

1966
Oct. 11,
Dec. 13

[VASSILIADES, AG. P., JOSEPHIDES, STAVRINIDES, JJ.
LOIZOU, HADJIANASTASSIOU, AG. JJ.]

COSTAS KTENAS
AND ANOTHER
(No. 2)
and
THE REPUBLIC
OF CYPRUS,
THROUGH
THE DIRECTOR
OF LANDS
AND SURVEYS

COSTAS KTENAS AND ANOTHER (No. 2),
Appellants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE DIRECTOR OF LANDS AND SURVEYS,

Respondent.

(*Revisional Jurisdiction Appeal No. 14*).

Acquisition of Land—Compulsory acquisition of land in 1937 by the then Colonial Government—Claim for the return of the land in question made in October, 1960 (i.e. after Independence Day) under section 13 of the Land Acquisition Law, Cap. 226 and Article 23, paragraph 5, of the Constitution of the Republic—Claim refused by letter dated 25th November, 1960—Claim repeated in September, 1963—Claim again declined by the respondent Director of Lands and Surveys by his letter of October 2, 1963, confirming his previous decision of the 25th November, 1960, supra—Respondent's letter of October 2, 1963 is merely confirmatory of his previous letter of the 25th November, 1960, supra—And, therefore, it could not become the subject of a recourse under Article 146 of the Constitution—In effect this recourse filed on the 16th December, 1963, was directed against the previous original decision of the respondent (25th November, 1960, supra)—Which recourse, thus, was clearly far out of the 75 days period of time prescribed by paragraph 3 of Article 146 of the Constitution—Nor can it be said that there exists any omission of a continuing nature on the part of the respondent Director to return the property in question—Because such continuing omission could only arise on the part of the organ of the Republic empowered or dutybound to decide to return the property—Such organ in this case is not the respondent Director but the Council of Ministers.

Compulsory Acquisition—Effected in 1937 by the then Colonial Government—Request for return made after Independence Day in 1960 under section 13 of Cap. 226 (supra)—Refusal to accede to such request—See under Acquisition of Land above—See, also, herebelow.

Administrative Act—See under Administrative Law, below.

Administrative Law—Administrative Act—Executory Act—Article 146, paragraph 1, of the Constitution—Confirmatory act—Merely confirmatory act of a previous decision, as distinct from an executory act—Cannot be made the subject of a recourse under Article 146 of the Constitution—Omission—Continuing omission—The omission must be that of the organ competent to decide viz. to take the positive decision alleged to have been omitted—See, also, under Acquisition of Land, above.

Constitutional Law—Article 146 of the Constitution—Recourse thereunder—Paragraphs 1 and 3 of the said Article—See under Acquisition of Land, Administrative Law, above.

Confirmatory Act—Merely confirmatory act as distinct from executory act—See under Acquisition of Land, Administrative Law, above.

Executory Act—See above.

Omission—Continuing omission—In the sense of Article 146, paragraph 1, of the Constitution—See above.

Council of Ministers—Proper organ to decide, in this case, the return of property compulsorily acquired—See under Acquisition of Land, above.

This is an appeal under section 11 (2) of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law No 33 of 1964) from the decision of a Judge of this Court whereby he dismissed the applicants'-appellants' recourse against the respondent's refusal or omission to return to them their property compulsorily acquired in 1937 by the then Colonial Government. His decision is reported in this Part at p. 64 *ante*. The Supreme Court, fully agreeing with the said decision in the first instance and with the reasons given therefor by the learned trial Judge, dismissed this appeal with no order as to costs.

Cases referred to .

Pikis and The Republic (1965) 3 C.L.R. 131, *distinguished*.

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Triantafyllides, J.) given on the 22nd day

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of January, 1966, (Revisional Jurisdiction Case No. 244/63) whereby a recourse against the decision of the Respondent refusing to offer back to Applicants a plot of land compulsorily acquired from them and not used for the purpose for which it was acquired, was dismissed.

G. Platritis with *A. Triantafyllides*, for the Appellants.

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

Cur. adv. vult.

The Judgment of the Court was delivered by:—

VASSILIADES, AG. P.: This is an appeal under section 11(2) of the Administration of Justice (Miscellaneous Provisions) Law, 1964, (No.33 of 1964), from the Decision* of a Judge of this Court who dealt with this recourse in the first instance.

The Applicants, who are husband and wife, were the registered owners of a plot of land (Plot 33) of 7 donums, 2 evleks and 1,100 sq.ft. in the area of Strovolos, one of the suburbs of Nicosia, in equal undivided shares.

About 30 years ago, in April, 1937, the Government of the then colony of Cyprus, took appropriate steps for the compulsory acquisition of the Applicants' said property for "the future building requirements of the Government, the development of such land and the erection on it of Government buildings for use as offices or otherwise", as stated in the notification (No.76) published in the official Gazette of the 16.4.1937. The amount of compensation payable in respect of the expropriation, was fixed by arbitration according to law at £140; and was paid to the Applicants in due course.

Twenty-three years later, in October, 1960, the Applicants wrote to the Lands and Surveys Officer, Nicosia, (*exhibit 1*), asking for the return of the property. Referring to the acquisition of the property, the Applicants say that its purpose was the erection of the English School, Nicosia, "but still we assure you—they add—that the Government has not at all used our field for the above purpose for which it acquired it, and this is proved from the fact that to this day it has remained uncultivated and unused and is in the same condition as it used to be on the day of its acquisition in 1937. We

*Decision reported in this vol. at p. 64 *ante*.

therefore ask that the above piece of land be returned to us, the previous owners, according to section 13 of the Land Acquisition Law, Cap. 226".

On November 25, 1960, the acting Senior Officer of Lands and Surveys Department, made an official reply to Applicants' request informing them that he declined to "recommend the return" of the property on the grounds that:-

- "(a) the said property has not been acquired for the erection of the English School as you allege in your letter, but for the future building requirements of the Government, the transformation later of such land and the erection on it of Government offices and other buildings.
- "(b) Until now there is no indication that the work of public utility for which the property has been acquired by the Government has been abandoned or that the whole or part of the acquired property is not required any more for the needs of the said work".

Three years later, on September, 1963, the Applicants reverted to the matter through their lawyers (Mr. G. Platritis and Mr. G. Tornaritis) who repeated the request that the property be offered back to them "the soonest possible" (*Exhibit 3*). The request was again officially declined by the Director of Lands and Surveys Department, by his letter of October 2, 1963, (*Exhibit 4*).

On December 16, 1963, the Applicants filed, through their advocates, the present recourse under Article 146 for:-

- (a) a declaration that the decision of the Director of Lands and Surveys Department contained in his letter of October 2, 1963, refusing Applicants' request for the return of the property "is null and void and of no effect whatsoever as being contrary to law and/or in excess of powers vested in such officer or authority"; and
- (b) a declaration that the omission of the Director of Lands and Surveys Department to offer to the Applicants the property in question, contained in his letter of October 2, 1963, "ought not to have

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been made and that whatever has been omitted should have been done".

The recourse was opposed on a number of grounds, the first of which was that "the letter of the Lands and Surveys Department to the Applicants dated 2.10.63" did not constitute an executive administrative act or decision, and therefore could not be attacked by the recourse. It was merely the confirmation of the refusal of the Director of Lands and Surveys Department communicated to the Applicants by his letter of 25.11.60.

A number of other grounds, 13 in all, on which the opposition was based need not be specifically referred to for the purposes of this Judgment.

The recourse came on for trial in October, 1965, and was eventually dismissed on the 22nd January, 1966, by the Judgment* attacked by the present appeal.

After stating the facts, briefly summarised above, the learned trial Judge first dealt with the question of whether there exists any omission on the part of the Respondent Director of Lands and Surveys.

"In my opinion—the Judge says, (at page 3 of the Judgment, at page 18 of the record)—in 1960, when he was first called upon to deal with the matter, he (the Director) appears to have examined it and given a reasoned reply (*Exhibit 2*). In 1963 he confirmed such reply by writing a letter in identical terms (*Exhibit 4*). Therefore, there can be no question of an omission on his part *to deal* with the request of the Applicants. In this respect this Case differs from that of *Pikis and The Republic* (1965) 3 C.L.R. 131 where a request for the return of property compulsorily acquired was found not to have been properly examined.

Nor do I think that there exists any omission of a continuing nature—on the part of the Director—to return the property in question, because a continuing omission to return the property could only arise on the part of the organ of the Republic empowered or dutybound to decide to return the property. Such

*Reported in this Part at p. 64 *ante*.

organ is in this case and on the basis of all relevant provisions, constitutional and statutory, the Council of Ministers".

We agree with this view and the decision based thereon

The learned trial Judge next proceeded to deal with the question whether the letter of the Director (*Exhibit 4*) is an executory act which can be challenged on its own, or it is a confirmatory of the previous act of the director of the 25th November, 1960 (*Exhibit 2*) in which case it cannot be made the subject of a recourse.

For the reasons stated in his Judgment (already reported in this Part at p 64 *ante*) the learned Judge found that the letter of the respondent Director of the 2nd October, 1963 (*Exhibit 4*) was merely confirmatory of his previous letter of the 25th November, 1960 (*Exhibit 2*) and that therefore it could not become the subject of a recourse, in effect this recourse was directed against the previous original refusal of the Director contained in Exhibit 2 which was clearly far out of the time prescribed under Article 146(3).

The present appeal attacks the decision of the trial Judge on a number of grounds which may be summarised in -

- (1) that the trial Judge erred in deciding that the recourse was out of time,
- (2) that as the Respondent is "The Republic of Cyprus through the Director of Lands and Surveys" the trial Judge erred in deciding "to treat separately" the Director of Lands and Surveys from the Council of Ministers in so far as the question of omission was concerned,
- (3) that the trial Judge erred in deciding the legal effect of Law 15/1962 and Article 23(5) of the Constitution when dealing with a preliminary objection instead of deferring the matter until the final stage of the recourse and dealing with it in his Judgment

After hearing extensive and able argument on the part of the learned counsel for the Appellants on the hearing of this appeal, we were clearly of the opinion that the recourse was aimed at the decision contained in the letter of the Director of Lands and Surveys dated 2nd October 1963 (*Exhibit 4*)

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for a declaration that the refusal to return the property communicated thereby is null and void. Agreeing as we do with the learned trial Judge that this was merely confirmatory of a previous executory act, and, therefore, not amenable to a recourse under Article 146, we came to the conclusion, without calling on the Respondents, that Appellants' recourse was rightly dismissed by the trial Judge. We therefore dismissed the appeal stating that we would give our reasons later, which we now do.

Repeating the reservation of the learned trial Judge, at the end of his Judgment, we may add that this Judgment does not purport to decide any other matters or rights of the Applicants, if any, which are not part of the decision of the Director of Lands and Surveys, constituting the executory act attacked by this recourse.

Appeal dismissed, no order for costs.

Order accordingly.