IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PARASKEVAS LORDOS LTD. AND OTHERS,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH

1. THE COUNCIL OF MINISTERS,
2. THE MINISTER OF COMMUNICATIONS AND WORKS,

Respondents.

(*Case No.* 126/69).

*Compulsory acquisition—Prematureness—Sufficient inquiry—Construction of harbour—Plans of project at time of acquisition order changed more than once in the course of construction—*Sub judice *acquisition order not rendered premature or as having been resorted to without sufficient inquiry—Because there existed sufficiently detailed drawings prepared for purposes of invitation and submission of tenders—None of the changes made the acquired properties of applicants to cease being in the very heart of the project.*

Compulsory acquisition—Valuation regarding cost of property to be acquired—Failure to be made in time may be a reason of annulment—Burden of establishing as a matter of fact such a reason on applicants—Who offered no concrete evidence to this effect—Presumption of regularity—In the absence of such evidence only legitimate conclusion is that the total cost of acquisition was duly considered at the proper time even if detailed valuations were prepared later.

Compulsory acquisition—Delay in making offers of compensation—Which were made about a year after publication of order of acquisition—Cannot be treated as rendering the sub judice *acquisition order contrary to Article* 23.4 (*c*) *of the Constitution or to sections* 8, 9 *and* 12 *of the Compulsory Acquisition of Property Law,* 1962 (*Law* 15 *of* 1962).

Compulsory acquisition—Construction of harbour—Acquisition of block of flats which could properly be acquired—In order to be

converted into administrative offices for purpose of functions of the harbour—Need to acquire said flats a matter to be decided by Government—In the absence of any valid reason to the contrary decision of the Government so to do cannot be interfered with by this Court—Fact that they will not be demolished does not establish any illegal or abusive use of the relevant powers of compulsory acquisition.

The applicants complain against an order of compulsory acquisition of certain plots of lands of theirs, made under section 6 of the Compulsory Acquisition Law, 1962 (Law 15/62), in relation to the construction of a new harbour at Larnaca.

In contesting the validity of the *sub judice* order of acquisition counsel for the applicant made the following contentions:

(a) That the properties of the applicants were acquired on the basis of only preliminary plans and, therefore, too early in the course of the planning of the harbour—for the purpose of acquiring such properties at the lower prices prevailing in 1968—and that this course amounted to abuse of powers; in support of this proposition he laid stress on the fact that the plans of the harbour were changed more than once after the compulsory acquisition and that at the time when the acquisition was decided upon there did not exist valuations of the properties to be acquired;

(b) That the offers of compensation were made about a year after the publication of the order of compulsory acquisition and he submitted that the delay occurred because there were no valuations ready at the time of the acquisition. He, also, argued that since at the time of the publication of the order there did not exist the final plans or the valuation of the properties, the relevant decision was taken by the respondent without sufficient inquiry into the matter. In this respect it has been argued that the delay in making the offers of compensation contravened Article 23.4 (c) of the Constitution and, therefore, the order of compulsory acquisition complained of became unconstitutional; it has, also, been submitted that such delay contravened sections 8, 9 and 12 of Law 15 of 1962.

(c) That the acquisition of plot 240 on which there existed at all material times a block of flats was outside the

scope of the ambit of the project of the construction of the new Larnaca harbour. In this respect the respondents disclosed that it is contemplated to use these flats by converting them into administrative offices for the purposes of the functioning of the harbour.

Held, (I). With regard to contention (a) above:

It is abundantly clear, from the material before me, that before the making of the compulsory acquisition order on the 21st February, 1969, in respect of the properties of the applicants, there were in existence sufficiently detailed drawings to enable tenders to be invited and submitted; it can, therefore, be safely said that the project in question was sufficiently ready from the point of view of adequate planning, as to exclude the contention that in this respect the compulsory acquisition of properties was premature. It is correct that the plan of the harbour was changed more than once in the course of its construction, but it is, also, correct that none of these changes made the acquired properties of the applicants cease to be in the very heart of the area of the harbour and, therefore, obviously necessary for the project in question.

Held, (II). With regard to contention (b):

(1) The burden of establishing, as a matter of fact, such a reason (*i.e.* delay in making offer of compensation) for annulment lay with the applicants (see, *inter alia*, *Koukoullis and Others* and *The Republic*, 3 R.S.C.C. 134).

(2) In the absence of any concrete evidence to that effect and because of the presumption of regularity—"*Omnia praesumuntur rite esse acta*" ("All acts are presumed to have been done rightly")—the only conclusion that I can legitimately reach is that the total cost of the compulsory acquisition was duly considered at the proper time, even if the "detailed valuations" of the properties concerned, for purposes of compensation, were prepared later, at the time of the publication of the order of acquisition. So it has not been established to my satisfaction that any abuse or excess of powers has occurred in this respect.

(3) I do fail to see how the delay in question amounted to an infringement of Article 23.4 (c): The payment of compensation in advance is a requirement for the completion of

the acquisition, in the sense that until such payment the order of compulsory acquisition is prevented, by the constitutional provisions in question, from becoming fully effective (see, also, section 13 of the Compulsory Acquisition Law, 1962 (15/62). It is to be noted that there is no provision in Article 23.4 (c) that the compensation is to be paid promptly (as in Article 23.8 (d)).

(4) I can find nothing in the provisions of sections 8, 9 and 12 of Law 15/62 which would lead me, by applying them to the circumstances of the present case, to the conclusion that the process of acquisition has been rendered illegal through infringement of these provisions.

Held, (III). With regard to contention (c) above:

(1) Plot 240 lies in the very heart of the area of the new Larnaca harbour; so the need to acquire that plot of land was a matter to be decided by the Government and in the absence of any valid reason to the contrary the decision of the Government so to do cannot be interfered with by this Court.

(2) I cannot accept that the acquisition of the said plot 240 should not have been proceeded with because there existed there a block of flats. Thus, they came to be compulsorily acquired because of the fact that they were built on land which could properly be acquired.

(3) The fact that the block of flats in question is not to be demolished, but it will, after the necessary conversion, be used as offices for the purposes of the harbour does not, in my opinion, establish any illegal or abusive use, in this case of the relevant powers of compulsory acquisition.

Application dismissed.

Cases referred to:

Glyki v. *The Municipal Corporation of Famagusta* (1967) 3 C.L.R. 677;

Thymopoulos v. *The Municipal Committee of Nicosia* (1967) 3 C.L.R. 588;

Venglis v. *The Electricity Authority of Cyprus* (1965) 3 C.L.R. 252;

Chrysochou Bros. v. *The Cyprus Telecommunications Authority* (1966) 3 C.L.R. 482;

Koukoullis and Others and *The Republic*, 3 R.S.C.C. 134.

Decisions of the Greek Council of State: Nos. 998/1968, 3409/1970.

Recourse.

Recourse against the validity of an order of compulsory acquisition of certain plots of land belonging to applicants situated at Larnaca.

L. Clerides with *E. Lemonaris*, for the applicants.

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

Cur. adv. vult.

The following judgment was delivered by:-

TRIANTAFYLLIDES, P.: The applicants complain against an order of compulsory acquisition, which was published in the Official Gazette (Third Supplement, Not. 122) of the 21st February, 1969.

The said order was made under section 6 of the Compulsory Acquisition Law, 1962 (Law 15/62) in relation to the construction of a new harbour at Larnaca.

The properties of the applicants, which are affected by the order, are plots 61, 68, 240 and 241, Block C, in Larnaca Town (see map, *exhibit* 1); on plot 240 there existed already, at the material time, a block of flats.

The relevant notice of acquisition had been published, earlier, in the Official Gazette (Third Supplement, No. 266) of the 18th April, 1968.

The notice and subsequent order of compulsory acquisition related also to plots 60 and 62, Block C, in Larnaca Town, in respect of which an order of requisition was made on the 16th May, 1969; against the latter order only, and not against the order of compulsory acquisition as well, there was filed recourse 253/69 by other applicants; this recourse was heard together with the present recourse, as a related case, but it was with-

drawn after judgment had been reserved and so there is no need to refer to it any further.

On the 14th February, 1969, there was published in the Official Gazette (Third Supplement, Not. 104) a notice revoking in part the previous notice of acquisition, but not affecting such notice in so far as it applied to the properties of the applicants.

After the notice of acquisition was published the applicants in the present case objected against the acquisition; their objection was lodged in writing on the 2nd May, 1968 (*exhibit* 2).

The decision to make the order of compulsory acquisition was reached by the Council of Ministers, on the 20th February, 1969, on the basis of a submission made to it on the 19th February, 1969 (*exhibits* 10 and 9, respectively); as it appears from both the said submission and decision the objections lodged against the proposed compulsory acquisition were considered by the Council of Ministers and were rejected.

Then, the present recourse was filed. The hearing of this case was rather protracted in view, *inter alia*, of the fact that matters of very technical nature had to be gone into. In this respect expert evidence was received by way, also, of affidavits. It is useful to identify the said affidavits now, for easy reference in the course of this judgment: They are two affidavits sworn by Mr. M. Christodoulides, a Senior Engineer of the Department of Public Works, on the 8th November, 1971, and the 13th January, 1972, respectively, and an affidavit sworn on the 25th November, 1971, by Mr. Sp. Florendiades, an engineer in the employment of the applicants; both affiants gave, also, oral evidence.

Before proceeding any further it is useful to refer briefly to the history of the planning and construction of the new Larnaca harbour, because some of the issues raised in these proceedings are connected therewith:

The initial plan for the new harbour envisaged the construction of only one breakwater, on the southern side, on which there would be the quay of the harbour (see *exhibit* 8). Later, the plan was revised so as to provide for the construction of an additional breakwater, on the northern side, and the quay has been built on this northern breakwater (see *exhibit* 7).

A comparison of *exhibit* 7 and the already referred to map, *exhibit* 1, shows that the compulsorily acquired properties of the applicants are still practically in the middle of the area of the harbour (see *exhibit* 7), notwithstanding the new shape which has now been given to the harbour.

By letter dated the 10th October, 1970 (*exhibit* 3) counsel for the applicants submitted to Government proposals with a view of excluding the properties of the applicants from the area compulsorily acquired; the effect of these proposals appears on a plan produced by applicants' side (*exhibit* 6).

The applicants' proposals were examined and a reply was given to them by letter dated the 31st March, 1971 (*exhibit* 4), by which it was made known to counsel for the applicants that "after careful consideration it had been found" that the applicants' properties were "absolutely necessary for the purpose for which they had been acquired and, consequently, it had not been found possible to acceed to" the request "that the properties in question should be excluded from the order of acquisition".

As has been stated in evidence by Mr. Christodoulides there did take place some reclamation of land from the sea during the construction of the harbour, both inside and outside the harbour on the basis of expert advice given to Government, and to a certain extent such reclamation coincided with reclamation suggested by the applicants; but he was quite positive that the reclamation which took place did not dispense with the need to acquire the applicants' properties.

It may be mentioned at this stage that Mr. Christodoulides admitted that the plans for the harbour were revised four times, in a manner entailing major alterations, but he explained that alterations of the plans of a harbour, as the project of its construction is being implemented, is something normal in view of the uncertainties involved in such a project; in this respect it is useful to study a relevant submission to the Council of Ministers (*exhibit* 12).

Offers for the payment of compensation were made to the applicants in relation to the compulsory acquisition of their properties, but it does not appear that until now any agreement has been reached in this respect. There have been produced together (*exhibit* 5) the offers made in respect of plot 68 (on the

8th January, 1970) and in respect of plot 240 with the block of flats built thereon (on the 28th May, 1970); and it has been stated during the hearing of the case—and it did not appear to be disputed—that the offer in respect of plot 61 was also made on the 8th January, 1970, and in respect of plot 241 on a date in 1970 which has not been further specified.

One of the main lines of attack adopted by counsel for the applicants in contesting the validity of the *sub judice* order of acquisition has been that the properties of the applicants were acquired on the basis of only preliminary plans and, therefore, too early in the course of the planning of the harbour—for the purpose of acquiring such properties at the lower prices prevailing in 1968—and that this course amounted to abuse of powers; in support of this proposition he laid stress on the fact that the plans of the harbour were changed more than once after the compulsory acquisition and that at the time when the acquisition was decided upon there did not exist valuations of the properties to be acquired; in this connection he drew attention to the fact that the offers of compensation were made about a year after the publication of the order of compulsory acquisition and he submitted that the delay occurred because there were no valuations ready at the time of the acquisition. He, also, argued that since at the time of the publication of the order there did not exist the final plans or the valuations of the properties, the relevant decision was taken by the respondents without sufficient inquiry into the matter. He referred, in particular, to *Glyki* v. *The Municipal Corporation of Famagusta* (1967) 3 C.L.R. 677, *Thymopoulos* v. *The Municipal Committee of Nicosia* (1967) 3 C.L.R. 588, *Venglis* v. *The Electricity Authority of Cyprus* (1965) 3 C.L.R. 252 and *Chrysochou Bros.* v. *The Cyprus Telecommunications Authority* (1966) 3 C.L.R. 482.

Before dealing with the issues raised in the present case it is useful to refer to two decisions of the Greek Council of State (Συμβούλιον τῆς Ἐπικρατείας).

In case 998/1968 (vol. 1968 B, p. 1197, at p. 1201) it was decided that whether or not in a particular case a property, which has been compulsorily acquired, was needed for a purpose which was to the public benefit, is a matter in relation to which the discretion of the administration is not subject to the control of the Council of State, except where there exists misconception of fact, wrong use of the said discretion or abuse of powers.

In case 3409/1970 (Vol. 1970 ΣΤ', p. 5247, at p. 5248) it was held that the decision as to what is the most suitable area for a public project cannot be challenged by recourse for annulment before the Council of State; and, furthermore, that it is not necessary to contact the owner of the area which has been found to be *most suitable*, in order to attempt to buy it from him before resorting to the measure of its compulsory acquisition.

In this connection it is expedient to refer, also, to Odent on Contentieux Administratif (1970-1971) pp. 1578-1581.

In the present case it appears from the affidavit of Mr. Christodoulides, of the 8th November, 1971, that after a preliminary report by the expert advisers of Government—the consulting engineers—in March, 1968, the contract drawings were submitted in July, 1968 (*exhibit* 8).

Mr. Florendiades, who gave expert evidence for the applicants, is a Director of a company—'The Cyprus Asphalting Co. Ltd'.—which participated in the tenders for the new Larnaca harbour; and the tender of his company was submitted on the 15th November, 1968 (*exhibit* 11). The tenders were made on the basis of the contract drawings which were prepared in July, 1968, by the consulting engineers of Government.

So, it is abundantly clear that before the making of the compulsory acquisition order on the 21st February, 1969, in respect of the properties of the applicants, there were in existence sufficiently detailed drawings to enable tenders to be invited and submitted; it can, therefore, be safely said that the project in question was sufficiently ready, from the point of view of adequate planning, as to exclude the contention that in this respect the compulsory acquisition of properties was premature. It is correct that the plan of the harbour was changed more than once in the course of its construction, but it is, also, correct that none of these changes made the acquired properties of the applicants cease to be in the very heart of the area of the harbour and, therefore, obviously necessary for the project in question.

I pause here in order to refer to the already referred to proposal which was made by counsel for the applicants on the 10th October, 1970 (*exhibit* 3) regarding the possibility of changing the plan of the harbour so as to dispense with the requirement

to acquire compulsorily the properties of the applicants. This proposal was, as stated earlier on in this judgment, duly examined but the Government was not able to exclude the said properties by adopting any of the suggested alternative courses; as this is a technical matter, I cannot substitute any opinion of my own in place of that of the expert advisers of the Government and there has not been established any ground (such as, for example, misconception of fact) which would enable me to interfere with the decision taken by Government in this connection.

Another argument which was advanced in support of the contention that the measure of compulsory acquisition was resorted to prematurely, without proper enquiry and, therefore, in abuse or excess of powers, was that the final valuations, regarding the compensation to be offered for each property acquired, were made after the order of compulsory acquisition and, so, the offers for compensation were made to the applicants more than a year after the said order.

Whether or not an estimate of the value of a property to be compulsorily acquired has been made in time, so that the approximate cost of the project concerned can be known, may be treated as a consideration to be taken into account in deciding whether all relevant factors were examined when making an order for compulsory acquisition; however, each case of this nature has to be considered on the basis of its own particular circumstances.

It is stated in the affidavit of Mr. Christodoulides (of the 8th November, 1971) that, simultaneously with the publication of the order of compulsory acquisition, instructions were given for the preparation of "detailed valuations" of the acquired properties for the purposes of the negotiations as to the compensation payable to the owners of such properties.

As it appears, also, from the oral evidence of Mr. Christodoulides (given on the 6th April, 1972) there had been placed before the Council of Ministers a submission as regards the "total cost" of the construction of the new harbour at Larnaca; the witness did not have, at the time, available in Court this document, but he said that he could produce it if necessary; and the matter was left at that without any request for its production.

Of course, it might be argued that the above facts tend only to show; but they do not establish with absolute certainty, that the cost entailed by the compulsory acquisition of the properties concerned was duly considered by the Government at the proper time; but the burden of establishing, as a matter of fact, such a reason for annulment lay with the applicants (see, *inter alia*, *Koukoullis and Others* and *The Republic*, 3 R.S.C.C. 134). Thus, in the absence of any concrete evidence to that effect and because of the presumption of regularity—" *Omnia preasumuntur rite esse acta*" (" All acts are presumed to have been done rightly")—the only conclusion that I can legitimately reach is that the total cost of the compulsory acquisition was duly considered at the proper time, even if the "detailed valuations" of the properties concerned, for purposes of compensation, were prepared later, at the time of the publication of the order of acquisition. So, it has not been established to my satisfaction that any abuse or excess of powers has occurred in this respect.

In connection with the aforementioned delay in making offers of compensation to the applicants, it has been argued by counsel for them that such delay contravened Article 23.4 (c) of the Constitution and, therefore, the order of compulsory acquisition complained of became unconstitutional. Article 23.4 reads as follows:-

> " Any movable or immovable property or any right over or interest in any such property may be compulsorily acquired by the Republic or by a municipal corporation or by a Communal Chamber for the educational, religious, charitable or sporting institutions, bodies or establishments within its competence and only from the persons belonging to its respective Community or by a public corporation or a public utility body on which such right has been conferred by law, and only -
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> (a) for a purpose which is to the public benefit and shall be specially provided by a general law for compulsory acquisition which shall be enacted within a year from the date of the coming into operation of this Constitution; and
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> (b) when such purpose is established by a decision of the acquiring authority and made under the provisions of such law stating clearly the reasons for such acquisition; and

(c) upon the payment in cash and in advance of a just and equitable compensation to be determined in case of disagreement by a civil Court".

I do fail to see how the delay in question amounted to an infringement of Article 23.4 (c): The payment of compensation in advance is a requirement for the completion of the acquisition, in the sense that until such payment the order of compulsory acquisition is prevented, by the constitutional provision in question, from becoming fully effective (see, also, section 13 of the Compulsory Acquisition Law, 1962 (15/62)). It is to be noted that there is no provision in Article 23.4 (c) that the compensation is to be paid promptly (as in Article 23.8 (d)).

Of course, it might be argued in a proper case that the delay in completing the acquisition, through failure to make an offer as regards the compensation due, has been of such an exorbitant length as to vitiate the whole process of compulsory acquisition; but, in any event, in the present case the delay in question cannot be regarded as being of such a nature and so it cannot be treated as rendering unconstitutional the *sub judice* acquisition order; any hardship caused to the applicants can be adequately remedied by a civil Court through, if necessary, an appropriate award of interest on the amount of compensation.

It has, also, been submitted by counsel for the applicants that the aforesaid delay in making the formal offers of compensation contravened sections 8, 9 and 12 of Law 15/62. I can find nothing in these provisions which would lead me, by applying them to the circumstances of the present case, to the conclusion that the process of acquisition has been rendered illegal through infringement of these provisions; and I would like to point, in particular, that under section 9 of Law 15/62 the applicants themselves could have tried to avoid delay in relation to the matter of the compensation if they had applied under section 9, one month after the publication of the order of acquisition, to a civil Court for the determination of the compensation due to them (subject may be to the effect of the operation of Article 23.11 of the Constitution).

I shall now deal with the submission of counsel for the applicants in respect of the compulsory acquisition of plot 240 on which there existed at all material times a block of flats. It has been argued that the acquisition of the block of flats was

outside the scope of the ambit of the project of the construction of the new Larnaca harbour.

As has been disclosed by the respondents' side, and, particularly, through the evidence of Mr. Christodoulides, it is contemplated to use these flats by converting them into administrative offices for the purposes of the functioning of the harbour. But this evidence must be examined together with all the other relevant circumstances of the case:

Plot 240 lies in the very heart of the area of the new Larnaca harbour; so the need to acquire that plot of land was a matter to be decided by the Government and in the absence of any valid reason to the contrary the decision of the Government so to do cannot be interfered with by this Court; and I cannot accept that the acquisition of plot 240 should not have been proceeded with because there existed there a block of flats. Thus, the flats came to be compulsorily acquired because of the fact that they were built on land which could properly be acquired; this is not a case where a block of flats lying far away from the area of the new harbour was compulsorily acquired in order to be used as administrative offices for the purposes of the functioning of the harbour.

The fact that the block of flats in question is—as it has been stated to the Court—not to be demolished but it will, after the necessary conversion, be used as offices for the purposes of the harbour does not, in my opinion, establish any illegal or abusive use, in this case, of the relevant powers of compulsory acquisition. It would be absurd to hold that the block of flats concerned should be demolished and a new office block be erected in its place but that it could not be converted as aforesaid; also, in my view, it makes no real difference if originally it might have been intended to demolish the flats and later it was decided to convert them for use relevant to the functioning of the harbour.

Furthermore, it must be borne in mind that the applicants will be compensated not only for the value of the land, but also for the value of the block of flats; and, indeed, this latter consideration suffices in order to answer the complaint of the applicants that they were allowed to erect the flats at a time when it was contemplated to construct in that area the new Larnaca harbour.

Having dealt as above with all the issues, raised in this recourse, which appeared to merit consideration, I find that this recourse has to be dismissed; but bearing in mind that this is a case in which a number of rather complicated issues had to be gone into I do not think that I should order the applicants to bear the costs of the respondents in the proceedings.

Application dismissed. No order as to costs.