IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MICHAEL THEODOSSIOU CO. LTD.,

Applicant,

and

THE MUNICIPALITY OF LIMASSOL, THROUGH
THE MUNICIPAL COMMITTEE OF LIMASSOL,

Respondent.

(*Case Nos* 11/73 & 47/73).

Building permit—Refusal to grant building permit due to compulsory acquisition of property subject matter of permit—Compensation for acquisition not paid—Refusal contrary to law.

Municipal Corporations—Compulsory acquisition—Section 8 *of the* 5 *Municipal Corporations Law,* 1964*—Does not deprive Municipal Corporations of the power to acquire property for any of the purposes set out in section* 124 (2) (*c*) *of the Municipal Corporations Law, Cap.* 240*—Compulsory Acquisition of Property Law,* 1962

10 *Municipal Corporations—Compulsory acquisition—Town planning—Whether a Municipal Corporation in deciding to make a compulsory acquisition may include town planning among the purposes for which the property is required—Article* 176 *of the Constitution—Town and Country Planning Law,* 1972, (*Law* 90 *of* 1972— 15 *not yet in force*)

Administrative Law—Compulsory acquisition by Municipal Corporation—Principles of administrative Law governing compulsory acquisition—Absolute necessity of acquisition—Due consideration of financial implications of project—Proper inquiry regarding all 20 *aspects of the case—Whether decision a duly reasoned one—Said principles not contravened in the circumstances of this case.*

Compulsory acquisition—Refusal to grant building permit because of.

Compulsory acquisition—Town planning—Municipal Corporation—Section 8 *of Law* 64 *of* 1964.

Compulsory acquisition—Principles of Administrative Law applicable.

The applicant Company in these two recourses complains:

(a) Against the decision of the respondent refusing the issue of a building permit and (b) against the decision of the respondent to acquire compulsorily immovable property of the applicant situated in Limassol.

The issue of a building permit was refused for the reason that it had been decided to acquire compulsorily the property upon which buildings were to be constructed. Though notice of the intended acquisition had been published in the official Gazette before the *sub judice* refusal the payment of compensation had not as yet been made.

The compulsory acquisition was made for public benefit purposes which included, *inter alia*, "Town planning" and "The construction, maintenance and development of land communications".

Regarding the refusal to issue the building permit counsel for applicant contended:

(a) That the reason for refusing the issue of a building permit was not a valid one, inasmuch as the intention to acquire and the publication of a notice, or even an order of acquisition, do not legally justify such refusal.

(b) That the refusal is unlawful as based on an intended acquisition which is in itself unlawful.

And regarding the compulsory acquisition counsel for the applicant contended:

(a) That the acquisition was ultra vires and void, as it was made in contravention of sections 3 (2) (g) of the Compulsory Acquisition Law, 1962 (15/62), section 8 (2) of the Municipal Corporations Law, 1964 (64/64) and section 124 of the Municipal Corporations Law, Cap. 240, as this section has been incorporated in Law 64/64, inasmuch as the respondent Municipality has no power or competence to acquire compulsorily immovable property for the purposes of public benefit which are set out in the notice of acquisition.

It has been argued in this respect that in view of the non re-enactment of sections 127 to 135 of Cap. 240

by means of Law 64/64, a Municipal Corporation has no power to acquire compulsorily land or buildings for any of the purposes set out in paragraph (c) of s. 124 (2) of Cap. 240 and in particular the construction of a new street or the widening of an existing one, which are among the purposes of public benefit specified in the notice of acquisition.

(b) That town planning was not a matter within the competence of a municipal corporation.

Reference, in this respect, has been made to Article 176 of the Constitution by virtue of which a law might provide for town planning with regard to any Municipal Corporation and to the Town and Country Planning Law, 1972 (Law 90/72—not yet in force) as according with the view that town and country planning was never intended to be within the competence of a Municipal Corporation.

(c) That the compulsory acquisition in question has been made in contravention of the principles of administrative Law, applicable to compulsory acquisition, namely:

(i) That there was no absolute necessity at the time to acquire the land in question in order to carry out any specific object of public benefit, the real intention behind the acquisition being the forestalling of the expected increase in the value of this property;

(ii) that there were no concrete plans at the time the *sub judice* decision was taken;

(iii) that the financial implications of this acquisition were not duly considered;

(iv) that no proper inquiry, in the circumstances, has been carried out, particularly so in relation to the objections submitted by the applicant Company;

(v) that the *sub judice* decision is not duly reasoned.

Held, (I) with regard to the refusal to issue a building permit:

(1) *A refusal to grant a building permit constitutes a disturbance of the possession of the owner of the property, who,*

until the payment of the compensation, continues to exercise, subject to certain limitations, and have, as owner, intact the rights prescribed by law regarding possession, disposal and enjoyment. And no building permit may be refused until the payment of the compensation for the property under acquisition. (See Saripolos The System of Constitutional Law of Greece, 4th Ed., Vol. 3 p. 215). 5

(2) So, the decision of the respondent Municipality to refuse to grant the building permit in question was contrary to law and *null* and *void.* 10

Held, (II) with regard to the compulsory acquisition:

(1) The wording of section 8 of Law 64/64 (quoted in full at pp. 207–208 of the judgment *post*) is such, that read as a whole and in conjunction with the Compulsory Acquisition of Property Law, 1962, which empowers a Municipality to acquire compulsorily property for the purposes of the Municipal Corporations Law, does not deprive a Municipal Corporation of the power to acquire property for any of the purposes set out in section 124 (2) (c) of Cap. 240, as re-enacted. The power to acquire compulsorily for such purpose, is not excluded by the fact that there is power and procedure laid down by law to acquire by private treaty. (See *Glyki and Another* v. *Municipal Corporation F'sta* (1967) 3 C.L.R. 677 at p. 686). 15 20

(2) (a) Article 176 of the Constitution does not prevent Municipalities from performing functions that normally come within the sphere of town planning; it merely clarifies the position in the sense that these Articles of the Constitution that refer to the functions of Municipalities should be so construed as not precluding the enactment of a law to provide for town planning with respect to Municipalities. Law 90/72, has not, as yet come into force, so as to be taken as superceding similar powers possessed by Municipalities. 25 30

2 (b) The term "town planning" used in the notice of acquisition, should be construed as covering in fact, town planning powers of a rudimentary nature, which, have always been entrusted to Municipalities under the relevant legislation; also, as used in conjunction with the remaining purposes and reasons set out in the said nature and for no other reason. 35

3 (a) The absolute necessity is evident from the object of the acquisition. In the circumstances of this case it cannot be 40

said that this compulsory acquisition has been resorted to without being absolutely necessary, as of its nature there could not exist any alternative possibility of achieving its objects by means of purchasing other suitable property either offered for 5 sale by its owner or the acquisition of which will entail a deprivation less onerous than the one for the proposed acquisition or which is more or less equally suitable for the purpose concerned.

(3) (b) The land in question is one of the few remaining ones 10 for the completion of a project that has been implemented by stages for more than two decades. There existed all the prerequisites for its acquisition, and upon completion of the compulsory acquisition its objects could be considered as immediately implemented by the respondent Municipality. The matter had 15 not been accelerated for any reason. And its very purpose did not call for any elaborate architectural plans other than the demolition of the existing premises and the consolidation of the land in question with the adjacent lands already acquired.

(3) (c) From the material in the file and the evidence adduced 20 it is clear that the financial implications of the project were, indeed, carefully considered by the respondent Municipality, having due regard to their financial capabilities and whether it was the opportune moment to proceed with the acquisition or not.

25 (3) (d) A comparison of the relevant minutes and all the material in the file, shows that the *sub judice* decisions are duly reasoned, in the circumstances, and a proper inquiry was carried out regarding all the aspects of the case, including the applicants' objection to the acquisition.

30 *Recourse No.* 11/73 *succeeds.*
Recourse No. 47/73 *dismissed.*
No order as to costs.

Cases referred to:

Holy See of Kitium and *The Municipal Council of Limassol*,
35 1 R.S.C.C. 15;

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

Glyki and Another v. *The Municipal Corporation of Famagusta* (1967) 3 C.L.R. 677 at p. 686.

Recourses.

Recourses against the decision of the respondent whereby applicant was refused a building permit and against the validity of an order of acquisition affecting applicant's property situated at Limassol. 5

K. Talarides, for the applicant.

J. Potamitis, for the respondent.

Cur. adv. vult.

The facts sufficiently appear in the judgment of the Court delivered by:- 10

A. LOIZOU, J.: The applicant Company is the registered owner of immovable property of an extent of 48,024 sq. ft. situated at locality " Melaini" Ayia Triada Quarter, under Plot Nos. 23 & 24/1, Sheet Plan LIV. 5921.II, Reg. No. 37792 on which there stands a complex of stores used by it as bonded 15 warehouses since 1965.

The acquisition, either compulsorily or by private treaty by the Municipality of Limassol of properties to the south of the seaside road of the town is part of a long-term policy for the beautification of the shore, the widening of the seaside road, 20 the completion of the air lung and the view to the sea and the provision of places of resort and recreation for the use of the public. The implementation of this policy was proceeded with, having regard to the financial means of the Municipality at the time, and according to the existing arrangements the Govern- 25 ment that approves and encourages such acquisitions, is paying two-thirds towards their cost, the remaining one-third being paid out of municipal funds. (*Exhibits* 4 (2), 12 and 9).

In 1969 the respondent Municipality decided to acquire certain of the seaside properties. They did not include, how- 30 ever, then the subject property, as well as certain other seaside properties, for the reason that they would involve an additional financial burden on the Municipality, on account of their being used as factories and stores, and they postponed their acquisition for the future. (*Exhibit* 5 (2)). 35

The acquisition of the subject property was decided by the respondent Municipality at its meeting of the 10th July, 1972 and authorised its chairman to take the necessary steps. (See

minutes, *exhibit* 5 (1)). On the 20th July, 1972, in accordance with the proviso to section 4 of the Compulsory Acquisition of Property Law, 1962 (Law No. 15 of 1962), the chairman of the respondent Municipality gave notice to the Council of Ministers of the proposed publication in the official Gazette of the Republic of the notice of the intended acquisition, copy of which was attached thereto. Receipt of same was acknowledged by the secretary of the Council of Ministers by letter dated the 24th July, 1972. (*Exhibits* 5 (3) and (4)). The notice dated the 19th September, 1972 was eventually published in Supplement No. 3, Part II to the official Gazette of the Republic of the 1st December, 1972, under Notification No. 824, but I shall revert to its contents in due course.

The applicant Company that had decided to develop this land early in 1972, submitted on the 10th of November of the same year to the respondent Municipality an application for a building permit in respect of the project which provided for the construction of three blocks of flats consisting of 32 shops, 13 three-bedroom and 32 two-bedroom flats, the estimated cost of which was £400,000.-. The plans had been prepared by the architects Messrs. Kolakides & Co., whose fees are £12,000.-.

This application was considered by the respondent Municipality—the appropriate authority under the Streets and Buildings Regulation Law, Cap. 96, for the town of Limassol—on the 4th December, 1972, and considering the magnitude of the project, one cannot say that the respondent Municipality unreasonably delayed its examination. The application was refused for the reason that the acquisition of the said property had been decided on the 10th July, 1972 for a purpose of public benefit and the relevant Notification under section 4 of the Compulsory Acquisition Law, 1962 was published in the official Gazette of the 1st December, 1972.

This refusal is the subject of Recourse No. 11/73 by which it is sought to be declared as *null* and *void* on two sets of grounds of law. The first set, as finally argued before me, is that the reason for refusing the issue of a building permit was not a valid one, inasmuch as the intention to acquire and the publication of a notice, or even an order of acquisition, do not legally justify such refusal.

The second set of grounds is to the effect that the refusal of a building permit is unlawful as based on an intended acquisition

of the property of the applicant Company, which acquisition is in itself unlawful for a number of reasons to which I need not refer here, as they may be conveniently dealt with when I shall later in this judgment be dealing with the grounds of law relied upon for the annulment of the order of acquisition, the subject of Recourse No. 47/73.

The question whether an appropriate authority may refuse the issue of a building permit solely on the ground that there has been a decision to acquire compulsorily the property in question, came up for determination before the then Supreme Constitutional Court in the case of the *Holy See of Kitium* and *The Municipal Council of Limassol*, 1 R.S.C.C. p. 15, but as that *sub judice* decision was taken before the 16th August, 1960, the date on which the Constitution came into force, its validity was determined in the light of the law then prevailing and of the manner in which such law was then administered and interpreted. Assistance, however, may be derived from the observation made by the Court in its judgment, page 27, where it says:–

> " No useful purpose would be served by analysing in extenso the grounds on which the above conclusion is based for the simple reason that such course would be of no assistance to the parties in this case or to any other future litigants, because from the 16th August, 1960, onwards the relevant legislation, and in particular Cap. 96, has, to be read subject to the Constitution and specifically Article 23 thereof, and to be applied with necessary modifications".

The Court further gave its opinion on certain questions concerning the interpretation and effect of Articles 23 and 188 of the Constitution. Relevant to our proceedings, is the following:–

> " (a) The requirement for applying for a building permit under section 3 of Cap. 96 is connected with the right of property safeguarded by paragraph 1 of Article 23 which includes the right to possess and enjoy property".

Under Article 23.4 of the Constitution, movable or immovable property or any right over or interest in such property, may be compulsorily acquired by the Republic or a Municipal Corporation and under paragraph (c) thereof, 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. No doubt, whatever the pre-existing position was, same has been radically changed by the Constitution which has safe-5 guarded the right to property and has permitted interference with such right, only within strictly defined conditions. The property, subject matter of an order of acquisition, does not vest in the Acquiring Authority, except upon payment or deposit with the Accountant-General of the sum agreed or determined 10 to be paid as compensation; the production of satisfactory evidence of such payment or deposit is sufficient authority to the Chief Lands and Surveys Officer of the Republic to cause registration of such property to be made in the name of the Acquiring Authority. (Section 13 of Law No. 15 of 1962).

15 The only authority of entry upon such immovable property is to be found in section 5 of Law No. 15 of 1962, whereby upon the publication of a Notice of Acquisition an officer authorized in that respect may enter for the purpose of surveying, taking levels of such immovable property and doing any other 20 act that may be necessary to ascertain whether it is suitable for the purpose for which it is proposed to be acquired or to estimate the value thereof. This authorization by the law is again subject to restrictions set out in the proviso to the section and by sub-section (2) thereof, the Acquiring Authority is bound 25 to pay back any damage done on account of such entry.

It is clear that neither the ownership, nor the possession thereof, is transferred to the Acquiring Authority by virtue of a decision to acquire irrespective of whether a Notice or an Order of Acquisition has been published and at no time, prior 30 to the payment of the compensation, the Acquiring Authority *can take over the property or interfere with its enjoyment*, except to the extent permitted by section 5 of the Law.

A refusal to grant a building permit constitutes a disturbance of the possession of the owner of the property, who, until the 35 payment of the compensation, continues to exercise and have, as owner, intact the rights prescribed by law regarding possession, disposal and enjoyment. There is, however, a limitation to the aforesaid, namely, that the property in question shall not be destroyed or damaged at any time between the publica-40 tion of such notice and the completion or abandonment of the acquisition to which the notice relates, as the case may be (section 19 (1)). Furthermore, that the alienation of immovable

property is not affected by an acquisition, is borne out by section 22 of the Law which provides that the proceedings for acquisition are not invalidated by reason of alienation, lease, etc. of such property.

Support for the proposition that no building permit may be refused until the payment of the compensation for the property under acquisition, is to be found in the interpretation of analogous provisions of the Greek Constitution, as stated by Saripolos in his textbook, the system of Constitutional Law of Greece, 4th Ed., Vol. 3, at page 215:

" 'Αλλὰ τὸ σύνταγμα προστατεύει πρὸ παντὸς τὴν νομὴν κατὰ πάσης ἀφαιρέσεως ἢ διαταράξεως, ἐφ' ὅσον δὲν προηγήθη ἡ καταβολὴ τῆς ἀποζημιώσεως. Οὕτω π.χ. οὗ μόνον ἡ κατάληψις ἀπαγορεύεται ἀλλὰ καὶ 'ἡ ὑπὸ τῆς ἁρμοδίας ἀρχῆς ἄρνησις ἀδείας πρὸς οἰκοδομὴν ἐπὶ χώρου, ἐφ' οὗ ἀπηγγέλθη ἀπαλλοτρίωσις, δὲν κατεβλήθη ὅμως ἡ ἀποζημίωσις· τοιαύτη ἀπαγόρευσις τῆς ἀρχῆς ἀναντιρρήτως ἀποτελεῖ διατάραξιν τῆς νομῆς τοῦ ἰδιώτου', ὡς παρατηρεῖ ὁ Γ. Μπαλῆς, αὐτόθι, σ. 43 καὶ 44. Ἴδε ἰδίως τὴν ὑπ' ἀριθ. 1 τοῦ 1918 ἀπόφασιν τοῦ 'Αρείου Πάγου ἐν ' 'Εφημ. τῆς ἑλλ καὶ γαλλ. νομολογίας', τ. ΛΗ', 1918, σ. 97, καθ' ἥν: ' 'Εκ τοῦ ἄρθρου 17 τοῦ συντάγματος σαφῶς συνάγεται ὅτι διὰ μόνης τῆς κατὰ τοὺς ὅρους τοῦ νόμου ἐκδοθείσης ἀποφάσεως τῆς ἁρμοδίας διοικητικῆς ἀρχῆς ὅτι ὑπάρχει δημοσία ἀνάγκη πρὸς ἀφαίρεσιν ὡρισμένης ἰδιωτικῆς κυριότητος, ἄνευ τουτέστι τοῦ κατὰ νόμον προσδιορισμοῦ καὶ τῆς καταβολῆς τῆς ὀφειλομένης ἀποζημιώσεως, ὁ εἰς ὃν ἀνήκει τὸ πρᾶγμα δὲν παύει νὰ ᾖ ἰδιοκτήτης αὐτοῦ καὶ νὰ ἔχῃ ἑπομένως, καθ' ὃ τοιοῦτος, ἀκεραίας τὰς εἰς τὸν κύριον προσηκούσας κατὰ τὸν νόμον ἐξουσίας νομῆς, διαθέσεως καὶ ἀπολαύσεως παντὸς εἴδους ὠφελείας, ἣν δυνατὸν εἶνε τοῦτο νὰ παραγάγῃ. ....
... καίπερ μὴ συνιστῶσα ἀφαίρεσιν τῆς νομῆς τοῦ κυρίου, ἤτοι κατάληψιν τοῦ πράγματος, κωλύει οὐδὲν ἧττον τοῦτον ἐν τῇ ἀπολαύσει τῶν χρησιμοτήτων τοῦ κτήματός του, οἷον χαρακτῆρα φέρει καὶ ἡ ἄρνησις ὑπὸ τοῦ ἁρμοδίου νομομηχανικοῦ χορηγίας ἀδείας πρὸς ἀνέγερσιν οἰκοδομῆς ἐπὶ τοῦ ἀκινήτου ἁπλῶς ὡς ὑποκειμένου εἰς ρυμοτομίαν πρὸς κατασκευὴν ὁδοῦ, ἡ τοιαύτη ἐνέργεια αὐτοῦ, καθ' ὃ ἀντικειμένη εἰς τὴν μνησθεῖσαν συνταγματικὴν ἀπαγόρευσιν καὶ συνιστῶσα κατὰ τὸν νόμον διατάραξιν τῆς νομῆς, ὡς ἐκ τούτου δὲ ἀθέμιτος ....' ".

And in English it reads:-

"(But the Constitution, above all, protects the possession from any deprivation or disturbance so long as the payment of compensation has not preceded same. So, for example, not only 'the entry' is prohibited but also 'the refusal by the appropriate authority of a permit to build on a place whose acquisition has been announced but the compensation has not been paid; such refusal by the Authority undoubtedly constitutes a disturbance of the possession of the citizen', as G. Ballis observes, *ibid*, at pages 43 and 44. See especially Case No. 1/1918 of Arios Paghos in 'The Newspaper of the Greek and French Case Law' 1918 Vol. 37, page 97, according to which: 'From Article 17 of the Constitution the conclusion is clearly drawn that from the issuing only of a decision of a competent authority, in accordance with the law that there is a public need to take over certain private ownership without, however, the assessment in accordance with the law, and the payment of the proper compensation, the person to whom the subject belongs, does not cease to be its owner and consequently have, as such, intact, the rights, belonging according to law, to an owner, of possession, disposition and enjoyment of every kind of benefit which it can possibly produce .... although, it does not constitute deprivation of the possession of the owner, that is to say, entry in the subject property, it, however, prevents him from the enjoyment of the use of his property, as it is the nature of the refusal by the appropriate District Engineer to grant a permit for the erection of a building on immovable, simply because it is affected by a town plan for the construction of a road, such action being contrary to the aforesaid constitutional prohibition and constituting, according to law, a disturbance of the possession, hence, it is unlawful... ....'").

Furthermore, the compensation is considered as being paid "in advance" only if it is paid to the person entitled or deposited for his benefit, before the acquired property is entered upon or possession thereof is taken. (See Sgouritsas, Constitutional Law, Vol. B. Part B. p. 175; also, *Aspris* and *The Republic*, 4 R.S.C.C. p. 57).

So, the decision of the respondent Municipality to refuse to grant the building permit in question on the mere ground that

the acquisition of the property had been decided upon and the relevant Notification published in the official Gazette, was contrary to law and *null* and *void*. Therefore, Recourse No. 11/73 succeeds on the aforesaid ground of law.

Before considering the grounds of law common to both recourses, I should refer to the contents of the relevant notice of acquisition. As stated therein, the purposes of public benefit for which the property is required to be compulsorily acquired, are as follows:-

"(a) Town planning.

(b) The construction, maintenance and development of land communications.

(c) The creation of development of places of recreation.

(d) The attainment and promotion of the objects of the Municipality of Limassol, specially provided for by the Municipalities Law, 1964, (No. 64 of 1964), namely, the establishment of places of recreation for use by the public, and the improvement of roads and pavements, and this acquisition is required for the following reasons:-

For the consolidation of the said ownership with the seaside properties that belong to the Municipality *on either side of it, or they are the subject of compulsory* acquisition, for use as promenades, the beautification of the seashore road and its pavements and completing the air lung and the view to the sea from the seaside road, matters required from a town planning view and considered as of the highest importance for the town of Limassol".

The applicant Company by its letter of the 12th December, 1972, (*exhibit* 2 attached to the application in Recourse No. 11/73), raised, under section 4 of Law 15/62, its objection to the said acquisition, giving therein a number of grounds constituting the second set of grounds relied upon in support of both recourses.

The respondent Municipality considered this objection at its meeting of the 18th December, 1972 (*exhibit* 5 (5)), dismissed same, and made an order of acquisition under section 6 of Law

15/62, which was published in the official Gazette of the Republic of the 26th January, 1973, Supplement No. 3 (Part II) under Notification No. 65.

The first ground of law, of this set, relied upon by the applicant Company, is that the subject acquisition was *ultra vires* and *void*, inasmuch as it was made in contravention of sections 3 (2) (q) of the Compulsory Acquisition Law, 15/62, section 8 (2) of the Municipal Corporations Law, 1964 (No. 64 of 1964) and section 124 of the Municipal Corporations Law, Cap. 240, as this has been incorporated in Law 64/64 inasmuch as the Municipality of Limassol has no power or competence to acquire compulsorily immovable property for the purposes of public benefit which are set out in the notice of acquisition.

In order to appreciate the argument of counsel for the applicant, a brief survey of the recent history of municipal legislation and its provisions, coupled with the provisions of the Constitution and in particular Article 23 thereof, as well as the Compulsory Acquisition of Property Law of 1962 has to be made.

The Municipal Corporations Law, Cap. 240 and all other laws relating to the Municipalities ceased to be in force on the 31st December, 1962, but before that date and in order to be more specific, on the 1st March, 1962, the Compulsory Acquisition of Property Law, 1962, Law No. 15/62, was enacted. This was the law envisaged by Article 23, paragraph 4 (a) of the Constitution which contained a directive to the legislature that the latter was bound to comply therewith. (See *Aspris* and *The Republic*, 4 R.S.C.C. p. 57). Subsequently, it was found necessary to enact a law to provide for Municipal Corporations and their competence, municipal administration and matters connected therewith for the reasons set out in its preamble, the short title of which is The Municipal Corporations Law, 1964, (Law No. 64 of 1964). Part IV thereof deals with the competence of Municipal Corporations and consists of one section which reads:-

"8.-(1) The administration of local affairs shall be within the competence of municipal corporations.

(2) Without prejudice to the generality of sub-section (1), the performance of the duties and the exercise of the powers specified in sections 123 to 126 (both inclusive) and 136 to 181 (both inclusive) of the law, including the Sche-

dules referred to in those sections, which shall for this purpose be deemed to be embodied in this Law, shall be *within the competence of municipal corporations.*

(3) The power to acquire compulsorily possessed by municipal corporations shall be exercised by resolution of the council passed by a majority of not less than two-thirds of the total number of its members".

The law referred to above as defined in section 2 is The Municipal Corporations Law, Cap. 240. In this case the legislature has thought proper to legislate by reference to the law that had ceased to exist, as already stated. Sections 127 to 135 (both inclusive) of Cap. 240, not re-enacted under sub-section (2) of section 8, covered the case of compulsory acquisition of land and the procedure thereof. The reason for this omission is that the Municipal Corporations already possessed powers to acquire compulsorily property under the provisions of Law 15 of 1962, which was, as we have seen, specifically enacted as a matter of constitutional directive and, therefore, there would be an overlapping of provisions if sections 127 to 135 were left on the Statute book or re-enacted.

Before dealing with the arguments advanced, I should quote section 124 (2) (c) of Cap. 240. It reads:-

"(2) Subject to the provisions of this Law, it shall be within the power of the council within the municipal limits:

(c) Notwithstanding anything contained in sections 128 to 135 of this Law to acquire by private treaty, with the consent in writing of the Commissioner previously obtained, any lands or buildings, or any part thereof, for any purpose of public utility, which shall include –

(i) The construction of new streets;

(ii) the opening, widening, straightening, diverting or improving of existing streets;

(iii) the erection of public buildings;

(iv) the provision of a good and sufficient water supply.

For the purposes of this paragraph the term 'lands' shall extend to and include water or water rights within

or without the municipal limits whether attached to land of held independently of land".

It has been argued that in view of the non re–enactment of sections 127 to 135 of Cap. 240, a Municipal Corporation has no power to acquire compulsorily land or buildings for any of the purposes set out in paragraph (c) of sub–section (2) of the aforesaid s. 124 and in particular the construction of a new street or the widening of an existing one, which are among the purposes of public benefit specified in the notice of acquisition.

As pointed out in the case of *Glyki and Another* v. *The Municipal Corporation of Famagusta*, (1967) 3 C.L.R., p. 677 at p. 686 –

" Matters of compulsory acquisition are regulated by the Compulsory Acquisition of Property Law, 1962 (Law 15/62) and, by virtue of section 2 thereof, a municipal corporation is specifically stated to be an acquiring authority.

Section 3 (2) (q) of the same Law provides that, among the purposes which are to the public benefit and in respect of which a compulsory acquisition may take place, are the 'attainment or promotion of the objects of a municipal corporation specifically provided by a Law' ".

The only addition made to the requirements of that Law being the provision of sub–section (3) of section 8 by which the power to acquire compulsorily has to be exercised by resolution of the Council passed by majority of not less than two–thirds of the total number of its members.

As further stated by Triantafyllides, J. (as he then was) in the *Glyki* case (*supra*) at p. 686 –

" In my opinion, the objects of a municipality, for the purpose of section 3 (2) (q) of Law 15/62, should be taken to include not only the duties laid down by means of section 123 of Cap. 240 but also the powers provided for by section 124 of Cap. 240".

In my view, the wording of section 8 of Law 64/64 is such, that read as a whole and in conjunction with the Compulsory Acquisition of Property Law, 1962 which empowers a Municipality to acquire compulsorily property for the purposes of the Municipal Corporations Law, does not deprive a Municipal

Corporation of the power to acquire property for any of the purposes set out in section 124 (2) (c) of Cap. 240, as re-enacted. The power to acquire compulsorily for such purpose, is not excluded by the fact that there is power and procedure laid down by law to acquire by private treaty. If anything, the power to acquire by private treaty is in addition to the power to acquire for the same purposes compulsorily. Any other interpretation would have led to absurd results and would have defeated the purpose and sense of the enactment as a whole. The opening words of sub-section (2) of section 124—"Subject to the provisions of this Law ...." considered independently of the reference made in paragraph (c) thereof to sections 127 to 135, should be taken to include a reference to the powers possessed by Municipal Corporations for compulsory acquisition, which powers, include, as already stated, the purposes set out in the said paragraph.

The other purpose of public benefit for which the property is required, namely, the establishment of places of recreation for use by the public, falls within the ambit of paragraph (f) of sub-section (2) of section 124 of Cap. 240.

The inclusion of town planning among the purposes of public benefit for which the property is required and the reference to it in the reasons for same, give rise to three more grounds which may be taken together and which are to the effect that town planning was not a matter within the competence of a Municipal Corporation; there did not exist a validly prepared town plan and the purpose of acquisition was an effort to apply a town plan for which the respondent Corporation had no competence.

In this respect, I have been referred to Article 176 of the Constitution by virtue of which a law might provide for town planning with respect to any Municipal Corporation, and the Town and Country Planning Law of 1972 (Law 90/72) as according with the view that town and country planning was never intended to be within the competence of a Municipal Corporation, and as going beyond the strict necessities of municipal administration.

I do not agree with this contention. In the first place, Article 176 of the Constitution, does not prevent Municipalities from performing functions that normally come within the sphere of town planning; it merely clarifies the position in the sense that

those Articles of the Constitution that refer to the functions of Municipalities should be so construed as not precluding the enactment of a law to provide for town planning with respect to Municipalities. In the second place, Law 90/72, an elaborate
5 law on town and country planning, has not, as yet, come into force, so as to be taken as superceding similar powers possessed by Municipalities.

But independently of all these, the term "town planning" used in the notice of acquisition, should be construed as covering
10 in fact, town planning powers of a rudimentary nature, which, have always been entrusted to Municipalities under the relevant legislation: Also, as used in conjunction with the remaining purposes and reasons set out in the said notice and for no other reason. It should be treated as a mode of describing the
15 purpose for which the property under acquisition is required, namely, the consolidation of the land with the adjacent property already acquired and the creation, naturally after the demolition of the existing buildings, of a place of resort or recreation for the use of the public with all its consequential
20 benefits of fresh air, good view, access to the sea, etc.

The remaining grounds of law which may conveniently be taken together, are to the affect that the compulsory acquisition in question has been made in contravention of the principles of Administrative Law, applicable to compulsory acquisition,
25 namely, that:-

(i) There was no absolute necessity at the time to acquire the land in question in order to carry out any specific object of public benefit, the real intention behind the acquisition being the forestalling of the expected in-
30 crease in the value of this property;

(ii) there were no concrete plans at the time the *sub judice* decision was taken;

(iii) the financial implications of this acquisition were not duly considered;

35 (iv) no proper inquiry, in the circumstances, has been carried out, particularly so in relation to the objections submitted by the applicant Company; and that

(v) the *sub judice* decision is not duly reasoned.

The absolute necessity is evident from the object of the acquisition to which I have already referred. In the circumstances of the present case it cannot be said that this compulsory acquisition has been resorted to without being absolutely necessary, as of its nature there could not exist any alternative possibility of achieving its objects by means of purchasing other suitable property either offered for sale by its owner or the acquisition of which will entail a deprivation less onerous than the one for the proposed acquisition or which is more or less equally suitable for the purpose concerned. The land in question is one of the few remaining ones for the completion of a project that has been implemented by stages for more than two decades. There existed all the prerequisites for its acquisition, and upon completion of the compulsory acquisition its objects could be considered as immediately implemented by the respondent Municipality. The matter had not been accelerated for any reason. Its very purpose did not call for any elaborate architectural plans than the demolition of the existing premises and the consolidation of the land in question with the adjacent lands already acquired.

The financial implications of this project were duly considered as emanating from the material in the file and the evidence adduced. The respondent Municipality has been proceeding at a pace having due regard to its financial capabilities. The acquisition of the subject property was considered along with other properties in 1969 but because of its character as a business establishment and the financial burden that it would involve then, its acquisition was postponed until 1972 (*exhibit* 5 (2)). When the matter came for decision on the 10th July, 1972, according to the affidavits filed and the evidence adduced, the respondent Municipality was informed by the Municipal Engineer, Mr. Droushiotis, that the reasonable compensation for the subject property was about £70,000.–, including the buildings, and a report to that effect was handed over to the town clerk, which must have been misplaced, as a new one was prepared on the 3rd September, 1972, again for the subject property and three other properties. The valuations, according to the municipal engineer, were based on prices of comparable properties, but I need not go into the matter, as anything said might prejudice the determination of the compensation by the appropriate Court. It is sufficient, for the purposes of this recourse, to say that the financial implications of the project were, indeed, carefully considered by the respondent Municipa-

lity, having due regard to their financial capabilities and whether it was the opportune moment to proceed with the acquisition or not. Furthermore, a comparison of the relevant minutes and all the material in the file, shows that the *sub judice* decisions are duly reasoned, in the circumstances, and a proper inquiry was carried out regarding all the aspects of the case, including the applicants' objection to the acquisition, as well as the financial aspects of the matter.

For all the above reasons, I find no reason to say that the exercise of the relevant discretionary powers by the respondent Municipality has not been done in accordance with the notions of the proper administration and the law.

In the result, Recourse No. 47/73 fails and Recourse No. 11/73 succeeds on the ground already stated.

In the circumstances, there will be no order as to costs.

Recourse No. 11/73 *succeeds.*
Recourse No. 47/73 *dismissed.*
No order as to costs.