[VASSILIADES P., TRIANTAFYLLIDES, JOSEPHIDES, STAVRINIDES, LOIZOU, JJ.]

MELPOMENI CONSTANTI ANTONI BAKKALIAOU,

Appellant,

v.

THE MUNICIPALITY OF FAMAGUSTA,

Respondent.

(*Revisional Jurisdiction Appeal No.* 40).

Compulsory Acquisition—Property owner invited to submit reasons for objection, if any, to the intended compulsory acquisition—Owner submitting written objection thereto with detailed reasons therefor, coupled with proposal for a new arrangement—Instead of replying to the said objection, months later the Respondent authority proceeded to publish an acquisition order in the Official Gazette under the provisions of the Compulsory Acquisition of Property Law, 1962 (*Law* 15/62)*—Such publication, although not defective for the purpose of the said statute, held to be, in the circumstances of this case, insufficient for the purposes of paragraph* 3 *of Article* 146 *of the Constitution—Publication cannot be treated on the facts of the case as a reply to the owner's-appellant's objection and proposal—Nor the said publication is sufficient for setting in motion the period of* 75 *days prescribed by Article* 146.3 *within which a recourse under that Article may be filed—Therefore, time for the filing of recourse commenced only as from the later date when the owner became aware of the true position—With the result that in the instant case the recourse must be held to have been filed within the time prescribed.*

Administrative and Constitutional Law—Recourse under Article 146 *of the Constitution—Time within which such recourse may be filed—Article* 146.3*—Setting into motion of the said period of time—Publication of the relative decision in the Official Gazette held to be in the particular circumstances of this case, insufficient for setting into motion the provisions of Article* 146.3*—See, also, above under Compulsory Acquisition.*

Recourse under Article 146 *of the Constitution—Time—Article* 146.3 *—When it began to run—See above.*

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Time—Recourse under Article 146 *of the Constitution—Time prescribed in paragraph* 3 *thereof—Setting in motion of the said period of time—Publication in the Official Gazette insufficient in the circumstances of this case to set in motion the* 75 *days' prescribed period for the filing of the recourse—Appellant entitled under Article* 29 *of the Constitution to a reply from the Respondent authority to her objection and proposal—See, also, above under Compulsory Acquisition.*

Expropriation—See above under Compulsory Acquisition.

Constitutional Law—Article 29 *of the Constitution—Expropriated owner's constitutional right to a reply from the public authority to her objection and proposal—See above under Compulsory Acquisition; Administrative and Constitutional Law.*

Observations *by the Court regarding the desirability of giving personal notice to property owners of the steps taken by public authorities for the compulsory acquisition of their property.*

This is an appeal from the decision of a single Judge of this Court (Hadjianastassiou, J.-see (1968) 3 C.L.R. 203) that the Appellant's (Applicant's) recourse under Article 146 of the Constitution challenging a decision of the Respondent Municipality for the expropriation of property, cannot proceed and should be dismissed, as having been filed after the lapse of the 75 days' period prescribed in paragraph 3 of Article 146. Paragraph 3 reads as follows:

> "Such a recourse shall be made within seventy-five 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 facts are shortly as follows:

On April 28, 1966 the Respondent Municipality caused to be published in the Official Gazette of the Republic a notice of compulsory acquisition under the provisions of the Compulsory Acquisition of Property Law, 1962 (Law 15/62). Some two months later, on June 19, 1966, the Respondent wrote a letter to the appellant informing her of the publication of the notice and of the intended expropriation of her property; and invited her, in case she had any objection to the intended acquisition, to submit her reasons for such objection within fifteen days. On June 30, 1966 the appellant replied to the

Municipality's letter, stating in detail her reasons for objecting to the proposed expropriation of her property and making at the same time a proposal for an arrangement under which, in her view, the public purpose would be served, while at the same time part of her property would be saved for her. The owner-appellant concluded her letter with a statement that she trusted that the Municipality would consider her proposal and give her their reply.

It is not disputed that the Respondent Municipality never gave a reply to this letter of June 30, 1966. But some four months later, on October 13, 1966 they caused an acquisition order in respect of the appellant's property to be published in the Official Gazette of the Republic, under the relevant statutory provisions.

Several months later the appellant–owner was served on June 8, 1967 with a notice of the proceedings taken by the Municipality before the District Court of Famagusta for the determination of the compensation payable in respect of her property, compulsorily acquired by the publication of the said order on October 3, 1966 as aforesaid. She consulted her lawyer and failing any agreement with the Municipality, she filed on August 17, 1967, a recourse under Article 146 of the Constitution challenging the validity of the acquisition. It is not in dispute that the first time she heard of the order of acquisition published on October 13, 1966 was when she was served on June 8, 1967 with the said notice of the compensation proceedings.

The learned trial Judge held that the publication of the acquisition order in the Official Gazette on October 3, 1966, should be treated as a reply to the owner's–appellant's proposal of June 30, 1966 (*supra*); and that, in any case, the publication of the said order set in motion the period of 75 days prescribed in Article 146.3 of the Constitution (*supra*) for the filing of a recourse; and that, therefore, on expiry of the said period the owner's constitutional right to challenge the administrative decision in question, lapsed.

Allowing the appeal and reversing the decision of the trial Judge the Court –

Held, (1)(a). We find ourselves unable to accept the view taken by the trial Judge that the publication of the acquisition order in the Official Gazette in October 1966 (*supra*) should

be treated as a reply to the owner's (appellant's) proposal of June 30, 1966 (*supra*).

(b) In the circumstances of this case we are of opinion that the expropriated owner was entitled under Article 29 of the Constitution to expect, in the course of the original administrative action adopted by the public authority, a reply to her proposal; she had no reason to anticipate that the public authority would circumvent her rights by the publishing of an acquisition order, before giving her a reply. It is not, therefore, a proper application of the provisions in Article 146.3 of the Constitution to tell her now that her recourse has in the circumstances of this case, been prescribed.

(2) The publication of the acquisition order is not attacked as, and is not, defective in itself as far as the statute is concerned (*supra*). However it is challenged as, and in effect is, lacking "sufficiency" for the purposes of Article 146.3 of the Constitution. The conduct of the public authority in this case having resulted, or having at least contributed to the appellant's-owner's actual ignorance of the true position, leads us without hesitation to the conclusion that, in the circumstances the publication of the acquisition order in October 1966, was not sufficient for the purpose of setting into motion the provisions of Article 146.3; and that the period of 75 days provided therein did not begin to run until the true position came to the knowledge of the appellant by the service upon her on June 8, 1966 of the notice of the proceedings for determination of the compensation (*Pissas (No.1) v. The Electricity Authority of Cyprus* (1966) 3 C.L.R. 634 (*reasoning adopted*)).

(3) We therefore, allow this appeal and set aside the order dismissing the recourse, so that the Court may now proceed to deal with the substance of the matter and the validity of the expropriation in question.

Appeal allowed.

Per curiam: We wish to draw attention to the practical insufficiency as seen in some of these cases, of the statutory publication in the Official Gazette to bring to the notice of property-owners and other interested parties, the steps taken by public authorities for the compulsory acquisition of their property. Where

personal notice is possible, it is apparently desirable that it should be so given, as required by expropriation laws in other countries.

Cases referred to:

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

Pissas (No. 1) v. The Electricity Authority of Cyprus (1966) 3 C.L.R. 634.

Appeal.

Appeal against a decision of a Judge of the Supreme Court of Cyprus (Hadjianastassiou, J.) given on April 27, 1968 (Revisional Jurisdiction Case No. 158/67) dismissing Appellant's (Applicant's) recourse against the decision of the Respondent Municipality for the expropriation of property, as having been filed after the lapse of the 75 days' period prescribed in Article 146.3 of the constitution.

A. Triantafyllides, for the Appellant.

S. Marathovouniotis, for the Respondent.

Cur. adv. vult.

The judgment of the Court was delivered by:

VASSILIADES, P.: This is an appeal from the decision (reported in (1968) 3 C.L.R. 203) of a single Judge of this Court that a recourse under Article 146 of the Constitution, challenging an administrative decision for the expropriation of property, cannot proceed and should be dismissed, as having been filed out of time; that is to say, after the lapse of the 75 days' period prescribed in paragraph 3 of Article 146.

The recourse was filed on August 17, 1967, by the registered owner of the property, the Appellant herein, for –

> " a declaration that the decision of the Respondents (the Municipality of Famagusta) to acquire compulsorily Applicant's property, plot 181..... in the town of Famagusta, is *null* and *void* and of no effect whatsoever."

Some five months after the filing of the recourse, and while the proceedings therein were taking their usual course, the advocate of the expropriating authority (the Respondent herein)

gave notice to the Registrar and the other party concerned, that he intended to take, by way of a preliminary objection, the point that the recourse was filed out of time and could not therefore proceed. Both sides agreed that the question thus raised, be tried first; and as a result of such hearing, the learned trial Judge upheld the objection and made the order challenged by this appeal.

The relevant facts constitute common ground; and are set out in the first part of the judgment in question. They are shortly as follows:

On April 28, 1966, the Municipal Corporation of Famagusta caused to be published in the Official Gazette of the Republic, a notice of acquisition under the provisions of the Compulsory Acquisition of Property Law, 1962 (No. 15/62).

Some two months later, on June 19, 1966, the Municipal Council "acting, no doubt, on sound administrative policy"—as the learned trial Judge described their action in his judgment—decided to inform personally the owner, of the intended compulsory acquisition of her property, and wrote a letter to her on that date, (19.6.66, *Exhibit* 1), informing her of the publication of the notice and of the intended expropriation; and invited her, in case she had any objection to the intended action, to submit her reasons for such objection, within 15 days.

Within the period of time so set by the expropriating authority viz.: on June 30, 1966, the appellant replied to the authority's letter, stating her reasons for objecting to the proposed expropriation and making at the same time a proposal for an arrangement under which, in her view, the public purpose of the expropriation would be served, while at the same time part of her property would be saved for her. The owner concluded her letter with a statement that she trusted that the Municipal Corporation would consider her proposal and give her their reply. This letter is exhibit 2 on the record.

It is part of the common ground that the public authority never gave a reply to this letter. But some four months later, on October 13, 1966, they caused an acquisition order to be published in the Official Gazette, under the relevant statutory provisions.

Several months later, while presumably the Appellant was

still expecting a reply to her proposal, she was served on June 8, 1967, with a notice of the proceedings taken by the Corporation for the determination of the compensation payable in respect of her property, compulsorily acquired by the publication of the said order. She consulted her lawyer; and failing any agreement with the Corporation, she filed on August 17, 1967, a recourse challenging the validity of the acquisition.

The learned trial Judge accepting the submission that the publication of the acquisition order in the Official Gazette in October 1966, should be treated as a reply to the owner's proposal of June 30, 1966, and that, in any case, the publication of the order set in motion the period of 75 days prescribed in Article 146.3 for the filing of an administrative recourse, held that on expiry of the said period, the owner's constitutional right to challenge the administrative decision in question, lapsed.

We find ourselves unable to accept that view. The provision setting down a period of time within which an administrative decision can be challenged by a recourse under Article 146, is obviously intended to give on the one hand the opportunity to the citizen affected by the decision to exercise his right of challenging its validity, and on the other hand to give finality, in the public interest, to the position created by administrative decisions. This matter was considered by the Supreme Constitutional Court in February 1961, in. *John Moran and The Republic* (1 R.S.C.C. p. 10).

In the circumstances of this case, we are of the opinion that the expropriated owner was entitled under Article 29 of the Constitution to expect, in the course of the original administrative action adopted by the public authority, a reply to her proposal; she had no reason to anticipate that the public authority would circumvent her rights by the publishing of an acquisition order, before giving her a reply. We have no reason to think that the Respondents acted in this manner with a sinister motive. In fact, it was considerable time after the filing of the recourse and their opposition thereto, that it dawned on their lawyer that his client could defeat the recourse by relying on the Constitutional provisions which were intended to protect it.

It was this citizen's legal right to own her property; it was her constitutional right to challenge any decision for expropria-

tion; it was her constitutional right to expect a reply from the public authority to her proposal in a matter as vital as property rights; and it is not, in our opinion, a proper application of the provisions in Article 146.3 to tell her now that her recourse has, in the circumstances of this case, been prescribed.

In *Pissas (No. 1)* v. *The Electricity Authority of Cyprus* (1966) 3 C.L.R. 634 the learned trial Judge in dealing with precisely the same objection on the part of the expropriating authority, felt bound by the previous decisions referred to in his judgment (at p. 636) to the effect that the provisions in Article 146.3 are mandatory; and that once there has been publication of the administrative act, time begins to run for the purposes of the provisions in question, from such publication. But apparently under the force of the circumstances and merits of the case before him, the learned Judge felt compelled to go beyond the bare fact of publication and to enquire whether the publication in question was a "sufficient" publication. After giving his reasons for taking this course, he said:– (p. 638).

> " We have, therefore, to see whether in the present case the publication in the Official Gazette of the order of acquisition was such as to amount to sufficient publication for the purpose of the time prescribed under Article 146.3 commencing to run."

The Judge found the publication in that case insufficient because it did not give the name of the owner together with the description of the property and he held that time did not begin to run under Article 146.3 until the Applicant "came actually to know of the compulsory acquisition in question" by the service of notice of the proceedings instituted by the expropriating authority for the determination of the compensation.

In the present case, the publication is not attacked as defective in itself. It is challenged as lacking "sufficiency" (for the purposes of Article 146.3) in the circumstances in which it was made; it is attacked as a step taken in the course of an expropriation, in respect of which the authority concerned chose to take the proper administrative action (contemplated by practice in such cases) of approaching personally and directly the owner of the property before taking other

steps in furtherance of the decision to acquire the property. Having taken that course, and having led the owner into it,—counsel argued—the public authority could not abandon the owner there and take a different course (that of compulsory acquisition by official publication) without informing her of the change; and without replying to the owner's letter that her proposal was not acceptable and that it was, therefore, intended to take statutory action for compulsory acquisition.

Such change of course having in fact resulted, or having at least contributed to the expropriated owner's actual ignorance of the true position and the consequential loss of her rights, leads us without hesitation, to the conclusion that, in the circumstances, the publication of the acquisition order was not sufficient for the purpose of setting into motion the provisions of Article 146.3; and that the period of 75 days provided therein, did not begin to run until the true position came to the knowledge of the Appellant by the service upon her on June 8, 1966, of the notice of the proceedings for determination of the compensation, as in the *Pissas* case (*supra*).

We, therefore, allow this appeal and set aside the order dismissing the recourse, so that the Court may now proceed to deal with the substance of the matter and the validity of the expropriation in question.

Before concluding, we wish to draw attention to the practical insufficiency, as seen in some of these cases, of the statutory publication in the Official Gazette, to bring to the notice of property-owners and other interested parties, the steps taken by public authorities for the compulsory acquisition of their property. Where personal notice is possible, it is apparently desirable that it should be so given, as required by expropriation laws in other countries.

Appeal allowed.