

1973
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KOUMIS
YIANNI
HJI MICHAEL
AND OTHERS

v

REPUBLIC
(COUNCIL OF
MINISTERS
AND ANOTHER)

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

KOUMIS YIANNI HJI MICHAEL AND OTHERS,

Applicant's,

and

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

Respondents.

(Case Nos. 68/72 - 71/72).

Requisition of property—Order of requisition—Renewal of such order as distinct from a new and independent order for the same property and for the same purpose—Renewal cannot take place after the expiration of the previous order—But a new order can be made provided that there exist the prerequisites under the Constitution and the relevant statute viz. the Requisition of Property Law, 1962 (Law No. 21 of 1962)—Section 4(3)(b) of said Law—Three years' maximum period provided under Article 23.8(c) of the Constitution.

Requisition order—Prompt payment of compensation—Article 23.8(d) of the Constitution—Delay—Due mainly to negotiations for a settlement and to proceedings against the validity of the requisition order—Such delay, in the light of the above circumstances, cannot be considered as rendering the sub judice requisition order contrary to said Article 23.8(d).

Constitutional law—Requisition of property—Article 23.8(c) and (d) of the Constitution—See supra.

Dismissing these recourses, the learned Judge of the Supreme Court held that a renewal of a requisition order cannot take place after its expiration; but there is nothing in the Requisition of Property Law, 1962, preventing the making of a new and independent order of requisition for the same property and for the same purpose as the previous order, provided that all other prerequisites under the Constitution and the said Law exist. The learned Judge further held that, in

view of the special circumstances of these cases, the delay in the payment of the just compensation did not render the requisition order unconstitutional as offending against Article 23.8(d) of the Constitution.

The properties of the applicants in these cases have been affected by an order of compulsory acquisition dated March 28, 1969 for a purpose of public interest, namely the promotion or development of tourism of the area known as "Golden Sands" in Famagusta. They were urgently required for the commencement of the project, and for that reason, an order of requisition in relation to those properties for a period of twelve months was made under the provisions of section 4 of the Requisition of Property Law, 1962 (Law No. 21 of 1962), dated February 6, 1971. After the expiration of the said order, the same properties were requisitioned for a further period of twelve months by a new order of requisition (and for the same purpose) dated February 25, 1972.

It was objected by counsel for the applicants that, *inter alia*, the said requisition order of February 25, 1972, contravenes section 4(3)(b) of the said Law, in the sense that there could be no renewal of a requisition after the expiration of a previous one (affecting the same property and for the same purpose). It was further argued by counsel for the applicants that the said same order contravenes Article 23.8 of the Constitution in particular sub-paragraph (d) thereof, which provides for "the prompt payment in cash of a just and equitable compensation to be determined in case of disagreement by a Civil Court".

The learned Judge of the Supreme Court, dismissing these recourses :-

Held, (1). Although in my judgment a renewal of a requisition order must take place before its expiration, there is nothing in the Requisition of Property Law, 1962 (Law No. 21 of 1962) to prevent the requisitioning authority from making a new order of requisition (for the same property and for the same purpose), after the expiration of the previous one, provided the other prerequisites under the statute and the Constitution exist; and these prerequisites have not been contested. Now, as the very wording of the order challenged by this recourse

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suggests, it was an altogether independent order made after the expiration of the previous one; and if any limitation could be imposed to the making of such successive independent orders, same will arise in cases where the three years' maximum period prescribed under Article 23.8(c) for the requisition of a particular property is exceeded; and that is not the case in the present recourse.

(2)(a) It is not in dispute that no compensation has been paid. It is, however, a common ground, that an offer for compensation was made during the period the previous order was in force which was turned down by the applicants. In the meantime proceedings were commenced against the validity of the relevant requisition order, which led to the judgments of this Court (see *post* in the Judgment), and, also, proceedings in the District Court of Famagusta, where the applicants filed References on September 30, 1972 for the assessment of the relevant compensation. It should be mentioned also that in the course of the hearing of the appeals before the Full Bench of this Court (see *post* in the Judgment), negotiations were engaged for an overall settlement of these matters, but they did not materialize.

(b) This delay, in the light of the aforesaid circumstances, cannot be considered as rendering the *sub judice* requisition order unconstitutional.

Recourses dismissed.
No order as to costs.

Cases referred to :

Papadopoullou and Others v. The Republic (1971) 3
C.L.R. 317;

Koumis HjiMichael and Others v. The Republic (1972)
3 C.L.R. 246.

Recourses.

Recourses against the validity of an order of requisition

affecting applicants' properties situated at Ayios Memnon Famagusta.

J. Kaniklides, for the applicants.

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

Cur. adv. vult.

The following judgment was delivered by :-

A. LOIZOU, J. : These four recourses have, by direction of the Court, been heard together, as they present the same factual and legal issues, and I propose to give one judgment for all of them.

The applicants are the registered owners of immovable properties situated at Ayios Memnon quarter Famagusta. These properties together with other properties have been affected by an order of acquisition published in Supplement No. 3 to the official Gazette of March 28, 1969, under Notification No. 202, for a purpose of public interest, viz. the promotion or development of tourism of the area known as "Golden Sands" in Famagusta, which purpose is specifically provided for by section 3(2)(f) of the Compulsory Acquisition of Property Law, 1962 (No. 15 of 1962). The properties comprising the said area in which the applicants' properties are included, were urgently required for the commencement of the project, and for that reason, an order of requisition for a period of 12 months was made under the provisions of section 4 of the Requisition of Property Law, 1962 (No. 21 of 1962), under Notification No. 94, in Supplement No. 3 to the official Gazette of the 6th February, 1971.

The aforesaid orders of acquisition and requisition were the subject of recourses before a judge of this Court and the judgment on them, as well as on an application for a provisional order to stay the execution of the said administrative acts, was delivered in August, 1971, reported as *Papadopoullou & Others v. The Republic* (1971) 3 C.L.R. 317 and they were all dismissed on the grounds stated therein. This judgment was the subject of an appeal to the Full Bench of the Supreme Court. The appeal against the finding of the learned trial judge that the recourses against the acquisition order were out of time,

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was withdrawn. So, the compulsory acquisition of the properties was an inevitable eventuality, and the requisition order was a clearly temporary measure, enabling entry in the meantime upon the properties acquired. The appeal in relation to the said requisition order was dismissed for the reasons to be found in the judgment of the Court reported as *Koumis Hji Michael & Others v. The Republic*, etc. (1972) 3 C.L.R. 246. In the meantime proceedings for the determination of the compensation payable in respect of the aforesaid acquisitions and requisitions were instituted before the District Court of Famagusta. Since the conclusion of the hearing of this recourse, the judgment thereon assessing the compensation, was delivered on the 28th February, 1973.

After the expiration of the aforesaid requisition order, the said properties of the applicants were requisitioned for a further period of 12 months, by order published under Notification No. 93 in Supplement No. 3 (Part II) to the official Gazette of the 25th February, 1972. The said order was made by the Minister of Commerce and Industry, exercising the powers under section 4 of the Requisition of Property Law, 1962, as amended by Law 50 of 1966. The said Notification is framed, as if it was the first of its kind to be published, unlike other Notifications, such as Notifications No. 91 and No. 92 published in the same Gazette, whereby an order is made for the extension of the period of other orders of requisition under section 4(3) of the aforesaid Laws. It is the aforesaid requisition order as published in Notification No. 93, that is the subject of these recourses. Its validity is attacked on the following grounds of law :-

- “(a) The order of requisition complained of is against the provisions of Article 23.8 of the Constitution.
- (b) The order of requisition complained of is against the provisions of the Requisition of Property Law, 21 of 1962 in general and especially section 4(3)(b).
- (c) The order for requisition complained of is against the provisions of Article 23 of the Constitution and/or in excess or abuse of

power and/or against the general principles of Administrative Law.

- (d) The respondents or either of them acted under a misconception respecting the factual or legal position."

The aforesaid grounds of law were grouped by learned counsel into two main arguments.

The first one is that the said order is contrary to the provisions of the Requisition of Property Law of 1962, section 4(3)(b), in the sense that there could not be a renewal of a requisition order after the expiration of a previous one.

Counsel for the respondents has not disputed this proposition, but has maintained that the *sub judice* order is not in law a renewal of the previous one, but an independent new order for requisition, and that same could be made independently of the previous requisition order, so long as the period of requisition concerning the same property does not exceed the maximum of three years provided by the Constitution, when made for the same purpose.

It is not in dispute that these properties are still required for the project of public benefit for which they were acquired and requisitioned. Although in my judgment a renewal of an order must take place before its expiration, there is nothing in the said Law to prevent the Requisitioning Authority from making a new order for requisition, after the expiration of the previous one, if the other prerequisites under the Law and the Constitution for the making of such requisition order exist. These prerequisites have not been contested and in accordance with the established principles of Administrative Law there exists a presumption that an administrative decision is reached after a correct ascertainment of relevant facts, though such a presumption can be rebutted if a litigant succeeds in establishing that there exists at least a probability that a misconception has led to the decision complained of. (Stasinopoulos, *The Law of Administrative Acts*, 1951 Edition, page 304, *et seq.* adopted by the Full Bench in *Koumis Hji Michael supra*).

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A question of doubt cannot arise in this case, as in no way the applicants have disputed the circumstances that led to the making of this requisition order, but they have confined themselves to the technicality of whether a renewal of requisition order could be made after the expiration of the period of the original one.

This ground, therefore, in my view, fails, inasmuch as the very wording of the order suggests that it was an independent order made after the expiration of the previous one. If any limitation could be imposed to the making of such successive independent orders, same will arise in cases that the three-year maximum period of requisition of a property is exceeded. In such cases, it will have to be decided depending on the circumstances whether they amount to an effort to bypass the restriction as to time provided for by the Constitution.

The second submission of learned counsel for the applicants is that the said requisition order is unconstitutional, as offending Article 23.8 of the Constitution and in particular paragraph (d) thereof, which provides for "the prompt payment in cash of a just and equitable compensation to be determined in case of disagreement by a civil court".

It is not in dispute that no compensation has been paid. It is, however, a common ground, that an offer for compensation was made during the period the previous order was in force which was turned down by the applicants as being too low. In the meantime, proceedings were commenced by the applicants, which led to the judgments hereinabove referred to, and the proceedings in the District Court of Famagusta, where the applicants filed References on the 30th September, 1972, for the assessment of the compensation payable for the requisition of their property. It should be mentioned also that in the course of the hearing of the appeals before the Full Bench, negotiations were made for an overall settlement of these matters, but they did not materialize, as offers and counter-offers were made but not accepted.

This delay, in the light of the aforesaid circumstances, cannot be considered as rendering the *sub judice* requisition order unconstitutional. This ground, therefore, also fails.

Before concluding, I would like to say that the rights of the applicants for the period of 20 days during which there was no legal authorization for the use or occupation of the properties in question by the respondents, should not be considered as being affected by this judgment. In fact, it has been conceded that that period might have been the subject of civil proceedings in another Court. I understand, however, that the overall period of occupation has been considered in the assessment of compensation by the District Court of Famagusta.

For all the above reasons, all four recourses are dismissed, but in the circumstances I make no order as to costs.

*Applications dismissed;
no order as to costs.*

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