

1987 January 28

(MALACHTOS J)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KYPROS N KOURTELLARIS AND OTHERS.

Applicants.

v

THE REPUBLIC OF CYPRUS, THROUGH

1 THE COUNCIL OF MINISTERS.

2 THE MINISTRY OF COMMERCE AND INDUSTRY.

Respondents

*(Case Nos 311/82, 312/82, 313/82,
316/82, 317/82 & 319/82)*

Administrative Law—General principles—Due inquiry—Purpose of—It must be carried out in all cases and it should be completed before reaching the decision—Facts placed before the Administration ex post facto do not lead to a conclusion of proper inquiry

By means of the above recourses the applicants challenge the validity of the order whereby their immovable properties situated by the village of Ergates in the District of Nicosia were compulsorily acquired for the purpose of setting up a new industrial area. The relevant notice of acquisition was published on 29 5 81

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It should be noted that the respondent Ministry made various inquiries both before and after the publication of the notice. On 10 9 80 the Ministry of Agriculture and Natural Resources informed the respondent Ministry that there would be a water supply problem. On 22 12 81 the District Officer suggested that several plots be exempted from the acquisition. On 4 3 82 the Department of Town Planning expressed its disagreement with the selection of the particular area

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On 7 5 82 the respondent Ministry sent a proposal to the Council of Ministers for the acquisition of the area in question, suggesting that the order be published by the 29 5 82, as after that date the relevant notice would expire. By letter dated 20 5 82 the respondent Ministry stressed to the Council of Ministers that if the order is not published by the 29 5 82, then the compensation payable, if paid at some future date, would certainly be increased and suggested that the order be published before the expiry date and that any exemption therefrom of private land be considered at a later stage and if required an order of revocation be published then. The order was

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eventually published on 28 5 82

The applicants complained, inter alia that no proper inquiry was carried out before the publication of the order whilst the respondents argued that such inquiry was carried out subsequently to the sub judge decision

5 Held *annulling the sub judge decision* (1) In accordance with basic principles of administrative law and of good administration a due and proper inquiry in all cases must be carried out in order that all material facts be before the organ or the authority at the time of reaching the sub judge decision Facts which are placed before it ex post facto do not lead to a conclusion of proper
10 inquiry as the factual situation at the time of reaching the sub judge decision is incomplete

(2) In this case the respondents failed to carry a due and proper inquiry before reaching the sub judge decision

15 (3) It must always be borne in mind that «Compulsory acquisition leads to deprivation of property which contravenes the fundamental right of property safeguarded by Art 23 of the Constitution and the acquiring Authorities are expected to act in conformity with the principles of good administration» (*Agrots v E A C* (1981) 3 C L R 503)

20 *Sub judge decision annulled
£50 costs in favour of applicants*

Cases referred to

Thymopoulos v The Municipal Committee of Nicosia (1967) 3 C L R 608

Ioannides v The Republic (1972) 3 C L R 318

Agrots v E A C (1981) 3 C L R 503

25 Recourses.

Recourses against the decision of the respondents to compulsorily acquire applicants' immovable properties

E Efthymiou, for the applicants

St. Ioannidou (Mrs), for the respondents.

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Cur adv vult.

MALACHTOS J read the following judgment The applicants by the present recourses which were heard together as they attack the same administrative decision claim a declaration of the Court that the decision of the respondents, published in Supplement No III to the Official Gazette of the Republic No 1780 dated 28 5 82 by which their immovable properties were compulsorily acquired is null and void and of no legal effect whatsoever 5

The factual background to these recourses is as follows

In or about the year 1977 the need arose for either a new industrial area or for the extension of an existing industrial area in Nicosia especially in order to accommodate labour from the villages of the Pitsilia District Originally in December, 1979, five areas were proposed in respect of which inquiries were made by the Ministry of Commerce and Industry to various Government Departments such as the Department of Town Planning and Housing and the Department of Geological Survey as regards soil structure and water supply the Department of Lands and Surveys as regards the value of the proposed areas and CYTA as regards the possibility and cost of installation of telephone lines 10 15

The respondent Ministry selected one of the five areas proposed and informed the Planning Bureau accordingly 20

At the suggestion of the Planning Bureau inquiries were made for the possibility of one area near the village of Aredhiou and in December 1979 the Lands Registry informed the respondent Ministry of the existence of two possible areas between the villages of Aredhiou-Episcopio, one within the area of Anayia (Area A) and one within the area of Ergates (Area B) which was between the villages of Aredhiou and Anayia 25

The views of the various Government departments were again sought The Department of Town Planning considered that the distance of the two new areas from Nicosia was not a factor in their favour also that the cost of providing essential services e g electricity, would be enormous Particulars of their average market value were obtained from the Land Registry and from CYTA of the cost of installation of telephone lines 30 35

By letter of 10 9 80 the Ministry of Agriculture and Natural Resources, informed the respondent Ministry that both new areas were faced with a water supply problem and that they were not in

a position to provide sufficient water for the requirements of the proposed industrial area. However, it was stated therein that the possibility that adequate water might be found as a result of drilling of boreholes could not be excluded, the cost, however, of which
5 could only be assessed after the water source would be specified.

On 14.5.81 the respondent Ministry proposed to the Council of Ministers that Area 'B', the area by the village of Ergates, be approved as the most suitable.

The Council of Ministers approved the aforesaid proposal of the
10 respondent Ministry and published in the Official Gazette of the Republic, No.1692, dated 29.5.81, the relevant notice of acquisition under Not.500 for the purpose of setting up the new industrial area.

On 10.6.81 the amount of the assessment of compensation
15 payable was requested from the Land Registry.

On 22.12.81 the Nicosia District Office by letter notified the respondent Ministry that several objections had been submitted because the area was an irrigated area and a number of plots had been included in the «Fourkismenos» Irrigation Division for
20 development purposes and suggested that several plots should be exempted.

On 27.2.82 the respondent Ministry sent to the Department of Lands and Surveys and to the Town Planning Department urgent letters by which it requested a survey map and the per donum
25 valuation of the properties in question.

Subsequently, the Department of Town Planning wrote to the respondent Ministry on 4.3.82 that it disagreed with the area selected because it was far away from Nicosia and also from the essential services as regards electricity, and water supply;
30 furthermore, the structure of the area was uneven and would create problems. Also the Nicosia-Pitsilia road, though it had been widened at various parts, such widening was not sufficient for the purposes of an industrial area.

On 7.5.82 a proposal was sent to the Council of Ministers by the
35 respondent Ministry for the acquisition of the area in question. It is stated therein that despite the suggestions of the District Officer for the exemption of certain plots, such plots being scattered all over

the area to be acquisitioned, would affect its uniformity and its consequent development and should, therefore, not be exempted but instead their owners should be compensated - such compensation of privately owned land reaching the region of £340 000 It was also suggested that the order of acquisition be published in the Official Gazette of the Republic by the 29th May, 1982 as after that date the relevant notice would expire 5

The respondent Ministry by letter dated 20 5 82 stressed to the Council of Ministers that if the notice is not published by the 29th May then the compensation payable if paid at some future date would certainly be increased and suggested that the order be published immediately before the expiry of the notice and that any exemptions therefrom of private land be considered at a later stage and if required an order of revocation be published then 10

The Council of Ministers approved the proposed acquisition and the relevant order was accordingly published in the Official Gazette of the Republic No 1780 dated 28 5 82 15

The grounds of law on which the recourses are based may be summarised as follows

- 1 That the respondents acted under a misconception of fact, 20
- 2 that the sub judge decision was reached without a proper inquiry and
- 3 that the sub judge decision lacks due reasoning

It was argued on behalf of the applicants that the Council of Ministers in reaching the sub judge decision failed to take into consideration material factors such as the unwillingness of the industrialists to set up an industrial area 12 miles away from Nicosia, the unsuitability of the land, the lack of water supply and the objections of the owners of the properties to be acquisitioned It was contended that no proper inquiry was conducted before the acquisition order was published but instead it was decided that it be rushed through and any inquiries as regards the water supply, the objections of the private land owners and the overall amount of compensation to be paid would be considered later and if need be an order of revocation might be issued in the future 25 30 35

It was argued on behalf of the respondents that sufficient inquiry was carried out subsequently to the sub judge decision,

particularly as regards the question of the water supply, the possibility of supplying water with tankers in the event of it being found that there was no sufficient water supply

In accordance with the basic principles of administrative law and the principles of good administration, a due and proper inquiry in all cases must be carried out in order that all the material facts be before the organ or authority at the time of reaching the sub judice decision. Facts which are placed before it *ex post facto* do not lead to a conclusion of proper inquiry, as the factual situation at the time of reaching the sub judice decision is incomplete. See *Thymopoulos v The Municipal Committee of Nicosia* (1967) 3 C L R 608 at pp 612-613, also *Constantinos Ioannides v The Republic* (1972) 3 C L R 318 at pp 324-26 where the following is stated at p 326

«Another reason for which the decision of the Council of Ministers has to be annulled is the failure to make a due inquiry with the result that the two material assumptions which were relied on in reaching such decision were based on a factual position which was incomplete (see for example, *Christides*, supra, and *National Bank of Greece S A*, supra), from all the material before me - including the absence of any relevant minutes of the Council of Ministers other than the text of its sub judice decision, and the fact that no written submission was made to the Council of Ministers in relation to the matter in question - it is to be derived that the Council of Ministers reached its decision in a hurry and this explains why apparently no due enquiry was made in order to ensure complete and correct knowledge of all material facts. The failure to make a due enquiry is a ground for annulment which in this case is closely related to the other already stated ground for annulment, namely misconceptions of facts, but it is also an independent, sufficient by itself, ground for annulment.»

In the circumstances I find that the respondents failed to conduct a due and proper inquiry before reaching the sub judice decision complained of and therefore, the order of acquisition, as far as the applicants are concerned, has to be annulled as made contrary to the well established principles of administrative law. It must always be borne in mind that «Compulsory acquisition leads to deprivation of property which contravenes the fundamental right of property, safeguarded by Article 23 of the Constitution and the acquiring Authorities are expected to act in conformity with the

principles of good administration». See *Agrotis v. EAC* (1981) 3 C.L.R. 503 at p.513.

In the result, these recourses succeed and the sub judice decision, as far as the applicants are concerned, is hereby declared null and void. **5**

On the question of costs, the respondent Authority is adjudged to pay to the applicants £50.- against their costs.

*Sub judice decision annulled.
Respondents to pay £50.-
against costs.* **10**