[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

VASILIKI EFTHYMIOU MAMMIDOU AND OTHERS,

Applicants,

and

THE ATTORNEY-GENERAL OF THE REPUBLIC,

Respondent.

(*Cases Nos.* 200, 201 *and* 204/75).

Compulsory Acquisition of Property Law, 1962 (Law 15 of 1962) —"Town and country planning or housing"—In section 3(2) (i) of the Law—Meaning—Compulsory acquisition of land for the purpose of creating a housing estate—Such purpose a "public benefit" purpose within the meaning of the said section 3(2) (i).

Housing Law, Cap. 222—Provisions of sections 7 and 8 of the Law—Repealed by necessary implication by means of the Compulsory Acquisition of Property Law, 1962 (Law 15 of 1962).

Compulsory Acquisition—Housing Scheme purposes—Procedure for acquisition is the one set out by the Compulsory Acquisition of Property Law, 1962 (Law 15 of 1962)—Sections 7 and 8 of the Housing Law, Cap. 222 repealed by necessary implication by means of the said Law 15 of 1962.

Administrative Law—Compulsory Acquisition of Land—Principles of Administrative Law applicable—Whether compulsory acquisition may be resorted to without prior offer to purchase privately the property affected.

Compulsory Acquisition—Principles of Administrative Law applicable—Whether compulsory acquisition may be resorted to without prior offer to purchase privately the property affected.

Constitutionl Law—Right of property—Article 23 of the Constitution—Compulsory acquisition of Land—Article 23.4—Rights under Article 23.4(c) not frustrated by requisition under Article 23.8.

Compulsory acquisition of land—Requisition thereof does not frustrate rights safeguarded by Article 23.4(c) of the Constitution.

Requisition of Land compulsory acquired—Does not frustrate rights under Article 23.4(c) of the Constitution.

Words and Phrases—"Town and Country Planning or Housing"—In section 3(2) (i) of the Compulsory Acquisition of Property Law, 1962—"Housing estate".

The applicants in these recourses challenged the validity of a compulsory acquisition order relating to immovable property of theirs; and applicant in recourse No. 200/75 challenged, also, the validity of a requisition order which was made in order to facilitate the expeditious entry of the Acquiring Authority in the properties in question.

The orders complained of were made under the Housing Law, Cap. 222 and their purpose was the creation of a housing estate and the disposal of the building sites to be created and/or the houses to be built thereon by hire purchase and/or on lease to citizens of the Republic of the lower middle social class from the point of view of income and/or the law social class from the point of view of income.

Counsel for the applicants contended:

(a) That the purposes for which the acquisition was ordered are not purposes of public benefit within the meaning of Article 23 of the Constitution and section 3 of the Compulsory Acquisition of Property Law, 1962 (Law 15/62) in the sense that the scheme in question is neither town and country planning nor housing.

Counsel referred to English legislation on matters of town and country planning and housing with regard to the meaning of these two terms and argued that the purposes of public benefit are set out in section 3(2) of Law 15/62 restrictively and not indicatively a fact which means that no additional purposes could be introduced depending on the circumstances of the time and thing because the purpose of Article 23.4 of the Constitution as well as Law 15/62, is the protection of the right of owner-

ship and the compulsory acquisition being an onerous restriction of this right, every provision relating to it should be interpreted strictly.

(b) That although the legal authorisation for the housing scheme in question were the provisions of the Housing Law, Cap. 222, yet its basic provisions governing the procedure for the acquisition of the required immovable property, such as the provisions of sections 7 and 8, which call for the acquisition of property by agreement before compulsory acquisition is resorted to, have not been complied with and consequently the *sub judice* decision is void as being contrary to law.

(c) That the omission of the administration to exhaust all efforts to acquire this property by private agreement on the first place and then resort to the onerous measure of acquisition is contrary to the Housing Law, Cap. 222 and the general principles of Administrative Law and, thus, renders the *sub judice* decision *null* and *void*.

(d) That the requisition made in respect of the properties in recourse No. 200/75 in order to facilitate an entry of the Acquiring Authority into them and the carrying out of the scheme in question is *void*, as being contrary to the Constitution and the provisions of section 3 of the Requisition of Property Law, 1962 (Law 21/62) and the general principles of Administrative Law, in the sense that it frustrates the rights of the applicant, safeguarded under Article 23.4 of the Constitution, because it facilitates the entry into the said properties without payment being made by the respondents in cash and in advance of a just and equitable compensation.

Held, dismissing the recourses, (1) that the terms "town and country planning or housing" to be found in section 3(2) (i) of Law 15/62, should be given their ordinary meaning and not be interpreted by reference to the legislation of the United Kingdom and the powers given therein to the various appropriate authorities for its implementation; that these terms should be understood as including, *inter alia*, the development and use of land in relation to existing urban areas and the

social and environmental requirements of a place, as well as the housing needs of the society, in particular, of those classes of the society which cannot, without public assistance or planned facilities solve their housing needs; that, if anything, the creation of a housing estate is nothing but a housing purpose and the layout of the streets and other facilities are clearly town and country planning purposes (see Article 23.4 of the Constitution).

(2) That the law envisaged by Article 23.4(a) of the Constitution, which contains a directive to the legislature that the latter was bound to comply with, is the Compulsory Acquisition of Property Law, 1962 (Law 15/62); that it is obvious that the purpose of this directive was that unlike the situation that existed before Independence where different procedures were prescribed under different laws, one general law should regulate matters of compulsory acquisition; that, further, under section 3 of this Law and subject to the provisions of the Constitution and of the Law, any property may be compulsorily acquired for a purpose which is to the public benefit and under sub-section (2) thereof, the purposes enumerated as being to the public benefit include, under para. (i) "town and country planning or housing".

(3) That in view of the aforesaid this Court has no difficulty, bearing in mind the purposes of public benefit and the reasons for the acquisition as set out in the Notice of Acquisition, to say that they are indeed purposes of public benefit coming within the provisions of section 3(2) (i) of Law 15/62; and that, accordingly, contention (a) above must fail.

Per curiam: It is true that a comprehensive Town and Country Planning Law was enacted in 1972 (Law 90/72) which has not, as yet, been put into operation, but that does not change the situation, nor can it be said, that because the Streets and Buildings Regulation Law, Cap. 96 considered as containing town planning powers of a rudimentary nature, does not contain powers to create housing estates, the purposes for the acquisition in question are not purposes of public benefit.

(4) That the provisions of the Housing Law, Cap. 222 regulating the procedure for the acquisition of property for the purposes of this Law, must be taken to have been repealed by necessary implication by means of the Compulsory Acqui-

sition of Property Law, 1962 (Law 15/62); that, therefore, the procedure which has to be followed in respect of the *sub judice* compulsory acquisition is the one set out in Law 15/62; and, that, accordingly, contention (b) above must fail (*Vassiliko Cement Works Ltd.* v. *Violaris* (1975) 1 C.L.R. 256 applied).

(5) (*After stating the principles of Administrative Law governing compulsory acquisition—vide p. 478 post*) that the onerous measure of compulsory acquisition may be resorted to if the required immovable property is considered the only technically suitable for the achievement of the purpose, when a prior offer to its owner to purchase it privately, is not necessary; that in such instances, the ground that there exists an obligation to acquire immovable property by private treaty, as a matter of general principle of law, cannot stand; that as the area, subject matter of the *sub judice* acquisition was found to be, after a proper inquiry, the only technically suitable for the purpose, the administration did not have to exhaust all efforts to acquire it by private agreement in the first place and then resort to the onerous measure of compulsory acquisition; and that, accordingly, contention (c) above must fail.

(6) That the making of the order of requisition would not frustrate whatever rights may have been safeguarded for applicants under Article 23.4(c) of the Constitution; and that, accordingly, contention (d) must fail (*Aspri* v. *Republic,* 4 R.S.C.C. 57 applied).

Applications dismissed.

Cases referred to:

Vassiliko Cement Works Ltd. v. *Violaris* (1975) 1 C.L.R. 256;

Aspri and *Republic,* 4 R.S.C.C. 57 at p. 61;

Pavlou & Another v. *Republic* (1971) 3 C.L.R. 120 at pp. 130 and 131;

Papadopoullou and Others v. *Republic* (1971) 3 C.L.R. 317 at p. 336;

Republic v. *Demetriades,* (reported in this Part at p. 213 *ante*)

Case Nos. 276/66, 2136, 2660/60, 505/68, 2579/69, 1344 and 3409/70 of the Greek Council of State.

Recourses.

Recourses against the validity of a compulsory acquisition order affecting applicants' properties.

G. Ladas, for applicant in case No. 200/75.

P. Ioannides, for applicant in case No. 201/75.

M. Christofides, for applicant in case No. 204/75.

N. Charalambous, Counsel of the Republic, for the respondent.

Cur. adv. vult.

The following judgment was delivered by:-

A. LOIZOU, J.: These three recourses which challenge the validity of a Compulsory Acquisition Order published in Supplement No. 3 to the official Gazette of the Republic, No. 1223 of the 26th September, 1975, have been heard together as they present common questions of law and fact. In addition, in Recourse No. 200/75 the validity of the Requisition Order published in Supplement No. 3 to the official Gazette No. 1237 dated 7.11.1977, made in order to facilitate the expeditious entry of the Acquiring Authority in the properties in question, is also challenged.

The purposes of public benefit and the reasons for the said acquisition are set out in the Notice of Aquisition published in Supplement No. 3 to the official Gazette of the Republic, No. 1183 of the 25th April, 1973, which reads as follows: ". . . . . the immovable property set out in the Schedule is necessary for the following purposes of public benefit, namely, for housing and town planning, and the acquisition is required for the following reasons, *i.e.*

"(a) the creation of a housing estate by the laying out and the construction of streets and drains, the installation of electricity cables and water supply system and the erection of any necessary, in relation thereto, installations, the creation of open green spaces as well as the division of the said immovable property into building sites and the construction either on all or

on a number of them (building sites) of houses suitable for the lower middle social class, from the point of view of income, and or the lower social class, from the point of view of income, of the type of semi-detached houses or blocks of flats and terrace houses, as well as the construction of shops and other buildings for the use, convenience and comfort of the inhabitants of the housing estate;

(b) the disposal of the building sites to be created and or the houses to be built thereon by hire purchase and or on lease to citizens of the Republic of the lower middle social class, from the point of view of income, and or the low social class, from the point of view of income, who, at the time of submitting the relevant applications for the disposal of the building sites and or the concession of houses will be residing with their families within the Greater Nicosia Area (including the quarters of Omorphita, Kaimakli and Pallouriotissa, as well as the suburbs of Trachona, Aglandjia, Strovolos, Engomi and Ayios Dhometios), and, possibly, at a second stage, and in the villages of Yerolakkos, Mia Milia, Pano and Kato Lakatamia, Tseri, Yeri and Latsia, and will not possess owned houses in the said area and villages;

(c) the lease of the shops and other buildings which will be constructed, and

(d) provided that the legislation in force at the time will permit this grant, with the approval of the Council of Ministers, part of the said immovable property to organisations which may be set up by law, the purpose of which will be the solution of the housing problem either by the granting of housing loans or by the disposal of building sites and or houses under such terms as the Council of Ministers would deem appropriate to impose at the time of such disposal".

The immovable property affected by this acquisition is of an extent of about 145 donums, 3 evleks and 1800 sq.

ft. consisting of 22 plots—in fact fields—situated outside the Nicosia Water Supply Area. In addition, Government-owned land of a total extent of 7 donums and 200 sq. ft. under plots 200, 172, 150 and 560 was granted by the Government for the needs of the said scheme.

Out of the properties acquired, the applicant in Recourse No. 200/75, Vasiliki Efthymiou Mammidou, a housewife of Strovolos, married with five children, is the owner of plot No. 146, a field of six donums 2 evleks and 1700 sq. ft. under Reg. No. H. 133, Sheet Plan XXX 6WII, Block H at locality "Ftana". In fact, this is the only property she owns and which she says, she intended to use for building thereon for her own family.

Applicant in Recourse No. 201/75, Vasos Pelopidha Hadjioannou, of Greece, is the one-half owner of plots Nos. 169 and 173, the other half is owned by a certain Loucas P. Hadjioannou. These two plots, as it appears from the plan produced, are of a considerable extent, but their size is not actually given in the material before me.

Applicants in Recourse No. 204/75, Sofoclis Hadjiosif Estate Co. Ltd., of Strovolos, are the owners of three plots, namely, (a) plot 199 of an extent of 3 donums, 1 evlek and 3000 sq. ft. under Reg. No. H. 183, Sheet Plan XXX 5WII, Block H, (b) plot 174 of an extent of 16 donums, 3300 sq. ft. under Reg. No. H. 159, Sheet Plan XXX 6WII, Block H and (c) plot 203 of an extent of 3 donums, 2 evleks and 3400 sq. ft. under Reg. No. H. 187, Sheet Plan XXX 6WII, Block H.

The two last mentioned applicants appear to be developers in land, as shown from the relevant file, and in particular, *exhibit* 'B' in Recourse No. 201/75, the letter of the Chairman of the Strovolos Village Committee of the 6th June, 1975, who says that he was shocked when he read the Notice of Acquisition, as the opinion of the village authority was not asked on such a serious matter and further states that one basic reason for their objection, was the fact that their information given orally to them at various periods, the Hadjiosif Estate Co. Ltd. in co-operation with the Hadjioannou brothers of Greece, made plans for the development of a total area of about 70 donums which now is affected by the said Notice of

Acquisition and which development included the construction of a big modern housing estate.

This housing project of the Government was conceived before the tragic events of 1974. Several studies carried out by the Housing and Country Planning Department as well as by experts of the United Nations, ascertained the existence in Cyprus of an acute housing problem, especially affecting the lower income and the lower middle income classes.

The Government in order to face this problem, took a number of decisions, one of which was the construction of low cost houses, intended for the aforesaid income classes, and, for that purpose, it was found necessary to find suitable areas. Those, however, found before the Turkish invasion, were no longer suitable, as being either within the part occupied by the Turkish army or too near to it to be used for the purpose needed. Further, the implementation of this housing scheme was brought to a standstill until October, 1974, when, because of the additional needs caused by the displacement of people and the intention of the Government to increase its activity in the field of Government house schemes, instructions were given to the Housing and Town Planning Department to find other suitable areas for such purpose.

Three areas were in fact chosen by the said Department, identified as Strovolos A, Strovolos B and Latsia—all outside the water supply area—and the Lands and Surveys Department was asked by letter dated the 1st October, 1974 (Appendix 1 of *exhibit* 1), for the assessment of their market value, the category of ownership, *i.e.* whether State, Church, private, Greek or Turkish, owned, and information regarding the extent of the whole or part of each plot affected by the scheme.

By letter dated the 30th January, 1975 (Appendix 2) the Director of the Department of Lands and Surveys gave his views about their market value, attached thereto a table of the approximate price of each plot as on July, 1974 and observed that the anomalous situation had created new conditions which should be noted. Prices of land had suffered a drop which differed, depending on the locality of the property. In the case under examina-

tion, that drop was assessed at 20 per cent, but as under the then prevailing circumstances such prices were very sensitive depending on developments, it was possible to have a spectacular increase in case of improvement of the political situation, given that the areas examined were in the south part of the Island which, in the new circumstances, was deemed safer for the expansion of the town and the absorption of the displaced population. He concluded that any decision regarding acquisition should be expedited and any development should be made on a corresponding height of building density so that the waste of useful land in a safe area should be avoided. He further pointed out in that Strovolos A Area there were four plots, in Strovolos B Area two plots and in Latsia Area three plots of State owned land. A study of the Housing and Town Planning Department containing also their recommendations on the matter, is to be found in their letter of the 29.2.75 addressed to the Minister of Interior (Appendix 3).

A comparative table of the cost and other information is set out in para. 3 thereof, from which it appears that the per donum cost of the land in Strovolos B Area is higher by about £1,090 or about 81.5 per cent, as compared with Strovolos A Area. This makes the price of Strovolos B Area almost double than that of Strovolos A Area.

Further factors relevant to the ultimate choice of Area A are to be found in para. 4 of the said *exhibit*. Both Strovolos A and B Areas are within the boundaries of and are compatible, regarding their use, to the requirements of the "Local Nicosia Plan"; both are outside the boundaries of the Greater Nicosia Water Supply plan but Area A is only a short distance from an inhabited area, which, from the point of view of social services, such as schools, church, public transport and shops gives it an advantage over Area B which is also on a plateau, but it is so slopy and rough in certain parts that additional expense will be needed for its development. It is true that it is near certain industries and for that suitable for housing schemes, yet, it is at a disadvantage with regard to Area A from the point of view of position in general and other factors.

The area of Latsia is outside the boundaries of the

"Local Nicosia Plan" although it forms an extension of the village; it consists of good quality agricultural land, densely planted with olive trees; the water supply may present problems and it is likely that there will be an increase in the problems of public transport, so that the intended hire purchases will have to pay additional transport expense of about 100 mils per day, than the hire purchasers of Strovolos A Area.

The conclusions and recommendations of this Department, as they are set out in paras 5-11 of the said Apendix are briefly to the effect that both Areas A and B should be acquired as a matter of a long term policy as the acquisition of the necessary land is a prerequisite to a housing programme and this will render unnecessary future acquisitions of adjacent land which, inevitably, will have its price enhanced by the carrying out of a housing scheme in the vicinity, and so any future extensions of such housing schemes will still be possible at a low cost. Further, if a Housing Finance Agency or a Land Development Corporation is established, it will, inevitably, need land for housing purposes and part of the acquired land may, if necessary, be placed at its disposal for its purposes.

It was also considered, whether, in view of the economic difficulties of the State, it would be more beneficial for the Government to prefer Strovolos B Area, half of which was Government owned land and consequently its purchase price would not have to be paid but it was observed, and rightly so, that for the hire purchasers the situation would not be changed and they would still have to pay the extra cost for this more expensive land, unless the Government decided to reduce the price of its land to the level of the price of land within Strovolos A Area. Elaborate reasons are further given in the said *exhibit* in support of the recommendations of the Department, but I need not go into them.

The view of the Director of the Planning Bureau (Appendix 4) was that Strovolos Area A should be preferred, and in addition to the existing Government land lying therein to acquire only about 153 donums of privately owned land, as against 209 donums proposed by the Housing and Town Planning Department.

Eventually, a submission (Appendix 5) was made by the Minister of Interior to the Council of Ministers for the approval of a housing scheme under the said Law. The Council of Ministers at its meeting of the 27th March, 1975, approved the scheme by its Decision No. 13884 (Appendix 6) which reads as follows:

"2. The Council:

(a) considered the housing scheme prepared by the Housing and Town Planning Department under section 3 of the Housing Law, Cap. 222 as same is described in detail in para. 3 of the submission and decided on principle to approve it under section 4 of the Housing Law, Cap. 222.

(b) Decided to approve the acquisition by the Government, either by private agreement or by compulsory acquisition, of the Immovable property in the area of Strovolos of an extent of 145 donums, 3 evleks and 1800 sq. ft. which is shown delineated with green colour on the survey plan lodged with the secretary of the Council and which was approved as suitable for the implementation of the said scheme at the estimated expense of £185,600.-

(c) Decided to grant under section 18 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224 and Laws 3/60, 78/65, 10/66, 75/68 and 51/71 and section 2 of the Government Loans Law, Cap. 22 and Law 54/72, to the Director of the Housing and Town Planning Department of Government owned land of a total extent of 7 donums and 200 sq. ft. which is shown delineated with yellow colour on the survey plan for the needs of the said housing scheme and,

(d) it decided to authorize the Minister of Finance to find the necessary funds and if necessary by submitting a supplementary budget to the House of Representatives".

In pursuance thereof the notice of the intended acquisition, already set out in this judgment, was published in the official Gazette.

Four objections were made by owners of land affected thereby and together with the views of the District Officer, Nicosia, the Director of Housing and Town Planning and the legal advice from the office of the Attorney-General, were submitted to the Council of Ministers by the Minister of Interior (see Appendices 12, 13, 14, 15 and 16). The objections were on the 11th September, 1975 rejected by the Council of Ministers by its decision No. 14260 which is to be found in Appendix 17.

It has been argued on behalf of the applicants that the purposes for which the acquisition was ordered are not purposes of public benefit within the meaning of Article 23 of the Constitution and section 3 of the Acquisition of Property Law, 1962 (Law 15/62) in the sense that the scheme in question is neither town and country planning nor housing. With regard to the meaning of these two terms, I was referred to the English legislation on matters of town and country planning and housing, as set out in Halsbury's Laws of England, 3rd Ed. Vol. 19, pp. 571-764.

It was argued that the purposes of public benefit are set out in section 3(2) of Law 15/62 restrictively and not indicatively, a fact which means that no additional purposes could be introduced depending on the circumstances of the time and this, because the purpose of Article 23.4 of the Constitution, as well as of the Law, is the protection of the right of ownership and the compulsory acquisition being an onerous restriction of this right, every provision relating to it should be interpreted strictly.

In my view, the terms "town and country planning or housing" to be found in section 3(2) (i) of Law 15/62, should be given their ordinary meaning and not be interpreted by reference to the legislation of the United Kingdom and the powers given therein to the various appropriate authorities for its implementation. These terms should be understood as including, *inter alia,* the development and use of land in relation to existing urban areas and the social and environmental requirements of a place,

as well as the housing needs of the society, in particular, of those classes of the society which cannot, without public assistance or planned facilities solve their housing needs. If anything, the creation of a housing estate is nothing but a housing purpose and the layout of the streets and other facilities are clearly town and country planning purposes. Under Article 23 para. 4 of the Constitution, any immovable property may be compulsorily acquired by the Republic only -

"(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

(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".

The law envisaged by Article 23.4 (a) of the Constitution which contains a directive to the legislature that the latter was bound to comply with, is the Compulsory Acquisition of Property Law, 1962 (Law 15/62). It is obvious that the purpose of this directive was that unlike the situation that existed before Independence where different procedures were prescribed under different laws, one general law should regulate matters of compulsory acquisition. Further, under section 3 of this Law and subject to the provisions of the Constitution and of the Law, any property may be compulsorily acquired for a purpose which is to the public benefit and under sub-section (2) thereof, the purposes enumerated as being to the public benefit include, under para. (i) "town and country planning or housing".

In view of the aforesaid, I have no difficulty, bearing in mind the purposes of public benefit and the reasons for the acquisition as set out in the Notice of Acquisition, to say that they are indeed purposes of public benefit coming

within the provisions of section 3(2) (i) of Law 15/62. It is true that a comprehensive Town and Country Planning Law was enacted in 1972 (Law 90/72) which has not, as yet, been put into operation, but that does not change the situation, nor can it be said, that because the Streets and Buildings Regulation Law, Cap. 96 considered as containing town planning powers of a rudimentary nature, does not contain powers to create housing estates, the purposes for the acquisition in question are not purposes of public benefit.

The next ground of law argued, is that although the legal authorisation for the housing scheme in question were the provisions of the Housing Law, Cap. 222, yet, its basic provisions governing the procedure for the acquisition of the required immovable property, such as the provisions of sections 7 and 8 which call for the acquisition of property by agreement before compulsory acquisition is resorted to, have not been complied with and consequently the *sub judice* decision is *void* as being contrary to law.

With regard to this contention, I would like to refer to the case of *Vassiliko Cement Works Ltd.* v. *Violaris* (1975) 1 C.L.R. 256 in which the validity of the procedure for compulsory acquisition provided for by the Cement Industry (Encouragement and Control) Law, Cap. 130 and the Mines and Quarries (Regulation) Law, Cap. 270, was questioned. It was stated therein at p. 263 that -

> "The Compulsory Acquisition of property is, since 1962, regulated by the Compulsory Acquisition of Property Law, 1962, (Law 15/62). This was the law envisaged by Article 23.4 (a) of the Constitution which contained a directive to the legislature, that the latter was bound to the situation that existed before Independence, where different procedures existed under different laws".

It was further said at pp. 264-265:-

> "It was accepted by all that the acquisitions in question were regularly made under the provisions of Law 15/62. This is a general law, not because it is described as such in Article 23.4 (a) of the Consti-

tution, but because of its very nature; it defines the purpose for which property may be acquired, the procedure to be followed for the purposes of acquisition, the rules for the assessment of compensation, as well as such matters as the vesting, use and disposal of property acquired. In contra-distinction, The Cement Law and The Mines Law, are special laws because problems relating to the cement industry, mining and quarry, are specially dealt with therein, and they are authorizing the respective acquisition of property by the two acquiring authorities, and that power has been saved by section 2(e) of Law 15/62. The provisions regarding acquisitions and in particular the procedure to be followed in respect thereof, must be taken to have been repealed by necessary implication, but not the provisions governing the amount of compensation payable. Section 10(a) and (b) thereinabove reproduced verbatim, sets out the relevant underlying principle of compensation under our law, namely, the market value, the value that the land would fetch in the open market by a willing seller. It specifically excludes allowance that could be made on account of the acquisition being compulsory, except where such acquisition is made for mining purposes".

What was said in the *Vassiliko* case (*supra*) regarding the Cement etc. and the Mines etc. Laws, Caps 130 and 270 respectively, applies with equal force to the provisions of the Housing Law regulating the procedure for the acquisition of property for the purposes of that Law and which, in the light of what has been stated hereinabove, must be taken to have been repealed by necessary implication, so that the procedure which has to be followed in respect of the compulsory acquisition of property is the one set out in the Compulsory Acquisition of Property Law, 1962.

The next ground of law relied upon is that the omission of the administration to exhaust all efforts to acquire this property by private agreement in the first place and then resort to the onerous measure of acquisition, renders the *sub judice* decision *null* and *void*. This is a duty, it was argued, to be found in the Housing Law and also in the general principles of Administrative Law.

I have already dealt with the procedural provisions of the Housing Law which have been superseded by the procedure laid down in the Acquisition Law. The issue, therefore, has to be approached with reference to the general principles of Administrative Law.

For that purpose, I was referred to the Case Law of the Greek Council of State, wherein the general principles of Administrative Law on the matter are stated to be that the act of compulsory acquisition must be fully reasoned, either in the act itself or in the accompanying elements, so that the necessity to take this exceptional measure shall appear clearly and particularly from the point of view that the purpose of public benefit could not be achieved otherwise, *e.g.* by the disposal of proper Government property or by the direct purchase of privately owned immovable property from owners specially contacted for that purpose. (See Digest of Cases of the Greek Council of State, (1961-1970) Vol. 1 p. 536, paras. 16 and 17 and Decisions 276/66, 2136, 2660/60 referred to therein).

This principle, however, is not complete, unless it is added that the onerous measure of compulsory acquisition may be resorted to if the required immovable property is considered the only technically suitable for the achievement of the purpose, when a prior offer to its owner to purchase it privately, is not necessary. In such instances, the ground that there exists an obligation to acquire immovable property by private treaty, as a matter of general principle of law, cannot stand. (See paras. 19 and 20 and Decisions 505/68, 2579/69, 1344, 3409/70).

It was argued on behalf of the respondents that this was a principle of law which they had in mind when they were deciding the making of the order of the acquisition. Appendix 14 of *exhibit* 1 is the legal advice from the office of the Attorney-General attached to the submission made to the Council of Ministers, together with the objections filed pursuant to the publication of the Notice of Acquisition and the other views expressed by the appropriate Government Departments to which I have already referred. It is stated clearly in the said advice, that compulsory acquisition may be resorted to without prior offer to purchase privately the property in question, if it is the only suitable for the achievement of the desired purpose, and

reference is made to some of the decisions of the Greek Council of State, to which I have already referred. That the area in question was found to be, after a proper inquiry, the only technically suitable for the purpose, it is apparent from the whole approach of the matter as emanating from the relevant file. It had to be acquired as a compact area and the exclusion of any part therefrom would frustrate the realisation of the object of the acquisition.

The option given by the decision of the Council of Ministers of the 27th March, 1975 (Appendix 6) to acquire the property either by private treaty or by compulsory acquisition, does not change the situation, because, after that decision, we have the decision to acquire the property compulsorily when examining the objections made which, incidentally, it may be mentioned, were only in respect of six plots out of the 22 affected by the Notice of Acquisition. For all the above reasons this ground should also fail.

Finally, I must deal briefly with the ground raised in Recourse No. 200/75 that the requisition made in respect of these properties in order to facilitate an entry of the Acquiring Authority into them and the carrying out of the scheme in question is *void,* as being contrary to the Constitution and the provisions of section 3 of the Requisition of Property Law, 1962 (Law 21/62), and the general principles of Administrative Law, and this, in the sense that it frustrates the rights of the applicant safeguarded under Article 23.4 of the Constitution, because it facilitates the entry therein without payment being made by the respondents in cash and in advance of a just and equitable compensation.

A series of decisions of this Court duly warrant this course followed; more so, if one bears in mind the urgency of proceeding with the housing scheme in question. The decisions which I was asked not to follow, are *Evridiki Aspri and The Republic,* 4 R.S.C.C. 57 at p. 61 followed in *Manolis Pavlou and Another* v. *The Republic* (1971) 3 C.L.R., 120 at pp. 130 and 131 and *Photini Papadopoulou and Others and The Republic* (1971) 3 C.L.R. 317 at p. 336. Leaving aside the consideration of judicial precedent with which I dealt in Revisional Ap-

peal No. 141, *The Republic* v. *D. Demetriades* (yet unreported)*, no reason whatsoever exists not to abide by this constant Case Law of this Court which is correct and duly justified by their reasoning. As stated by Fortshoff, P. in delivering the judgment of the Court in *Aspri and The Republic* (*supra*) at p. 61 -

> "The Court, further, cannot accept that the making of the order of requisition would frustrate whatever rights may have been safeguarded for applicant under sub-paragraph (c) of paragraph 4, concerning the payment in cash and in advance of compensation in respect of the compulsory acquisition. The sole purpose, in the opinion of the Court, of such sub-paragraph (c) when viewed in the context of Article 23, is to ensure that a person shall not be permanently deprived of the ownership of property, or of any right over or interest in property, prior to the payment of compensation in cash and in advance, and this is also the effect of section 13 of Law 15/62. The mere fact that the purpose for which a compulsory acquisition has been decided upon is being pursued *pro tempore* my means of requisition, upon payment of compensation, cannot reasonably be said to frustrate the said rights of applicant under sub-paragraph (c) of paragraph 4, because the ownership continues to vest in the applicant in the meantime".

For all the above reasons, these recourses fail, but in the circumstances I make no order as to costs.

Applications dismissed.
No order as to costs.

* Now reported in this Part at p. 213 *ante*.