

1986 February 15

[LORIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

GEORGHIOS LORDOS AND SONS LTD AND OTHERS,

Applicants,

v.

THE MINISTER OF COMMUNICATIONS AND WORKS,

Respondent.

(Cases Nos. 119/82 and 131/82).

- 5 *Compulsory Acquisition—Constitution, Article 23.5 and The
Compulsory Acquisition Law, s. 15(1)—Allegation that
purpose of acquisition not attained—Meaning of phrase
“if not attained” in Article 23.5—Time when the three year
period referred to in both the above provisions begins to
run—Both provisions only applicable to cases when the
acquisition had been completed by payment of compensa-
tion under Article 23.4(c) of the Constitution and s. 13 of
Law 15/62—As the evidence in this case showed that the
10 properties which had been compulsorily acquired were used
within the 3 year period for the purpose they had been
acquired, the recourses challenging the sub judice decisions
whereby applicants’ claim for the return of the said pro-
perties to them were rejected, have to be dismissed.*
- 15 *The Cyprus Port Authority Law 38/73 as amended—The Port
Authority is an agency of the state in consimili casu with
servants of the State—It is not an Authority altogether
different from the State—Transfer of properties which had
been compulsorily acquired by the Republic to the Ports
20 Authority (Order of Council of Ministers made pursuant
to s. 16(1) of Law 38/73 and published in the Official Ga-
zette of the Republic under Not. 168 on 31.7.76 whereby
the ports referred to in the order were transferred to the
Authority)—Such transfer does not indicate that purpose*

of acquisition has never been attained or made attainable by the Republic, i. e. the acquiring Authority.

Constitutional Law, Constitution, Articles 23.5 and 23.4(c).

Applicant in recourse 119/82 was the owner of plot 472 or 560 of sh/PI XLI/49.4.1 and XLI/49.4.3 at Larnaca and applicants in recourse 131/82 were the co-owners of plot 30 of Sh/PI XLI/49.4.1 at Larnaca. The said properties were compulsorily acquired by the Republic for purposes of "Port development of the District of Larnaca and the construction of a port at Larnaca". The relevant notice of acquisition was published on 18.4.68 and the relevant order on 21.2.69. The compensation to applicant in case 119/82 was paid on 5.7.75, whilst the compensation to applicants in case 131/82 was paid on 4.2.71.

By virtue of an order of the Council of Ministers made pursuant to s. 16(1) of Law 38/73 all ports referred to in the order (including Larnaca Port) and all obligations and liabilities of the Republic in connection therewith were transferred to the Cyprus Ports Authority as from 1.8.76.

By letter dated 26.1.81 applicant in recourse 119/82 and by letter dated 5.8.81 applicants in recourse 131/82 applied to the respondent Minister for the return of their said properties on the ground that they were never used for the purpose for which they were acquired. In support of their said applications applicants invoked the provisions of Article 23.5* of the Constitution and s.15(1)** of Law 15/62.

The said applications were turned down on the ground that the said properties "were used, are being used and will continue to be used for the purpose for which they have been acquired".

As a result applicants filed the above recourses. Applicants' counsel contended that the said properties were never used within the 3 year period after acquisition or even till the present day for the purpose they have been acquired and that the fact of transfer of the said properties

* Quoted at pp. 27-28 post.

** Quoted at pp. 28-30 post

to the Cyprus Ports Authority indicates that the purpose of the acquisition has never been attained or made attainable by the Acquiring Authority, i.e. the Republic of Cyprus.

5 *Held, dismissing both recourses:* (1) The provisions of Article 23.5 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" (10 *Kaniklides v. The Republic*, 2 R.S.C.C. 49 cited with approval). Section 15(1) of Law 15/62 contains similar provisions. Both Article 23.5 and s.15(1) apply where the acquisition had been completed through payment of compensation under Article 23.4(c) of the Constitution and section 13 of Law 15/62 (*Cyprus Tannery Ltd. v. The Republic* (1980) 3 C.L.R. 405 cited in this respect with 15 approval). Under both Article 23.5 and s.15(1) the three year period begins to run as from the payment of compensation.

20 (2) The evidence in this case showed that the properties in question were used for the purpose for which they were acquired as early as 1969 and that it cannot be said that they were not used for three years after the compensation was paid.

25 (3) The object of the Cyprus Ports Authority is defined in s. 4(2)* of Law 38/73. As it was held in *Ports Authority of Cyprus v. The Republic* (1983) 3 C.L.R. 385 upheld on appeal "the Cyprus Ports Authority was an agency of the State in consimili casu to servants of the state, carrying out Governmental duties and discharging State responsibilities". The Authority, therefore, is not an altogether 30 different authority from the original acquiring authority, i.e. the Republic, as maintained by counsel for the applicants.

Recourses dismissed.

No order as to costs.

Cases referred to:

35 *Kaniklides and The Republic*, 2 R.S.C.C. 49;

* Quoted at p. 33 post.

Ports Authority of Cyprus v. The Republic (1983) 3 C.L.R. 385 upheld on appeal (1986) 3 C.L.R. 117;

Cyprus Tannery Ltd. v. The Republic (1980) 3 C.L.R. 405.

Recourses.

Recourses against the decision of the respondent whereby applicants' claim for the return to them of their properties which had been compulsorily acquired but were not used for the purpose they had been acquired was turned down. 5

A. Poetis, for the applicants.

R. Gavrielides, Senior Counsel of the Republic, for the respondent. 10

P. Ioannides, for interested party Cyprus Ports Authority.

Cur. adv. vult.

LORIS J. read the following judgment. The above intitled recourses were heard together on the application of all concerned as they present common factual and legal issues. 15

The salient facts of both recourses are briefly as follows:

The applicant in recourse under No. 119/82, a company of limited liability, was at all material times the owner of land covered by plot 472 or 560 of sheet/plans XLI/49.4.1 and XLI/49.4.3 situated at Larnaca. 20

The applicants in recourse 131/82, were at all material times the co-owners of land covered by plot 30 of sheet/plan XLI/49.4.1 situated at Larnaca. 25

On 18.4.68, notice of intended acquisition, pursuant to the provisions of s. 4 of the Compulsory Acquisition of Property Law, 1962 (Law No. 15/62) was published in the Official Gazette of the Republic (vide Not. 266 of 18.4.68), whereby certain properties in the town of Larnaca, including the above described properties of applicants in both recourses, were to be compulsorily acquired by the Republic for purposes of "Port Development of the 30

District of Larnaca and the construction of Port at Larnaca”.

5 On 21.2.1969 the relevant Order of Acquisition made by the Council of Ministers, as envisaged by s. 6 of Law 15/62, in respect of the aforesaid properties of the applicants in both cases, was published in the Official Gazette of the Republic, under Not. 122.

10 The compensation in respect of the property of the applicant company in recourse 119/82 was paid on 5.7.75 (vide affidavit of Georghios Lordos—one of the Directors of the Company—dated 26.7.84, marked “Z”) whilst the compensation to the co-owners-applicants in recourse 131/82 was paid on 4.2.71 (vide affidavit of Nicos Fysentzides, one of the co-owners dated 20.7.84).

15 On payment of compensation the property vests to the acquiring authority as envisaged by s. 13 of Law 15/62; thus on payment of compensation to the applicants in both recourses, their respective properties were transferred to the Republic.

20 By virtue of Law 38/73 a body corporate to be known as the “Cyprus Ports Organisation” was established, later renamed “Cyprus Ports Authority” (vide Law 59/77).

25 By virtue of an Order of the Council of Ministers made pursuant to the provisions of s. 16(1) of the Cyprus Port Authority Law 1973, (as amended) and published in the Official Gazette of the Republic on 31.7.76 under Not 168, all ports referred to in the Order (including Larnaca Port) and all obligations and liabilities of the Republic in connection therewith were transferred to the Cyprus Port
30 Authority as from 1st August, 1976.

35 Applicants in both recourses alleging that their respective properties compulsorily acquired as aforesaid, were never used for the purpose they have been so acquired, and invoking the provisions of Article 23.5 of the Constitution and the provisions of s. 15 of Law 15/62, addressed separate letters dated 26.1.81 (by applicant in recourse 119/82) and 5.8.81 (by applicants in recourse 131/82) to the respondent Minister praying for the return to them of their

respective properties and signifying their willingness to refund the compensation collected upon the compulsory acquisition.

The respondent Minister by separate letters dated 27.1.82 (vide exh. "X" in recourse 119/82) communicated to applicants in both recourses his decision, whereby the claim of the applicants was turned down; the respondent in his aforesaid letter was informing the applicants that their properties which have been acquired for the Port Development of Larnaca "were used, are being used and will continue to be used for the purpose for which they have been acquired." 5 10

Applicants filed the above intitled recourses praying for the annulment of the aforesaid decision of the respondent Minister set out in his letter of 27.1.82.

In spite of the fact that the present recourses were filed on 25.2.82 and 8.3.82 respectively, and the oppositions by the respondent were filed on 7.6.82 and 4.7.82, it was not until the 17th May, 1983 when applicants in both recourses applied and eventually joined the Cyprus Ports Authority as interested party. 15 20

The Authority did not file an opposition of their own but instead adopted the opposition filed earlier by the respondent Minister.

In order to complete the picture the following may be added: the applicants, the respondent Minister as well as the interested party filed written addresses pursuant to relevant directions of this Court, an affidavit was filed in recourse 119/82 by one of the Directors of the applicant company and another affidavit was filed by applicant No. 1 in case No. 131/82; finally, at later stage, Mr. Georghios Lordos, one of the Directors of the applicant company, in recourse 119/82, gave evidence viva voce before me as A.W. 1 and the interested party called a single witness namely Marios Meletiou (R. W. 1), a Senior Civil Engineer in charge of the branch of Civil Mechanical Architecture of Cyprus Port Authority, who gave evidence and produced an explanatory map of Larnaca port and the surrounding area which is exh. 7 before me; the evidence 25 30 35

of this witness was adopted by the respondent who called no other evidence.

At the end counsel for applicants, respondent and interested party summed up their respective cases briefly viva
5 voce.

Relying mainly on Article 23.5 of our Constitution, learned counsel for applicants in both cases, argued forcefully that the respective properties of their clients should be offered back to them by the Acquiring Authority at the
10 price they have been acquired as:

(a) The properties in question were never used within the period of 3 years after the acquisition, or even till the present day, for the purpose they have been acquired by the Acquiring Authority i.e. the Republic of Cyprus;

15 (b) The fact that the properties in question have already been transferred to the Cyprus Ports Authority indicates that the purpose of the acquisition has never been attained or made attainable by the Acquiring Authority i.e. the Republic of Cyprus; it was maintained in this connection that
20 if the purpose was attained or made attainable by the Cyprus Port Authority, that was immaterial as the Cyprus Port Authority is an altogether different Authority from the Acquiring Authority.

I shall now proceed to examine the complaints of both
25 applicants in the light of the material placed before me, the provisions of the Constitution and the relevant legislation, judicial pronouncements to which I have been referred by counsel, as well as those I was able to trace myself, bearing in mind at all times the submissions of learned counsel for
30 applicants in both cases as well as the submissions of learned counsel appearing for the respondent Minister and the interested party.

Article 23.5 of our Constitution reads as follows:

35 "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.”

The above referred paragraph 5 of Article 23 of the Constitution received judicial interpretation as early as 1961 by the then Supreme Constitutional Court in the case of *Kaniklides and The Republic*, 2 R.S.C.C. 49 where the following are stated at page 58:

“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.”

Provisions similar to those contained in paragraph 5 of Article 23 of the Constitution were embodied in the Compulsory Acquisition of Property Law 1962 (Law No. 15/62); section 15(1) of the aforesaid Law reads as follows:-

“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 -

5 (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 10 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;

15 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 20 this Law is offered by the acquiring 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 to whom such notice has been given may, in his notice signifying acceptance of the offer 25 of the property, dispute the price therefor fixed and indicated as aforesaid, whereupon the price shall, in default of agreement, be determined by 30 the Court;

(b) where the person to whom a notice under paragraph (a) has been given has signified acceptance of the offer referred to therein as aforesaid, such 35 person shall, within a further period of three months of such signification of acceptance or, in the circumstances envisaged in the proviso to paragraph (a), within a period of three months of the date on which the price at which the property shall be returned to him is agreed between him and the ac- 40

quiring authority or determined by the Court. as
 the case may be, pay to the acquiring authority
 the price due for the return of the property afore-
 said; and the acquiring authority shall, thereupon,
 promptly cause ownership of the property to be 5
 transferred to him."

Article 23.5 of the Constitution as well as s. 15(1) of
 Law 15/62 were judicially considered and interpreted by
 the Full Bench of this Court in the case of *Cyprus Tannery*
Ltd. v. The Republic, (1980) 3 C.L.R. 405, where at page 10
 413 the following were laid down:

"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 15
 of compensation in respect thereof, under Article
 23.4 (c) of the Constitution and section 13 of Law
 15/62....".

Reverting now to the facts of the present recourses; in
 the light of the last authority cited above, the three year 20
 period envisaged by Article 23.5 of the Constitution and
 the relevant provisions of s. 15(1) of Law 15/62, should
 commence running (a) on 4.2.71 (Recourse No. 131/82);
 (b) on 5.7.75 (Recourse No. 119/82), i.e. on the dates on
 which the compensation was paid and the respective prop- 25
 erties vested in the Republic as the acquiring authority.

Learned counsel for applicant submitted that the proper-
 ties in both cases were never used by the acquiring au-
 thority for the purpose they were acquired either within the
 period of three years after the acquisition or even till the 30
 present day.

The respondent in his letters dated 27.1.82 addressed
 to applicants in both recourses maintains that their afore-
 said properties which were acquired for the purpose of
 Port Development of the District of Larnaca and the Con- 35
 struction of Port at Larnaca, "were used, are being used
 and will continue to be used for the purpose for which
 they have been acquired."

Mr. Marios Meletiou, a Senior Civil Engineer in charge of the branch of Civil Mechanical Architecture of Cyprus Port Authority gave evidence before me and produced a map of Larnaca Port and the surrounding area (ex. 7).

5 This witness stated inter alia:

1. That Larnaca Port was constructed in two stages: The first stage commenced in 1969 and was completed in 1973. The second stage commenced in 1979 and was completed in 1982; he added that during the time between the two
10 stages "works of minor significance" were also carried out.

2. The properties of applicants in both recourses appear in ex. 7; the property of the applicants in recourse 131/82 is coloured red and indicated by No. 30 which is the respective plot of sheet/plan XLI/49.4.1. The property of
15 the applicant company in recourse 119/82 is coloured blue with additional blue lines on it and bears No. 560 which is the reference to plot No. 560 of sheet/plans XLI/49.4.1. and XLI/49.4.3. (In this connection it may be added here that whilst in the notice of acquisition the property of the
20 applicant company was referred to as plot 472 or 560 at some later stage according to the evidence of A. W. 1 owing to some revision of D.L.O. plans it is referred to as plot 560 only.)

3. The witness explained that every port consists of 3
25 parts, notably the bay sea, the quays and the back up area. The properties subject-matter of the present recourses form part of the back up area of the port: their use is mainly for stacking merchandise and the transportation of goods generally over these spaces after their removal from the
30 quays.

4. The witness went on to say that both aforesaid properties were being used even during the first stage of the construction of the port (1969 - 1973), for the parking of
35 vehicles working in the port and the storing in this open space of building and other material necessary for the construction of the bay sea and the quays.

It is apparent from the evidence of this witness that the acquired properties although not used for the actual con-

struction of the port basin or the quays were used even at the first stage of the construction of the port (1969-1973) and they are being used as a "back up area" of the Larnaca Port and they are absolutely necessary for the purpose they have been acquired notably "the port development of the District of Larnaca and the construction of the Port of Larnaca."

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As stated further by the witness, when plans are made for the construction of a port the future needs thereof are being considered; and these properties of the applicants are and will always be absolutely needed for use incidental to the running of the Port; and it is immaterial whether buildings were not built on them or whether this area has been asphalted or not.

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In the light of the above the first leg of the submission of learned counsel for the applicants cannot be sustained. It is abundantly clear that these properties were used by the acquiring authority even as early as 1969, when the first stage of the construction of the Port started and it cannot be said anyway that they were not used for three years after their vesting to the acquiring authority in 1971 and 1975 respectively, when the compensation was paid.

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I shall now proceed to examine the second leg of the submission of learned counsel for applicants; as I comprehend this submission it suggests:

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(i) that the purpose of acquisition has never been attained or made attainable by the acquiring authority i.e. The Republic of Cyprus;

(ii) if the purpose of acquisition was attained or made attainable by the Cyprus Ports Authority it is immaterial as the C.P.A. is an altogether different authority from the Acquiring Authority.

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As regards the first part of the second submission I feel that I have decided it already in dealing with the first leg of the submission: the properties of both applicants were acquired for purposes of Port Development of the District of Larnaca and the construction of Port at Larnaca. The acquisition order was made on 21.2.69 and it is clear from

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all the material before me that the first stage of the construction of Larnaca commenced as early as 1969 and was completed in 1973; and I have already found that the subject-matter properties in both recourses were
5 used during that time (even before the compensation was paid) for the purpose for which they have been acquired. I fail therefore, to see how the purpose of acquisition "has never been attained or made attainable" by the Acquiring Authority i.e. the Republic. In connection with part (ii)
10 of the second submission: As already stated earlier on in the present judgment, by virtue of an Order of the Council of Ministers made pursuant to the provisions of s. 16(1) of the Cyprus Port Authority Law 1973, as amended, and published in the Official Gazette of the Republic on 31.7.
15 1976 under Not. 168, all Ports referred to in the Order (including Larnaca Port) and all obligations and liabilities of the Republic in connection therewith were transferred to the C.P.A. as from 1st August, 1976.

The object of the C.P.A. is defined as follows in s. 4(2)
20 of Law 38/73 as amended:

"4 (2) The object of the Authority shall be to manage and exploit the ports in the Republic and subject to the provisions of sub-section 1 of section 3 to undertake and manage the existing ports with all
25 their assets and liabilities."

In the case of *Ports Authority of Cyprus v. The Republic* (1983) 3 C.L.R. 385 it was held by the learned trial Judge of this Court, in the first instance, that "the C.P.A. was
30 an agency of the State in consimili casu to servants of the State, carrying out Governmental duties and discharging State responsibilities" (vide p. 397 of the report).

The above case was upheld on appeal by the Full Bench of this Court (vide R. A. 303; judgment delivered on 13.11.1984—still unreported).*

35 It is clear from the above that the C.P.A. is not an altogether different authority from the original acquiring authority i.e. The Republic, as maintained by learned coun-

* Reported in (1986) 3 C.L.R. 117.

sel for applicant, but an agency by the State in consimili casu to servants of the State carrying out Government duties and discharging State responsibilities.

For all the above reasons, both above intituled recourses fail and they are accordingly dismissed.

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In the circumstances, I have decided to make no order as to costs.

*Recourses dismissed.
No order as to costs.*