

1984 November 6

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION
DINA MAVROGENOUS AND ANGELIKI (KOULA) PAPA,
Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE COUNCIL OF MINISTERS AND/OR THE
MINISTRY OF COMMERCE AND INDUSTRY,
Respondents.

(Case No. 47/79).

*Compulsory acquisition—Principles applicable—Notice of acquisition
—Objections to—Appropriate procedure of dealing with—No
violation of the rules of natural justice through failure of respondents
to afford opportunity to applicants to produce their submissions
and grounds of objection in more detail—Because no limitation
was placed on applicants as regards their right to submit an elaborate
and all embracing objection—Non-choosing of a more expensive site—
Not a ground for annulment of sub judice order of acquisition—Because
fiscus and its interests are a material consideration.*

*Administrative Law—Administrative acts or decisions—Reasoning
—Supplemented from the material in the file.*

On December 31, 1977 the respondents published a notice of acquisition affecting applicants' property at Ayios Athanasios village. Upon the publication of the notice of acquisition the applicants submitted to the Ministry of Commerce and Industry, through the District Officer Limassol their objection to the intended acquisition. There followed an inquiry by the District Officer who submitted his finding to the respondent Minister of Commerce and Industry. The latter, after obtaining the advice of the Attorney-General of the Republic, on the legal aspect

of the issues raised, made a submission to the Council of Ministers which examined the matter and decided to dismiss the objections; and approved, under section 6 of the Compulsory Acquisition of Property Law, 1962 (Law 15 of 1962) the issue of an order of acquisition.

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Hence this recourse.

Counsel for the applicants mainly contended:

(a) That the sub judge decision lacks due reasoning.

(b) That the procedure regarding the examination leading to the dismissal of applicants' objections was faulty.

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(c) That in determining the objections of the applicants respondents offended the principles of natural justice as they deprived applicants of the possibility of producing their submissions and grounds of their objections in more detail.

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(d) That the respondents erroneously chose applicants properties on account of their being by £500 per donum cheaper than those proposed by the Town Planning Department.

Held, (1) that the subject decision contains due reasoning in its body and such reasoning is supplemented, in addition, from the material in the file.

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(2) That the procedure regarding the examination leading to the dismissal of applicants' objections was the one prescribed by the law.

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(3) That there has been no violation of the rules of natural justice because no limitation was placed on the applicants as regards their right to submit an elaborate and all embracing objection.

(4) That the fiscus and its interests are a material consideration that has to be duly taken into account by the acquiring authority in choosing the appropriate property to be acquired.

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Application dismissed.

Cases referred to:

Aspri v. Republic, 4 R.S.C.C. 57;

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Chrysochou Bros. v. C.Y.T.A. and Another (1966) 3 C.L.R. 482;

Mammidou and Others v. Attorney-General (1977) 3 C.L.R. 462;

HadjiIoannou and Another v. Republic (1983) 3 C.L.R. 536;

Decision of the Greek Council of State No. 1023/49.

5 **Recourse.**

Recourse against the decision of the respondents whereby the objection of the applicants against the intended acquisition of their property was rejected.

A.S. Angelides, for the applicants.

10 *Cl. Antoniadès*, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By the present recourse the two applicants seek a declaration of the Court
15 that the decision and/or act of the respondents, whereby they rejected their objection of the 14th January 1978, against the intended acquisition of their property under plot No. 176/3 Sheet LIV 43 in the village of Ayios Athanassios, in Limassol which was communicated to the applicants by letter dated
20 13th November 1978, together with the decision for the relevant order of acquisition of the said property of the applicants, be declared as null and void, illegal and without any legal effect.

The facts of the case are as follows:

25 The two applicants are the registered owners of the aforesaid properties. The Council of Ministers at its meeting of the 29th December 1977, considered a submission for the acquisition of an additional area for the extension of the Industrial Estate of Ayios Athanassios.

By its decision No. 16.459 of even date, it decided:-

30 "(a) after exhaustive study of the subject to approve by virtue of Section 4 of the Compulsory Acquisition of Property Law, 1962 (No. 15 of 1962), the issue of the Notice of Acquisition attached to the Submission, for the acquisition of the immovable property of an

extent of about 229 donums in the village of Ayios Athanassios (Area "A") as described in the Schedule to the said Notice which is necessary for the extension of the Industrial Estate of Ayios Athanassios.

(b) To authorize the Minister of Commerce and Industry— 5

(i) to take in co-operation with the Planning Bureau the appropriate steps for the execution of the foundation works, which are necessary for the development of the aforesaid property and to the letting, of the Industrial plots to be created, to those interested for the purpose of industrial development. For the examination of applications of the letting of space within the Industrial Estate to be created, there will be followed the procedure approved by the Council. The relevant rent and the terms of the lease will be specified jointly with the Minister of Finance; and 10

(ii) That in case the Electricity Authority of Cyprus will ask the lease to it of plots of land within the said area for the purpose of erecting electricity Sub-Stations for the needs of the extension of the Industrial Estate of "Ayios Athanassios" in electricity, to proceed to lease to it of the plots of land that are necessary for the purpose". 15 20

It is worth noting that in the extensive submission to the Council of Ministers, among the main purposes set out therein for the acquisition in question there were the following:— 25

"(a) In order to prevent the scattered development in the areas near the Industrial Estate of Ayios Athanassios, a development which if it takes place will render problematic if not impossible its extension in the near future; and 30

(b) in order to meet the great demand for industrial plots which is observed in Limassol and so assist and accelerate the reactivation of affected, and the establishment of new, industries". 35

I do not intend to reproduce verbatim the rest of the contents of this submission as it is sufficient to indicate that there is

a description of the area and its location and its character and that it is mainly a poor agricultural land.

Reference is also made to its value and that the Town Planning Department recommended an extension to be effected by acquisition of land to the south of the existing industrial estate, instead of the extension to the direction ultimately decided upon. The views are also given of the Ministry of Commerce and Industry and reasons as to why the proposal of the Town Planning Department should not be adopted, and as to why the area proposed by them in which the subject property lies should be preferred. In effect these reasons are:

- (a) That the cost per donum is £500.- less than the cost is the south area.
- (b) That that area constituted already a part of the Industrial Zone of Ayios Athanassios and that it should be left available for those industries that did not qualify for plots in the Industrial Estate and that Limassol should not be deprived of that area by converting an Industrial Zone into an Industrial Estate.
- (c) That the one proposed for acquisition was irregularly shaped, whereas the one proposed in the submission for acquisition was properly shaped and the two could be united and make a compact harmoniously functioning entity.
- (d) That within that area there exist electric wires of 66,000 volts which would necessitate the division and isolation of the two plots; and
- (e) That the area proposed is of an extent of 229 donums, whereas the extent of the other area is only 154 and that out of the 138 donums which could be let, 64 donums have already been assigned—there was in fact a list of the industries to which these areas were given, attached thereto.

The notice of acquisition was published on the 31st December 1977 under Notification 1211. The purpose of public benefit for which the properties in question were to be acquired was stated to be the promotion and development of industries

or for anyone of them and the reason requiring the acquisition of same was for the establishment of an industrial estate, the letting of the said area or part of it in lots or otherwise to industrialists for the development of industry and or the letting of use of the area or part of it for any other purpose conducive to the development of industry. It was further stated that the properties described therein were considered most suitable for the said purpose. 5

Upon the publication of the said notice of acquisition a number of owners, whose ownership was affected by the intended acquisition, submitted to the Ministry of Commerce and Industry through the District Officer Limassol, objections to the intended acquisition. The District Officer of Limassol having studied the objections recommended their dismissal for the reasons that appear in his letter of the 6th April 1978, copy of which was attached to the submission which the Council of Ministers had before it at its meeting of the 14th September 1978, which had also before it copies of the objections. Furthermore the objections were placed before the Attorney-General of the Republic together with the views expressed by the District Officer of Limassol and in his turn by letter dated the 26th April 1978, copy of which is also attached to the submission, expressed the opinion that the objections could be dismissed by the Council of Ministers, if it was satisfied that the area which was to be acquired for the extension of the Industrial Estate of Ayios Athanassios was chosen after due inquiry and that it was found that same was the only suitable area for the achievement of the intended purpose. It is further pointed out in the said submission, which together with the rest of the relevant documents has been attached to the notice of opposition filed in the present recourse on behalf of the respondent, that in the submission under number 963/77 to which I have already referred there appear the reasons for which the property in question was chosen and also a comparative study which was made between the two areas which were available for extension of the said Industrial Estate, which showed that the finally chosen by the Council of Ministers area is the most suitable area for the said purpose. 10
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The Minister of Commerce and Industry who was making this submission was recommending to the Council of Ministers to dismiss the objections under section 6 of the Compulsory 40

Acquisition of Property Law, 1962 and issue the attached thereto order of acquisition.

5 The Council of Ministers by its decision number 17.213 of the 14th September 1978, decided to dismiss the objections and having taken into consideration all the circumstances of the case approved under section 6 of the Law the issue of the order of acquisition attached to the submission which was ultimately published in the Official Gazette of the Republic.

10 In order to complete the picture as to the facts of the case and the procedure followed which has been attempted to be outlined here as briefly as possible once the relevant documents have been produced and are available for a perusal, reference must be made to the plan of the area which has been attached to the written address filed on behalf of the respondents and which
15 with its coloured delineation of the various areas concerned, gives a very clear picture of the whole situation and the lay out of the area. I would only like to say that the property of the two applicants, subject matter of this recourse, forms a part almost in the middle of the north part of the total area
20 under acquisition and it is on the side which abuts the new Nicosia Limassol Highway.

The grounds of Law relied upon by the applicants as set out in their application are the following:

- 25 “(1) The decision of the respondents as communicated to the applicants lacks due reasoning that can be supplemented or completed from the material in the file and it constitutes a mere reproduction of the provisions of the relevant Law.
- 30 (2) The respondents decided to dismiss the objection of the applicants and simultaneously to issue the order of acquisition in a manner offending the provisions of the Constitution and the Law inasmuch as:
- 35 (a) In substance the decision for the acquisition of the said area exceeds the permitted by the Law and the Constitution boundaries and amounts in actual fact to nationalization of private property.
- (b) It has not been examined if there exists another way less onerous for achieving the purpose of public

- benefit although for nearby immovable property there has been invoked the procedure of purchase in the free market.
- (c) There have not been exhausted all the possible means for achieving the purpose of public benefit, before resorting to compulsory acquisition. 5
- (d) They did not examine if there was a possibility to achieve the purpose of public benefit by selecting other property, in order to achieve such purpose and which property was offered or was suitable for it. 10
- (3) Respondent 2, when determining the objections of the applicants offended the principles of natural justice as he deprived the applicants of the possibility to produce their submissions and grounds of their objection in more detail, taking so into consideration, some one-sided reasons only, in favour of the necessity of the intended acquisition by suggesting for the purpose, to respondents 1, who merely accepted the submission of respondent 2. 15
- (4) The decision of the respondents is the result of misconception, and an act of discrimination against the applicants or vindictive or contrary to the principle of equality. 20
- (5) On the whole the administrative procedure by which the objection was dismissed and the acquisition decided upon was taken in excess of power and in violation of the notion of good administration". 25

The legal principles governing the question of the compulsory acquisition of property are well settled and they have by now been extensively stated to in the Case Law of this Court. If any enumeration of the cases in which they were expounded is necessary, reference may inter alia be made to the cases of *Aspri and the Republic*, 4 R.S.C.C. p. 57; *Chrysochou Bros. v. C.Y.T.A. and Another* (1966) 3 C.L.R. 482; *Mammidou and Others v. The Attorney General* (1977) 3 C.L.R. 462, and the recent judgment of the Full Bench of *HadjiIoannou and Another v. The Republic* (1983) 3 C.L.R. p. 536, where an extensive review of the Case Law of this Court and the principles pertaining to compulsory acquisition is to be found. 30 35

It would be therefore an academic exercise if I were to repeat them here in general terms and not by relating them to the issues raised in this recourse.

5 The purpose of public benefit for which the property of the applicant is acquired is among those enumerated in section 3 subsection 2 of the Law and in particular paragraph "f" thereof, namely the "promotion or development of agriculture or industry or commerce or tourism".

10 The purpose as described in the Notice of Acquisition and reiterated in the Order of Acquisition is a specific one and in the circumstances of the case in no way can be said that it is, as claimed by applicants, a mere reproduction of the Law.

15 In so far as the grounds of Law turn on arguments regarding lack of proper reasoning, no due inquiry, and on misconception, there is no difficulty in dismissing them as unfounded. A glance at the factual aspect of the case which has earlier in this judgment been set out, gives a conclusive answer. Every aspect of the case was duly inquired into in the appropriate sequence and the subject decision reached contains due reasoning in
20 its body, such reasoning being supplemented in addition, from the material in the file to which reference was appropriately made.

As regards the procedure regarding the examination leading to the dismissal of the objection of the applicants and the allegation that there has been a violation of the rules of natural
25 justice, again very little need be said in holding that such arguments cannot in any way be successfully maintained. The procedure followed was the one prescribed by Law. The persons whose properties were affected by the Notice of Acquisition were invited to submit their objection. An inquiry was
30 in the first place carried out by the District Officer who submitted his finding to the respondent Minister of Commerce and Industry. The latter in his turn, after obtaining the advice of the Attorney-General on the legal aspect of the issues raised, made a submission to the appropriate organ, the Council of
35 Ministers, which examined the matter and decided upon it.

Moreover and in so far as the violation of the rules of natural justice were concerned, the argument advanced that the applicants were denied the opportunity of presenting in more details

their grounds of objection and their submissions on the matters raised thereby, the applicants, if such a thing happened, can only blame themselves as no limitation was placed on them whatsoever as regards their right to submit an elaborate and all embracing objection. By this I do not mean that I accept the stand that they did not present their case properly. Nor do I accept that the respondents acted in an one-sided manner in any way on account of the submission made by the respondent Minister of Commerce and Industry to the Council of Ministers. All available material emanating both from the applicants and the appropriate services of the Republic was placed before the Council of Ministers in addition to the material that had been already before it at the time of deciding to issue the Notice of Acquisition.

As regards the argument advanced on behalf of the applicants that the per donum value of the properties to be acquired and the fact that the one ultimately preferred by the respondent Council of Ministers was by £500.- per donum cheaper than the one proposed by the Town Planning Department, should not be taken into consideration as offending the very notion of the compulsory acquisition which is made for the public benefit and not for the State not to be poorer. I need only refer to the Decision of the Greek Council of State, No. 1023/1949 cited with approval in the *HadjiIoannou* case (supra). In that Decision one of the principles stated is that "the administration has to chose for compulsory acquisition out of suitable properties that one, the acquisition of which entails less onerous consequence, both from the point of view of the use being served by the property to be acquired and from the point of view of the interests of the fiscus".

It is clear that the fiscus and its interests are, contrary to what has been argued by counsel on behalf of the applicants, a material consideration that has to be duly taken into account, by the acquiring authority in choosing the appropriate property to be acquired.

With regard to the question whether the acquisition of these properties was absolutely necessary for the achievement of the relevant public utility purpose the material before the respondents supplies the answer that it was indeed indispensably necessary. Reasons were advanced for it and also as to why

the area in which the applicants' property formed only small part, was preferred to the one proposed by the Town Planning Department.

- 5 In addition sound reasons were given as to why the larger area was preferred and no use was made of the Industrial Zone to the south, such reason being in effect the demand for a larger area for industrial development in Limassol and the desirability to have available both an Industrial Zone and an extended Industrial Estate.
- 10 For all the above reasons the recourse is dismissed but in the circumstances there will be no order as to costs.

Recourse dismissed. No order as to costs.