IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

COSTAS G. TIKKIRIS AND OTHERS,

Applicants,

and

THE ELECTRICITY AUTHORITY OF CYPRUS,

Respondent.

(*Case No.* 298/69).

Compulsory Acquisition of Land—Discretionary powers—Principles applicable in the exercise of such powers—State land available—The general rule to the effect that the acquiring authority has to examine whether there are other properties equally suitable for the purpose of acquisition; and that it has to prefer the property the acquisition of which will entail for its owner a deprivation less onerous as compared to the case of other owners of other properties which may be equally suitable for the relevant said purpose—Sub judice *decision taken without any contravention of such principles—Relevant discretion properly exercised, due regard having been had to all relevant factors, including the interest of the fiscus—Consequently, there has been no excess or abuse of powers—See further* infra.

Compulsory acquisition of land—Use of state land in lieu of private land—Principles applicable—Such use not feasible in the circumstances of the instant case—In view of the fact that such state land was a forest viz. the forest of Athalassa near Nicosia—The amenities whereof would have been destroyed as a result of the establishment in the said forest of a major project such as the one intended in the present case viz. the erection of an electrical sub-station with the overhead transmission lines spreading up to a considerable extent—Cf. supra.

Compulsory Acquisition—Choice between equally suitable sites—Discretion of the acquiring authority in this respect will not be substituted by that of the Court.

In these proceedings under Article 146 of the Constitution the Applicants seek a declaration of the Court that the order

of compulsory acquisition dated July 11, 1969, whereby their fields referred to therein were compulsorily acquired by the Respondent Authority, is *null* and *void* and of no effect whatsoever. It was argued by counsel on behalf of the Applicants that, *inter alia*, the acquiring Authority (the Respondent) has failed to exercise properly its discretionary powers under the law, because before resorting to the onerous method of compulsory acquisition of private lands, it ought to have tried either to secure property which was voluntarily offered for sale or to acquire Government land viz. part of the Athalassa forest, which was equally suitable for the purposes of the acquiring Authority. Counsel relied on the authority of *Chrysochou Bros and CYTA and Another* (1966) 3 C.L.R. 482; also on the decision of the Greek Council of State No. 826/1969. It was further argued on behalf of the Applicants that the extent of the area acquired was more than the indispensably necessary for the achievement of the public utility purpose mentioned in the relevant notice of acquisition. In fact the property of the Applicants was, under that notice, required for the purpose of constructing an electricity sub-station of 132 KV, in order to interconnect the generating stations of Dhekelia and Moni with the transmission lines near Nicosia.

Overruling the submission on behalf of the Applicants and dismissing this recourse, the Court:

Held, (1) (a). It is not permissible to take away from a private individual, through compulsory acquisition, more than what it is indispensably necessary for the achievement of the relevant public utility purpose (see the Decision of the Greek Council of State No. 300/1936).

(b) However, the question of the necessary extent of the acquisition is, as a rule, a matter within the discretion of the acquiring authority; and having in mind the principles of proper administration governing the lawful use of discretionary powers, I have reached, on the material before me, the view that the Respondent Authority has properly exercised its relevant discretionary powers under the law. In any event, the Applicants have failed to adduce any evidence to show to the Court that really the extent of the property acquired was more than it was necessary for the achievement of the aforesaid public utility purpose.

(2) (a). The trend of the authorities is that a compulsory acquisition of property should not be ordered if its objects

can be achieved in any less onerous manner; and it should be only resorted to if it is absolutely necessary to do so after exhausting the possibility of achieving this object by means of purchasing other suitable property which is voluntarily offered by the owner; and before resorting to compulsory acquisition of a particular immovable property, it should be considered whether there exists any other suitable property for the purpose of the acquisition, including state land, in which case the administration has to prefer the property the acquisition of which will entail for its owner a deprivation of ownership less onerous in comparison to the case of owners of other properties which may be equally suitable for the purpose of the acquisition. (See the Decisions of the Greek Council of State Nos.: 1023/1949, 92/1957, 826/1969; Kyriacopoulos on Administrative Law 4th ed. Vol. 3 at p. 372).

(b) Counsel for the Applicants forcefully argued that the Respondent has failed to utilize state land (viz. the Athalassa forest) for the purpose of erecting the sub-station in question, the acquisition of which land would be less onerous to the Government.

(c) But having considered the evidence, I reached the conclusion that the construction of a sub-station in the forest is incompatible with its proper use. The purpose of a forest like that of a park imports the conception of a ground dedicated to the public to be used and enjoyed as a pleasure ground in all the appropriate ways in which such a ground is normally expected to be used. There is no doubt that if the Athalassa forest should have been chosen for the construction of this sub-station with the overhead transmission lines spreading up to a considerable extent, its real purpose as a forest would have been obviously defeated. Moreover, the establishment of such a major project in the forest is definitely incompatible with the relevant amenities.

(3) (a) With regard to other suitable properties mentioned in this case, it would appear that the same amount of hardship would have been caused to those owners as to the Applicants. Consequently, I am unable to hold that the decision of the Respondent has been taken in contravention of the principles of administrative law.

(b) It goes without saying that I would have reached a different conclusion if less onerous means for achieving the

purpose of the compulsory acquisition in hand had been overlooked by the Respondent acquiring authority; and not because one out of equally onerous solutions has been preferred. In my view, the Respondent has properly exercised its discretion and it is not for this Court to substitute its own discretion for that of the Respondent regarding the choice among equally suitable properties the acquisition of which entails more or less equal hardship (see *Pissas (No. 2) and The Electricity Authority of Cyprus* (1966) 3 C.L.R. 784, at pp. 791–792).

(4) There is no doubt that the construction of this sub-station is intended to be an important feature of the Respondent's transmission system for the best deployment and use of generation and for the security of supply of electricity; and quite rightly the experts of the Respondent Authority have considered which is the most suitable property from every technical point of view, including also the point of view of the interest of the fiscus.

(5) On the evidence, I am satisfied that the *sub judice* decision was validly taken for the purpose of constructing an electricity sub-station, which no doubt is a project of public benefit and utility according to law.

Application dismissed.
No order as to costs.

Cases referred to:

Chrysochou Bros v. *CYTA and Another* (1966) 3 C.L.R. 482 at pp. 497–498;

Pissas (No. 2) and The Electricity Authority of Cyprus (1966) 3 C.L.R. 784, at pp. 791–792;

The Decision of the Greek Council of State Nos.: 300/1936, 1023/1949, 92/1957 and 826/1969.

Recourse.

Recourse against an order of compulsory acquisition by the Respondent of Applicants' fields published under Not. No. 570 in Supplement No. 3 to the Official Gazette dated 11th July, 1969.

A. Hadjiioannou, for the Applicants.

A. Dikigoropoullos, for the Respondent.

Cur. adv. vult.

The following judgment was delivered by:-

HADJIANASTASSIOU, J.: In these proceedings, under Article 146 of the Constitution, the Applicants seek a declaration of the Court, that the order of compulsory acquisition published under Not. No. 570 in Supplement No. 3 to the Official Gazette dated July 11, 1969, whereby the fields of the Applicants were compulsorily acquired by the Respondent, is *null* and *void* and of no effect whatsoever and/or it was made in abuse of power and/or under a misconception of the real facts.

The facts in brief are as follows:-

The Applicants are the owners of immovable property situated at the locality of "Kakoskali" of Yeri village of an extent of about 77 donums. This property under acquisition is shown on a map-plan, *exhibit* 5, and is coloured in green; the government land acquired is coloured in yellow and the forest land is shown by a cross written in ink. The Respondent, is the Electricity Authority of Cyprus, which is a statutory public corporation, on which a right to acquire property is conferred by law. The acquiring authority, under the powers vested in it by the provisions of the Compulsory Acquisition of Property Law, 1962 (Law No. 15/62), caused a notice of the intended acquisition in the form set out in the schedule thereto, to be published in the Official Gazette of the Republic, dated February 21, 1969, containing a description of the property intended to be acquired; and stating clearly the purpose for which it is required and the reasons for the acquisition and calling upon any person interested in such property to submit to such authority any objection which he may wish to raise to such acquisition.

In fact the property of the Applicants under acquisition, was required by the Respondent for the purpose of constructing an electricity sub-station of 132 KV, in order to interconnect the generating stations of Dhekelia and Moni with the transmission lines near Nicosia. This is required to reinforce the supplies in Nicosia area as well as in the whole of the island. The aforementioned notice of acquisition was published under Not. No. 123 in Supplement No. 3 to the Official Gazette.

On April 15, 1969, the Secretary of the acquiring authority wrote to the Director-General of the Ministry of Commerce and Industry in these terms:-

"Objections were received within the prescribed period from seven persons who are affected owners of part of the land under acquisition; copies of the said objections are attached hereto.

All the above objections were the subject of careful consideration by the Authority at its meeting of 4th April, 1969, when it transpired that the said objections were not of such a strong nature as to necessitate a change in the plans for the erection of the proposed sub-station.

More specifically, amongst other objections, the owners put forward the fact that adjoining Government land could be used for the erection of the sub-station, that the land is agricultural land and that certain part of this land is ready for development into building sites. In answer to the above, it has been established that with regard to the Government land, no access road existed, the land in question is not flat and, therefore, could not be used for the establishment of a sub-station of the size of the proposed one. Even if, however, it were possible for the sub-station to be erected on the Government land, the nearby land now being compulsorily acquired would be in effect useless, in view of the fact that high voltage lines would pass over it and steel towers carrying the said 132KV lines would have to be erected therein. In such a case the compensation which would be paid to the owners of the surrounding land for the erection of the towers and transmission lines would be very small in comparison to –

(a) the compensation to be paid for the compulsory acquisition of the land itself, and

(b) the actual diminution of the value of the property as a result thereof."

Later on he says:–

"The Authority, bearing in mind the above, UNANIMOUSLY passed the following resolution during the said meeting of 4th April, 1969:–

That the objection of Costas Tikkiris dated 27.2.69, and of Ekaterini Georghiou Demetriou dated 27.2.69, and of Andreas Mattheou dated 28.2.69, and of Alexandra Steliou Christoforou dated 1.3.69, and of Andreas

Demetriades and Stavros Christou dated 5.3.69, to the proposed compulsory acquisition of the properties for the erection of the Athalassa 132 KV sub-station are not supported by good grounds and they have no substance whatsoever. Furthermore, the lands sought to be acquired are not suitable for development and neither are they particularly good for agricultural purposes as alleged in the objections of Costas Tikkiris, Ekaterini Georghiou Demetriou and Costas Spyrou dated 27.2.69 and of Andreas Mattheou dated 28.2.69 and of Alexandra Steliou Christoforou dated 1.3.69 and of Andreas Demetriades and Stavros Christou dated 5.3.69, nor are the said lands suitable for any purposes referred to in such objections."

Finally he said:

"..... agreements have been reached with the owners of two pieces of land, namely, plot No. 23, sheet-plan XXX.16E.1, Block B covering an area of 3 donums, 3 evleks and 1800 sq. ft. and plot No. 27 sheet-plan XXX. 16. E. 1, Block B, covering an area of one donum, one evlek and 3400 sq. ft. The said pieces of land have already been transferred to the authority's name." (See *exhibit* 1).

On June 18, 1969, the Director-General replied to the Secretary of the acquiring authority informing him that the Council of Ministers at its meeting of the 22nd May, 1969, decided, after taking into consideration all the circumstances of the case, to sanction in accordance with section 6 of the Compulsory Acquisition Law, No. 15/62, the order for the compulsory acquisition by the Electricity Authority of the property referred to which was necessary for the construction of an electricity sub-station. (See *exhibit* 2).

On July 11, 1969, the Respondent, acting under the provisions of section 6 of Law 15/62, caused to be published in Supplement No. 3 to the Official Gazette of that date, under Not. No. 570, an order of acquisition dated June 27, 1969, whereby, *inter alia*, the acquisition of the property under acquisition was authorized. (See *exhibit* 3).

It would be observed that in this publication (*exhibit* 3) it is stated that no objections were raised to such acquisition.

On September 16, 1969, the Applicants, feeling aggrieved, because of the order of acquisition, filed the present recourse which was based on the following legal points:–

«Ἐπὶ τοῦ ἄρθρου 23 (1) (4) τοῦ Συντάγματος καὶ τοῦ Νόμου 15 τοῦ 1962 ἄρθρον 3 (1), 6 (1) (2) καὶ ἰσχυρισθοῦν (α) πῶς ἐξ ὅλων τῶν περιστατικῶν τῆς ὑποθέσεως δὲν κρίνεται ἀπολύτως σκόπιμος ἡ ἀπαλλοτρίωσις τῶν ὡς ἄνω ἀκινήτων διὰ τὸν σκοπὸν ὃν ἐγένετο καὶ ὡς ἐκ τούτου εἶναι παράνομος.

(β) Ὅτι οἱ αἰτηταὶ περαιτέρω ἰσχυρίζονται ὅτι ἅμα τῇ δημοσιεύσει τῆς εἰδοποιήσεως ἀπαλλοτριώσεως ὑπ' ἀριθ. 123 προέβησαν προσωπικῶς εἴτε διὰ τοῦ δικηγόρου των ἐγγράφως εἰς ἐνστάσεις ἐντὸς τῆς νομίμου προθεσμίας ἐκθέτοντες τοὺς λόγους, δι' οὓς ἐνίσταντο εἰς τὴν σκοπουμένην ἀπαλλοτρίωσιν, ἐν τούτοις τὸ προσβαλλόμενον διὰ τῆς παρούσης διάταγμα ἀναφέρει ὅτι οὐδεμία ἔνστασις ὑπεβλήθη καὶ ὡς ἐκ τούτου ἡ καθ' ἧς ἡ αἴτησις Ἀρχὴ μὴ ὑποβαλοῦσα τὰς τοιαύτας ἐνστάσεις εἰς τὸ Ὑπουργικὸν Συμβούλιον ἐνήργησε ἐν καταχρήσει ἐξουσιῶν καὶ / ἢ παρὰ τὸν νόμον.

(γ) Οὐδεμία προσπάθεια ἐγένετο ὑπὸ τῶν καθ' ὧν ἡ αἴτησις ν' ἀγοράσουν ἄλλα κτήματα εἰς τὴν ἰδίαν ἢ ἄλλην τοποθεσίαν κατάλληλα διὰ τοὺς σκοποὺς τῆς σκοπουμένης ἀπαλλοτριώσεως καὶ ἐν πάσῃ περιπτώσει οὐδεμία προσπάθεια ἐγένετο ὑπὸ τῶν καθ' ὧν ἡ αἴτησις ν' ἀποκτήσουν καὶ / ἢ χρησιμοποιήσουν γῆν ἀνήκουσαν εἰς τὴν Κυπριακὴν Δημοκρατίαν ἥτις εὑρίσκεται εἰς τὴν ἰδίαν τοποθεσίαν καὶ / ἢ ἐφάπτεται τῶν ὡς ἄνω ἐπηρεαζομένων διὰ τῆς ἀπαλλοτριώσεως κτημάτων κατάλληλον διὰ τὸν ἐπιδιωκόμενον σκοπὸν καὶ ὡς ἐκ τούτου αἱ ἐνέργειαί των ἀποτελοῦν κατάχρησιν ἐξουσίας.

(δ) Τέλος οἱ αἰτηταὶ διαζευτικῶς θὰ ἰσχυρισθοῦν ὅτι ἐὰν ἡ ἀπαλλοτριοῦσα Ἀρχὴ ἐνήργησε ἐν ἀγνοίᾳ τῶν ὡς ἄνω πραγματικῶν γεγονότων τότε ἡ πρᾶξις δέον ν' ἀκυρωθῇ.»

Counsel on behalf of the Applicant has contended:–

1) That the order of acquisition published in the Official Gazette, is vitiated because of the failure of the Respondent to state in the said publication that the Applicants have raised an objection to the acquisition of their lands.

2) That the Council of Ministers in sanctioning the order of acquisition by the Respondent has acted under a misconception of the real facts viz., that objections were not raised by the Applicants to such acquisition.

3) That the acquiring authority has failed to exercise properly its discretionary powers under the law, because before resorting to the onerous method of compulsorily acquiring private lands, ought to have tried either to secure property which was voluntarily offered for sale or to acquire government land at Athalassa, which was equally suitable for the purposes of the acquiring authority. Counsel relies on the authority of *Chrysochou Bros* v. *CYTA and Another* (1966) 3 C.L.R. 482 at pp. 497, 498, also on a decision of the Greek Council of State No. 826/69.

4) That the extent of the area of the land acquired by the same authority was more than indispensably necessary for the achievement of its public utility purpose.

I am in agreement with counsel for the Applicants that because the right of property in Cyprus is guaranteed by Article 23 of the Constitution, an acquiring authority which acquires immovable property for a purpose which is to the public benefit, the purpose being one of those specified in the relevant law, then in each case it has to be established that such purpose exists. Moreover, in such a decision the reasons for the proposed acquisition should be clearly stated, and, of course, the machinery laid down in Law 15/62 should be followed in order to effect the acquisition. In fact in the case of *Chrysochou* (*supra*), it was found that no such decision for the compulsory acquisition was validly taken and the whole proceedings were, therefore, a nullity.

I find it convenient to deal at the same time with both the first and second contentions of counsel for the Applicants. It is a well established principle that this Court can declare an act or decision of any organ, authority or person based, *inter alia*, on a misconception of the real facts (πλάνη περὶ τὰ πράγματα), because in substance it violates the legal principles of administrative law. The question, therefore, which is posed before me, is whether the composite act made by the Council of Ministers in sanctioning the order of acquisition, was reached as a result of a misconception that the Applicants raised no objection to the intended acquisition of their property. In view of the correction made by the acquiring authority, published in Supplement No. 3 to the Official Gazette No. 752 dated October 10, 1969, to the effect that objections were

made and that after they were examined by such authority were forwarded to the Council of Ministers together with its observations and recommendations, and in the light of other evidence before me, I have reached the view that the Council of Ministers did not act under a misconception of the real facts because the Council had before it both the objections raised by the Applicants as well as the recommendations of the acquiring authority. Moreover, it is equally clear, that the provisions of section 6 of our law were followed and that the Council in sanctioning the order of acquisition did not act contrary to any of the provisions of the Constitution or of any law. For these reasons, I would dismiss both contentions of counsel for the Applicants.

With regard to the fourth submission of counsel, with due respect, the position is different because this point is covered by a Greek authority. In decision 300/1936 it was held by the Greek Council of State, that it is not permissible to take away from a private individual, through compulsory acquisition, more than what it is indispensably necessary for the achievement of the relevant public utility purpose and it is, thus, not proper to go to the extent of taking away ownership if the said purpose may be achieved by less onerous means, such as the acquisition of a servitude concerned; the question, however, of the necessary extent of the acquisition is, as a rule, a matter within the discretion of the acquiring authority. It is in evidence that the acquiring authority in this case, required more land in extent than the one acquired from the Applicants, in order to achieve the purpose of this big public utility project. Moreover, it has already acquired government land of about 26 donums in extent, which is next to the land of the Applicants, as well as other private land by private agreement of an extent of 5½ donums.

Having in mind the principles of proper administration with regard to the use of lawful discretionary powers, and the fact that the necessary extent of the acquisition to meet both the technical point of view as well as the other purposes of the acquiring authority is within its discretion, I have reached the view that the said authority has properly exercised its discretionary powers under the law. In any event, the Applicants have failed to adduce any evidence to show to the Court that really the extent of the property acquired by the acquiring authority was more than necessary to achieve

its public utility purpose. I would, therefore, dismiss also this contention of counsel.

Before dealing with the third contention of counsel for the Applicants, I consider it constructive to refer to the principles of administrative law enunciated by the decisions of the Greek Council of State, and adopted and followed by this Court, with regard to the compulsory acquisition of property. In my view, the trend of the authorities is that a compulsory acquisition should not be ordered if its object can be achieved in any less onerous manner; and it should be only resorted to if it is absolutely necessary to do so after exhausting the alternative possibility of achieving this object by means of purchasing other suitable property which is voluntarily offered by the owner; and before resorting to compulsory acquisition of a particular immovable property it should be considered whether there exists any other suitable property for acquisition and to prefer the one the acquisition of which will render less onerous deprivation to the owner than others.

Counsel for the Applicants in support of his main contention, called expert evidence to show to the Court that it was possible for the Respondent to acquire property in the area in question, viz. the forest of Athalassa, which was also equally suitable from the technical point of view of constructing a sub-station, and that the consequences of such acquisition would cause less hardship to the government than would cause to the Applicants. Counsel called Mr. Georghios Lartides, a graduate of the university of New York in electrical engineering, a B.Sc., who stated that he has visited the forest of Athalassa which is to the north side of the proposed site, and adjacent to the lands of the Applicants and which has also access to a major road. In his opinion the property in the forest is equally suitable, although extra work would be required for the uprooting of the trees in the forest. Moreover, he agreed, that the land already acquired is also suitable from every point of view, including the fact that the soil was more level than the soil in the forest. He pointed out that other suitable land could be found to the south of the land already acquired by the Respondent. Questioned at great length by counsel for the Respondent, he agreed that he had no practical experience in designing or constructing a sub-station, although he added that the knowledge of constructing a sub-station has nothing to do with the knowledge of a transmission sub-station. He went on to explain that he had acquired the background theory

over this subject because of his studies at university, but he had not as yet put it into the field of practice and experience. He agreed that in selecting a site the experts of the Electricity Authority had to take into consideration (a) the technical side i.e. whether or not the soil is hard or soft, its inclination, (b) the economical side and (c) whether or not a particular site had access to big roads for the purpose of conveying the heavy machinery which would be needed for this particular major project. With regard to the placing of a sub-station he pointed out on the map-plan *exhibit* 5, that he would have preferred the construction to be made somewhere between Haraklis No. 2 Strovolos No. 3 ine and the existing Haraklis Moni 132 KV DC lines, either to the east or to the west of the road in the forest. He also suggested an alternative site at the locality of Pouyeros. From the technical point of view he said that he took into consideration the existing black lines of electricity as well as the red lines which are the proposed lines, and because of the short distance he did not agree that it is more favourable the way it is now placed on the map-plan, because one can move this sub-station 500 yards away and still have the same favourable location either into the forest or into Pouyeros area. He went on to say that the loss of electricity even under these circumstances would be very small indeed taking into consideration that electricity is transmitted from Moni station. He agreed, however, that if the Pouyeros site had been chosen, one has to construct headlines with square towers of 90 sq. ft. each and with high tension 132 KV lines in the shape indicated on *exhibit* 5 by continuous reddish and dotted lines; he further agreed that the property over which these wires would pass make the land useless for obvious reasons of danger. However, he explained that in order to minimize the damage to the property, one has to place those lines in a certain way in order to take only part of the land of the Applicants. With regard to the forest he reiterated what he has already said about the Pouyeros area adding that if the Electricity Authority had agreed to use one of the two alternative sites he suggested it would not have been less favourable; it would have to use longer lines but as a result the damage to the land of the Applicants or other private land would be the minimum. Questioned further he said that he could not decide what would have been the damage to private property if the sub-station would be erected somewhere else, because he did not spend enough time to study this problem in order to answer the question.

On the other hand, counsel for the Respondent contended (a) that the property of the Applicants was the only suitable place because the sub-station had to be constructed in accordance with the technical advice of the experts and near the main line that joins Nicosia with Dhekelia power station; and (b) that the property belonging to the Government known as the forest of Athalassa could not be utilized by the Respondent for many reasons including one that a site would not have met the technical requirements of the Town Planning and Housing department of the Government.

Counsel in support of his contention, called Mr. Georghios Phaedonos, a qualified town planner and architect who is also a senior town planning officer, who told the Court that he was familiar with the area in question, and that he knew that the area deleniated in yellow and green on the map plan *exhibit* 5 is the area which has been compulsorily acquired by the Electricity Authority. He explained that as a department would strongly object to using any part of the Athalassa forest for the construction of an electricity sub-station because the department is envisaging that the whole of the forest area would be used as a major amenity centre for Nicosia and, that they have informed the Electricity Authority about their plans. Furthermore, he explained that they would not have been prepared to recommend to the appropriate authority the granting of a building permit for the construction of an electricity sub-station. Questioned by counsel for the Applicants he said: "The works as proprosed cannot be built within the forest without affecting the forest, because it is not the actual area of installation but also the overhead lines which spread in all directions and this spreading will affect a much bigger area of the forest than the actual site area. Whether it is technically possible to have the lines without spreading I cannot tell, but we would still object to having this sub-station for the very true reasons that the two uses of the forest and of the Electricity Authority are absolutely incompatible."

Pausing here for a moment it would be observed that the Electricity Authority had in mind in advance, the views of the department of the Town Planning and Housing and of their objection of using the forest land for their public utility purposes.

Mr. Demetrios Papageorghis, the Deputy Chief Engineer in charge of the construction of sub-stations, explained that it

was necessary for technical and other reasons to construct a sub-station in the area acquired, because it should be as near as possible to the cross-over point between the existing Dhekelia/Nicosia and Moni Haraklis lines, shown in colour black on *exhibit* 5; and that the site should be inside the triangle within these lines and close to the line which is marked Haraklis/Moni 132 KV DC line. This line can carry about 120,000 KV directly from the power station, and it has to be as short as possible. He went on to say that the area acquired is also close to a main asphalted road and has a better access to this place for conveying heavy machinery some of which may weigh more than 60 tons; and that the land is of a good sub-soil and fairly level for the construction of the sub-station. As regards the land covered by the forest he said that the main disadvantage is that they do not get approval from the appropriate authorities for the erection of this sub-station on that land; and that it is not situated technically in such a position as good as the one chosen because it is necessary to take into account how the lines will enter into the sub-station; and that the line entry to that sub-station in the forest land is not going to be as good as the one chosen. Moreover, the sub-soil is not as good as the one chosen, the land is not as level, and that a lot of damage will be caused to the forest not only where the sub-station would be erected, but also from where the lines will run in order to come into the sub-station. As regards the land in the south, i.e. the land in Pouyeros area, he said that it does not possess the requirements which he has mentioned earlier about access, the lines, the soil and that the distance from Nicosia will be longer. Moreover, if land was chosen either in the forest or Pouyeros area, then the cost would have been much higher and the repercussion would be that electricity would cost more to the consumer; there was technically another disadvantage, i.e. the risk of running continuous loss of electricity because of having to erect longer lines. Questioned by counsel for the Applicants he said that if the place on which the sub-station would be constructed would move 500 yards to the south or to the north, then it would be further away from the main transmission lines which will come from Moni and from the new power station and it would affect the cables which will supply Nicosia by having longer cables. As regards moving to the south, one may have to need less cable but would have more power lines. One has to find what would be centrally the basis, and the one chosen, he repeated, is the best. As regards the

forest, he stated that one had to take into consideration the line entry into the sub-station which is a very important consideration and cannot be put anywhere without taking into account how these lines would come into the sub-station, because one cannot have lines entering the sub-station at heavy angles.

Mr. Robert Jubb, a member of the Institute of Civil and Chartered Engineers, said that he visited the area in question and has given his report from a civil engineer's point of view. He explained that when one does an engineering appraisal of various sites, one does not only look for engineering factors but also for economy and the economic and engineering factors are simetimes inseparable. In choosing this particular site, he went on to say, it was necessary to have a site as level as possible to avoid high cost in excavation and to be near the main road to reduce access road costs and also to have suitable sub-soil for supporting heavy equipment and foundations. He further added that from the northern boundary northwards, the ground slopes downhill and it is a fairly steep one from an engineering point of view. With regard to the forest soil he said that it would be of a more organic nature because of the leaves falling on to the ground and also because it is at the bottom of a hill and would expect a thicker layer of silt deposits which would mean deeper excavation before one can arrive at load bearing sub-strata. Questioned by counsel for the Applicants he said that as to the question of angles of the lines one cannot just take the deviation from anywhere from the existing lines, but has to look at suitable points from which you can take your new lines from the existing line. Of course, he added, that if they were forced to move the sub-station it would not be impossible to achieve, it would just mean extra cost. He repeated that when one does an engineering appraisal, one cannot just divorce costs from engineering and that it would not have been more advantageous to the authority to erect on the forest land even without pay ng any money for the acquisition of the land.

In view of the main contention of counsel for Applicants, after considering the whole evidence before me with regard to the properties lying in the Pouyeros area and in the forest, I am satisfied that the land in Pouyeros area does not meet with the technical requirements needed for the construction of a sub-station for the reasons given in evidence by Mr. Papageorghis and Mr. Jubb. Moreover, I have approached

this problem from another angle viz., that assuming that I am wrong and, that the properties in question are also equally suitable, then again, I would have been prepared to say that the Respondent, in exercising its discretionary powers as to which would be the best possible property from all aspects, has done so properly in deciding to acquire the property of the Applicants. In my view, therefore, the Respondent did not act in abuse of the powers vested in it.

In decision 92/1957 it was held by the Greek Council of State that the administration when exercising its discretionary powers to choose a suitable property under its powers of acquisition to serve a particular lawful public utility purpose has, among other things, to examine if there are other properties equally suitable for the purpose of acquisition and has to prefer the property the acquisition of which will entail for its owner a deprivation of ownership less onerous in comparison to the case of owners of other properties which may be equally suitable for the purpose of the acquisition.

In the present case, regarding the fact that this sub-station could possibly be erected on to the private properties within the Pouyeros area—and this point has not been pressed by counsel for the Applicants—it would appear that the same amount of hardship would have been caused to those owners as to the Applicants. In my view, therefore, I cannot reach the conclusion that the decision of the Respondent has been taken in contravention of the administrative principles. It goes without saying, of course, that such principles could have been contravened if less onerous means of achieving the purpose of the compulsory acquisition had been overlooked by the acquiring authority; and not because one out of equally onerous solutions has been preferred. I would reiterate once again that the Respondent has properly exercised its discretion, and it is not for this Court to exercise its own discretion in substitution of the discretion of the Respondent regarding the choice among equally suitable properties the acquisition of which entails more or less equal hardship. See *Pissas* (No. 2) v. *E.A.C.* (1966) 3 C.L.R. 784 at pp. 791-792.

Counsel for the Applicants mainly argued with force, relying on a passage from the well-known textbook of Kyriacopoulos 4th edn., Vol. 3 at p. 732, that the Respondent has failed to utilize State land for its relevant purpose of erecting a sub-station the acquisition of which would be less onerous to the

Government. It is true that in decision 1023/49 of the Greek Council of State, it was held that the principles of proper administration and of lawful use of discretionary powers demand that the administration should not resort to the more onerous method of compulsory deprivation of ownership before it exhausts the possibility of either using for the relevant purpose State land or of finding property which is being voluntarily offered by its owner and it is more or less equally suitable for the purpose concerned; and if State land is not available and it has been established that it is not possible to secure the necessary land by means of ordinary purpose then the administration has to choose by compulsory acquisition among the suitable properties, the one the acquisition of which entails less onerous consequences both from the point of view of the use being served by the property to be acquired and from the point of view of the interest of the fiscus.

In a recent decision which counsel for the Applicants was very helpful in securing a copy, decision No. 826/1969, a case of acquisition of land by the Electricity Authority of Greece, the Greek Council of State in annulling the decision had this to say at pp. 4–6:

«Ἐπειδή, κατὰ τὴν ἔννοιαν τῶν διατάξεων τούτων, ἑρμηνευομένων ἐν τῷ πλαισίῳ καὶ τῶν διὰ τῆς νομολογίας τοῦ Δικαστηρίου τούτου διαμορφωθεισῶν σχετικῶν γενικῶν τοῦ δικαίου ἀρχῶν, ἡ κατ' ἐφαρμογὴν αὐτῶν κηρυσσομένη ἀναγκαστικὴ ἀπαλλοτρίωσις, ἀκινήτου, ὡς ἀναγομένη εἰς τὴν λῆψιν μέτρου ἐπαχθοῦς εἰς βάρος τοῦ πολίτου, συνισταμένου εἰς τὴν ἀκουσίαν στέρησιν τῆς συνταγματικῶς προστατευομένης ἰδιοκτησίας του, δέον πλήρως νὰ αἰτιολογῆται εἴτε ἐν αὐτῇ τῇ πράξει τῆς ἀναγκαστικῆς ἀπαλλοτριώσεως, εἴτε ἐκ τῶν συνοδευόντων αὐτὴν στοιχείων. Πλήρης δὲ εἶναι ἡ αἰτιολογία κατ' ἀρχὴν ὁσάκις ἐξ αὐτῆς προκύπτει σαφῶς ἡ ἀνάγκη τῆς λήψεως, κατὰ περίπτωσιν, τοῦ ὡς ἄνω ἐξαιρετικοῦ μέτρου καὶ δὴ ἀπὸ τῆς ἀπόψεως ὅτι ὁ δι' οὗ ἡ ἀναγκαστικὴ ἀπαλλοτρίωσις σκοπὸς δημοσίας ὠφελείας, συγκεκριμένως προσδιοριζόμενος, δὲν δύναται νὰ ἐκπληρωθῇ ἐπαρκῶς κατ' ἄλλον τρόπον, ὡς ἐπὶ παραδείγματι διὰ τῆς ἀπ' εὐθείας ἀγορᾶς καταλλήλων ἰδιωτικῶν ἀκινήτων οἰκειοθελῶς προσφερομένων ὑπὸ τῶν εἰδικῶς προσκαλουμένων πρὸς τοῦτο ἰδιοκτητῶν των, ἐκτὸς ἐὰν τὸ διὰ τῆς ἀναγκαστικῆς ἀπαλλοτριώσεως πλησσόμενον ἀκίνητον, κρίνηται ὡς τὸ μόνον κατάλληλον διὰ τὴν ἐπίτευξιν τοῦ ἐπιδιωκομένου συγκεκριμένου σκοποῦ.»

and at p. 6 they went on to say:

«Ὡς προκύπτει ὅμως ἐκ τῶν λοιπῶν στοιχείων τοῦ φακέλλου, ὑπεδείχθη ὑπὸ τῆς αἰτούσης πρὸς τὴν Δ.Ε.Η. ἀντὶ τοῦ ἀπαλλοτριωθέντος γηπέδου ἕτερον τοιοῦτον τῆς αὐτῆς ἐκτάσεως, κείμενον ὡσαύτως ἐπὶ τῆς Ἐθνικῆς Ὁδοῦ καὶ ἐπὶ τῆς αὐτῆς πλευρᾶς, εἰς ἀπόστασιν 90 μ. περίπου, ἀνῆκον ἐν μέρει εἰς τὴν αἰτοῦσαν καὶ ἐν μέρει εἰς ἑτέρους ἰδιοκτήτας. Ἡ προταθεῖσα αὕτη ἔκτασις ἀπερρίφθη ὡς μειωνεκτοῦσα τῆς ἐπιλεγείσης, λόγῳ ὑπάρξεως ἐν αὐτῇ 'χωματερῆς' καὶ διότι 'ἡ ὄδευσις καὶ εἴσοδος τῶν γραμμῶν 150 KV εἰς τὸν ὑποσταθμὸν ὡς καὶ ἡ προσπέλασις ἐκ τῆς Ἐθνικῆς Ὁδοῦ εἶναι δυσχερέστεραι' καὶ διότι οἱ λοιποὶ ἰδιοκτῆται 'ὡς φαίνεται δὲν εἶναι διατεθειμένοι νὰ πωλήσουν τὰ μερίδιά των' (ἔγγραφον Δ.Ε.Η. ὑπ' ἀριθ. πρωτ. 2644/11/23.5.1968).–

Ἐπειδή, ἐκ τῶν ἐν τῇ προηγουμένῃ σκέψει ἀναφερομένων, αἰτιολογεῖται μὲν ἡ ἀνάγκη τῆς κηρύξεως τῆς ὑπὸ κρίσιν ἀπαλλοτριώσεως, δὲν δύναται ὅμως νὰ θεωρηθῇ ὡς πειστικὴ καὶ ἐπαρκὴς ἡ ἀνωτέρω αἰτιολογία, ἐπὶ τῇ ὁποίᾳ ἡ Δημοσία Ἐπιχείρησις Ἠλεκτρισμοῦ δὲν ἐδέχθη τὴν ὑπὸ τῆς αἰτούσης ὑποδειχθεῖσαν λύσιν τῆς χρησιμοποιήσεως ἐκτάσεως κειμένης ἐγγύτατα πρὸς τὴν ἀπαλλοτριωθεῖσαν τοιαύτην καὶ ἥτις ἔχει πρόσωπον ἐπὶ τῆς αὐτῆς ὁδοῦ, ἐν ὄψει καὶ τοῦ λίαν ἐπαχθοῦς διὰ τὴν αἰτοῦσαν τοῦ ληφθέντος μέτρου τῆς ἀναγκαστικῆς ἀπαλλοτριώσεως, πλήττοντος τὴν συνταγματικῶς κατωχυρουμένην ἰδιοκτησίαν αὐτῆς, δοθέντος ἄλλωστε ὅτι ὁ ἰσχυρισμὸς τῆς Δ.Ε.Η., ὅτι ἡ ὄδευσις καὶ ἡ προσπέλασις πρὸς τὴν ὑποδειχθεῖσαν ἔκτασιν εἶναι δυσχερέστεραι, τυγχάνει τελείως ἀόριστος καὶ ἀσαφής. Κατ' ἀκολουθίαν, δέον ὅπως ἀκυρωθῇ ἡ προσβαλλομένη πρᾶξις, λόγῳ ἀναιτιολογήτου ὡς πρὸς τὴν ἐπιλογὴν τοῦ ἀπαλλοτριωθησομένου γηπέδου, ἵνα ἐπανερχομένη ἡ Διοίκησις, ἐφ' ὅσον τυχὸν ἤθελεν ἐξακολουθεῖ κρίνουσα ἀναγκαίαν τὴν ἀπαλλοτρίωσιν, αἰτιολογήσῃ πλήρως καὶ διὰ συγκεκριμένων στοιχείων τὴν ἀπόρριψιν τοῦ ἑνὸς γηπέδου καὶ τὴν πρόκρισιν τοῦ ἑτέρου.»

With regard to the forest land, it is clear from the evidence of Mr. Papageorghis the Deputy Chief Engineer, that the area covered by the forest was among the places which their consultants Messrs. Preece, Gardew & Rider of the U.K. had in mind when they were considering the project in that area. And although Mr. Jubb considered the property under acquisition the most suitable one, yet in being questioned by counsel for the Applicants he stated:

"In the forest you will probably find similar sub-soil for founding heavy equipment on, but you will probably have to dig deeper, therefore, it is a matter of cost. I cannot say that it is not suitable at all. If we were forced to move the sub-station it would not be impossible to achieve, it would just mean extra cost. When one does an engineering appraisal, I must point out that you just cannot divorce cost from engineering."

Having considered the evidence before me, I would like to state that I am in agreement with Mr. Phaedonos that the construction of a sub-station in the forest is incompatible with its proper use. In my view, the purpose of a forest like that of a park imports the conception that it is a ground which gives the right to people to use the ground as a pleasure ground in all the ways in which a pleasure ground would normally be enjoyed and which, no doubt, gives the right to walk about and sit down in order to enjoy the surroundings or indeed to sit down on possible appropriate parts of the ground to picnic there. There is no doubt that if the forest would have been chosen for the construction of this sub-station and with the erection of overhead transmission lines spreading up to such an extent, the real purpose of a forest would have been defeated for obvious reasons, viz. because of danger to people visiting the forest. Moreover, the establishment of such a major project in the forest is definitely incompatible with amenity, unless the placing of the electric lines should be below the ground across the forest; but I doubt it again whether this is feasible in view of the big cost in carrying out such a project.

There is no doubt that the construction of this sub-station is intended to be an important feature of the Respondent's transmission system for the best deployment and use of generation and for the security of supply of electricity; and quite rightly in my view the experts of the Electricity Authority have considered which is the most suitable property from every technical point of view, including also the point of view of the interest of the fiscus.

In view of the evidence, I am satisfied that the decision of the acquiring authority to acquire the property of the Applicants was validly taken for the purpose of constructing an electricity sub-station, which, no doubt, is a project of public benefit. With regard to the evidence of the experts, I would like to make it clear, that I am indebted to Mr. Jubb who has

been so fair and so lucid, and I accept his evidence. As regards the evidence of Mr. Georghios Lartides, my opinion of this witness is that he has been very frank and that his evidence has also helped the Court to have before it the technical version of the Applicants. In view, however, of the fact that he had no practical experience in designing or constructing a sub-station, I would definitely prefer the evidence of Mr. Papageorghis who has a lot of experience in these technical matters, viz., with regard to the location of the sub-station and the technical considerations as to how the lines will enter into that sub-station.

In view, therefore, of the evidence as a whole, I have reached the conclusion that from the technical and other reasons put forward, the property under acquisition is the most suitable from every point of view compared to the lands covered by the forest. My reasons for doing so are:

(a) the technical reasons put forward by both experts of the acquiring authority;

(b) that the department of Town Planning and Housing would strongly object—though admittedly not being the authority for granting a building permit to the use of Athalassa forest for the construction of a sub-station;

(c) the extra cost needed if such lands would be utilized;

(d) that the purpose of the use of the forest and use of an electricity sub-station are inconsistent to each other;

(e) that the acquiring authority has already acquired other State property of an extent of 26 donums;

(f) that even if Athalassa forest would have been found as equally suitable for the purpose of the acquiring authority, then again, part of the land of the Applicants would, in fact, be useless for development because of the high voltage lines which would pass over this land and possibly because steel towers would have to be erected therein.

At the same time, I would like to make it quite clear, that if the property at Athalassa was not utilized as a forest, then I would perhaps have been prepared to find in favour of the

Applicants, because I accept the principle enunciated by the Greek Council of State, that the administration should not resort to the more onerous method of compulsory deprivation of private property before it exhausts the possibility of using for the relevant purpose State land which is more or less equally suitable, even if it would cost more to the administration for its public utility purpose.

For the reasons I have endeavoured to explain, I have reached the view that the decision of the acquiring authority to acquire the property of the Applicants is the most suitable from every point of view, and is not contrary to any of the provisions of this Constitution or of any law or is made in excess or in abuse of powers vested in such authority. I would, therefore, dismiss the recourse of the Applicants.

In the light of these circumstances and in view of the novelty of the point raised as to the use of state land I do not propose to make an order for costs in favour of the Respondent.

Application dismissed.
No order as to costs.