1979 June 5

[TRIANTAFYLLIDES, P., STAVRINIDES, L. LOIZOU, HADJIANASTASSIOU, MALACHTOS, JJ.]

THE CYPRUS TANNERY LTD.,

*Appellant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTER OF COMMUNICATIONS AND WORKS,

*Respondent.*

(*Revisional Jurisdiction Appeal No.* 187).

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*Administrative Law—Recourse for annulment—Prematureness—Compulsory acquisition order—Claim that property be excluded from ambit of—Reply from respondent that matter was under consideration—A preparatory act devoid of any executory nature and cannot be made the subject of a recourse under Article* 146 *of the Constitution—Only against decisions or acts of the Administration, in relation to a particular matter of a final nature, such a recourse can be made—Not a case of an omission in the sense of Article* 146 *of the Constitution because there has not occurred an omission of the respondent to act under section* 23.5 *of the Constitution—See, also, section* 15(1) *of the Compulsory Acquisition of Property Law,* 1962 (*Law* 15/62)*—Recourse against refusal to revoke said compulsory acquisition order premature.*

*Compulsory acquisition—Claim for offering back property compulsorily acquired—Article* 23.5 *of the Constitution—When applicable—Section* 15(1) *of the Compulsory Acquisition of Property Law,* 1962 (*Law* 15/62)*—Demand that property be excluded from ambit of compulsory acquisition order—Can only be granted in the exercise of discretionary powers under section* 7 *of Law* 15/62.

*Administrative Law—Omission—In the sense of Article* 146.1 *of the Constitution—Meaning.*

*Practice—Appeal against dismissal of recourse—Dismissal of appeal on a ground other than that on which the recourse was dismissed.*

In February, 1969, there were published orders of acquisition and requisition in respect of a piece of property of the appellant ("the property") at Larnaca, which was required, together with other properties in the same area, for the construction of a port at Larnaca. On January 15, 1970, counsel for the appellant wrote* to the respondent enquiring whether the property has been excluded from the area required for the construction of the New Larnaca port. The respondent replied by letter** dated February 17, 1970 and stated that the property "has not been excluded from the area acquired". There followed another letter*** from counsel for the appellant dated February 23, 1970, enquiring whether the property "was actually excluded from the area required for the construction of the New Port of Larnaca". In reply the respondent stated that the property "has not been excluded from the area acquired".

On November 3, 1973, counsel for the appellant wrote**** to the respondent directing his attention to Article 23.5***** of the Constitution and calling upon him to exclude within 45 days the property from the acquisition and requisition. Respondent replied by letter dated January 15, 1974 that the matter was being examined and a reply would be given in due course. On October 11, 1974, a letter was addressed to counsel for the appellant by the respondent by which he was asked to specify the reasons for which it was being contended that the property ought to be excluded from the compulsory acquisition and requisition.

Counsel for the appellant replied on October 14, 1974, stating that the property was not needed for the construction of the Larnaca port and, therefore, it ought to be excluded from the acquisition and requisition and ought to be returned to the appellant; it was added that the appellant intended to vindicate its rights by instituting judicial proceedings.

On December 4, 1974 the appellant filed a recourse against the refusal of the respondent to revoke the order of compulsory acquisition relating to the property, on the ground that more

* See the letter at p. 410 *post*.
** Quoted at p. 410 *post*.
*** Quoted at pp. 410–11 *post*.
**** See the letter at p. 411 *post*.
***** Quoted at p. 413 *post*.

than three years had elapsed since the acquisition and the purpose for which the property had been acquired had not been attained, or had been abandoned in so far as the property was concerned; and, also, that such property was found to be in excess of the actual requirements in respect of the purpose for which it was acquired. The trial Court dismissed the recourse and hence this appeal.

*Held*, that when the recourse was filed there had not yet been reached any decision by the respondent as regards the claim of the appellant that its property concerned should be excluded from the ambit of the relevant order of compulsory acquisition; that, on the contrary, it clearly emerges from the last letter of the Ministry of Communications and Works, dated October 11, 1974, that the matter was still under consideration; that this letter can only be regarded as a preparatory act which is devoid of any executory nature and it could not be made the subject of a recourse under Article 146 of the Constitution (see, in this respect, *inter alia*, *Tanis* v. *The Republic* (1978) 3 C.L.R. 314, 318) as it is only against a decision or act of the administration, in relation to a particular matter, which is of a final nature that such a recourse can be made (see, in this respect, *inter alia*, *Haros* v. *The Republic*, 4 R.S.C.C. 39, 44); that, therefore, the filing of a recourse by the appellant was premature, and it is an inevitable corollary of this that the determination of the matter on its merits, by the learned trial Judge, is to be treated as being premature, too; and that, accordingly, the appeal must be dismissed on a ground other than that on which the recourse was dismissed at the trial.

*Held*, further, (1) that this was not a case of an omission, in the sense of Article 146 of the Constitution because there has not occurred an omission of the respondent to act under Article 23.5 of the Constitution which, like section 15(1) of the Compulsory Acquisition of Property Law, 1962 (Law 15/62), is only applicable in cases where the compulsory acquisition has been completed through the payment of compensation in respect thereof, under Article 23.4.(c) of the Constitution and section 13 of Law 15/62, and not in a case, such as the present one, in which the compensation payable to the appellant has not yet even been assessed.

(2) That the demand of the appellant that his property should

be excluded from the ambit of the relevant compusory acquisition order could only have been granted in the exercise of the powers under section 7* of Law 15/62; that the exercise of such powers is a matter of discretion and it appears to be well settled that an omission, in the sense of paragraph 1 of Article 146 of the Constitution, means an omission to do something required by Law, as distinct from the non-doing of a particular act or the non-taking of a particular course as a result of the exercise of discretionary powers (see, *inter alia*, *The Police Association and others* v. *The Republic*, (1972) 3 C.L.R. 1, 23); and that in the present instance there has not been either a refusal or an omission to consider the relevant claim of the appellant under section 7 of Law 15/62, as the appellant has hurried to file a recourse while the matter was still under consideration.

*Appeal dismissed.*

Cases referred to:

*Pavlides* v. *Republic* (1977) 3 C.L.R. 421 at p. 426;

*Tanis* v. *Republic* (1978) 3 C.L.R. 314 at p. 318;

*Mustafa* v. *Republic*, 1 R.S.C.C. 44 at p. 47;

*Haros* v. *Republic*, 4 R.S.C.C. 39 at p. 44;

*Police Association and Others* v. *Republic* (1972) 3 C.L.R. 1 at p. 23;

*Cariolou* v. *The Municipality of Kyrenia and Others* (1971) 3 C.L.R. 455 at pp. 462–464;

*HjiCostas* v. *Republic and Another* (1974) 3 C.L.R. 1 at p. 12;

*Pissas (No. 1)* v. *Electricity Authority of Cyprus* (1966) 3 C.L.R. 634 at pp. 637–639;

*Markantonis* v. *Republic and Another* (1966) 3 C.L.R. 714 at pp. 719–720;

*Soundia* v. *The Town School Committee of Larnaca and Others* (1965) 3 C.L.R. 425 at p. 430;

*Kyriacou* v. *The Cyprus Broadcasting Corporation and Another* (1965) 3 C.L.R. 482 at p. 500;

*Georghiades and Another* v. *Republic* (1966) 3 C.L.R. 827 at pp. 841–842;

*Neophytou* v. *Republic*, 1964 C.L.R. 282 at p. 290;

*Bakkaliaou* v. *The Municipality of Famagusta* (1967) 3 C.L.R. 19, at pp. 24–27.

* Quoted at pp. 414–15 *post*.

**Appeal.**

Appeal from the judgment of a Judge of the Supreme Court of Cyprus (A. Loizou, J.) given on the 31st March, 1977 (Revisional Jurisdiction Case No. 387/74) whereby appellant's recourse against the refusal of the respondent to revoke an order of compulsory acquisition to the extent to which it related to a property of the appellant, was dismissed.

*P. Cacoyiannis*, for the appellant.

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

*Cur. adv. vult.*

TRIANTAFYLLIDES P. read the following judgment of the Court. In this appeal the appellant company challenges the dismissal.* by a Judge of this Court, of its recourse against the refusal of the respondent Minister of Communications and Works to revoke an order of compulsory acquisition to the extent to which it relates to a property of the appellant in Larnaca (plot No. 334, under registration No. D. 367, of February 14, 1961). It had been contended by the appellant that more than three years had elapsed since the acquisition and the purpose for which its property had been acquired had not been attained, or had been abandoned in so far as its property was concerned; and, also, that such property was found to be in excess of the actual requirements in respect of the purpose for which it was acquired.

The relevant notice of acquisition was published on April 18, 1968 (see No. 266 in the Third Supplement to the Official Gazette).

It was stated in such notice that the property of the appellant, together with other properties in the same area, which were described in the same notice, were required for the construction of a port at Larnaca.

The order of acquisition was published on February 21, 1969 (see No. 122 in the Third Supplement to the Official Gazette).

On February 28, 1969, there was published, in respect of the said property, an order of requisition (see No. 138 in the Third Supplement to the Official Gazette).

* Reported in (1977) 3 C.L.R. 75.

The appellant did not make a recourse either against the order of acquisition or against the order of requisition.

After some earlier correspondence to which we need not refer for the purposes of this judgment, counsel for the appellant addressed, on January 15, 1970, the following letter to the Director-General of the Ministry of Communications and Works:

> "Orders of Requisition and Acquisition of Plot No. 334 at Larnaca, belonging to the *Cyprus Tannery Ltd., of Larnaca.*
>
> We refer to our correspondence on the above subject and we request you on behalf of our clients Messrs. Cyprus Tannery Limited to let us know whether it is true and correct that the above Plot No. 334 the subject of the Orders of Requisition and Acquisition aforesaid, has been excluded from the area required from the construction of the New Larnaca Port in respect of which the Orders of Acquisition and Requisition were made.
>
> You will agree that in such case you are legally bound to revoke the said Orders and release the said Plot 334 from the acquisition and requisition aforesaid.
>
> We shall be very grateful if we may have a reply at your earliest convenience.
>
> With full reservation of all rights, claims and defences of our clients."

He received a reply, dated February 17, 1970, which reads as follows:

> "I am directed to refer to your letter of the 15th January, 1970, and to inform you that Plot No. 334 at Larnaca which as stated by you belongs to the Cyprus Tannery Limited, has not been excluded from the area acquired."

Then, he wrote a further letter on February 23, 1970, which reads as follows:

> "We received your letter of 17th February, 1970 and regret to state that it is not an answer to our letter to you dated 15th January, 1970.

We asked you to state whether Plot No. 334 has been excluded from the area required for the construction of the New Larnaca Port and you reply that it has not been excluded from the area acquired.

Would you please inform us whether or not the Plot No. 334 belonging to our clients Messrs. Cyprus Tannery Ltd., was actually excluded from the area required *for the construction of the New Port of Larnaca.*"

In reply to the above letter he received a letter dated April 9, 1970, which reads as follows:

"I am directed to refer to your letter of the 23rd February, 1970 and to reiterate my previous statement that Plot No. 334 at Larnaca which as stated by you belongs to the Cyprus Tannery Ltd. has not been excluded from the area acquired."

Then, on November 3, 1973, counsel for the appellant wrote to the Director-General of the Ministry of Communications and Works the following letter:

"We are instructed by our clients Messrs. The Cyprus Tannery Limited of Larnaca to direct your attention to paragraph 5 of Article 23 of the Constitution of the Republic of Cyprus and to call upon you to exclude within 45 days from the date hereof from the acquisition and requisition aforesaid their property known as the Cyprus Tannery Plot No. 334 at Larnaca under registration No. D 367 dated 14.2.1961.

Our clients reserve all their rights to claim from the Cyprus Government reasonable compensation for the occupation and use of the said property by or on behalf of the Government and for any damage caused thereto from the date of the acquisition up to the date of exclusion of such property from the acquisition and requisition aforesaid and delivery to our clients.

Awaiting your reply."

He was informed, by letter dated January 15, 1974, that the matter was being examined and a reply would be given to him in due course.

Eventually, on October 11, 1974, a letter was addressed to counsel for the appellant by the Director-General of the Ministry of Communications and Works by which he was asked to specify the reasons for which it was being contended that the property concerned, plot 334, ought to be excluded from the compulsory acquisition and requisition.

It was pointed out in that letter that, in the earlier letter of counsel for the appellant, dated November 3, 1973, in which reference had been made to paragraph 5 of Article 23 of the Constitution, no such reasons had been given and it was stressed that, in the circumstances, it was difficult to examine the claim of the appellant.

Counsel for the appellant replied on October 14, 1974, stating that the said property was not needed for the construction of the Larnaca port and, therefore, it ought to be excluded from the acquisition and requisition and ought to be returned to the appellant; and it was added that the appellant intended to vindicate its rights by instituting judicial proceedings.

Finally, on December 4, 1974, recourse No. 387/74 was filed, seeking the relief which has already been referred to earlier on in this judgment; and it is against the dismissal of this recourse by a Judge of this Court that the present appeal has been made.

In our opinion the filing of a recourse by the appellant was premature; and it is an inevitable corollary of this that the determination of the matter on its merits, by the learned trial Judge, is to be treated as being premature, too. Our reasons for reaching this conclusion are as follows:

When the recourse was filed there had not yet been reached any decision by the respondent as regards the claim of the appellant that its property concerned should be excluded from the ambit of the relevant order of compulsory acquisition. On the contrary, it clearly emerges from the last letter of the Ministry of Communications and Works, dated October 11, 1974, that the matter was still under consideration.

This letter can only be regarded as a preparatory act which is devoid of any executory nature; therefore, it could not be made the subject of a recourse under Article 146 of the Constitution (see, in this respect, *inter alia*, *Pavlides* v. *The Republic*,

(1977) 3 C.L.R. 421, 426 and *Tanis* v. *The Republic*, (1978) 3 C.L.R. 314, 318). It is only against a decision or act of the administration, in relation to a particular matter, which is of a final nature that such a recourse can be made (see, *inter alia*, in this respect, *Mustafa* v. *The Republic*, 1 R.S.C.C. 44, 47 and *Haros* v. *The Republic*, 4 R.S.C.C. 39, 44).

Nor can we accept the contention of counsel for the appellant that this was a case of an omission, in the sense of Article 146, *supra*, and that, therefore, the recourse of the appellant was not premature:

We are unable to agree with counsel for the appellant that it can be said that there has occurred an omission of the respondent to act under paragraph 5 of Article 23 of the Constitution. The said paragraph 5 reads as follows:

> "Any immovable property or any right over or interest in any such property compulsorily acquired shall only be used for the purpose for which it has been acquired. If within three years of the acquisition such purpose has not been attained, the acquiring authority shall, immediately after the expiration of the said period of three years, offer the property at the price it has been acquired to the person from whom it has been acquired. Such person shall be entitled within three months of the receipt of such offer to signify his acceptance or non-acceptance of the offer, and if he signifies acceptance, such property shall be returned to him immediately after his returning such price within a further period of three months from such acceptance".

It is useful to refer, also, at this stage, to section 15(1) of the Compulsory Acquisition of Property Law, 1962 (Law 15/62), which has been enacted as a result of the provisions of Article 23.5 of the Constitution.

It is, in our opinion, clear from the provisions of both Article 23.5 and section 15(1), above, that they are only applicable in cases where the compulsory acquisition has been completed through the payment of compensation in respect thereof, under Article 23.4(c) of the Constitution and section 13 of Law 15/62, and not in a case, such as the present one, in which the compensation payable to the appellant has not yet even been assessed.

Actually, on January 14, 1975, the District Lands Officer in Larnaca addressed a letter to counsel for the appellant asking to be informed of the claim as regards compensation for the compulsory acquisition of the property in question, and on January 23, 1975, counsel for the appellant replied that his client had filed a recourse—namely the present recourse No. 387/74—which was pending before the Supreme Court and that the sum which his client would claim as compensation would depend on the outcome of the recourse.

The demand of the appellant that his property should be excluded from the ambit of the relevant compusory acquisition order could only have been granted in the exercise of the powers under section 7 of Law 15/62, which reads as follows:

"7.-(1) At any time after the publication of a notice of acquisition and before the payment or the deposit of compensation as in this Law provided, the acquiring authority may, by an order published in the official Gazette of the Republic, revoke such notice and any relative order of acquisition that may have been published, either generally or in respect of any particular property or part of property referred to therein; and thereupon all proceedings consequential to such notice or order of acquisition shall abate and the acquisition shall be deemed to have been abandoned either generally or in respect of such particular property or part of property, as the case may be.

(2) Where no order of acquisition in respect of any property or any part of any property referred to in any notice of acquisition is published within twelve months of the date of the publication of such notice in the official Gazette of the Republic, all proceedings consequential to such notice shall abate and the intended acquisition shall be deemed to have been abandoned in respect of such property or part of property, as the case may be.

(3) Where the acquisition of any property or any part of any property is deemed to have been abandoned under the provisions of sub-section (1) or sub-section (2), the acquiring authority shall pay to any person interested in such property any costs or expenses reasonably incurred by such person, and shall compensate him for any loss he has suffered, since the publication of the notice of acquisition

and in consequence of such notice or of any relative order of acquisition that may have been published; and in the event of any dispute as to the amount to be paid as aforesaid, such amount shall be determined by the Court."

The exercise of the said powers is a matter of discretion and it appears to be well settled that an omission, in the sense of paragraph 1 of Article 146 of the Constitution, means an omission to do something required by law, as distinct from the non-doing of a particular act or the non-taking of a particular course as a result of the exercise of discretionary powers (see, *inter alia*, *The Police Association and others* v. *The Republic*, (1972) 3 C.L.R. 1, 23). In the present instance there has not been either a refusal or an omission to consider the relevant claim of the appellant under section 7 of Law 15/62, as the appellant has hurried to file a recourse while the matter was still under consideration.

It may be pointed out, at this stage, that we are not faced in this case with a complaint of the appellant that there has been a contravention of Article 29 of the Constitution in failing to reply, within thirty days, to the letter of its counsel, dated October 14, 1974.

It seems, actually, that, due to the filing of the recourse of the appellant, the administration postponed any final decision in the matter, pending the outcome of the recourse.

During the hearing of this appeal, however, counsel for the respondent undertook to examine whether the appropriate authority of the Republic is prepared to give a definite reply to the appellant as regards whether or not the property concerned will be returned to it and, as a result, on February 16, 1978, counsel for the respondent forwarded to the Registry of this Court, and to counsel for the appellant, copy of a letter dated February 15, 1978, addressed by the Director-General of the Ministry of Communications and Works to the Attorney-General of the Republic, by means of which the latter was informed that the property of the appellant continues to be required for the purpose for which it has been compulsorily acquired and that there is no question of excluding it from the ambit of the relevant acquisition order or of revoking, in part, in relation to such property, the said order.

But, we should observe that, in our opinion, until now the final decision of the respondent in the matter has not yet been communicated to the appellant, even though it might be said that, by virtue of its counsel receiving copy of the aforementioned letter of February 15, 1978, the appellant has, indirectly, come to know what is the final decision to be expected as regards its request for the exclusion from the compulsory acquisition of its relevant property.

We make this observation in view of the fact that as was already held by this Court in, *inter alia*, *Cariolou* v. *The Municipality of Kyrenia and others*, (1971) 3 C.L.R. 455, 462–464 and *HjiCostas* v. *The Republic and another*, (1974) 3 C.L.R. 1, 12, knowledge of an administrative decision, in the sense of Article 146.3 of the Constitution, has to be complete (see, also, in this respect, *inter alia*, the Conclusions from the Case-Law of the Council of State in Greece, 1929–1959, p. 253); there should, too, be full and sufficient knowledge (see, *inter alia*, *Pissas* (*No.* 1) v. *The Electricity Authority of Cyprus*, (1966) 3 C.L.R. 634, 637–639 and *Markantonis* v. *The Republic and another*, (1966) 3 C.L.R. 714, 719–720) of the final decision of the administration in a particular matter (see, *inter alia*, *Soundia* v. *The Town School Committee of Larnaca and others*, (1965) 3 C.L.R. 425, 430, *Kyriacou* v. *The Cyprus Broadcasting Corporation and another*, (1965) 3 C.L.R. 482, 500 and *Georghiades and another* v. *The Republic*, (1966) 3 C.L.R. 827, 841–842); and it is, also, well established that any doubt as regards the acquisition of knowledge in the sense of Article 146.3 and, consequently, about the commencement of the running of the period of seventy-five days provided thereunder, should be resolved in favour of the applicant in a recourse (see *Neophytou* v. *The Republic*, 1964 C.L.R. 282, 290 and *Georghiades*, *supra*, 842).

A case which seems to be somehow analogous to the present one is *Bakkaliaou* v. *The Municipality of Famagusta*, (1969) 3 C.L.R. 19, 24–27; it was held that, as the appellant in that case had objected to the proposed compulsory acquisition of her property, the publication, about four months later, of an acquisition order in respect of her property did not constitute a reply to her said objection and that the publication of the order was not, in itself, sufficient for the purpose of setting into motion the

provisions of Article 146.3 of the Constitution as regards the running of the period prescribed thereunder.

On the present occasion the appellant company has not yet received directly any final reply to its demand that its property concerned should be excluded from the operation of the compulsory acquisition order in question, but has, only, been informed of certain instructions given by the respondent Ministry of Communications and Works to counsel appearing for the respondent in this appeal; and we are inclined not to treat such information as complete, full and sufficient knowledge of the final decision of the respondent in the matter in question, in the sense of Article 146.3 of the Constitution.

In the result and in the light of all the reasons set out in this judgment we dismiss this appeal on a ground—as suggested by counsel for the respondent—other than that on which the recourse of the appellant was dismissed at the trial, inasmuch as we have found that the recourse of the appellant was made prematurely.

As regards costs we think that there should be no order for costs in this appeal.

*Appeal dismissed. No order as to costs.*