case No. 181/66).

Immovable property—Compulsory acquisition of a shop—Now occupied by applicant as a statutory tenant thereof under the Rent Control (Business Premises) Law, 1961—Requisition of the same shop pending completion of the compulsory acquisition proceedings—Article 23, paragraph 8, of the Constitution—The Requisition of Property Law, 1962 (Law No. 21 of 1962)—Provisional Order restraining the respondent from acting in furtherance of the requisition order by demolishing the shop granted—Such provisional order to be discharged on certain conditions—Principles applicable—In the instant case the provisional order was granted as aforesaid, to protect the applicant's rights to compensation as they may be in connection with his occupation of the shop—Constitution of the Republic, Article 23, paragraph 8—Vassiliades and The Republic, reported in this Part at p. 708 ante, followed.

Constitutional Law—Compulsory Acquisition of property—Requisition of the same property before the acquisition proceedings have been brought to a conclusion—Property (i.e. a shop) requisitioned for demolition by a certain date—Duties of the acquiring and requisitioning Authority—Article 23, paragraph 8, of the Constitution—The Requisition of Property Law, 1962—The Compulsory Acquisition of Property Law, 1962—Vassiliades and The Republic reported in this Part at p. 708 ante, followed—See, also, under Immovable Property above.

Practice—Recourse under Article 146 of the Constitution—Provisional Order—See under the headings above.

Requisition—Compulsory acquisition—Requisition of a shop subject to compulsory acquisition proceedings, but not yet brought to a conclusion—Provisional Order affecting the requisition order—See under the headings above:

Acquisition—Compulsory acquisition—See above.

Cases referred to :

Aspri and The Republic, 4 R.S.C.C. 57 ;

Pissas (No. 1) and The Electricity Authority of Cyprus, reported in this part at p. 634 *ante* ;

Vassiliades and The Republic, reported in this Part at p. 708 *ante*, followed ;

Colocassides and The Republic (1965) 3 C.L.R. 542.

The facts of the case sufficiently appear in the judgment of the Court. In this case a provisional order was granted on the principles and on the lines of the case *Vassiliades and The Republic* reported in this Part at p. 708 *ante*.

Application.

Application for a provisional order restraining the Respondents from demolishing the shop at 77 Eptanisou Str. Nicosia, occupied by Applicant, until the hearing and final determination of a recourse against a notice of requisition and a notice of demolition in respect of the said property.

L. Clerides, for the Applicant.

L. Loucaides, Counsel of the Republic, for Respondent No.1.

K. Michaelides, for Respondent No.2.

The following decision was delivered by:

VASSILIADES, J.: The Applicant is a shopkeeper in Nicosia, in occupation of a shop at 77, Eptanissou Street, where he carries on a tinsmith's business with a "big clientele" according to his affidavit; and this is the only sworn evidence before the Court, at this stage, regarding his business.

Counsel on his behalf stated that the Applicant shopkeeper went into possession of the shop in question, in March 1963, under an annual lease; and that since March, 1964, he is there as a statutory tenant, carrying on personally his business.

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Some two weeks ago, on July 11, 1966, the Applicant (to whom I shall hereinafter, refer as the shopkeeper) received a letter from the Mayor of Nicosia, informing him that the Municipal Corporation of the town (to which I shall refer as the Municipality) acting as Acquiring Authority, presumably under the Compulsory Acquisition of Property Law, has acquisitioned the shop in question owned by Mr. Moustafa Riza; and that the Government of the Republic has duly requisitioned the property. Furthermore the Mayor's letter (exhibit 1 in these proceedings) went on to inform the shopkeeper, that the Municipality was going to demolish the shop on July, 26, in order to use the site for purposes of public utility; and he was, therefore, required to vacate and quit the property within fifteen days from the date of the letter, as the Municipality were not going to have any responsibility for damage to his goods which might be caused by the demolition.

Alarmed as he would naturally be by such news, the shopkeeper consulted a lawyer, and filed a recourse to this Court of July 21, challenging the requisition, together with the present application for a provisional order to stop the threatened demolition of his shop, pending the hearing and final determination of the recourse.

His case is that the requisition order in respect of the shop in question is illegal; the intended demolition is likewise illegal; and by his recourse under Article 146, he seeks relief in the form of a declaration that the notice of requisition issued by the first Respondents (the Republic) and the notice of demolition issued by the second Respondents (the Municipality) are both null and void and of no effect whatsoever.

The substance of the grounds upon which the recourse is made, is that the Municipality cannot requisition the property; and that the Government of the Republic can only do so "upon the prompt payment in cash of a just and equitable compensation", which in this case has never been offered. Moreover the shopkeeper being a statutory tenant in possession, is protected by the Rent Control (Business Premises) Law, No. 17/1961, under which no proceedings for ejectment from his shop have ever been instituted against him.

No opposition has as yet been filed on the part of either of the respondents. There was hardly time for pleadings.

But not even an affidavit has been filed of the facts in opposition of the proceeding for a provisional order. So I must take Respondents' case as best as I can, from counsel.

Mr. Loukaides, for the Republic, contended that the Court could not restrain the Respondents from acting in furtherance of the requisition order by demolishing the shop. And referred me to the Requisition of Property Law, 1962, (No. 21/1962) section 7(2); section 2; and section 8(3). He also referred me to Professor Kyriakopoulos' Administrative Law (4th Edition) Vol. 3 p. 95; Professor Tsatsos' Αίτησις Ἀκυρώσεως (2nd Edition) p. 284; and to *Colocassides* case (1965) 3 C.L.R. p. 542.

Mr. Michaelides for the Municipality adopted the argument against interfering with steps taken in furtherance of the requisition made for purposes of public utility. He referred me to the publication of the necessary notices in the Official Gazette which gave ample warning, he contended, to the occupiers of the property, including the Applicant shopkeeper; and referred me to the decision in *Aspri v. The Republic* (4 R.S.C.C. p. 57) as to requisition orders made in furtherance of the objects for which the property is acquisitioned under the Compulsory Acquisition of Property Law.

In view of the urgency of the matter after hearing counsel, I proceeded to make a provisional order in the terms declared, stating that I would give my reasons later. These I now proceed to do, extending at the same time the period for the filing of any appeal against the order, so as to cover the prescribed period commencing as from today.

Returning now to the reasons which led me to the order made, these are as follows:-

The Municipality, a public Authority, (existing and exercising powers under statutory provisions) expressed through their chief executive officer, the Mayor, a clear and definite intention to demolish the shop in question by a certain date, July 26. (the day on which the application for a provisional order was being heard); and called upon the shopkeeper in possession to quit the property by that date, as they would not be responsible for any damage to his goods caused by the intended demolition. This course of action is expressed in the Mayor's letter, exhibit 1, which I understand to convey also an intention on the part of the Municipality to make

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a forcible entry into and upon the shop, if not found vacant and abandoned by the prescribed date.

As at present advised, I am not aware that the statutory Authorities established under the Municipal Corporations Law have such powers. And learned counsel for the Respondents in this case, have not helped me to become any wiser on the point. If the second Respondents do not have such powers, I would rather abstain from describing their intended conduct; or speculating on the probable consequences thereof.

Counsel for the Applicant submitted that his client's possession as a statutory tenant in occupation, is protected by the Rent Restriction (Business Premises) Law No. 17/1961; and he particularly referred me to the provisions of section 10(1)(i). Counsel submitted that without an ejection order, a tenant in possession of business premises within the statute in question, cannot be forcibly evicted.

I have not had the advantage of hearing a full argument on the point from counsel; and I have not been referred to any similar case. As advised on the date I made the provisional order, I accepted the submission.

It is not in dispute that the acquisition proceedings have not yet been brought to a conclusion; and the shop in question is still the property of Mr. Moustafa Riza. If I understand the position correctly, this is why the requisition proceedings were initiated; and the requisition order was made.

In such cases, where the requisition of property is made for the purposes of the compulsory acquisition thereof, and in order to give effect to an acquisition order, I take the view, same as I did in another application for a provisional order in similar circumstances, (Case No. 171/66)* that "where the requisition order is made as a corollary to, and for the purposes of the acquisition of the property, the whole transaction should be treated as one in substance, notwithstanding that in form it results from two separate orders, under two different statutes".

In this case, the Municipality caused the notices for compulsory acquisition to be published in the Official Gazette in October, 1965. It may safely be assumed that the project

*Vide the Case of *Vassiliades v. Republic etc.*, reported *ante*, at p. 708.

of building a Municipal Market in that particular part of the town, was under consideration for some time before that; probably some months before. And the cost of the project depending to a considerable extent on the compensation payable for the compulsory acquisition of all the plots described in the notice, as well as such compensation as might be payable to persons having an interest therein, must, I presume, have been the subject of careful calculation and evaluation on the part of the public Authority who conceived and embarked on such project. And yet, this Applicant alleges that he first came to know of the position, from the Mayor's letter, exhibit 1, in July, 1966; that he has never been approached for negotiations regarding the payment of compensation for the loss of his shop and business; nor has he ever been offered any.

In November, 1965, the acquisition order under section 6, was published in the Official Gazette No. 451 (Notification 729). And about five months later, in April, 1966, the provisions of the Requisition of Property Law were brought into play by a requisition order made and published by the Government of the Republic (the first respondents herein) under section 4 of the Requisition of Property Law 21/62 (Notification 205) for the possession of the property, including the shop in question, for a period of nine months from the date specified in the order: a step apparently taken in aid of the acquisition, and for the purpose of enabling the Municipality (the second respondents herein) to take possession of the property and proceed with their project of building a new Municipal Market. Same as for the acquisition of the property, however, no step appears to have been taken, other than the publication in the Official Gazette, to negotiate with the persons in possession, the question of compensation; and no offer was made.

How far the publication in the Official Gazette is sufficient to bring to the notice of an interested person the effect of an order of this nature, for the purposes of computing time in Article 146 (3) was recently considered by this Court in the case of *Charalambos Pissas* (No. 1) and *The Electricity Authority of Cyprus* (reported in this part at p. 634 *ante*). The observations of my brother Triantafyllides J., regarding the sufficiency of such publications, for actually bringing to the notice of the party concerned, their legal effect upon his interest, are, if I may say so with respect, applicable, in the

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great majority of cases, for all practical purposes. In this particular case and for the purposes of the present proceeding for a provisional order, I am satisfied that the publication in question never reached the shopkeeper.

His property rights, including his legal interest in the shop and in the carrying on of his business therein, duly protected under Article 23 of the Constitution, are apparently affected by the acquisition and the requisition orders in question. What are the rights of the shopkeeper in this case; whether his recourse against the requisition order shall eventually succeed or not; what if any, is the compensation payable to him under the relevant legislation, it is not for me to say at this stage. All I have to find, is whether there is a matter of substance to be determined in the recourse; and whether the Applicant will suffer irreparable loss if his application for a provisional order be refused. That there is a matter of substance to be determined in the recourse, it is not in dispute. There can be no doubt about it. That refusing the application for a provisional order to preserve the shop in existence, pending determination of the recourse, may result in irreparable loss to the shopkeeper, in the sense that he shall lose his shop and his claim of right to occupy it for the purposes of his business, it is equally clear. But in the sense that his loss cannot be repaired by the payment of appropriate compensation, the shopkeeper's loss cannot be said to be irreparable. In fact the substance of his legal rights, such as they may be, is, in the last analysis, to be found in his claim for compensation.

I have, therefore, reached the result that the Applicant should be granted a conditional provisional order, sufficient to protect his rights to compensation such as they may be, in connection with his occupation of the existing shop.

Both statutes, the Compulsory Acquisition of Property Law and the Requisition of Property Law, contain clear provisions as to the payment of compensation to persons affected by orders made thereunder, for the compulsory acquisition or requisition of property in which such persons have a legally protected interest. Article 23 of the Constitution guarantees "prompt payment in cash of a just and equitable compensation" ("ἐπὶ καταβολῇ τοῖς μετρητοῖς τὸ ταχύτερον δικαίας καὶ εὐλόγου ἀποζημιώσεως" in the Greek version of the Constitution). In a case heard on the same

day as this one (No. 171/66)* I took the view that steps "to oust (a person) from his rights of possession and enjoyment, under a requisition order, should be taken together and at the same time with the appropriate steps for the determination and prompt payment of the compensation" involved. And later on the same occasion I said that "my understanding of the relative legislation, as at present advised, is not that the owner must give up his property and chase after the compensation payable to him; but that failing agreement at the time of the taking of the property, the Authority concerned must promptly proceed with the steps prescribed by law, for the determination of just and equitable compensation and the due payment thereof".

In the absence of any evidence on the point, I enquired of counsel of both sides at the conclusion of the hearing, what would be a reasonable amount to cover the shopkeeper's claim for compensation. Mr. Clerides on his behalf, stated that his instructions were that in case of demolition of the shop the shopkeeper's loss would be a thousand pounds (£1000). Counsel for the Respondents stated that the matter had not been considered; nor had there any valuation or assessment been made in that respect; and they could, therefore, make no statement.

In the circumstances, I have made a provisional order in the terms declared and recorded at the conclusion of the hearing, which reads as follows:

Provisional Order made restraining both Respondents from taking any steps in furtherance of the requisition order affecting the property described in the recourse, for a period of 14 days from today. On the making of a deposit in the sum of £1000 (one thousand pounds) with the Registrar of this Court within the said period of 14 days, the provisional order to be discharged, and the Respondent-Authorities to be at liberty to proceed with the requisition of the property.

Failing such a deposit within the said period of 14 days, the Provisional Order to remain in force pending the hearing and final determination of the recourse, or until further order.

With costs in this application, for the petitioner in any event.

*Provisional Order in terms.
Order for costs as aforesaid.*

* Vide the Case of *Vassiliades v. Republic etc.*, reported *ante*, at p. 708.

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