IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MELPOMENI CONSTANTI ANTONI BAKKALIAOU,

Applicant,

and

THE MUNICIPALITY OF FAMAGUSTA,

Respondent.

(Case No. 158/67).

Compulsory Acquisition of property—Validity—Recourse under Article 146 of the Constitution—Time for the making of the recourse—Article 146.3—The period of 75 days required by Article 146.3 commenced to run as from the date of the publication in the Official Gazette of the Republic of the relevant Order of acquisition—The Compulsory Acquisition of Property Law 1962 (Law No. 15 of 1962), sections 4, 6 and 9—See, also, herebelow.

Constitutional Law—Article 29 of the Constitution—Reply to written requests or complaints by the administrative authorities concerned—Reply by publication—Compulsory acquisition—Failure of acquiring authority to reply to a letter from owner sent after publication in the Official Gazette of the relevant notice of acquisition and in reply to a previous letter of the acquiring authority informing the owner of the intended acquisition—Such failure does not offend against Article 29.

Recourse under Article 146 of the Constitution — Time within which such recourse may be made—Article 146.3—See above under Compulsory Acquisition.

Time—Recourse under Article 146 of the Constitution—Paragraph 3 of this Article—See above.

By this recourse filed on the 17th August, 1967, the Applicant challenges the validity of the decision of the Respondent Municipality to acquire compulsorily her property. On the 19th December 1967, counsel for the Respondent raised a preliminary point of law to the effect that the recourse is out of time; and on the 30th December

1967, counsel agreed that this preliminary point of law be tried by the Court first.

Paragraph 3 of Article 146 of the Constitution reads:

> "Such a recourse shall be made within 75 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 undisputed facts are shortly as follows:

On the 28th April, 1966, the Respondent Municipality published in the Official Gazette of the Republic the "notice of acquisition" in accordance with section 4 of the Compulsory Acquisition of Property Law 1962 (Law No. 15 of 1962). On the 19th June, 1966 the Respondent Municipality—the acquiring authority—wrote a letter to the Applicant informing her of the intended acquisition and calling upon her to submit to the said Municipality within 15 days any objection which she may wish to raise to such acquisition.

On the 30th June, 1966 the Applicant (owner of the property in question) replied objecting to the intended acquisition. It appears that no reply was given to this letter of the Applicant, but the acquiring authority (the Respondent) no doubt acting under section 6 of the said Law No. 15 of 1962 *(supra)*, and after examining the objections to the acquisition made by the Applicant, considered expedient to acquire the property of the Applicant; and on the 13th October, 1966, the relevant "order of acquisition" was published in the Official Gazette of the Republic. As stated above the recourse was filed on the 17th August, 1967, counsel for the Applicant arguing that in view of the fact that the Respondent Municipality failed to reply to his client's letter of the 30th June 1966 *(supra)*, she (the owner-applicant) was informed of the aforesaid order of acquisition for the first time on the 8th June, 1967, when she was served with the notice of the proceedings taken for the determination by the District Court of the compensation payable for the acquisition under section 9 of the said Law. Therefore, counsel submitted that time began to run as from that particular date of the 8th June, 1967, and not from the date of the publication on the 13th Oc-

tober, 1966 of the "order of acquisition" *(supra)*.

In dismissing the recourse as having been filed out of time, the Court:-

Held, (1). It is plain to me, that in view of the wording of paragraph 3 of Article 146 *(supra)*, once the decision or act of the acquiring authority for the compulsory acquisition of the property was published, time was set in motion and the commencement of the running of the period for the making of the recourse by the owner began to run as from the date of such publication in computing the period of 75 days; and irrespective of when the act or decision came to the knowledge of the person concerned.

(2) The mere fact that the acquiring authority failed to reply to the letter of the Applicant dated the 30th June, 1966, *(supra)* does not in my view change the position of the Applicant, because the acquiring authority has acted under the provisions of Law 15 of 1962 *(supra)*.

(3) The view that time begins to run as from such publication is further supported by the decisions of the then Supreme Constitutional Court (See *John Moran and The Republic*, 1 R.S.C.C.10, at p. 13; *Joyce Marcoullides and The Greek Communal Chamber*, 4 R.S.C.C. 7, at p. 10; *Charalambos Pissas (No. 1) and The Electricity Authority*, (1966) 3 C.L.R. 634).

(4) It should be further observed that the Applicant, under the provisions of the aforesaid Law No. 15 of 1962, was deemed to have had constructive notice as from the date of the publication in the Official Gazette of the intended compulsory acquisition of her property.

(5)*(a)* Counsel further contended that the failure of the Respondent to reply to the Applicant's aforesaid letter of the 30th June, 1966 *(supra)* contravened Article 29 of the Constitution; and submitted that there could not be a reply by publication.

(b) There is no doubt that Article 29 covers all those cases where a person applies in writing to any competent authority (see *Phedias Kyriakides* and *The Republic*, 1 R.S. C.C. 66). But in the present case, the Applicant has not put forward a collateral claim under Article 29 for failure of the Respondent to reply to her letter; and it is equally

clear that the Applicant did not apply first to the acquiring authority, but only as a result of the said letter of the respondent dated the 19th June, 1966 *(supra)* informing her of the intended acquisition and calling on her to submit any objection which she may wish to raise. In my view, the failure of the acquiring authority to reply personally to the Applicant's letter does not offend against Article 29, because, as a matter of fact, the decision of such authority and its due reasons were published in the Official Gazette as required under the provisions of the Compulsory Acquisition of Property Law, 1962 (Law No. 15 of 1962) for her information and of any other person interested to such property.

(c) I would like further to observe, that once the Applicant had ample notice of the intended acquisition of her property, it was her duty to show more interest and watch out for such publication in the Official Gazette.

(6) With regard to counsel's submission that "there cannot be a reply by publication" on the authority of *Nicos Pelides and The Republic,* 3 R.S.C.C. 13 at p. 17, I think that the reasoning behind this passage does not in any way support counsel's view, because it is evident that in that part of its Judgment the Supreme Constitutional Court was dealing with the question of review on an appeal.

(7) In the circumstances, and for the reasons I have advanced, this application cannot proceed and is dismissed as being filed out of time.

Application dismissed.
No order as to costs.

Cases referred to:

John Moran and The Republic, 1 R.S.C.C. 10, at p. 13;

Joyce Marcoullides and the Greek Communal Chamber, 4 R.S.C.C. 7 at p. 10;

Nicos Pelides and The Republic and Another, 3 R.S.C.C. 13, at pp. 17 and 20;

Phedias Kyriakides and The Republic, 1 R.S.C.C. 66;

Charalambos Pissas (No. 1) and The Electricity Authority, (1966) 3 C.L.R. 634;

Maria Venglis and The Electricity Authority of Cyprus, (1965) . 3 C.L.R. 252.

Recourse.

Recourse against the decision of the Respondent to acquire compulsorily Applicant's property.

A. Triantafyllides, for the Applicant.

S. Marathovouniotis, for the Respondent.

Cur. adv. vult.

The following Judgment* was delivered by:-

HADJIANASTASSIOU, J.: In this preliminary point of law, the short question between the parties is whether this application has been filed in Court within time, that is to say, before the lapse of the period of 75 days, as provided for in paragraph 3 of Article 146 of our Constitution.

The undisputed facts are in brief as follows:

The Applicant is the owner of a corner building site Plot No. 181, sheet-plan No. XXXIII/12.6.II, Block B, situated at Ayios Nicolaos in Famagusta.

On the 28th April, 1966, the acquiring authority, the municipal corporation of Famagusta, published in the official Gazette of the Republic a "notice of acquisition" (Not. No. 49 in Supplement No. 3), containing a description of the property intended to be acquired, the name of the Applicant, the purpose for which it was required and the reasons for the acquisition in accordance with the provisions of section 4 of the Compulsory Acquisition of Property Law, 1962.

The municipal council acting, no doubt, on sound administrative policy, and in order to inform personally the owner of the intended acquisition of her property wrote a letter to the Applicant dated 19th June, 1966, in which it says:

«Φέρεται εἰς γνῶσιν ὑμῶν, ὅτι ἡ Δημοτικὴ Ἐπιτροπὴ Ἀμμοχώστου, ἐν τῇ ἐνασκήσει τῶν δικαιωμάτων ἅτινα τῆς παρέχονται δυνάμει τοῦ Νόμου 15 τοῦ 1962, Περὶ

*For final decision on appeal see (1969) 1 J.S.C. 74 to be reported in due course in (1969) 3 C.L.R.

'Αναγκαστικῆς 'Απαλλοτριώσεως κτημάτων, διὰ σκοποὺς δημοσίας ὀφελείας, ἤτοι διὰ τὴν δημιουργίαν, συντήρησιν καὶ ἀνάπτυξιν δημοσίων ὁδῶν, προέβη εἰς τὴν δημοσίευσιν Γνωστοποιήσεως 'Απαλλοτριώσεως τοῦ ὑμετέρου κτήματος τεμ. 181, Φ/Σχέδιον XXXIII/12.6.II Μπλὸκ Β, "Αγιος Νικόλαος, τοῦ ὁποίου ἡ ἀπόκτησις εἶναι ἀπαραίτητος διὰ τὴν διεύρυνσιν, εὐθυγράμμισιν καὶ βελτίωσιν μέρους τῆς Λεωφόρου Εὐαγόρου καὶ τῆς ὁδοῦ 'Ηλεκτρικῆς. 'Η δημοσίευσις τῆς Γνωστοποιήσεως ταύτης, ἐγένετο εἰς τὴν ἐπίσημον ἐφημερίδα τῆς Δημοκρατίας, ὑπ' ἀρ. 490 (Παράρτημα Τρίτον), ἡμερ. 28.4.66 ('Αρ. Γνωστοποιήσεως 203).

'Εὰν ἐνίστασθε εἰς τὴν σκοπουμένην ταύτην ἀπαλλοτρίωσιν, δύνασθε νὰ ὑποβάλετε πρὸς τὴν 'Απαλλοτριοῦσαν 'Αρχήν, ἤτοι τὴν Δημοτικὴν 'Επιτροπὴν 'Αμμοχώστου, πλήρη καὶ δεόντως ἠτιολογημένην ἔκθεσιν περὶ τῶν λόγων τῆς ἐνστάσεώς σας, ἐντὸς 15 ἡμερῶν ἀπὸ τῆς λήψεως τῆς παρούσης εἰδοποιήσεώς μου».

It would be observed, that the municipal council in their letter was calling upon the owner of the property to submit to the acquiring authority — the municipal corporation — within 15 days any objection which she may wish to raise to such acquisition.

On the 30th June, 1966, the Applicant replied objecting to the intended acquisition of her property and, in a letter she says:-

«'Αναφερομένη εἰς τὴν ἐπιστολὴν τοῦ 'Εντίμου Κυρίου Δημάρχου 'Αμμοχώστου ὑπ' ἀριθ. 41/65 ἡμερ. 19ης 'Ιουνίου, 1966 ἐπιθυμῶ νὰ φέρω εἰς γνῶσιν σας ὅτι ἐνίσταμαι εἰς τὴν σκοπουμένην ἀπαλλοτρίωσιν τοῦ κτήματός μου Τεμάχιον 181, Φύλλον/Σχέδιον 33/12.6.2, Μπλὸκ «Β» εὑρισκομένου εἰς 'Αμμόχωστον, ἐνορίαν 'Αγίου Νικολάου διὰ τὸν λόγον ὅτι τὸ κτῆμα τοῦτο εἶναι ἡ μοναδική μου περιουσία καὶ ἐσκόπευα νὰ κτίσω καταστήματα ἐπὶ τοῦ κτήματος τούτου σύμφωνα μὲ τὴν αἴτησίν μου καὶ τὰ σχέδια τὰ ὁποῖα εἶχα ὑποβάλη πρὸς ὑμᾶς δι' ἄδειαν οἰκοδομῆς ἵνα τὰ τέκνα μου ἔχουν ἕνα εἰσόδημα ἐκ τοῦ ὁποίου νὰ δύνανται νὰ ζήσουν.

«'Εκ τῆς ἐν λόγῳ ἐπιστολῆς τοῦ 'Εντίμου Κυρίου Δημάρχου ἀντιλαμβάνομαι ὅτι ὑμεῖς χρειάζεσθε μέρος τοῦ κτήματός μου διὰ τὴν διεύρυνσιν, εὐθυγράμμισιν

καὶ βελτίωσιν μέρους τῆς Λεωφόρου Εὐαγόρου καὶ τῆς ὁδοῦ 'Ηλεκτρικῆς. 'Εὰν πράγματι τοῦτος εἶναι ὁ σκοπὸς τῆς ἀναγκαστικῆς ἀπολλοτριώσεως, προτείνω ὅπως, ἐὰν δοθῆ ἄδεια οἰκοδομῆς τριῶν καταστημάτων σύμφωνα μὲ τὴν αἴτησίν μου καὶ τὰ σχέδια τὰ ὁποῖα ὑπέβαλα πρὸς ὑμᾶς ἢ ὡς ἠθέλατε ὑποδείξη, παραχωρήσω μέρος τοῦ κτήματός μου δωρεὰν διὰ τοὺς σκοποὺς τῆς διευρύνσεως καὶ εὐθυγραμμίσεως τῆς Λεωφόρου Εὐαγόρου καὶ τῆς ὁδοῦ 'Ηλεκτρικῆς.

Μὲ τὴν πεποίθησιν ὅτι θὰ μελετηθῆ ἡ ὑπ' ἐμοῦ γενομένη πρότασις καὶ θὰ τύχω ἀπαντήσεώς σας».

It appears that no reply was given to the letter of the Applicant, but the acquiring authority, no doubt, acting under the provisions of section 6 of Law 15/62, and after examining the objections to the acquisition made by the Applicant as well as after considering all circumstances of her case, it was considered expedient to acquire the property of the Applicant; and on the 13th October, 1966, an "order of acquisition" was published in the official Gazette of the Republic Not. No. 726 in Supplement No. 3).

The Applicant, in her application for relief, dated the 17th August, 1967, seeks a declaration that the decision of the Respondent to acquire compulsorily her property is *null* and *void* and of no effect whatsoever.

On the 19th December, 1967, counsel for the Respondent raised a preliminary point of law, that the application is out of time; and on the 30th December, 1967, counsel agreed that the preliminary point of law be tried by the Court first.

It is not in dispute that the order of acquisition to acquire the property of the Applicant was published on the 13th October, 1966, and, therefore, it becomes evident that when this recourse was made on the 17th August, 1967, it was long after the lapse of 75 days as provided by paragraph 3 of Article 146 of the Constitution. But counsel for the Applicant argued, that in view of the fact that Respondent failed to reply to the letter of the owner of the property, and because she was informed of the order of acquisition for the first time on the 8th June, 1967, when the Applicant was served with the notice of the proceedings for determination of the compensation payable for the acquisition, under the provisions of section 9 of Law 15 of 1962, he submitted that time

began to run as from that particular date of the 8th June 1967, and not from the 13th October, 1966.

Paragraph 3 of Article 146 provides:-

> "Such a recourse shall be made within 75 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".

It is plain to me, that in view of the wording of paragraph 3, once the decision or act of the acquiring authority for the compulsory acquisition of property was published, time was set in motion and the commencement of the running of the period for the recourse by the owner began to run as from the date of such publication in computing the period of 75 days; and irrespective of when the act or decision came to the knowledge of the person concerned. The mere fact that the acquiring authority failed to reply to the letter of the Applicant in which she put forward her objections to the intended acquisition, does not in my view, change the position of the Applicant, because the acquiring authority has acted under the provisions of Law 15 of 1962.

The view that time begins to run from such publication is further supported by the decisions of the Supreme Constitutional Court of Cyprus and I propose dealing first with the case of *John Moran and The Republic (Attorney-General and Minister of Interior)* 1 R.S.C.C. 10. The Court had this to say at p. 13:

> "The Court is of the opinion that the period of time provided for in the said paragraph 3 is mandatory and has to be given effect to in the public interest in all cases. Such view is in accordance with the interpretation of analogous provisions given by administrative tribunals in a number of European countries and is also the view of authoritative writings on this subject. Exceptional circumstances recognized by the above authorities as affecting the running of such period do not arise on the facts of this case.
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> As in the present case the acts complained of were not published, in order to find as from when the period of seventy-five days began to run, it is necessary to ascertain when such acts came to the knowledge of the Applicant".

Later on the Court says:

> "In the opinion of the Court 'knowledge' means knowledge of the decision, act or omission giving rise to the right of recourse under Article 146 of the Constitution and not knowledge of evidential matters necessary to substantiate before this Court an allegation of unconstitutionality, illegality or an excess or abuse of power".

The second case is *Joyce Marcoullides and The Greek Communal Chamber (Director of Greek Education)*, 4 R.S.C.C. 7 the Court had this to say at p. 10:

> "As stated in the judgment of this Court in the Case of *John Moran, and The Republic (Attorney-General & Another)*, 1 R.S.C.C. p. 10 at p. 13, the provisions of paragraph 3 of Article 146 are mandatory and have to be given effect to in the public interest in all cases. The Court, therefore, is always watchful to enquire whether a recourse is in, or out of, time, in view of the said provisions; actually in the Case of *The Holy See of Kitium and the Municipal Council of Limassol*, 1 R.S.C.C. p. 15 at p. 18, the Court proceeded to examine this issue even though, having been raised originally by Respondent, it was later abandoned by him as an objection on his part".

See also *Charalambos Pissas (No. 1) and The Electricity Authority of Cyprus*, (1966) 3 C.L.R. 634.

It would be further observed, that the Applicant, under the provisions of Law 15 of 1962, was deemed to have had constructive notice as from the date of the publication of the intended compulsory acquisition of her property in the official Gazette, irrespective of whether or not the acquiring authority had decided to inform the Applicant by means of a letter. Therefore, as no question arises in this case, as to whether or not there has been proper publication of the notice and order of acquisition, I am of the view, that the submission of counsel for the Applicant fails on this point.

Counsel further contended that the failure of the Respondent to reply to the letter of the Applicant contravened Article 29 of the Constitution; and submitted that there could not be a reply by publication within the ambit of the case of *Nicos Pelides and The Republic (Council of Ministers and Another)*, 3 R.S.C.C. 13.

There is no doubt, that Article 29 of the Constitution covers all those cases where a person applies in writing to any competent public authority under the provisions of any specific law or otherwise. Vide *Phedias Kyriakides and The Republic of Cyprus*, 1 R.S.C.C. 66. In the present case, the Applicant has not put forward a collateral claim under Article 29 for failure of the Respondent to reply to the letter of the Applicant; and it is equally clear that the Applicant did not apply first to the acquiring authority, but only as a result of the letter of the municipal council, informing the owner of the intended acquisition of her property; and calling on her to submit to such authority any objection which she may wish to raise to such acquisition. In my view, the failure of the acquiring authority to reply personally to Applicant's letter does not offend against Article 29 of the Constitution, because, as a matter of fact, the decision of such authority and its due reasons were published in the Official Gazette, as required under the provisions of Law 15 of 1962 for her information and of any other person interested to such property. I would like further to observe, that once the Applicant had ample notice of the intended acquisition of her property, it was her duty to show more interest and watchout for such publication in the Official Gazette of the Republic. Vide *Maria Ch. Venglis and The Electricity Authority of Cyprus*, (1965) 3 C.L.R. 252. Furthermore it is evident that even if the Applicant was aggrieved because of the failure of the Respondent to reply to her letter, such requirement, in my view, has been waived by her. Having reached the conclusion that by such publication in the Official Gazette, the acquiring authority had in fact replied to the Applicant, this submission of counsel also fails.

With regard to the last submission of counsel for the Respondent, that "there cannot be a reply by publication" on the authority of *Nicos Pelides (supra)*, with due respect to counsel, I think the reasoning behind this case does not in any way support counsel's view. In *Pelides* case, the Applicant was the registered owner of a building site situated at the junction of Markos Drakos and Charalambos Georghiou Mouskos Streets, Nicosia. By Not. No. 422, published in the Official Gazette No. 61 of the 12th May, 1961, the Respondent No. 2 published certain plans concerning the widening and/or straightening of the said two streets. It was expressly stated therein that any person objecting to the

scheme could appeal to the Council of Ministers within three months from the date of such publication. The Applicant having thus first appealed to the Council of Ministers and the appeal having been left in abeyance by the Council filed a recourse on the 14th July, 1961, seeking a declaration by the Court that the street-widening scheme was *null* and *void* and of no effect whatsoever. The part of the judgment of the Court on which counsel for the Applicant relies is to be found at p. 17. It reads:

> "The Court takes this opportunity of stressing that though Article 146 grants it exclusive jurisdiction in administrative law matters there is nothing in such Article to prevent procedures for administrative review of executive or administrative acts or decisions from being provided for in a Law. Such review may be either—
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> *(a)* by way of confirmation or completion of the act or decision in question, in which case no recourse is possible to this Court until such confirmation or completion has taken place (e.g. under section 17 of Cap. 96); or
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> *(b)* by way of a review by higher authority or by specially set-up organs or bodies of an administrative nature, in which case a provision for such a review will not be a bar to a recourse before this Court but once the procedure for such a review has been set in motion by a person concerned no recourse is possible to this Court until the review has been completed".

The Court had further this to say at p. 20:

> "Once the time within which and the organ before which the street-widening scheme may be challenged are included in such publication, then, in a case of this nature, they become essential ingredients thereof because they are inseparably interwoven with the very nature and object of such publication, viz. to enable any person affected thereby to make a recourse against the street-widening scheme".

With due respect to counsel's submission, in my view the part of the judgment on which he relies, does not in any way help his case, because it is evident that, that part of the

judgment of the Supreme Constitutional Court, was dealing with the question of review on an appeal. In the present case, Law 15 of 1962 lays down that in the case of an intended acquisition of property of a citizen notice must be published in the Official Gazette and, that the owner or any other person interested in such property, is called upon within a certain period to submit to such authority any objection which he may wish to raise to such acquisition. Once the order of acquisition was published the Applicant who was affected was entitled to make a recourse within the proper time.

In the circumstances, and for the reasons I have advanced, this application cannot proceed and is dismissed, as being filed out of time.

Mr. Ladas (Appearing for Mr. Marathovouniotis): I do not claim costs.

Court : In the circumstances I am not proposing to make an Order for costs.

Application dismissed.
No Order for costs.