1972
May 4
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KOUMIS
HJI MICHAEL
AND OTHERS

v.

REPUBLIC
(COUNCIL OF
MINISTERS
AND ANOTHER)

[TRIANTAFYLLIDES, P., STAVRINIDES, L. LOIZOU, A. LOIZOU, MALACHTOS, JJ.]

KOUMIS HJI MICHAEL AND OTHERS,

Appellants,

and

THE REPUBLIC OF CYPRUS, THROUGH THE COUNCIL OF MINISTERS AND ANOTHER,

Respondents.

(Revisional Jurisdiction Appeals Nos. 88, 89, 91, 92 and 93).

Misconception of fact—Administrative decision taken under alleged misconception of fact—Presumption that the decision was reached after correct ascertainment of relevant facts—Such presumption may be rebutted by establishing that there exists at least a probability that a misconception has led to the taking of the decision complained of—Such a probability not established in the instant case—On the contrary, the contention that the sub judice *requisition order was based on a misconception is not well founded.*

Administrative acts or decisions—Misconception of fact—Presumption that the decision was reached after correct ascertainment of the facts—Rebuttal—By establishing at least a probability that a misconception has led to the taking of the decision—See further supra.

Requisition of Property—Urgency—A requisition order being a temporary measure resorted to for special reasons urgency can be treated as being such a special reason—Delay—By respondents to take steps for completion of the compulsory acquisition of the property concerned through assessment and payment of compensation therefor—In the circumstances of the instant case said delay was not such as it could affect the degree of urgency

required for the making of the requisition order in a manner vitiating the validity of such order—Cf. further infra.

Requisition of Property—Requisition order in respect of property sought to be compulsorily acquired—Not incompatible with the provisions of Article 23 of the Constitution (Aspri *and* The Republic, *4 R.S.C.C. 57,* followed)—*Cf. further* infra

Requisition order in respect of property sought to be compulsorily acquired—Demolition of a small house standing thereon viz. *on a large area of land—Demolition not unconstitutional in the circumstances of this case—Section 6(2) of the Requisition of Property Law, 1962 (Law No. 21 of 1962)*—Aspri's *case* (supra) followed.

Compulsory acquisition and requisition of the same property —See supra

Compulsory acquisition—Any undue delay by the acquiring authority to expedite the process of compulsory acquisition and which operates inequitably against the owners concerned, the competent civil Court has power to make the necessary adjustments by directing the payment of interest on the amount of compensation for such length of time as it may deem fit in the circumstances of the case for the purpose of awarding just and equitable compensation (see Moti *v.* The Republic *(1968) 1 C.L.R. 102).*

This is an appeal against the decision of a Judge of the Supreme Court (reported in (1971) 3 C.L.R. 317) dismissing the recourses made by the applicants (now appellants) challenging the validity of a requisition order in respect, *inter alia,* of a large area of land together with a small house standing thereon (demolished therefter under the said requisition order). It is to be noted that the aforesaid properties were the subject matter also of a procedure of compulsory acquisition under Article 23 of the Constitution and the relevant Law (*viz.* the Compulsory Acquisition of Property Law, 1962).

It was argued by counsel for the appellants that :-

(1) The requisition order was based on a misconception of fact;

(2) There was no urgency justifying the making of a requisition order;

(3) A requisition order in respect of property which was in the process of being compulsorily acquired is repugnant to Article 23 of the Constitution; and

(4) In any event, the respondents acted unconstitutionally in demolishing the small house (standing on the aforesaid large area of land) apparently in the exercise of the powers given by section 6(2) of the Requisition of Property Law 1962 (Law No. 21 of 1962)

Dismissing the appeal, the Supreme Court :-

Held, *as to (1) hereabove :*

(A) According to the principles of administrative law there exists a presumption that an administrative decision is reached after a correct ascertainment of relevant facts; but such presumption can be rebutted if a litigant succeeds in establishing that there exists at least a probability that a misconception has led to the taking of the decision complained of (see, *inter alia*, Stassinopoulos Δίκαιον τῶν Διοικητικῶν Πράξεων, 1951, p. 304 etc.).

(B) In the present case not only we are not satisfied that such a probability has been established, but, on the contrary, it seems to us that the contention that the requisition order was based on a misconception is not well founded.

Held, *as to (2) hereabove :*

(A) Although it is not expressly provided either in the Constitution (see Article 23) or in the relevant legislation (*viz.* the Requisition of Property Law 1962) that *urgency* is a prerequisite for the making

of a requisition, we think that the nature of a measure such as a requisition presupposes the existence of some kind of special reason, such as urgency (see *decision of the Greek Council of State* No. 1330/1955).

(B) But there was *urgency* in the present case as it is shown by the fact that contracts regarding the tourist project in question (see *post* in the Judgment) had already been concluded and work thereunder was to start on March 1, 1971, by which date the process of compulsory acquisition of the properties concerned could not possibly have been completed.

(C) True, there has been some delay regarding the process of compulsory acquisition of the said properties; but this delay was not of such a nature as could affect the degree of urgency, required for the making of the requisition order, in a manner vitiating the validity of such order.

Held, *as to (3) hereabove:*

Regarding the contention that it was not compatible with the relevant provisions of Article 23 of the Constitution to make a requisition order in respect of properties which are in the process of being compulsorily acquired, the answer is to be found in the case of *Aspri* v. *The Republic*, 4 R.S.C.C. 57, from which it is clear that there is no unconstitutionality in making a requisition order in relation to a property in respect of which the process of compulsory acquisition has been set in motion

Held, *as to (4) hereabove:*

(A) In the light of the *Aspri's* case *(supra)* and of the particular circumstances of this case, we find nothing unconstitutional as regards the demolition of the aforesaid house. Of course, each case has to be decided on its merits.

(B) In the present case there was demolished a small

house standing on a large area of land and occupying a small part thereof. If it were a case of the demolition of a requisitioned building which has resulted in destroying altogether the nature of the immovable property then it might be said that what was done was beyond the limits of permissible action under the requisition order.

Appeals dismissed with costs.

Per curiam : If it were to be found that any undue delay by the acquiring authority to expedite the process of compulsory acquisition did operate inequitably against the owner concerned, the competent Civil Court has power to make the necessary adjustments by directing payment of interest on the amount of compensation for such length of time as it may deem fit in the circumstances of the case for the purpose of awarding just and equitable compensation (see, *Moti* v. *The Republic* (1968) 1 C.L.R. 102).

Cases referred to :

Moti v. *The Republic* (1968) 1 C.L.R. 102;

Rashid Ali v. *Vassiliko Cement Works Ltd.* (1971) 1 C.L.R. 146;

Aspri and *The Republic*, 4 R.S.C.C. 57;

Decisions of the Greek Council of State : Nos. 47/1954, 659/1954, 1661/1954, 1328/1955, 1330/1955, 1507/1956.

Appeal.

Appeal from the judgment of a Judge of the Supreme Court of Cyprus (Hadjianastassiou, J.) given on the 20th August, 1971 (Case Nos. 51/71, 52/71, 54/71, 55/71, 60/71, 62/71 and 63/71) whereby applicant's recourses, against the validity of an order of requisition of their properties were dismissed.

J. Kaniklides, for the appellants.

L. Loucaides, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

The Judgment of the Court was delivered by :-

TRIANTAFYLLIDES, P. : In these five appeals, which, like the recourses in which the judgment * appealed from was given, were heard together, we have to deal with the validity of an order of requisition, published on the 6th February, 1971, (see No. 94 in the Third Supplement to the official Gazette of that date), whereby immovable properties belonging to the appellants were requisitioned in relation to a tourist development project. Previously, on the 28th March, 1969, there had been made, for the same purpose, an order for the compulsory acquisition of these properties.

Learned counsel for the appellants has attacked the requisition order on several grounds; the first one being that it was made under a misconception of fact, namely that the Minister of Commerce and Industry decided to make the order because of a minute of the Director-General of his Ministry in which it was incorrectly stated that the appellants had rejected offers of compensation which were made to them in relation to the compulsory acquisition of their properties, and that as, consequently, a long time would elapse until the Government would become entitled, on completion of proceedings under the relevant legislation, to enter upon the properties, and as, according to contracts which had already been concluded, the work on the project concerned was to commence as from the 1st March, 1971, a requisition order was necessary in order to enter, thereunder, upon the properties as soon as possible.

The said minute is dated the 5th February, 1971;

* Published in (1971) 3 C.L.R. 317.

though it is not in dispute that formal written offers of compensation for the compulsory acquisition had not been made to the appellants up to that date, it does appear that before such date offers of compensation had been made orally to the appellants, in the course of negotiations, and that these offers had been rejected; therefore, there was not, in our view, contained in the minute any mis-statement of a material nature, regarding the matter of the compensation, as contended by the appellants.

According to the principles of administrative law there exists a presumption that an administrative decision is reached after a correct ascertainment of relevant facts; but such presumption can be rebutted if a litigant succeeds in establishing that there exists at least a probability that a misconception has led to the taking of the decision complained of (see, *inter alia,* Stasinopoulos on The Law of Administrative Acts—«Σταθινοπούλου Δίκαιον τῶν Διοικητικῶν Πράξεων»—1951, p. 304 et seq.).

In the present case not only we are not satisfied, on the material before us, that such a probability has been established, but, on the contrary, it seems to us that, as already stated, the contention that the requisition order was based on a misconception, as alleged by the appellants, is not well founded.

It has, next, been submitted by counsel for the appellants that there existed no urgency justifying the making of the requisition order: It is not expressly provided in the Constitution (see Article 23) or in the relevant legislation—the Requisition of Property Law, 1962 (21/62)—that urgency is a prerequisite for the making of a requisition order; but we think that the nature of a measure such as a requisition order presupposes the existence of some kind of special reason, such as urgency. As held by the Council of State («Συμβούλιον Ἐπικρατείας») in Greece in, *inter alia,* Cases 47/1954, 659/1954, 1661/1954, 1328/1955, 1330/1955 and 1507/1956 a requisition order is a temporary measure resorted to for special reasons; and in Case 1330/1955 urgency was treated as being such a special

reason.

That in the present instance there was urgency is shown by the fact that contracts regarding the tourist project in question had already been concluded and work thereunder was to start on the 1st March, 1971, by which date the process of compulsory acqisition of the properties concerned could not possibly have been completed; and as the compulsory acquisition order had not been attacked by recourse, within the time prescribed for the purpose under Article 146.3 of the Constitution, and, therefore, the compulsory acquisition of the properties was an inevitable eventuality, the requisition order was a clearly temporary measure enabling entry in the meantime upon the properties acquired.

A matter which we have duly considered is whether the urgency was brought about through any delay on the part of the respondents to take steps for the completion of the compulsory acquisition through assessment and payment of compensation therefor; it is true that, though the compulsory acquisition order was published in March, 1969 and no agreement had been reached about the compensation payable to the appellants, at the time when the requisition order was made the respondents had not yet applied to the competent court to have such compensation assessed; but it is equally true that neither had the appellants so applied, as they were perfectly entitled to do as from the date when the compulsory acquisition order was published; and, while both sides were adopting, thus, an attitude of wait and see regarding the aspect of compensation, the urgency for entering upon the properties arose as aforesaid. In these circumstances we are not prepared to hold that there has occurred a delay of such a nature as could affect the degree of urgency, required for the making of the requisition order, in a manner vitiating the validity of such order. We might add, in passing, that if it were to be found that any delay by the respondent acquiring authority did operate inequitably against the appellants as regards the quantum of compensation for the acquisition of their properties the competent in the matter civil Court has power to make the necessary adjustment by directing the payment of interest in respect thereof, for such length of time as

it may deem fit in the circumstances of the case for the purpose of awarding just and equitable compensation; in this respect we might refer to the decision in *Moti* v. *The Republic* (1968) 1 C.L.R. 102—which was adopted in argument by learned counsel for the respondents—and to the later case of *Rashid Ali* v. *Vassiliko Cement Works Ltd.* (1971) 1 C.L.R. 146.

The last question to be resolved is whether it was compatible with the relevant provisions in Article 23 of the Constitution to make a requisition order in respect of properties which were being compulsorily acquired: The answer is to be found in the decision in the case of *Aspri* and *The Republic*, 4 R.S.C.C. 57, from which it is clear that there is no unconstitutionality in making a requisition order in relation to a property in respect of which the process of compulsory acquisition has been set in motion.

In this connection it was pointed out by counsel for the appellants that on one of the properties concerned there was a small house and that such house was demolished by the respondents, apparently in the exercise of the powers given by section 6(2) of Law 21/62. In the light of the decision in the *Aspri* case to which we have just referred and of the particular circumstances of this case, we find nothing unconstitutional as regards the demolition of the said house. Of course, as rightly pointed out by counsel for the respondents, each case has to be decided on its merits. In the present case there was demolished a small house standing on a large area of land and occupying a small part thereof. If it were a case of the demolition of a requisitioned building which had resulted in destroying altogether the nature of the requisitioned immovable property then it might be said that what was done was beyond the limits of permissible action under the requisition order.

In the light of all the foregoing reasons these appeals are dismissed with costs.

Appeals dismissed with costs.