

1968
Aug. 24

[TRIANTAFYLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

KALLIOPI K.
KOUPEPA
v.
THE MUNICIPAL
COMMITTEE OF
THE MUNICIPAL
CORPORATION OF
LIMASSOL
AND ANOTHER

KALLIOPI K. KOUPEPA,

Applicant,

and

THE MUNICIPAL COMMITTEE OF THE MUNICIPAL
CORPORATION OF LIMASSOL AND ANOTHER,

Respondents.

(Case No. 135/67).

Acquisition of land—Compulsory acquisition of land effected in 1961—Offer by the Respondent Municipality in 1967 of compensation in respect of the property compulsorily acquired as aforesaid—Recourse under Article 146 of the Constitution challenging the validity of the step so taken—The Court has no jurisdiction under Article 146 to entertain the recourse—The said step is not a final administrative act, or decision, of an executory character—It is, merely, a preparatory step towards the assessment of the compensation payable to the Applicant—And as such it cannot be attacked by the recourse under Article 146—Moreover, the question of the assessment of such compensation being a matter within the jurisdiction of a civil Court under Article 23.4(c) of the Constitution—It follows that the said offer by the Respondent would be, in any case, outside the competence of this Court under Article 146—Even if such step were to be considered as a step taken in 1967 in execution of the compulsory acquisition in 1961—Again no recourse would lie against it, because an act of execution cannot be the subject matter of a recourse under Article 146.

Compulsory acquisition—See above.

Administrative and Constitutional Law—Recourse under Article 146 of the Constitution—Jurisdiction of the Court thereunder—Preparatory acts or acts of execution cannot be made the subject matter of a recourse under Article 146—Only final administrative acts or decisions of an executory character can be attacked by such recourse—In any case questions of assessment of compensation in respect of compulsory acquisition of property are within the jurisdiction of a civil Court under Article 23.4(c) of the Constitution.

Preparatory acts—Acts of execution—Final administrative acts of an executory character—See above.

Executory acts—See above.

Acts of execution—See above.

Final administrative acts or decisions—See above.

Recourse under Article 146 of the Constitution—What can be attacked thereby—See above.

Administrative acts or decisions within the ambit of Article 146 of the Constitution—See above.

Jurisdiction—Revisional jurisdiction of the Court under Article 146 of the Constitution—See above and below.

Revisional jurisdiction under Article 146 of the Constitution—This being a matter of public law, the point has to be decided by the Court even if it is not raised by either party—See, also, above.

On the 6th June, 1967, the Respondent Municipality addressed to the Applicant a letter offering her compensation, at the rate of £900 per donum, in respect of her property in Limassol under Plot 20/3 which had been compulsorily acquired on the 22nd September, 1961. It is common ground that the said compulsory acquisition was not challenged by recourse under Article 146 of the constitution and it could be too late to do so now in view of the provisions of Article 146.3 which provides that a recourse may be made within seventy-five days of the publication of the act or decision challenged thereby. The present recourse was filed on the 17th July, 1967, challenging the validity of the step taken, as aforesaid, by the Respondent Municipality on the 6th June 1967.

The Court dismissed the recourse on the ground that it has no competence under Article 146 of the Constitution to deal with the validity of the subject-matter thereof, although the question was not raised by either side.

Held, (1). At the hearing of the case the question of the competence of this Court to entertain the recourse has not been raised by either side. But, I have to consider this aspect just the same, because the competence under Article 146 of the Constitution is a matter of public law and it should

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not be exercised unless the conditions enabling its exercise do exist.

(2) I have come to the conclusion that the said step taken by the Respondent Municipality on the 6th June, 1967, is not, by any means, a final administrative act, or decision, of an executory nature; it is, merely, a preparatory step towards the assessment of the compensation payable to the Applicant in respect of her compulsorily acquired property, and as such it is outside the ambit of the jurisdiction under Article 146, and could not be attacked by a recourse thereunder (see *Papanicolaou (No. 1)* and *The Republic*, reported in this Vol. at p. 225 *ante*).

(3) Moreover, the question of the assessment of the compensation payable to the Applicant, being a matter within the jurisdiction of a civil court, and not of this Court, the step complained of would be, in any case, outside the competence of this Court under Article 146.

(4) Even if one were to look at the letter of the Respondent Municipality of the 6th June, 1967, from another angle—though I do not think that this would be the correct approach—as being a step taken in execution of the compulsory acquisition—in September, 1961—of the Applicant's property, again no recourse would lie against it, because an act of execution cannot be the subject matter of a recourse under Article 146 (see *Kolokassides and the Republic (1965)* 3 C.L.R. 542.

Recourse dismissed. No order as to costs.

Per curiam: If the Applicant wishes to pursue the argument, advanced before me, that the 1961 compulsory acquisition of her property ceased to be of any effect after the expiration on the 31st December, 1962, of the Municipal Corporations Law, Cap. 240, a possible course might be by way of a preliminary objection to that effect in the relevant proceedings of reference 15/67 before the District Court of Limassol which was filed in connection with the assessment of the compensation due to the Applicant in respect of the compulsory acquisition of her property concerned; she might argue that if the acquisition had lapsed then no question of assessing such compensation could arise.

Cases referred to:

Papanicolaou (No. 1) and *The Republic* (reported in this Vol. at p. 225 *ante*);

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

Recourse.

Recourse against the validity of a decision of the Respondent, communicated to Applicant by a letter dated 6th June, 1967, offering to her compensation in respect of her property which had been compulsorily acquired on the 22nd September, 1961.

Sir P. Cacoyiannis, for the Applicant.

J. Potamitis, for the Respondent.

Cur. adv. vult.

The following Judgment was delivered by:-

TRIANTAFYLIDIS, J.: On the 6th June, 1967, the Respondent Limassol Municipality addressed to the Applicant a letter (see *exhibit 1*) offering her compensation, at the rate of £900 per donum, in respect of her property in Limassol (plot 20/3, under registration 34216 of the 28th November, 1947), which had been compulsorily acquired on the 22nd September, 1961; the relevant Order had been published in the Official Gazette of that date (3rd Supplement, Not. 338).

Counsel acting for the Applicant replied on the 12th July, 1967 (see *exhibit 2*), stating that their client no longer recognized the compulsory acquisition in question as being in force; it was, further, stated that, in any case, the compensation offered was unreasonably low.

It is common ground that the said compulsory acquisition was not challenged by recourse when it was made, in September, 1961.

It would be too late to do so now, in view of the provisions of Article 146.3, which provides that a recourse should be made within seventy-five days of the publication of the act or decision challenged thereby.

This recourse was filed, on the 17th July, 1967, challenging

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the validity of the step taken, as aforesaid, by the Respondent Municipality, on the 6th June, 1967.

At the hearing of the Case the question of the competence of this Court to deal with the validity of the subject matter thereof has not been raised by either side. But, I have had to consider this aspect, just the same, because the competence under Article 146 of the Constitution is a matter of public law and it should not be exercised unless the conditions enabling its exercise do exist.

I had, therefore, to examine whether the step taken by the Respondent Municipality on the 6th June, 1967—and which had been made by the Applicant the subject matter of this recourse—is an act or decision against which a recourse could be made under Article 146.1.

I have come to the conclusion that the said step is not, by any means, a final administrative act, or decision, of an executory nature; it is, merely, a preparatory step towards the assessment of the compensation payable to the Applicant in respect of her compulsorily acquired property, and as such it is outside the ambit of the jurisdiction under Article 146, and could not be attacked by recourse (see *Papanicolaou* (No. 1) and *The Republic*, reported in this Vol. at p. 225 ante).

Moreover, the question of the assessment of the compensation payable to the Applicant, being a matter within the jurisdiction of a civil Court, and not of this Court, the step taken by the Respondent Municipality on the 6th June, 1967, would be, in any case, outside the competence of this Court under Article 146.

Even if one were to look at the letter of the Respondent Municipality of the 6th June, 1967, (*exhibit 1*) from another angle—though I do not think that this would be the correct approach—as being a step taken in execution of the compulsory acquisition—in September, 1961—of the Applicant's property, again no recourse would lie against it, because an act of execution cannot be the subject matter of a recourse under Article 146 (see *Kolokassides* and *The Republic* (1965) 3 C.L.R. 542).

For the foregoing reasons this recourse cannot be entertained and it is dismissed accordingly.

In my view, if the Applicant wishes to pursue the argument, advanced before me, that the 1961 compulsory acquisition of her property ceased to be of any effect after the ceasing to be in force of the Municipal Corporations Law, Cap. 240, a possible course might be by way of a preliminary objection to that effect in the proceedings of reference 15/67 (before the District Court of Limassol) which was filed in connection with the assessment of the compensation due to the Applicant in respect of the compulsory acquisition of her property concerned; she might argue that if the acquisition has lapsed then no question of assessing such compensation could arise. In any case I leave this issue entirely open, both from the procedural and the substantive point of view.

In the circumstances in which this recourse has failed I am not prepared to make any order as to costs.

Application dismissed.

No order as to costs.

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