1985 April 26

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

CYPRUS TANNERY LTD.,

Applicant,

v.

1. THE REPUBLIC OF CYPRUS, THROUGH THE MINISTER OF COMMUNICATIONS AND WORKS
2. THE CYPRUS PORTS AUTHORITY,

Respondents.

(Case No. 286/80).

Compulsory acquisition—Claim for offering back property compulsorily acquired—Under Article 23.5 of the Constitution and section 15(1) of the Compulsory Acquisition of Property Law, 1962 (Law 15/62)—Can only be submitted when the compulsory acquisition has been completed through the payment of compensation in respect thereof, under Article 23.4(c) of the Constitution—Section 7(1) of Law 15/62 gives no right to the owner to demand revocation of an acquisition order and the return of his property on the ground that it is not required for the purpose of the acquisition or on the ground that the purpose for which it was acquired has not become attainable.

Practice—Recourse for anulment—Joinder of parties—Interested party—Compulsory acquisition of land for the purpose of construction of port—Cyprus Ports Authority properly joined as a party to a recourse, concerning the acquisition—Section 16(1) of the Ports Authority of Cyprus Law, 1973 (Law 38/73).

By means of an acquisition order made in 1969 respondent 1 acquired compulsorily a piece of land at Larnaca belonging to the applicant, for the purpose of construc-

tion of a port at Larnaca. The applicant requested by virtue of Article 23.5 of the Constitution and section 15(1) of the Compulsory Acquisition of Property Law, 1962 (Law 15/62) that its property be excluded from the said acquisition on the ground that more than 10 years have elapsed since the acquisition and the purpose for which the property had been acquisitioned had not been attained in so far as this property was concerned.

The respondents rejected the request on the ground that "the said property has not yet been transferred to the Acquiring Authority due to the fact the question of assessment of compensation payable to your client is still pending. Notwithstanding this, the said property has been used, is still being used and will continue to be used for the purpose for which the acquisition order has been made". Hence this recourse.

Held, that it is clear from the provisions of both Article 23.5 of the Constitution and section 15(1) of Law 15/62 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; that since the compensation payable has not yet been assessed and the acquisition has not yet been completed by the payment of compensation applicant cannot base a claim on paragraph 5 of Article 23 of the Constitution.

Held, further (1) that no right is given by section 7(1) of Law 15/62 to the owner of the land subject of acquisition to demand the revocation of an acquisition order and the return of his property on the ground that it is not required for the purpose of the acquisition or on the ground that the purpose for which it was acquired has not become attainable; that the remedy of the owner to object to a notice of acquisition is to be found in section 4 of the Law, whereby he is entiled to object to the notice of acquisition and if his objection is rejected, then he may challenge such decision by a recourse; that in cases where the purpose of the acquisition has not become attainable

within a period of three years from the completion of the acquisition by payment of compensation the owner derives his remedy from Article 23.5 of the Constitution and the provisions of section 15(1) of Law 15/62, which was enacted for the purpose of regulating the procedure to be followed in cases where the object of acquisition is not attained within the period of three years; that to interpret section 7(1) as giving an additional remedy to the owner to claim the revocation of an acquisition order would amount to a defeat of the object of Article 23.5.

(2) That respondent 2 is an interested party directly concerned with the outcome of this case as the Larnaca port is one of the ports transferred to it by an order made under the provisions of section 16(1) of the Ports Authority of Cyprus Law, 1973 (Law 38/73); that it has been the practice of this Court that all interested parties should be notified of any recourse touching their interest and such parties are at liberty to participate, oppose and challenge such proceedings in the same way as parties to the action; and that, therefore, respondents 2 have properly been joined as a party in this recourse.

Application dismissed.

Cases referred to:

Cyprus Tannery Ltd. v. *Republic* (1977) 3 C.L.R. 75;

Cyprus Tannery v. *Republic* (1980) 3 C.L.R. 405 at pp. 415, 416, 417;

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

Michaelides and Another v. *Republic* (1984) 3 C.L.R. 1596;

Chrysochou Bros v. *CY.T.A* (1966) 3 C.L.R. 482;

Hjiloannou v. *Republic* (1983) 3 C.L.R. 536.

Recourse.

Recourse against the refusal of the respondents to re-

lease or revoke a compulsory acquisition order to the extent it relates to applicants property.

G. Cacoyiannis, for the applicant.

S. Georghiades, Senior Counsel of the Republic, for respondent 1.

N. Papaefstathiou for *T. Papadopoullos,* for respondent 2.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The applicant Company by the present recourse, challenges the refusal of the respondent Minister of Communications and Works to release or to revoke the respective compulsory acquisition order to the extent that it relates to the property of the applicant in Larnaca (Plot 374 under Registration No. D. 367, dated 14th February, 1961) described as Tannery, on the ground that more than 10 years have elapsed since the acquisition and the purpose for which it was acquired has been attained more than five years prior to the filing of the recourse.

The aforesaid property of the applicant was the subject of an acquisition order made in 1969, together with other properties which, according to the Notice of Acquisition were required for the construction of a port at Larnaca.

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

The applicant Company objected to the said acquisition by letter dated the 29th April, 1968 (exhibit 1 to the Application) on the grounds, as stated therein, that:

> "because our plot is not a building site or a house but an industry and we note in the area acquisitioned that you have left out other industrial plots which are next to us".

The District Officer through whom the said objection was forwarded, observed that for more than the two preceding years the said industry had not been functioning

and there did not exist a reason for the annulment of the notice of acquisition.

The Council of Ministers by decision No. 8537 of the 20th February, 1969, dismissed the objection of the applicant Company and decided to proceed with the acquisition, whereupon an order of acquisition under section 6 of Law 15/62 dated the 20th February, 1969, was published in Supplement No. 3 to the official Gazette of the 21st February, 1969, under Notification No. 122.

On 28th February, 1969, an order for requisition of the said property was made and published in the Third Supplement to the official Gazette of the Republic under Notification No. 138. The applicant did not make a recourse either against the order of acquisition or against the order of requisition.

The requisition expired five years thereafter but the property remained in the possession of the respondents under a tenancy agreement at the agreed rent of £2,196.- per annum.

After a series of letters exchanged between the parties on a request of the applicant to be informed as to whether the subject property had been excluded from the area required for the construction of the new Larnaca port or not a final reply was sent by the Ministry of Communications and Works reiterating a previous statement that such property had not been so excluded.

Further correspondence was exchanged between the parties concerning the subject matter of this acquisition by which a claim for the exclusion of such property from the acquisition was raised, to which I need not refer in detail, and which finally culminated with the filing of a recourse by the applicant against the refusal of respondent 1 to revoke the order for compulsory acquisition relating to the property, on the ground that three years had elapsed since the acquisition and the purpose for which the property had been acquisitioned had not been attained or had been abandoned in so far as this property is 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 (Recourse No. 387/74). The said recourse was tried by a Judge of this Court who by his judgment dismissed same. (See *Cyprus Tannery Ltd. v. The Republic* (1977) 3 C.L.R. p. 75). I shall deal briefly with the grounds of such dismissal material to the present recourse, later in my judgment.

The applicant then filed an appeal before the Full Bench against the above judgment, which was dismissed on the ground that the filing of the recourse was premature and as "an inevitable corollary of that the determination of the matter on its merits by the learned trial Judge, is to be treated as premature, too." (See *Cyprus Tannery* v. *Republic* (1980) 3 C.L.R. 405). Amongst the reasons given for the aforesaid opinion of the Supreme Court were 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. 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."

I shall revert to this judgment when considering the arguments advanced in the present recourse.

By a letter dated 20th June, 1979, attached to the application as exhibit 16, addresssed to respondent No. 1 by the applicant's advocate, respondent No. 1 was requested to reconsider the applicant's claim to have its property excluded from the said acquisition and to give a clear and final answer to the said claim. The claim was also made in the said letter for the payment of arrears of rent due to the applicant. As no reply had been received to this letter, applicant's advocates addressed another letter dated 27th September, 1979 to respondent No. 1 attached to the ap-

plication as exhibit 17 asking for a speedy reply. Respondent No. 1 by its letter dated 26th October, 1979, attached to the application as exhibit 18, replied that the matter was under consideration and a new communication would be made.

Finally on the 23rd July, 1980 the following letter attached to the application as exhibit 20, was sent to the applicant by the Director-General of the Ministry of Communications and Works:

> "I have been instructed to refer again to your letter dated 27th September, 1979 in connection with the above subject and to inform you that plot 334 where the Tannery was accommodated has been acquisitioned for the port development of Larnaca District.
>
> 2. As you know, the said property has not yet been transferred to the Acquiring Authority due to the fact that the question of assessment of compensation payable to your client is still pending. Notwithstanding this, the said property has been used, is still being used and will continue to be used for the purpose for which the acquisition order has been made.
>
> 3. Therefore, the claim of your client Company cannot be satisfied."

As a result, applicant filed the present recourse. The following reliefs are claimed in this recourse:

1. Declaration that the refusal by letter dated 23rd July 1980 of the Minister of Communications and Works to release from the acquisition or to revoke the respective order of the acquisition of the property belonging to the applicant situated at Larnaca known and registered as Tannery plot number 334 under registration number D 367 dated 14.2.1961 and offer or return such property to the applicant is null and void and of no effect on the ground that more than 10 years have elapsed since the acquisition and the purpose for which it was acquired has been attained more than 5 years ago, viz the Larnaca Port was completed and in operation, and such property was found to be in excess of the actual requirements of the purpose of the acquisition such refusal being contrary to paragraph 5 of ar-

ticle 23 of the Constitution and sections 2, 4, 7 and 14 of the Compulsory Acquisition of Property Law 15/62 and or is made in excess or in abuse of his powers.

2. Declaration that the Compulsory acquisition of the above property ceased to have any effect or purpose on the ground that the said property was found to be in excess of the requirements of the purpose for which the acquisition was made and which has been attained and the Larnaca Port was completed and in operation more than 5 years ago the property acquired was neither needed nor used by the respondent number 1 for the purpose of which it was acquired viz. the construction of the Larnaca Port. Therefore the said refusal is null and void and of no effect being contrary to the Constitution Article 23, paragraph 5, of the Compulsory Acquisition Law 15/62 and/or is made in excess or in abuse of his powers.

3. Declaration that the Agreement made between the respondent number 1 and respondent number 2 under which respondent number 1 agreed to cede or transfer to the respondent number 2 the property of the applicant acquired, as aforesaid, is null and void and of no effect for the reason that it is illegal and unauthorised and conflicts with the relevant provisions of the Constitution especially article 23 paragraph 5 and Law 15/62 section 14.

4. Declaration that the acquisition aforesaid ceased to have any legal effect for the reason that a tenancy in respect of the property acquired was agreed upon by the applicant and respondent number 1 at an agreed rent of £2,196 per annum and such tenancy was substituted for the acquisition and thus the respondent number 1 has been possessing the property acquired as a tenant and not by virtue of the acquisition.

To complete the factual picture, I need add that the compensation in respect of the compulsory acquisition of the subject matter property has not yet been determined as the amount offered by the respondents was not accepted by the applicant and a Reference in this respect is pending before the District Court of Larnaca.

The application was opposed by both respondents. Coun-

sel for respondent (1) in support of his opposition, advanced the following grounds of law:

1. There is no act or omission by Respondent 1 within the ambit of Article 146 of the Constitution and therefore the recourse is lacking of subject matter.

2. The letter of the 23rd July, 1980 is confirmatory of a previous letter dated 15th February, 1978 and therefore the contents of such letter do not amount to an executory act capable of being challenged by a recourse.

3. The Court has no jurisdiction under Article 146 of the Constitution to grant the reliefs under paragraphs 2, 3 and 4 of the application.

4. The sub judice acts and/or decisions and/or omissions were taken lawfully and in the light of all relevant facts.

Counsel for respondent 2 adopted the grounds of Law set out in the opposition of counsel for respondent 1.

Before embarking on the arguments advanced by counsel on both sides, in support of their contentions, I wish to point out that nothing has been advanced in the written address of counsel for applicant in support of the reliefs prayed under paragraphs 3 and 4 of the application and in reply to the objection raised by counsel for respondents that the Court has no jurisdiction to grant such reliefs. Bearing in mind the whole tenor of the argument of counsel for applicant, I have come to the conclusion that the prayer in respect of reliefs 3 and 4 has been abandoned.

I shall also deal briefly with an objection raised by counsel for the respondents in their joint written address that respondent 2 should not have been joined as a party in the proceedings as under the provisions of section 37 of Law 38/73 proceedings in this respect should have been instituted only against respondent 1.

The Cyprus Port Authority (respondent 2) was established as a public corporation for the purpose of running and managing the ports. Its establishment was made in compliance with an obligation of the Republic under an agreement with the International Bank for Reconstruction and Development, published in the official Gazette of 19.9.1969

under Notification No. 748. Under section 16(1) of the Ports Authority of Cyprus Law 1973 (Law 38/1973), the relevant provision of which came into force on 31st July, 1976, an order was made for the transfer of all ports referred to therein (including the Larnaca Port) and of all obligations and liabilities of the Republic in that respect to the Cyprus Ports Authority, with effects as from 1st August, 1976. Section 37 of Law 38/73 provides that:

> "Any proceedings or cause of action pending or existing by or against the Republic in respect of the assets and liabilities transferred to the Organisation by virtue of this Law before the date of their transfer shall be continued or enforced by or against the Republic as if this Law had not been enacted."

Notwithstanding the fact that counsel for respondent 2 has adopted the opposition of counsel for respondent 1 in which no ground of Law is raised by respondent 2 for misjoinder in these proceedings, it is clear from the provisions of section 16(1) of Law 38/1973 that respondent 2 is an interested party directly concerned with the outcome of this case as the Larnaca port is one of the ports transferred to it by an order made under the provisions of such Law. It has been the practice of this Court that all interested parties should be notified of any recourse touching their interest and such parties are at liberty to participate, oppose and challenge such proceedings in the same way as parties to the action. The sub judice decision must have been taken by respondent 1 after consultation with respondent 2 which is the body having a direct interest in the outcome of the case and in the name of which the ownership will vest after the completion of the acquisition by payment of the compensation which will be assessed by the Court. Respondent 1 was since the 31st July, 1976, acting all along for and on behalf of respondent 2. Applicant by this recourse does not challenge the validity of the acquisition order which was made at a time when respondent 1 had exclusive ownership and control of the ports but is challenging the refusal to release the property of the applicant from the acquisition in respect of which a decision was taken after 1976 and at a time when ownership and control of the ports had vested in respondent 2. Therefore,

I see no reason why the joining of respondent 2 in the circumstances of the present case as a party in the recourse is improper and that it should be struck out as a party.

Counsel for applicant in his written address maintained that the sub judice decision is null and void and of no effect for the following reasons:

(a) It was not duly or sufficiently reasoned and particularly no grounds were given why it should be deemed to be used for the purposes of the acquisition even though it lies outside the port of Larnaca and was not used or required for the construction of the port of Larnaca.

(b) The said decision is contrary to the provisions of s. 7 of the Compulsory Acquisition of Property Law, 1962 in that it ought to have been excluded from the Order of Acquisition for the reasons already stated.

(c) It was contrary to the provisions of Article 23.5 of the Constitution in that the purpose for which it has been acquired has not been atttained and its use for another purpose cannot render valid an acquisition which was made for a different purpose.

(d) The said decision was in excess and/or in abuse of the respondents' powers.

Counsel for applicant contended that the subject property has not been required and will not be required for the purpose for which it has been compulsorily acquired, namely for the construction of the Larnaca port and, therefore, it should be excluded from the relevant order for acquisition. He also added that the Larnaca port had been completed and been in operation since 1975, and as such a long time has elapsed from the date of the order of acquisition and the completion of the port without being necessary to use the property of the applicant for the construction of the said port, the acquisition order in respect of such property should be revoked and the property returned to the applicant. Bearing in mind the fact that the property has never been used for such purpose, it is not anticipated that it will be used and in fact it has been used and is still used

for another purpose extraneous to the object of acquisition. Finaly, counsel submitted that such property is 765 meters from the entrance to the Larnaca port, whereas another property, the oil factory, which had been included in the Notice of Acquisition, was later exempted by an order of revocation.

Counsel for respondents by their joint address submitted that once the compensation for the acquisition of the said property has not yet been paid, and the property has not vested in the respondents, the claim of the applicants that the property has not been put into the use for which it was acquired, is premature.

They further contended that the decision communicated to the applicants by the letter of the 23rd July, 1980, is confirmatory both of the order of acquisition and of the decision indirectly communicated to the applicants by letter dated 15th February, 1978. Counsel further submitted that inrrespective of the fact that the construction of the port was completed on or about the end of 1973, the works material in the operation of such port have not yet been completed and in 1979 substantial extension works exceeding three and a half million pounds began, which were completed in 1982. Regarding the need for the use of such property, counsel argued that "port development" and "port" should be taken to include the adjacent land which will be necessary for the construction thereon of warehouses, offices and other necessary structures for the operation of the port. The fact, counsel added, that the needs of land for the construction of the port were extensive, is evidenced by the fact that respondent 2 was obliged to acquire additional land by subsequent compulsory acquisitions published in Supplement No. 3 part II of the official Gazette under Notification No. 141 of 15.2.1978 and the order of acquisition under Notification No. 166 of 16.2.1979.

As to the submission of counsel for applicant that the subject matter land is situated at a long distance from the main entrance of the port, counsel contended that this is irrelevant as the subject property is adjacent with the rest of the area used for such purpose and the position of the entrance of the port is not the criterion. On the basis of

a plan of the respective area of the port, counsel added, the land in question is very close to the basin area and other installations of the port and forms part of the operational and back-up area of the port. Counsel further submitted that the fact that the subject matter land is required for the purpose of the port, is clear from the decision taken to dismiss applicant's objection to the acquisition which was made when the notice of acquisition was published and which decision has not been challenged by the applicant.

Counsel concluded that the applicant does not have a legal right to claim revocation nor is the authority in any way required or bound to act under section 7 of Law 15/62 to revoke the acquisition order and he contended that the refusal complained of is not an executory act or omission within the ambit of Article 146 of the Constitution.

I shall deal first with the contention of counsel for respondents that the letter of the 23rd July, 1980 does not contain a decision of an executory nature but is merely confirmatory of a previous decision communicated indirectly to the applicant by letter dated 15th February, 1978. As to the circumstances pertaining to the letter of the 15th February, 1978 and its effect, useful assistance may be derived from the decision of the Full Bench in *Cyprus Tannery* v. *The Republic* (supra) where at pp. 415 and 416, we read:

> "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 acquisi-

tion 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."

Though I may have some reservations as to whether, in the circumstances, the applicant had not impliedly acquired a full and sufficient knowledge of the final decision of respondent 1, I am bound by the judgment of the Full Bench in the above case which, in this respect, concluded as follows at p. 417:

"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."

The above pronouncement of the Full Bench answers the preliminary objection of counsel for respondents. Bound by the above opinion I find that the letter of respondent 1 of the 15th February, 1978 does not amount to a direct and final reply to applicant's demand, communicated to the applicant, that its property should be excluded from the operation of the compulsory acquisition order and that the reply to such demand is embodied in the letter of the 23rd July, 1980. Therefore, the contention of counsel for respondents that the letter of the 23rd July, 1980 is merely confirmatory of a previous decision com-

municated to the applicant by letter dated 15th February, 1978 cannot be sustained.

I come next to consider whether a valid claim can be made for the return of the subject property under Article 23.5 of the Constitution and section 15(1) of the Compulsory Acquisition of Property Law, 1962 (Law 15/62) which has been enacted as a result of Article 23.5 of the Constitution.

Paragraph 5 of Article 23 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."

The answer to this question may also be found in the judgment of the Full Bench in the previous case between the parties *(Cyprus Tannery* v. *The Republic* (1980) 3 C.L.R. 405 at p. 413 where it was held that:

> "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."

The situation has not changed since the above judgment. The compensation payable has not yet been assessed and

the acquisition has not yet been completed by the payment of compensation. Applicant, therefore, cannot base a claim on paragraph 5 of Article 23 of the Constitution.

Counsel for applicant has contended that the subject property should be excluded from the ambit of the relevant acquisition order under section 7 of Law 15/62 as same has not been required and will not be required for the purpose for which it has been compulsorily acquired and that in fact it is used for another purpose extraneous to the object of acquisition.

It is evident that the applicant has advanced this claim relying on the opinion expressed in the judgment of the Full Bench in the previous case between the parties at p. 414 ((1980) 3 C.L.R.) that "the demand of appellant that his property should be excluded from the ambit of the relevant compulsory acquisition order could only have been granted in the exercise of the powers under section 7 of Law 15/62." The Full Bench however in its judgment went further and considered the nature of the exercise of such powers and said the following at page 415:

> "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."

Section 7 of Law 15/62 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 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."

It is clear that section 7(1) was introduced in the relative legislation to empower an acquiring authority, before the acquisition is completed by the payment of compensation, to revoke such acquisition for any reason that in the opinion of the acquiring authority and at its discretion such acquisition should not be pursued. The power of an acquiring authority under section 7(1) and the administrative principles underlying the exercise of such power have been judicially considered by the Full Bench in the case of *Michaelides and Another* v. *The Republic* (1984) 3 C.L.R. 1596.

Sub-section (2) of section 7 regulates the position where

a notice of acquisition has been published but no order for acquisition is made within 12 months thus limiting the time of the validity of a notice of acquisition to a definite period. Finally sub-section (3) provides for the payment of any loss and expenses suffered by the owner as a result of the abandonment of a notice of order of acquisition.

No right is given by section 7(1) to the owner of the land subject of acquisition to demand the revocation of an acquisition order and the return of his property on the ground that it is not required for the purpose of the acquisition or on the ground that the purpose for which it was acquired has not become attainable. The remedy of the owner to object to a notice of acquisition is to be found in section 4 of Law, whereby he is entitled to object to the notice of acquisition and if his objection is rejected, then he may challenge such decision by a recourse. In cases where the purpose of the acquisition has not become attainable within a period of three years from the completion of the acquisition by payment of compensation the owner derives his remedy from Article 23.5 of the Constitution and the provisions of section 15(1) of Law 15/62 which was enacted for the purpose of regulating the procedure to be followed in cases where the object of acquisition is not attained within the period of three years. To interpret section 7(1) as giving an additional remedy to the owner to claim the revocation of an acquisition order would amount to a defeat of the object of Article 23.5.

Section 7(1), as already mentioned, empowers an acquiring authority to revoke an acquisition order. The exercise of such power is a matter of discretion and if such discretion in revoking an order of acquisition is wrongly exercised, then a recouse may lie for wrong exercise of discretion. (See *Michaelides and Another* v. *The Republic* (supra)).

Notwithstanding the above, I shall proceed to consider the case on the assumption that the applicant could have a lawful right to demand that the acquisition of his property be revoked under section 7 of Law 15/62 on the ground that it is not used for the purpose for which it has been acquisitioned. By their letter dated 23rd July, 1980, in reply to applicant's demand, respondents informed the ap-

plicant that the subject property has been used, is still being used and will continue to be used for the purpose for which the Acquisition order was made. Counsel for applicant submitted that the particular purpose for which the acquisition was made, has to be narrowly confined to the description given in the Notice of Acquisition, namely, "the construction of the port of Larnaca." Counsel added that once the construction of the port has been completed, a number of years ago and the subject property has not been used or has not been required for such construction, the acquisition order should be revoked.

The same argument was advanced in the previous recourse between the same parties, before the first instance trial Judge *(Cyprus Tannery Ltd.* v. *The Republic* (1977) 3 C.L.R. 75) who at pp. 81, 82, expressed the following opinion with which I agree and which answers the argument of counsel for applicant in this respect.

> "Article 23.5 of the Constitution, was judicially considered and interpreted in the case of *Kaniklides and The Republic*, 2 R.S.C.C. p. 49 at p. 58, where it is stated as follows:
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> 'The Court is, therefore, of the opinion that the provisions of paragraph 5 of Article 23 take effect if within three years of the acquisition the purpose for which the land in question had been acquired has not become 'attainable'. Any other interpretation would lead to absurdity in that there are bound to be many purposes for which land has been acquired in the sense of paragraph 5 of Article 23, which, by their very nature, cannot be fulfilled within the said period of three years'.
>
> In the present case no such situation has arisen because the purpose for which the property in question together with other properties has been acquired, has been attained by the construction of the port of Larnaca, and the land in question is being used and is needed for the purpose for which it has been acquired. The fact that the acquired property has not been used for the actual construction of the port basin and its quays and wharfs, or that no buildings have been erect-

ed thereon, does not make the property unnecessary for the purposes for which it was acquired, namely, the port development of the district of Larnaca and the construction of a port. 'Port development' and 'port' should be taken to include not only the part covered with water in which a ship would be afloat but also the adjacent land which will be necessary for the construction thereon of warehouses, offices or is to be left as an open space for storage or parking or any other use incidental to the construction of a port and in general the port development of an area."

According to the plan of the Larnaca port, copy of which has been annexed to the written address of counsel for the respondents, the subject property is very close to the basin area and other installations of the port and forms part of the operational and back-up area of the port.

The determination of the issue whether a property is useful and necessary for the purpose of public utility is primarily within the competence of the acquiring authority. In Case 347/63 of the Greek Council of State it was held in this respect that «...πάντως ἡ ἐκτίμησις καθ' ἑκάστην συγκεκριμένην περίπτωσιν ἀναγκαστικῆς ἀπαλλοτριώσεως περὶ *τοῦ σκοπίμου καὶ τοῦ ἐνδεδειγμένου αὐτῆς ἀνήκει εἰς τὴν* διακριτικὴν ἐξουσίαν τῆς διοικήσεως.» Also in Cases 1903/74 and 1904/74 the Greek Council of State had this to say: «... δεδομένου ὅτι ἡ ἐπιλεγείσα πρὸς ἀπαλλοτρίωσιν ἔκτασις ὡς τελοῦσα ἐν ἐπαφῇ πρὸς τὴν ἰδιόκτητον ἔκτασιν τῆς ΔΕΗ, τυγχάνει κατὰ τὴν ἀνέλεγκτον τεχνικὴν κρίσιν τῆς Διοικήσεως, ἡ μόνη κατάλληλος διὰ τὴν ἐπέκτασιν τοῦ χώρου ὅστις προορίζεται διὰ τὴν κατασκευὴν ἔργων τῆς ΔΕΗ.»

("...in any way the determination in each particular case of the issue whether a compulsory acquisition is useful and necessary lies within the discretionary power of the Administration.

...given that the land chosen for acquisition, is adjoining the land possessed by the D.E.I. is in accordance with the uncontrolled technical judgment of the Administration the only suitable one for the ex-

tension of the space intended for the construction of the works of D.E.I.").

Assuming, as I said earlier, that section 7(1) of Law 15/62 was applicable, I have not been convinced that the respondents in refusing to annul the order of acquisition concerning applicant's property, have acted in violation of the Law or in excess of their discretion. The allegation of the applicant that the subject property has never been required or will not be required for the purpose for which the order of acquisition has been made, has not been substantiated. As to contention that the sub judice decision is contrary to the provisions of Article 23.5 of the Constitution, as I have already found, such provisions can only apply in cases where three years have elapsed from the day when the compulsory acquisition has been completed through the payment of compensation thereof and therefore, a claim based on Article 23.5 in the present case is premature.

If the applicant was of the opinion which could be substantiated by expert evidence, that the subject property was not required for the purpose for which it was acquisitioned, it could challenge the refusal of respondent 1 to accede to the objection submitted on 29th April, 1968 against the notice of acquisition, by filing a recourse, a course which he failed to adopt, even after the publication of the order of acquisition. (As to the principles of administrative Law applicable in such cases, (see *Chrysochou Bros* v. *CY.T.A.* (1966) 3 C.L.R. 482, *Hjiloannou* v. *The Republic* (1983) 3 C.L.R. 536).

As to the complaint of the applicant that the notice of acquisition in respect of the property of the Oil Refinery Factory which though situated nearer to the entrance of the Larnaca port than the subject property, which was also included in the same notice, was subsequently revoked upon an objection made to the notice of acquisition, which was accepted by the Council of Ministers, the answer may be found in the first instance judgment of A. Loizou, J. in the previous case between the parties *(Cyprus Tannery Ltd.* v. *The Republic* the following extract of which at pp. 82, 83, I adopt:

"With regard to the issue raised in relation to the Oil Refinery Factory, it may be stated that with the exception of a strip of land along its boundary, as indicated on the plan (exh 5), same was never the subject of an acquisition, and what was released, following the objection lodged by its owners, was part of this strip of land According to the evidence, there were valid reasons for its non acquisition, being an industry in operation, useful to the economy of the Island, and the costs of its acquisition would be tremendous In such circumstances, no claims for discrimination could validly stand, which, if at all, should have been raised within the prescribed period after the determination of the objections"

For all the above reasons this recourse fails and is hereby dismissed with £100 - costs in favour of each of respondents 1 and 2

Recourse dismissed
Order for costs as above