1988 July 12

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHARALAMBOS VAYIANOS AND ANOTHER,

Applicants,

v.

THE MUNICIPALITY OF LARNACA,

Respondent.

(Cases Nos. 84/87 and 91/87).

Compulsory Acquisition—Revocation of—The Compulsory Acquisition Law, 1962 (Law 15/62), section 7(1)—Offer for compensation (£5.- per sq. foot) accepted by applicants with reservation of rights—Acceptance followed by references for assessing compensation—Decision assessing compensation at £7.- per sq. foot—Revocation of acquisition after lapse of 7 months from such decision on ground of changed circumstances—Changes invoked as justification for the revocation became apparent years before the offer for compensation—Sub judice revocation contrary to the principles of good administration—Annulled—Michaelides v. The Republic (1984) 3 C.L.R. 1596 distinguished.

General principles of administrative law—Good administration—See Compulsory Acquisition—Revocation of.

The sub judice revocation was issued years after the compulsory acquisition revoked thereby. In the meantime the respondents offered compensation which the applicants accepted, albeit with reservation of their rights, as they were entitled to do so in virtue of the Compulsory Acquisition of Property (Amending) Law, 1983. Following such acceptance, the applicants filed references for the final assessment of the compensation. The Court assessed the compensation at £7 per sq. foot of the land under acquisition, i.e. £2. - more than the price offered by the respondents.

The acquisition was originally ordered for the purpose of creating a

parking space. Seven months after the decision assessing compensation, but before payment of the compensation or any part thereof, respondents revoked the decision on the ground that in the light of changed circumstances the parking space was no longer needed.

However, the changes invoked (Building permits granted after the order of acquisition) had become apparent years before the offer for compensation and the initiations of the Court proceedings regarding compensation.

Held, annulling the sub judice decision: (1) This case is clearly distinguishable from the case of *Michaelides v. The Republic* (1984) 3 C.L.R. 1596.

(2) The respondent conduct in revoking the order of acquisition is, in the circumstances of this case, contrary to the principles of good administration.

Sub judice decision annulled.
Costs in favour of applicants.

Cases referred to:

Michaelides v.The Republic (1984) 3 C.L.R. 1596.

Recourses.

Recourses against the decision of the respondents to revoke the order of compulsory acquisition of applicant's property.

K. Michaelides, for the applicants.

G.M.Nicolaides, for the respondent.

Cur. adv. vult.

SAVVIDES J. read the following judgment. Applicants by these recourses challenge the decision of the respondent to revoke the order of compulsory acquisition of applicants' property published in Supplement No. 3, Part II to the official Gazette No. 2190 of 28th November, 1986, under Notification 1682. Both

these recourses were heard together as presenting common questions of law and fact.

The issue which poses for consideration in the present cases is whether a compulsory acquisition order can be revoked by the acquiring authority after all steps for the assessment of the compensation payable have been completed.

The facts of the case are as follows:

Applicant in Case No. 84/87 is the owner of a house and yard situated within the municipal limits of Larnaca,under registration No. D159, plot 161 of sheet /plan XXLI/57.I.III, block D of an extent of £4,965 sq. feet. He also owns half share of a house and yard adjoining the aforesaid plot under registration No. D158, plot 160 of the same sheet plan and block of an extent of 2,425 sq. feet,the other half of which belongs to applicant in Case No. 91/87.

By a notice of compulsory acquisition published in Supplement No. 3, Part II, to the official Gazette No. 1640 of 24th October, 1980,under Notification No. 1158, the decision of the respondent of intended compulsory acquisition of the aforesaid properties was publicized, for the purpose of public benefit described therein which was the creation of a municipal parking space. Applicants objected to the intended compulsory acquisition within the time prescribed in such notice.

The District Officer of Larnaca by letter dated 10th November, 1981 informed the applicants that the council of Ministers at its meeting of 10th September, 1981, considered applicants' objections against the compulsory acquisition of their properties and decided to reject same. Consequently an Order of compulsory acquisition was made for the aforesaid properties which was published in Supplement No. 3, Part II of the official Gazette of the Republic No. 1719 of 25th September, 1981.

In the course of negotiations for the payment of compensation

the Chairman of the Municipal Committee who was then handling the affairs of the Municipality under the provisions of the law, by letters dated 15th November, 1983 offered to applicant 1 the sum of £30,800.- and to applicant 2 the sum of £6,000. - as compensation for the acquisition of their properties which the applicants did not accept.

By letters dated 4th February, 1984, the Chairman of the Municipal Committee offered to applicants the same amounts and informed them that they could accept them with reservation of their rights to take steps for the transfer of their properties to the respondent and resort to the Court for the determination of the amounts of compensation payable in respect thereof. Applicants accepted such offer and through their counsel repeatedly asked to be paid the aforesaid sums which the respondent, however, failed to pay though bound to do so under the provisions of the Compulsory Acquisition Law. In the meantime applicants filed references 21/84 and 22/84 in the District Court of Larnaca for the determination of the compensation payable to them for the aforesaid properties. Respondent offered £5. - per sq. foot but the District Court of Larnaca by its decision dated 12th April, 1986 found that the compensation payable was to be assessed on the basis of £7.- per sq. foot and made an award accordingly for such amount plus interest as provided by Law 25/83. Applicants asked repeatedly to be paid the adjudged sums but respondent paid the costs awarded in the proceedings and failed to pay the compensation found by the Court. Applicants' counsel by letters dated 4th August, 1986, 12th September, 1986 and 9th December, 1986, repeated their previous demand for the payment of the adjudged compensation. In reply to such letters the Mayor of Larnaca by his letter dated 18th December, 1986 informed applicants' counsel that respondent published an order of revocation of the order of compulsory acquisition. In fact such revocation order was published in the official Gazette of the Republic No. 2190, Supplement No. 3, Part II, under Notification 1682. The revocation was made, allegedly, as the acquisition was no longer necessary for the purposes for which it has been made. As a result applicants filed the present recourse challenging the sub judice deci-

sion.

The legal grounds on which the recourses are based are the following:

That the revocation was not made in accordance with the principles of good administration and is contrary both to the spirit and the general principles of law; the revocation was made in abuse or excess of respondent's power as same was made for the mere purpose of avoiding payment of the compensation awarded by the Court; respondent did not take into consideration that the purposes for which the acquisition was made are attainable and/or desirable but it acted in an unreasonable and arbitrary manner; respondent failed to take or consider the hardship imposed on applicants or their interests.

In expounding on his grounds of law counsel for applicants contended that the respondent in deciding so belatedly to revoke the order of compulsory acquisition was not guided by criteria as to the suitability of applicants' land for the creation of a parking space but acted so in an attempt to evade the judgment of the District Court determining the compensation payable to applicants at £7. - per sq. foot plus interest which was much higher than the one assessed by the Lands and Surveys Department acting on behalf of the respondent and thus such act is merely an effort to deprive the applicants of the fruit of their successful litigation. Counsel made reference to decided cases concerning the principles of administrative law governing the revocation of administrative acts and particularly revocation of compulsory acquisition under s.7 of the Compulsory Acquisition Law No. 15/62.

Counsel further added that the object of the acquisition never ceased to exist, that in the present case there was adjudication of the amount of compensation payable and as a result the respondent could not have lawfully revoked the act of acquisition. In consequence the respondent by so doing acted under a misconception of fact and law, arbitrarily and in abuse of its powers. It was counsel's submission that there was no change in the factual

situation as it existed at the time of the acquisition and the time of the revocation and he concluded by submitting that the revocation was made strictly for financial reasons.

Counsel for the respondent, on the other hand, submitted that

(a) The legal prerequisites on which the respondent relied for the making of the acquisition order ceased to exist due to change of circumstances and this is the only reason of the revocation;

(b) The revocation was not made for financial reasons;

(c) Before the respondent took the sub judice decision it obviously took into consideration the protests and complaints of the applicants and particularly their request for the revocation of the compulsory acquisition.

(d) The respondent proceeded to the revocation within a reasonable time and as soon as it realized that notwithstanding its goodwill and desire to serve the citizens the object of acquisition could not be accomplished.

The main reason which was advanced by counsel for respondent as to the change of circumstances was that on 5th November, 1980, the Municipality had to issue a building permit in respect of plot 525 which was one of the plots mentioned in the original notice of acquisition on which a building was erected with the result that one of the exits to the properties under acquisition which existed over plot 431 was blocked and also the extent of the whole area was reduced. This, according to the allegation of the respondent, was ascertained by the technical service of the Municipality of Larnaca some time after the order of acquisition was published. In fact the Municipal Engineer on 19th February, 1983, submitted a report explaining the situation and suggesting the revocation of the acquisition order. As a result the respondent after considering the report decided to authorize the Chairman of the Municipal Committee to make an offer to the owners of plot 525 for purchase by the Municipality of part of it with the object

of extending the parking place and creating a second exit. In the meantime the building development in the area, between the years 1983 - 1986 turned the property under acquisition into an enclosure by high buildings so that in effect it lost its main characteristic as a parking place.

Furthermore in 1985 the Municipality made pavements covering a large part of the square leading to the intended parking place, which was turned into a tourist area mostly covered with tiles, benches and parking was prohibited. The result of these developments was that the only access to the property in question became useless. As a result the Senior Technical Assistant of the Municipality by his report to the Mayor of Larnaca dated 28th August, 1986, after earmarking the difficulties recommended the re - examination of the subject. His recommendation was accepted by the Municipal Council which by its decision of 11th September, 1986, decided to take the sub judice decision. It should be noted that much earlier i.e. on the 14th February, 1985, the respondent rejected a submission made by its Internal Auditor to the effect that the operation of the parking place in question would not be beneficial to the Municipality.

Counsel further mentioned that the applicants repeatedly had asked the revocation of the acquisition order unless compensation on the basis of £11.50 per sq. foot was paid to them against which the Court awarded £7. - per sq. foot instead of £5. - offered by the respondent.

The allegations as to the facts which have led to the change of circumstances from the date of the acquisition till the date of the revocation were supported by the evidence of Polyvios Loizides, a Municipal employee in charge of the department of issue of permits and the control of town planning of the Municipality of Larnaca. In his evidence in cross - examination he admitted that the Mayor of Larnaca on the 23rd July, 1986, wrote a letter to the applicants in which he mentioned that one of the tenants who was carrying on the business of a tailor in a ruinous conditioned room of the said property was refusing to leave,but he never mentioned

in the said letter that there was any problem as to the unsuitability of the property as a parking place due either to the creation of a square or to the blockage of one of the exits to the said parking space.

The order of revocation complained of is stated to have been made under s.7 of the Compulsory Acquisition of Property Law, 1962 (Law 15/62) and the reasoning for such revocation was that the acquisition was no longer necessary for the purpose for which it had been made. Sub - section (1) of s.7 under which the power of revocation was exercised reads as follows:

" 7. - (1) Καθ οιονδήποτε χρόνον μετά την δημοσίευσιν γνωστοποιήσεως απαλλοτριώσεως καί πρό της πληρωμής ή καταθέσεως της αποζημιώσεως ως προβλέπεται εν τω παρόντι Νόμω, η απαλλοτριούσα αρχή δύναται διά διατάγματος δημοσιευομένου εν τη επισήμω εφημερίδι της Δημοκρατίας, ν' ανακαλέση την τοιαύτην γνωστοποίησιν καί παν δημοσιευθέν σχετικόν διάταγμα, είτε γενικώς είτε ειδικώς αναφορικώς πρός την εν τούτω αναφερομένην ιδιοκτησίαν ή μέρος ιδιοκτησίας· επί τούτω η επομένη της τοιαύτης γνωστοποιήσεως ή διατάγματος απαλλοτριώσεως διαδικασία ατονεί, καί η απολλοτρίωσις λογίζεται ως εγκαταλειφθείσα είτε γενικώς είτε αναλόγως της περιπτώσεως, αναφορικώς πρός την τοιαύτην ειδικήν ιδιοκτησίαν ή μέρος ιδιοκτησίας.

And the English translation reads:

("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; 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.")

The construction of s. 7(1) and the powers vested in an acquiring authority to revoke an acquisition previously made by it have been dealt with by the Full Bench of this Court in the case of *Michaelides v. The Republic* (1984) 3 C.L.R. 1596, the facts of which are as follows:

The appellants were owners of three pieces of land, situated within the area of Ayios Sergios village in the District of Famagusta, which were compulsorily acquired in June, 1972 for a public benefit purpose, namely for the purpose of preservation, enhancement and development of the ancient monuments of Salamis and its surroundings. The area where the above property was situated had been, since 1974,under the occupation of the Turkish invasion forces and inaccessible to the State and appellants were unable to resume possession of it.

The appellants instituted proceedings in June 1975 for assessment of the compensation payable for the compulsory acquisition of their above properties. In July, 1976 and whilst these proceedings were still pending, the acquiring authority, acting under section 7 of the Compulsory Acquisition of Property Law, 1962, revoked the compulsory acquisition order affecting appellants' said properties on the ground that the purpose for which the order of acquisition was issued could not be attained on account of the situation created after the Turkish Invasion, and on the ground that the acquired property had not as yet been transferred in the name of the Government. The trial Judge dismissed appellant's recourse against the validity of the above revocation order as a result of which an appeal was filed.

After review of the Greek Case Law and the Greek authorities on the matter and particularly Kyriakopoulos on Greek Administrative Law, 4th ed., vol. C at pp. 268 and 388 the principle was formulated that the construction which should be placed on s.7 is that the only prerequisite for the revocation of an acquisition is

that the revocation should be made before the payment or the deposit of the compensation, placing any other specific conditions within the discretion of the administrative authority concerned.

The judgment reads at pp. 1609 - 1610 as follows:

" The principles of the Greek Administrative Law concerning the annulment of an acquisition, are useful in construing section 7 of the Compulsory Acquisition Law, No. 15/62. In Kyriacopoullos, Greek Administrative Law, 4th Edition, Vol.C at p. 388, we read:

'Also revocation is not allowed after the completion of the procedures of acquisition by settlement because by this a legal situation of subjective rights is created precluding further unilateral act of the administration so long as this is not based on a term or reason in the order of acquisition.'

This is in line with the provisions of sub - section (1) of section 7 of our Law, that a revocation can only take place before the payment or deposit of compensation as provided in the Law.

This position does not arise, as the payment of compensation has never been agreed or finally determined by a decision of the Court. The act of annulment took place in the process of the hearing of a reference for the determination of compensation."

And further at p.1611 it reads as follows:

" We find it unnecessary to embark at length on the two cases (800/1931 and 108/1972) referred to in Kyriacopoulos, and the principles underlying them, as the learned trial Judge has explicitly done so in his judgment. It suffices here to say briefly that from both these cases it emanates that though under the relevant statutory provisions in Greece, which are similar to section 7 of our Compulsory Acquisition of Property Law,

1962, a decision for acquisition can, at any time , upto the final determination by the Court of the compensation to be paid, be revoked by the Acquiring Authority, nevertheless, such power is not an absolute power but a discretionary one which cannot be exercised arbitrarily but in a proper manner bearing in mind the spirit of the law and the conditions laid down by the general principles of administrative law. Also, that the revocation of an acquisition with the exclusive object of serving the financial interest of the State only, without at the same time taking into consideration the interest of the owner amounts to a wrong exercise of discretion."

We concluded in that case that bearing in mind all the circumstances of the case the acquiring authority in taking the sub judice decision did not act arbitrarily or in abuse of power but exercised its discretion in the proper way and without violating the principles of good administration and we affirmed the decision of the trial Judge that the respondent "acted within the spirit of the law and the limits of good administration in the exercise of its discretionary powers."

Bearing in mind the principles emanating from the case of *Michaelides* (supra) I revert to the facts of the present case. As alleged by the respondent the fact that there were problems for the creation of the parking space for which the acquisition orders were issued became apparent since the 5th November,1980, a few days after the notice of acquisition was published in the official Gazette of the Republic.

On the 5th November, 1980, the respondent was well aware that the issue of a building permit for part of plot 525 would have affected one of the exits of the property under acquisition and also restrict considerably the parking space. Notwithstanding that fact which now is raised in support of the respondent's allegation that there was a change of circumstances and notwithstanding the objections raised by the owners against the acquisition the respondent proceeded with the acquisition of the property and the order of acquisition was published on 25th September, 1981.

It has been further alleged that in February, 1983, the Municipal Engineer submitted a report suggesting the revocation of the acquisition as in his opinion the property in question could not satisfactorily be used as a parking place. Notwithstanding such information the respodent instead of revoking the acquisition authorized its Chairman to negotiate with the owners of plot 525 with the intention of enlarging the parking space and creating a second exit. Such effort did not materialize and in the meantime the Municipality was granting permits for the erection of constructions which according to their allegations turned the parking place into an enclosure which was unsuitable as a parking place.

It is the contention of the respondent that due to a change of circumstances the object of the acquisition could not be achieved, a fact which became apparent to them since 1983. Instead of revoking the acquisition order the respondent proceeded to the development of the square opposite the entrance leading to the said parking place by turning it into a tourist centre without, however, having ever decided that the parking place in question was not necessary. When the applicants filed their references for assessment of compensation in 1986 the respondent again instead of proceeding to a revocation of the acquisition order they thought fit to offer compensation to the applicants calculated at £5.- per sq. foot and fought the two references in an effort to persuade the Court that the compensation payable should be the one offered by it. The decision of the Court was delivered on the 21st April, 1986, awarding £7.- per sq. foot as reasonable compensation plus interest and costs.

The respondent after such references were determined paid to the applicants the costs of the actions and after repeated requests on behalf of counsel for applicant contained in numerous letters for the payment of the compensation awarded by the Court, the Mayor of Larnaca acting on behalf of the respondent, on the 23rd July, 1986, informed applicants' counsel that a tailor occupying part of the premises refused to evacuate same and requested them to do something about it. Though as alleged by the respondent it had found out that the property in question was not suitable for

the purposes of the acquisition due to the change of circumstances since 1983, nevertheless nothing was mentioned to the applicants as to such intention and it was only until December, 1986, after the decision to revoke the acquisition order was taken that such decision was mentioned in reply to the claims of the applicants for compensation.

The facts of the present cases are materially different from those in *Michaelides* case (supra). In the case of *Michaelides* when a reference was made to the Court for the assessment of compensation the respondents proceeded with the revocation of the acquisition order before the amount of compensation was agreed upon or before any decision of the Court fixing such compensation was taken. In the present case the revocation was effected after a reference was made to the Court, which was fought by the respondent whose contention was that the value of the property was only £5. - per sq. foot, without raising the question of substantial changes of circumstances which according to the evidence before me was a matter ascertained by it long before the references were made and it was after the lapse of seven months from the date when the Court found that the compensation payable was £7. - per sq. foot that the respondent came forward to revoke the acquisition.

Furthermore in *Michaelides* case it became apparent that the object for which the acquisition was made became unattainable due to considerable change in the factual situation between the time of the acquisition and the time of the revocation as a result of the Turkish invasion and occupation of property by the Turkish forces which made the purpose of the acquisition completely unaccomplishable.

The distinction between the two cases is clearly indicated by the reference made in *Michaelides* (case) to Kyriacopoulos to the effect that a revocation is not allowed after the completion of the proceedings of acquisition by settlement because of the legal situation of creation of subjective rights precluding any unilateral act of the administration to disturb the situation so long as this is not

based on a term or reason in the order of acquisition. In that case a situation similar to that of the present case did not arise as the payment of compensation had never been agreed or finally determined by a decision of the Court.

Bearing in mind the circumstances of the case I have not been-persuaded that the reason stated in the order of revocation that there was a substantial change of circumstances which made the acquisition unattainable has been substantiated in the present cases. The whole conduct of the respondent clearly indicates than in all the circumstances of the present case though aware as alleged by it of the fact that the property in question became unsuitable as a parking place nevertheless it waited till the compensation was assessed by the Court which was higher than its offer and considerable time after the judgment of the Court it came forward with the contention that the objects of the acquisition could not be achieved.

In my view in the present case the respondent failed to exercise its discretion within the limits of good administration. It is clearly a case of wrong exercise of discretion which amounts in substance to a violation of the law.

In the circumstances the sub judice decision has to be and is hereby annulled with costs in favour of the applicants.

Sub judice decision annulled with costs in favour of applicants.