

1985 February 14

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

OLYMPIAS A. NICOLAIDOU,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE COUNCIL OF MINISTERS,

Respondent.

(Case No. 325/80).

Compulsory acquisition—Purpose of, not attained—Offering property to the person from whom it had been acquired—Article 23.5 of the Constitution and section 15(1)(a) of the Compulsory Acquisition of Property Law, 1962 (Law 15/1962)—Meaning of “attained” in the said Article 23.5 and section 15(1)(a)—Their provisions take effect if within three years of the acquisition the purpose for which the land had been acquired has not become “attainable”. 5

Words and Phrases—“Attained” in Article 23.5 of the Constitution and section 15(1)(a) of the Compulsory Acquisition of Property Law, 1962 (Law 15/62). 10

In 1971 the respondent, as the Acquiring Authority, compulsorily acquired a piece of land belonging to the applicant for the purpose of constructing the new bypass road of Limassol known as the “Syngrou Avenue”. 15
which is about 4 miles long. Though about one and a half mile length of the said avenue was constructed by October 1979, no road was constructed on the compulsorily acquired piece of land of the applicant up to that date. The respondent refused to offer the compulsorily acquired piece of land to the applicant, on the 20
ground that the purpose for which the acquisition was

ordered had not been attained within three years; and hence this recourse.

Counsel for the applicant submitted that since the period of three years from the acquisition of the property had elapsed and no road was constructed thereon, the acquiring authority was bound to return the said property to the applicant; and that the omission or refusal of the acquiring authority to do so offended Article 23.5* of the Constitution and section 15(1)(a)* of Law 15/62.

Held, that the provisions of paragraph 5 of Article 23 of the Constitution take effect if within three years of the acquisition the purpose for which the land in question had been acquired has not become "attainable"; that 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; that in the present case it cannot be said that the purpose for which the compulsory acquisition was ordered, i.e. the construction of the Syngrou Avenue of Limassol, has been abandoned or has not been attained in view of the fact that more than one third of the said Avenue has already been constructed; accordingly the recourse should fail. (*Kaniklides v. Republic*, 2 R.S.C.C. 49 followed).

Application dismissed.

Cases referred to:

Kaniklides v. Republic, 2 R.S.C.C. 49.

Recourse.

Recourse against the refusal and/or omission of the respondent to free from the acquisition or to revoke the relevant order of acquisition of applicant's property situated at Mesa Yitonia and to offer or return such property to

* Article 23.5 and section 15(1)(a) are quoted at pp. 91-93 post.

applicant in view of the lapse of more than three years from such acquisition.

N. Neocleous, for the applicant.

A Vassiliades, for the respondent.

Cur. adv. vult. 5

MALACHTOS J. read the following judgment. The applicant in this recourse claims, as stated therein, a declaration of the Court that the refusal or omission of the respondent to free from the acquisition or to revoke the relevant order of acquisition of the property of the applicant situated at Mesa Yitonia of Limassol, under Registration No. 6979 S/P LIV/50, Plot 335 and to offer or return such property to the applicant in view of the lapse of more than three years from such acquisition and in view of the fact that the purpose for which the acquisition was ordered, was not attained or such purpose was abandoned, is void and of no legal effect whatsoever and that the refusal or omission of the respondent to offer or return the compulsorily acquired property ought to have been performed. 10
15
20

The facts of the case, shortly put, are the following:

On the 19th September, 1970, the respondent, as the Acquiring Authority, published in the Official Gazette of the Republic a notice of acquisition under Not. 758, of part of the property of the applicant under Registration No. 6979 S/P LIV/50, Plot 335, for the purpose of constructing the new by-pass road of Limassol known as the "Syngrou Avenue". 25

On 18/1/71 the order of acquisition of the above property of the applicant was published in the Official Gazette of the Republic under Notification No. 82 for the above purpose. 30

On 24/5/73 the value of the said property was assessed by the proper Court at £6,561.298 mils and this amount, together with the relevant interest thereon at 7% per annum as from 5/2/71, was paid to the applicant and the 35

property was transferred into the name of the respondent authority.

5 The relevant plans for the construction of the Syngrou Avenue of Limassol, which is about four miles long, were prepared in 1960 and since then when a plot of land which was divided into building sites and was affected by the said plans, the extent of land required for the construction of the said avenue, was ceded by the owner of the said land. Whenever small pieces of land were affected, as in 10 the case of the applicant, the extent of the land required for the said purpose was compulsorily acquired. As a result, of imposing the proper conditions on applications for division of land affected, about one and a half mile length of the said avenue had been constructed.

15 By letter dated 29/10/79 the applicant applied to the acquiring authority to offer the compulsorily acquired piece of land to her on payment of the price at which it had been acquired, on the ground that the purpose for which the acquisition was ordered had not been attained within 20 three years.

As a matter of fact, no road was constructed on the compulsorily acquired piece of land of the applicant up to that date.

25 On the 3rd October, 1980, the applicant filed the present recourse on the ground that the refusal and/or omission of the respondent authority to offer to her the compulsorily acquired piece of land, amounts to abuse of power as being contrary to the provisions of Article 30 23.5 of the Constitution and section 15(1)(a) of the Compulsory Acquisition of Property Law, 1962, (Law 15/62).

Article 23.5 of the Constitution reads as follows:

35 "23.5: 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." 5

Section 15(1)(a) of the Compulsory Acquisition of Property Law, 1962, reads as follows: 10

"15.-(1) Where any immovable property has been acquired after the date of the coming into operation of the Constitution and, within three years of the date on which such property has vested in the acquiring authority, the purpose for which it has been so acquired is not attained, or the attaining of such purpose is abandoned by the acquiring authority, or the whole or any part of such property is found by the acquiring authority to be in excess of its actual requirements, the following provisions, shall have effect, that is to say:- 15 20

(a) the acquiring authority shall, by a notice in writing, offer such property, at the price at which it has been acquired to the person from whom such property has been acquired or, if dead, to his personal representatives or heirs who shall, within three months of the giving of such notice, by a notice in writing addressed to the acquiring authority, signify acceptance or non-acceptance of the offer; and if no reply to the offer is given within the period aforesaid, such offer shall be deemed not to have been accepted: 25 30

Provided that where, during the period of the occupation of any immovable property for the purpose for which it has been acquired under the provisions of this Law, there has been any addition to, or deduction from, such property or any other alteration thereof, or where only a part of any immovable property acquired under the provisions of this Law is offered by the acquir- 35

ing authority under the provisions of this section, a reasonable price therefor shall be fixed by the acquiring authority and indicated in the notice hereinbefore mentioned; and the person
5 to whom such notice has been given may, in his notice signifying acceptance of the offer of the property, dispute the price therefor fixed and indicated as aforesaid, whereupon the price shall, in default of agreement, be determined by
10 the Court”.

Counsel for applicant in arguing his case before the Court submitted that since the period of three years from the acquisition of the property had elapsed and no road was constructed thereon, the acquiring authority was bound
15 to return the said property to the applicant. The omission or refusal of the acquiring authority to do so offends Article 23.5 of the Constitution and section 15(1)(a) of Law 15/62.

The only question that falls for consideration in this
20 recourse is the meaning of the word “attained” which appears both in Article 23.5 of the Constitution and section 15(1)(a) of Law 15/62.

This word was given judicial interpretation in the case
25 of *Kaniklides v. The Republic*, 2 R.S.C.C. 49. At page 58 of this report, the following is stated:

“The words corresponding to the word ‘attained, which appears in the second sentence of paragraph 5 of Article 23, in the original Greek text is «καταστή
30 επικράτος» and in the original Turkish text is ‘gercekleşmedigi (‘takdirde’). The Court is of the opinion that the respective Greek and Turkish expressions in the respective authentic original texts convey the same notion i.e. that of ‘attainability’: in any case the notion which is intended to be conveyed by the
35 English word ‘attained’ in the context in which it is used in the English text of paragraph 5 of Article 23 of the Constitution is also the notion of ‘attainability’, and the word ‘attained’ should be read as meaning ‘has become attainable’.

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." 5 10

In the present case it cannot be said that the purpose for which the compulsory acquisition was ordered, i.e. the construction of the Syngrou Avenue of Limassol, has been abandoned or has not been attained in view of the fact that more than one third of the said Avenue has already been constructed. 15

For this reason this recourse fails and is dismissed with no order as to costs.

*Recourse dismissed.
No order as to costs*