

[ΤΡΙΑΝΤΑΦΥΛΛΙΔΕΣ, Π.]  
IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

ANNA GEORGHIOU AND ANOTHER,

*Applicants,*

*and*

THE MUNICIPALITY OF NICOSIA,

*Respondent.*

(Case No. 151/70).

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ANNA  
GEORGHIOU  
AND ANOTHER

v  
MUNICIPALITY  
OF NICOSIA

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*Compulsory Acquisition of Property Law, 1962 (Law 15 of 1962)—Not unconstitutional as being contrary to Article 23.4 of the Constitution.*

*Administrative Law—Discretionary powers—Administrative decision on a matter of technical nature—Extent of widening a street—Principle on which an administrative Court can go into the merits of such a decision.*

*Compulsory Acquisition—Compensation—Need not be offered simultaneously with the making of the order of compulsory acquisition—Section 8 of the Compulsory Acquisition of Property Law, 1962 (Law No. 15 of 1962) and Article 23.4(c) of the Constitution.*

*Equality—Principle of equality—Article 28.1 of the Constitution—Equality of treatment is required thereunder in cases where no reasonable differentiation can be justified objectively—Compulsory acquisition of property—Justification therefor existing in view of the particular location of Applicants' properties.*

*Constitutional Law—Article 23.4(a) of the Constitution—Compulsory Acquisition of Property Law, 1962 (Law 15 of 1962) not unconstitutional in relation to the said Article.*

The applicants in this recourse complain against an order of compulsory acquisition affecting property of theirs in Nicosia.

The *sub judice* order of compulsory acquisition was made

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under the provisions of the Compulsory Acquisition of Property Law, 1962 (Law 15 of 1962).

Counsel for the applicants raised the following points :

- (a) That the said law 15 of 1962 is contrary to Article 23.4 of the Constitution, which provides that a general law for compulsory acquisition should be enacted within a year from the coming into operation of the Constitution. This is so because Law 15/62 was enacted on the 1st March, 1962, *i.e.* after more than a year's period had elapsed since the coming into operation of the Constitution on the 16th August, 1960.
- (b) That until the date of the hearing of this case no offer of compensation in respect of the compulsory acquisition had been made to the applicants.
- (c) That the compulsory acquisition of the properties of the applicants was not, as made, reasonably necessary for the purposes of the widening of the avenue concerned.

Counsel for applicants argued in this respect that the acquisition went beyond what is envisaged by the street-widening scheme currently in force in relation to this avenue and that, therefore, the respondent has acted in excess or abuse of powers.

- (d) That applicants are the victims of unequal treatment in view of the fact that they have been deprived, by compulsory acquisition, of their properties without the same course being adopted, at least to the same extent, in relation to other neighbouring properties.

Held, (I) *with regard to point (a)* :

As held in *Aspri and The Republic*, 4 R.S.C.C. 57 at p. 60, Article 23.4(a) is a provision in the nature of a direction to the Legislature and it does not preclude compliance therewith after the expiry of the period of time prescribed therein.

Held, (II) *with regard to point (b)* :

I can find nothing in either Article 23.4, or in Law 15/62, which could lead me to a decision annulling the order of compulsory acquisition on such a ground. Actually from Article 23.4(c) it can be fairly derived, by reasonable implication, that the compensation in respect of a compulsory acquisition need not be offered

simultaneously with the making of the relevant order of compulsory acquisition; and s. 8 of Law 15/62 clearly envisages that the offer of compensation may be made subsequently to the publication of the acquisition order.

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Held, (III) *with regard to point (c)* :

1. This Court, in the exercise of its revisional jurisdiction as an administrative Court, cannot go into the merits of an administrative decision regarding a matter of a technical nature such as the extent of the widening of a street, or of any particular part thereof, so long as such decision has been reached in the course of the exercise, within the proper limits, of the relevant discretionary powers of the competent administrative organ (*Eraclidou and Another v. Compensation Officer, Ministry of Labour & Social Insurance* (1968) 3 C.L.R. 44, at pp. 52 - 55).
2. I have not been satisfied that such limits have been exceeded merely because the respondent has decided to widen the avenue in question more than envisaged by the street-widening scheme in force, by resorting to compulsory acquisition of the required land.

Held, (IV) *with regard to point (d)* :

Equality of treatment is required, under Article 28 of the Constitution in cases where no reasonable differentiation can be justified objectively; in the present case such a justification existed in view of the particular location of the properties of the applicants.

*Application dismissed.*  
*No order as to costs.*

Cases referred to :

*Aspri and The Republic*, 4 R.S.C.C. 57, at p. 60.

*Eraclidou v. The Compensation Officer, Ministry of Labour and Social Insurance* (1968) 3 C.L.R. 44, at pp. 52 - 55.

#### Recourse.

Recourse against an order of compulsory acquisition affecting properties of the applicants situated in Nicosia.

*E. Emilianides and E. Efsthathiou*, for the applicants.

*K. Michaelides*, for the respondent.

*Cur. adv. vult.*

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The following judgment was delivered by :-

TRIANTAFYLIDES, P.: In this case the applicants complain, in effect, against an order of compulsory acquisition published on the 13th March, 1970 (under Not. 195 in the Third Supplement to the Official Gazette of that date).

By virtue of such order the immovable properties of the applicants, in Nicosia, which were described in the relevant notice of acquisition, published on the 12th December, 1969 (under Not. 965 in the Third Supplement to the Official Gazette of that date), were compulsorily acquired by the respondent for the purpose of straightening Niciforos Phocas Avenue in Nicosia.

The *sub judice* order of compulsory acquisition was made under the provisions of the Compulsory Acquisition of Property Law, 1962 (Law 15/62).

It has been argued by counsel for the applicants that Law 15/62 is contrary to Article 23.4 of the Constitution, because it was enacted on the 1st March, 1962, after more than a year's period had elapsed since the coming into operation of the Constitution on the 16th August, 1960: It is correct that in Article 23.4(a) it is provided that "a general Law for compulsory acquisition"—such as Law 15/62—should be enacted within a year from the coming into operation of the Constitution; and this was, indeed, not done; but, as held in *Aspri* and *The Republic*, 4 R.S.C.C. 57, 60, Article 23.4(a) is a provision in the nature of a directive to the Legislature and it does not preclude compliance therewith after the expiry of the period of time prescribed therein.

Another complaint of counsel for the applicants has been that until the date of the hearing of this case no offer of compensation in respect of the compulsory acquisition had been made to the applicants. This is certainly a most undesirable state of affairs, but I can find nothing in either Article 23.4, or in Law 15/62, which could lead me to a decision annulling the order of compulsory acquisition on such a ground. Actually, from Article 23.4(c) it can be fairly derived, by reasonable implication, that the compensation in respect of a compulsory acquisition need not be offered simultaneously

with the making of the relevant order of compulsory acquisition; and section 8 of Law 15/62 clearly envisages that the offer for compensation may be made subsequently to the publication of the acquisition order. I might add that in the present case the applicants could have expedited the payment to them of compensation for the acquisition by applying for its assessment by a civil Court.

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The next issue with which I have to deal is the contention of applicants' counsel that the compulsory acquisition of the properties of their clients was not, as made, reasonably necessary for the purposes of the widening of the avenue concerned; it was argued, in this respect, that the acquisition went beyond what is envisaged by the street-widening scheme currently in force in relation to this avenue and that, therefore, the respondent has acted in excess or abuse of powers.

This Court, in the exercise of its revisional jurisdiction as an administrative Court, cannot go into the merits of an administrative decision regarding a matter of a technical nature (see, *inter alia*, *Eraclidou and Another v. The Compensation Officer, Ministry of Labour and Social Insurance* (1968) 3 C.L.R. 44, at pp. 52 - 55) such as the extent of the widening of a street, or of any particular part thereof, so long as such decision has been reached in the course of the exercise, within the proper limits, of the relevant discretionary powers of the competent administrative organ; and I have not been satisfied that such limits have been exceeded merely because the respondent has decided to widen the avenue in question more than envisaged by the street-widening scheme in force, by resorting to compulsory acquisition of the required land.

Nor can I accept the contention of the applicants that they are the victims of unequal treatment in view of the fact that they have been deprived, by compulsory acquisition, of their properties without the same course being adopted, at least to the same extent, in relation to other neighbouring properties. Equality of treatment is required, under Article 28 of the Constitution, in cases where no reasonable differentiation can be justified objectively; in the present case such a justification existed in view of the particular location of the properties of the applicants.

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In the light of all the foregoing I have reached the conclusion that this recourse cannot succeed and it is dismissed accordingly; but I am not prepared to make any order as to costs against the applicants.

*Application dismissed.*  
*No order as to costs.*