

[TRIANTAFYLLOIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

KYPRIANOS KOUPPAS,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH

1. THE COUNCIL OF MINISTERS,
2. THE MUNICIPALITY OF NICOSIA,

*Respondents.*

(Case No. 205/66).

1966  
Sept. 2, 8, 15  
—  
KYPRIANOS  
KOUPPAS  
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THE REPUBLIC  
OF CYPRUS,  
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1. THE COUNCIL  
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OF NICOSIA

*Acquisition of premises—Compulsory acquisition—Requisition of the same premises pending completion of the compulsory acquisition procedure—With a view to demolishing the premises in question—Provisional Order—Application for a provisional order restraining the demolition of the premises until final determination of the Recourse—Rule 13 of the Supreme Constitutional Court Rules, which are still in force by virtue of section 17 of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law No. 33 of 1964)—Principles laid down in Georghiades (No. 1) and The Republic (1965) 3 C.L.R. 392, applied—In the instant case and on its facts, it seems that it is not necessary in the public interest to demolish the premises in question at once—Provisional Order made on the 15th September, 1966, preventing for a reasonable time (viz. until the 31st October, 1966) the demolition of the said premises.*

*Provisional Order—General principles applicable—The factor of irreparable harm—Meaning—But even if such harm might be involved, there may be, nevertheless, cases where the personal interest of the applicant has to be subjected to the public interest—See, also, above.*

Cases referred to :

*Georghiades (No. 1) and The Republic (1965) 3 C.L.R. 392.*

**Application.**

Application for a provisional order directing that Respondents, and in particular Respondent 2, be restrained from

1966  
Sept. 2, 8, 15

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

demolishing the premises of the Applicant at Eptanisos Str. No. 73, Nicosia (plot No. 29, under Registration No. 727) until the hearing and final determination of a recourse against a notice of requisition and a notice of evacuation and demolition of the above premises of the Applicant.

*L. Papaphilippou*, for the Applicant.

*K. Talarides*, Counsel of the Republic for Respondent No. 1.

*K. Michaelides*, for Respondent No. 2.

*Cur. adv. vult.*

The following Decision was delivered by:-

TRIANTAFYLLIDES, J.: In this Case Applicant has applied on the 20th August, 1966, for a Provisional Order directing that Respondents, and in particular Respondent 2, be restrained from demolishing the premises of the Applicant at Eptanisos St. No. 73, Nicosia (plot No. 29, under Registration No. 727) until the hearing and final determination of the recourse.

What has given reason to an application for a Provisional Order is a letter dated 11th July, 1966, (*exhibit 1*) by which Respondent 2 informed Applicant that it was intended to proceed with the demolition of his said premises, Respondent 2 having had compulsorily acquired such premises, and Respondent 1 having requisitioned them made them available to Respondent 2—under section 7(2) of the Requisition of Property Law, 1962 (21/62).

The relevant Notice of acquisition was published on the 21st October, 1965, in Supplement No. 3 to the official Gazette (Not.661) and the Order of acquisition followed on the 18th November, 1965 (Not.729); the Order of requisition was published on the 28th April, 1966 (Not.205). The purpose of public benefit, common to all, is the creation of a new municipal market in the area.

Applicant objected, at first, to Respondent 2 against the proposed compulsory acquisition. but once his objection was rejected and the Order of acquisition was published, he did not choose to take the matter any further and, thus, he has filed no recourse against such compulsory acquisition;

it would be out of time for him to do so now in view of the provisions of Article 146(3) of the Constitution.

The premises in question of Applicant appear to consist of two shops on the groundfloor, and a dwelling house on the first floor; Applicant uses one of the two shops for his business as a retailer and commission agent, lets out the other, and resides in the dwelling house.

In an affidavit filed on the 2nd September, 1966, Applicant alleges that the nature of his business is such that it is inseparably connected with the location of his present business premises.

As it appears from the application for a Provisional Order the Applicant is seeking to secure a Provisional Order preventing, pending the final determination of these proceedings, the demolition of his premises, which are affected by the Order of requisition; the decision to demolish such premises, as communicated to Applicant by the letter of Respondent 2 dated 11th July, 1966 (*exhibit 1*) is part of the subject-matter of this recourse, together with the Order of requisition, consequent upon which the said premises were made available to Respondent 2; such Respondent intends to demolish the premises, not intending to use them in their present state.

This Court is called upon, at this stage, to act under rule 13 of the Supreme Constitutional Court Rules—which are still in force by virtue of section 17 of the Administration of Justice (Miscellaneous Provisions) Law 1964 (33/64)—and to suspend the taking of effect of the aforesaid decision to demolish.

The relevant principles, which govern the exercise of the competence of this Court in a matter such as this one, have been referred to in a number of Decisions in the past, one of them being *Cleanthis Georghiades (No. 1)* and *The Republic*, (1965) 3 C.L.R. 392; they need not be repeated.

The main reason, for which Applicant insists on the Provisional Order applied for, is that he will suffer irreparable harm if he is forced to abandon his present premises and move his business elsewhere; he alleges that there are not, at present, available other suitable premises.

On the other hand Respondent 2 insists that the premises concerned have to be demolished, the soonest possible, in

1966  
Sept. 2, 8. 15

KYPRIANOS  
KOUPPAS  
and  
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1. THE COUNCIL  
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2. THE MUNICIPALITY  
OF NICOSIA

view of the urgent need to carry on with the creation of a new municipal market there.

Counsel for Applicant has, also, argued that, in the circumstances of this Case, it is illegal to proceed to demolish the premises on the strength of the requisition Order; this, indeed, raises a serious legal issue which has to be gone into further, and more fully, at the hearing of this Case on the merits; there does not, at present, however, appear to arise such a case of flagrant and definite illegality, so as to render it proper for this Court to hurry to intervene; and, in any case, should Applicant be found to be right, eventually, on this issue, then an appropriately large award of damages would meet the situation.

Also, though there does appear *prima facie* that the present recourse, which was filed on the 20th August, 1966, is, in the circumstances, out of time, in so far as the Order of requisition is concerned, I have decided to leave this issue to be decided later at the hearing of this recourse; in any case, this recourse appears to be within time in so far as the letter of the 11th July, 1966 (*exhibit 1*)—containing the threat of demolition—is concerned.

It is well-established that a Provisional Order, in proceedings of the present nature, should not be granted if its refusal does not entail irreparable harm for an Applicant; irreparable being the harm which cannot be compensated adequately, later, in terms of money. Moreover, even if such harm might be involved, nevertheless, the personal interest of an Applicant has to be subjected to the public interest, when the Court is weighing the granting or refusing of a Provisional Order.

In the present Case, bearing always in mind that Applicant has not challenged the validity of the Order of acquisition --and as a result when the compensation for the compulsory acquisition has been paid to him he will have to give up his premises and move his business and dwelling elsewhere—I cannot accept that he will really suffer irreparable harm if the decision to demolish his premises, taken consequent upon the requisition, is not prevented from taking effect before the final determination of the present proceedings, and he is, thus, forced to abandon his premises earlier than by virtue of the compulsory acquisition. Nor can I seriously envisage, in this connection, and at this stage, the possibility

of the compulsory acquisition being abandoned; it appears, in the light of all the circumstances of this Case, to be too remote a possibility.

On the other hand I do think that Applicant might suffer irreparable harm if he is forced to give up his business premises without being afforded a due opportunity to make suitable, as far as possible, arrangements elsewhere. The damage which flows from an immediate and sudden uprooting of a business, such as Applicant's, cannot, perhaps, be always measured accurately in terms of money.

There remains, thus to consider whether, notwithstanding the possibility, as above, of irreparable harm being caused to Applicant, his personal interest should be subjected to the public interest and the demolition of his premises should be allowed to take place at once—it had already been fixed, by means of *exhibit* 1, for the end of last July.

Had this been a case where Respondent 2 had acted in a manner consistently demonstrating an existing major urgency in the matter, I might have been inclined to accept that the superior claim of public interest over the personal interest of the Applicant is such that it would not be proper for this Court to intervene at all at this stage.

But I am not satisfied that there does exist all that urgency in the matter as Respondent 2 appears to rely upon; the conduct of such Respondent undermines seriously its position on this issue:—

The Notice of acquisition was published, as aforesaid, in October, 1965; the Order of acquisition was published in November, 1965; yet no timely step was taken at any time thereafter to settle, by agreement or otherwise, the question of the relevant compensation, so that Respondent 2 could take over the property; only on the 7th September, 1966, after the hearing of the application for a Provisional Order had begun, Respondent 2 filed an application to the District Court of Nicosia for the determination of the compensation payable to Applicant in respect of the compulsory acquisition; counsel for Respondent 2 has explained that this was due to delay in valuating the property concerned; but it is not at all consistent with extreme urgency not to take such steps as to ensure an early valuation of the Applicant's property. Five whole months were allowed to elapse

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before the Order of requisition was published on the 28th April, 1966 in order to expedite—as it has been stated to the Court—the achievement of the public benefit purpose of the acquisition; and, then, no notice of the intended demolition was given to Applicant until two and a half months, later, on the 11th July, 1966.

In the circumstances Applicant cannot be made to bear the dire consequences of the suddenly found sense of urgency of Respondent 2.

I am not convinced that it is so much necessary in the public interest to demolish Applicant's premises *at once*, so that he should not be given some reasonable space of time to try and find suitable premises to which to move his business, and his dwelling. I have decided, therefore, to make a Provisional Order preventing Respondent 2 from demolishing the premises of Applicant before the 31st October, 1966, and it is, therefore hereby so ordered accordingly.

In doing so I have not lost sight of the fact that it is not quite certain that the decision of Respondent 2 to demolish the premises of Applicant is an executory one which may be made the subject-matter of a recourse. At this stage, *ex abundanti cautela*, I have thought fit to lean, on this issue, in favour of Applicant and to proceed to make an Order, as aforesaid, but I am leaving this issue entirely open to be decided later, at the proper stage.

There shall be no order as to costs for the proceedings relating to the application for a Provisional Order.

*Provisional Order in terms.  
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application for a Provisional  
Order.*