

1988 April 28

(A. LOIZOU, P., MALACHTOS, SAVVIDES, PIKIS & KOURRIS, JJ.)

PANTELITSA CHRISTOPHIDOU,

*Appellant-Applicant,*

v.

THE REPUBLIC OF CYRPUS, THROUGH  
THE COUNCIL OF MINISTERS,

*Respondents.*

*(Revisional Jurisdiction Appeal No. 598).*

*Compulsory Acquisition—Purpose of—Preservation or improvement of ancient monuments or antiquities or the development of the surrounding places—Building already declared an "ancient monument" under the Antiquities Law, Cap. 31—Such statement of purpose of acquisition quite clear in the circumstances.* -5

*Compulsory Acquisition—Of building, which is the only accommodation of its owner and her family—Not a ground for annulling the acquisition.*

*Compulsory Acquisition—Purpose of—Building already declared an "ancient monument"—Recourse challenging the acquisition, but not the previous order—The nature of the building as an "ancient monument" cannot be challenged.* 10

*Compulsory Acquisition—Necessity of, for the purpose stated in the notice—Judicial control—Principles applicable.*

The appellant was originally 1/3 owner of a building known as the "Inn of Kaliana". Following a subdivision among the co-owners, the appellant was allotted a specific part of the building, for which a separate title deed was issued. 15

The whole building was declared an "ancient monument" and was emplaced in the second schedule to the Antiquities Law, Cap. 31. The appellant did not challenge the relevant order. 20

5 About a year later, there was published a notice of acquisition of the whole building, followed, notwithstanding appellant's objection, which was dismissed, by an order for the acquisition of the whole building. The purpose of public benefit was described as archaeological excavations or the preservation or improvement of ancient monuments or antiquities or the development of the surrounding places. The reasons for which the building was required were described as the preservation or improvement of ancient monuments or antiquities in the village of Kaliaana.

10 The appellant challenged the order of acquisition by a recourse to this Court, which was eventually dismissed.

Hence this appeal.

The grounds of appeal may be described as follows:

15 (a) The trial Court wrongly treated appellant's property as "ancient monument" or "antiquity". Counsel argued that these terms in the context of the Compulsory Acquisition of Property Law 15/62 have not the same meaning as in Cap. 31, but the meaning attached to them in the Constitution and the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224. He further argued that the power to declare a building as "ancient monument" is unconstitutional.

20 (b) The trial Court failed to take into account the fact that appellant's house was the only accommodation for herself and her family.

(c) The purpose of the acquisition in the said notice was very vague and general and not specifically explaining the purpose for which it was acquired.

25 (d) The finding of the trial Court about the complete indifference and the lack of interest for the restoration of the inn by the owners of it and the fruitless attempts of that Department to come to an arrangement with all the owners for the restoration of the inn was not supported by evidence.

30 In fact, in a letter by the Director of Antiquities it is mentioned that "some of the owners" (the appellant was not among them) abandoned their property in a ruinous condition and that the Director objected to repairs carried out by appellant, as they were made for the purpose of converting part of the Inn to dwelling house.

Held, *dismissing the appeal*, Pikis and Kourris JJ. dissenting:

(1) When the property was compulsorily acquired it was already a declared ancient monument. All arguments put forward in the context of the first ground of appeal might have been material in a recourse challenging the order under Cap. 31.

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(2) The second ground does not amount to a ground for setting aside an acquisition order.

(3)(a) Whether it is necessary that property is to be acquired for a purpose to the benefit of the public, is a matter to be decided by the Government and in the absence of any valid reason to the contrary the decision of the Government so to do cannot be interfered with by this Court.

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(b) The purposes of the acquisition are clearly stated in the notice of acquisition. They are for the public interest and specifically for the maintenance and useful valorization (αξιοποίησης) of ancient monuments. The useful valorization of such monument can take several forms and various ideas have been expressed by the Antiquities Department.

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This Court does not agree that all such purposes are outside the scope of useful valorization (αξιοποίησης) of the property, to serve its purpose as an ancient monument in its character as an "Inn", and rejects the submission made by counsel for the appellant that the property was acquired to serve extraneous motives and not for purposes of public interest.

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(4) The trial Judge should not, in the absence of material before him, have relied on the fact that appellant refused to co-operate with the Department of Antiquities. In the light, however, of the material in the aforesaid letter of the Director of the Department of Antiquities, the discretion was exercised in a way that was reasonably open to the acquiring authority.

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*Appeal dismissed.*

*No order as to costs.*

*Cases referred to:*

*Lordos Ltd. and Others v. The Republic* (1974) 3 C.L.R. 447.

30

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Demetriades, J) given on the 23rd April, 1986 (Revisional Jurisdiction Case No. 437/79)\* whereby appellant's re-  
5 course against the compulsory acquisition of her property situated at Kaliaia village was dismissed.

*A.S. Angelides for N. Papaefstathiou, for the appellant.*

*A. Vassiliades, for the respondents.*

*Cur. adv. vult.*

10 A. LOIZOU, P.: The first Judgment of the Court will be delivered by his Honour Savvides, J.

ΣΑΒΒΙΑΔΗΣ, Δ.: Το κείμενο της απόφασης θα είναι έτοιμο σε λίγες μέρες. Το πρωτόδικο Δικαστήριο ορθώς απεφάσισε και απέρριψε την προσφυγή της εφεσειούσης. Υπό τις περι-  
15 στάσεις της υποθέσεως δεν δίδομε έξοδα στην έφεση αυτή.

A. LOIZOU, P.: I agree with the judgment delivered by Justice Savvides and I have nothing to add.

ΜΑΛΑΧΤΟΣ, J.: I also agree with the judgment just delivered by Mr. Justice Savvides that the appeal should be dis-  
20 missed with no order as to costs.

ΠΙΚΗΣ, Δ.: Καταλήγω σε διαφορετικό συμπέρασμα για τους λόγους που εκτίθενται εν εκτάσει στην απόφαση το κείμενο της οποίας είναι έτοιμο και δίδω αντίγραφο στους δικηγόρους.

25 ΚΟΥΡΡΗΣ, Δ.: Είχα την ευκαιρία να διαβάσω την απόφαση του κ. Πική και συμφωνώ πλήρως και δεν έχω να προσθέσω τίποτε.

\* Reported in (1986) 3 C.L.R. 539.

("KOURRIS J.: I had the opportunity to read in advance the judgment of Pikis, J. I am in full agreement and have nothing to add").

A. LOIZOU P.: The judgment of the majority of the Court (A. Loizou, Malachtos, Savvides) will be delivered by Mr. Justice Savvides. 5

SAVVIDES J.: This is an appeal against the first instance judgment of a Judge of this Court in case No. 435/79 whereby he dismissed the recourse of the appellant challenging the validity of the decision of the respondents by which her property under registration No. 4227, plots Nos. 423, 424, 425, 426/1 and 427, situated at Kaliana village, was compulsorily acquired. 10

The property of the appellant, together with certain adjacent plots of land belonging to other persons and which had also been acquired by the Republic of Cyprus, consist of a building of traditional architecture known as the "Inn of Kaliana". Such inn was formerly owned jointly by the appellant and other co-owners and was in fact a compound building as it appears in the photographs which are exhibits before us and as we have seen it at a local inspection at the village. The front part consists of six arches supporting a terrace with rooms on the ground and the first floor. The appellant was originally the owner of 1/3rd of the whole building but after a sub-division between the owners the appellant was allotted a part corresponding to two arches with the respective part of the terrace and the rooms on the ground and first floor. 15  
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Due to the nature of the property and the need for its preservation as a sample of old traditional type of popular architecture as an "Inn" the Department of Antiquities decided in 1976 that such "Inn" should be preserved as an ancient monument and made a recommendation to that effect to the Council of Ministers. 30

On the 23rd September, 1977, an order of the Council of Min-

isters was published in the official Gazette declaring the said property an ancient monument and emplacing it in the Second Schedule of the Antiquities Law, Cap. 31. The appellant did not challenge this order by means of a recourse.

- 5 On 6th October, 1978, a notice of acquisition of appellant's property was published in the official Gazette. The appellant objected but the Council of Ministers rejected the objection and on the 28th September, 1979, the relevant order of acquisition was published in the official Gazette. The purpose of public benefit intended to be served by the said acquisition was, according to the  
10 notice of acquisition and the subsequent order of acquisition, which sets out such purposes in the terms of paragraph (h) of sub-section (2) of section 3 of the Compulsory Acquisition of Property Law, 1962 (Law 15/62), for "archaeological excavations or the maintenance or useful valorization (αξιοποίησης) of  
15 ancient monuments or antiquities or the development of the surrounding areas" and then specifically setting out such purpose as being "the maintenance or useful valorization (αξιοποίησης) of ancient monuments or antiquities in the village of Kaliaia".
- 20 As a result the appellant filed recourse No. 435/79 challenging such order on the grounds that:

(a) Her property is neither an ancient monument nor an antiquity;

- (b) The notice of acquisition does not specify adequately the  
25 purpose of the acquisition and further all the prerequisites of the law are not satisfied; and

(c) The respondents did not consider an alternative solution less onerous to the appellant.

- We need not relate the facts of the case at length as they appear  
30 in the first instance (*see Christophidou v. The Republic* (1986) 3 C.L.R. p. 539).

The grounds of appeal raised by the notice of appeal are that:

1. The decision of the first instance Court is wrong as the

Court misinterpreted and wrongly applied the law.

2. The decision is the product of misconception of law and fact.

3. The findings of fact are not justified by the evidence before the Court. 5

4. The trial Court misinterpreted and misapplied the case law on the matter.

Counsel for appellant in arguing his grounds of appeal submitted that:

(a) The trial Court wrongly treated appellant's property as "an antiquity" or "an ancient monument" subject to compulsory acquisition under the Compulsory Acquisition of Property Law (Law 15/62). The terms "Ancient Monument" or "Antiquity" in section 3(2)(h) of Law 15/62 should not, counsel submitted, be given the same meaning as that attached to them by the Antiquities Law, Cap. 31, but that they should be given the meaning attached to them by the Constitution and the Immovable Property (Tenure Registration and Valuation) Law, Cap. 224. 10 15

He further contended on this point that the property of the appellant which was constructed in 1923 cannot under any circumstances be treated as an "Ancient Monument" or "Antiquity" for the purposes of s.3(2)(h) of Law 15/62 enabling its compulsory acquisition. 20

He also argued that s. 6(1) and (2) of the Antiquities Law (Cap. 31) enabling the appropriate authority to declare buildings as ancient monuments are unconstitutional as they create an impediment or deprive the owner of the free enjoyment of his property without at the same time making provision for the payment of compensation for the injurious effects resulting therefrom. The reason, counsel submitted, the appellant did not challenge the decision to include her house in the Second Schedule of the Antiqui- 25 30

ties Law as an "Ancient Monument" was because she had been allowed to occupy and enjoy her property in accordance with the policy of the Antiquities Department according to which when a property was declared an Ancient Monument and was included in  
5 Schedule B of the Law, the owner was not deprived of the possession and enjoyment of such property. Such policy appears in the letter of the Antiquities Department dated 22nd June, 1979, to the Director of the Ministry of Communications and Works the material part of which reads as follows:

10 "Finally I observe that no one will prevent the occupiers of such building to use them as houses or offices etc. when they will be declared as Ancient Monuments in the Second Schedule. On the contrary it is the policy of our Department to encourage the owners to use them because in this way we  
15 achieve the preservation and improvement of Ancient Monuments which we maintain and restore to their original form."

(b) The trial Court failed to take into consideration the fact that appellant's house was the only accommodation she had for herself and her family and that by the acquisition order she was  
20 deprived of such accommodation. The importance of this fact is stressed in the letter of the District Officer which appears in the relevant file.

(c) The prerequisite under s.4 of the Compulsory Acquisition of Property Law that a property can only be compulsorily acquired  
25 if it is shown that the acquisition is necessary for a purpose beneficial to the public, has not been satisfied. The purpose of the acquisition in the said notice was very vague and general and not specifically explaining the purpose for which it was acquired. Therefore, counsel submitted, the trial Court wrongly found that  
30 the acquisition was in fact necessary for a purpose beneficial to the public and that the purpose of the acquisition was clearly stated in the notice of acquisition.

(d) The Court wrongly found that the discretion of the acquiring authority was reasonably exercised. In reaching such finding,



counsel submitted, the trial Court relied on facts unsupported by evidence and never brought to the knowledge of the appellant and in particular to the following finding of the trial Court (at p. 548):

"... the complete indifference and the lack of interest for the restoration of the inn by the owners of it and the fruitless attempts of that Department to come to an arrangement with all the owners for the restoration of the inn. (See blue 8 para. 2 (γ) of the letter of the Director of Antiquities to the Director General of the Ministry of Communications and Works in File 41/76)"

Such allegations are entirely unfounded; if the owners of the adjoining parts to appellant's property might have behaved in such manner, such conduct cannot be attributed to the appellant and this is apparent from the material in the relevant file and in particular in the letter of the District Officer of Nicosia dated 28th November, 1978, by which he submitted his comments on the objections received by him against the acquisition in which he mentions, inter alia, that "it is known that the property under acquisition is part of the inn of Kaliana, the applicant carried out extensive repairs which cost £3000 - £3500".

We need not embark at length on the first argument of counsel for appellant as to the nature of an Ancient Monument under the Antiquities Law and the Compulsory Acquisition of Property Law, the Constitutionality of section 6(1) and (2) of the Antiquities Law, or with the explanations offered by him for not challenging the decision declaring appellant's property as an ancient monument. What was being challenged by appellant's recourse was the order for compulsory acquisition and it is only with such order we have to deal in this appeal. It is common ground that when appellant's property was compulsorily acquired it was already a declared ancient monument in the Second Schedule of the Antiquities Law. All arguments raised by counsel for appellant in this respect might have been material in a recourse against the order declaring such property as ancient monument, though, in our opinion, which is in line with the opinion expressed by the learned trial Judge, such recourse would be

barred by limitation of time.

5 The second argument advanced by counsel for the appellant that the property acquired is the only house accommodation of the appellant and her family does not amount to a ground for setting  
10 aside an acquisition order. No provision exists in the law exempting such property from acquisition. On the contrary provision is made in such cases under paragraph (1) of section 10 of Law 15/1962 that the compensation may be assessed bearing in mind the reasonable expenses required for the reinstatement of the owner  
15 of the property acquired to another property. The argument raised in this respect, therefore, fails.

15 We come next to consider the question as to whether the finding of the learned trial Judge that the purpose of the acquisition was clearly stated in the notice of acquisition and whether such  
20 purpose was in the public interest, was the proper one in the circumstances.

20 Whether it is necessary that property is to be acquired for a purpose to the benefit of the public, is a matter to be decided by the Government and in the absence of any valid reasons to the  
25 contrary the decision of the Government so to do cannot be interfered with by this Court (see *Lordos Ltd. and Others v. The Republic* (1974) 3 C.L.R. 447).

The learned trial Judge in disposing of this question concluded as follows at pp. 545-546:

25 "As to the requirement of the property for a purpose of public benefit, this becomes evident from the material in the files produced. The property was required for the purpose of preserving and restoring buildings of traditional architecture, which is one of the purposes listed in section 3 of Law 15/62.

30 I now come to the clarity of the purpose of the acquisition in question. The notice of acquisition, which was published in Supplement No. 3 Part II of the Official Gazette of the Republic, dat-

ed the 6th October, 1978, under Notification 1044, reads:

'Διά του παρόντος γνωστοποιείται ότι η εν τω παρατι-  
θεμένω Πίνακι περιγραφόμενη ακίνητος ιδιοκτησία είναι  
αναγκαία διά τον ακόλουθον σκοπόν δημοσίας ωφελείας,  
ήτοι δι' αρχαιολογικάς ανασκαφάς ή την συντήρησιν ή 5  
αξιοποίησιν αρχαίων μνημείων ή αρχαιοτήτων ή την ανά-  
πτυξιν των πέριξ κείμενων χώρων και η απαλλοτριώσις  
αυτής επιβάλλεται δια τους ακόλουθους λόγους, ήτοι διά  
την συντήρησιν ή αξιοποίησιν αρχαίων μνημείων ή αρχαι-  
οτήτων εις το χωρίον Καλιάνα.'

(' It is hereby notified that the immovable property de-  
scribed in the attached Schedule is necessary for the following  
purpose of public benefit, that is for archaeological excavations  
or the preservation or improvement of ancient monuments or 15  
antiquities or the development of the surrounding places and  
its acquisition is required for the following reasons, that is the  
preservation or improvement of ancient monuments or antiqui-  
ties in the village of Kaliana.')

Considering the contents of the last part of the above notices  
which reads 'its acquisition is required for the following reasons, 20  
that is the preservation or improvement of ancient monuments or  
antiquities in the village of Kaliana' and which are, in my mind,  
very clear of what it was intended and meant by them, I find that  
as the applicant failed to challenge the declaration of her property  
as an ancient monument she cannot now be successful in her re- 25  
course by which she is in fact attacking the purpose for which the  
respondent seeks the compulsory acquisition of her property. In  
any event, the applicant has failed to satisfy me that the purpose  
for which her property is compulsorily acquired is not one which 30  
is for the public benefit.

This ground is, therefore dismissed."

We agree with the learned trial Judge on the above. We have  
preferred however in this judgment to use for the Greek word  
"αξιοποίησις" the English term "useful valorization" and not

"development".

Useful valorization (αξιοποίησης) of the property in question together with the adjoining properties composing the Inn of Kaliana was earmarked by the Government ever since 1976. The Director of Antiquities by a letter dated 7th August, 1976, to the Director - General of the Ministry of Communications and Works on the question of requisitioning the Inn of Kaliana stressed the importance of its maintenance, preservation and useful valorization (αξιοποίησης). In his opinion:

10       "(1) (a) The inn of Kaliana constitutes an excellent sample of popular architecture in the field of group lodging establishments and buildings of public use.

15       (b) It preserves most of the characteristic elements (e.g. two storey building, arches, verandas etc.) of buildings of the mountainous areas of the island.

(c) The building by itself forms, from the architectural point of view, an entity unique in its kind for the area in which it is situated, as well as for the whole of Cyprus.

20       (2) Therefore, this inn should be preserved and restored to its original condition as one of the most representative samples of the cultural inheritance of the island .....

25       and went on to enumerate a number of reasons for the immediate requisition of the whole building for preventing its complete destruction, such as the desertion of most part of it in a ruinous condition, its falling into disuse, the absolute indifference of some of the owners for its maintenance and the repair of part of it by one of its owners (the appellant in this appeal) in an unacceptable manner for use as her dwelling.

30       He stressed in his letter the need for its requisition "to prevent an unprecedented destruction of a building of eminent importance from the point of view of popular architecture and to

preserve a unique sample of the cultural inheritance of our land".

Also in the minutes of the meeting of the Antiquities Advisory Committee of 20th September, 1976, we read in connection with the Inn of Kaliana "... the Chairman made reference to the effort of preservation of houses and complexes of popular Architecture and specifically in the work of the Polytechnic of Athens at Kakopetria which will shortly be declared as an ancient monument for the purpose of its maintenance and useful valorization (αξιοποίησης). For the same reason the requisition took place of a building at Kaliana which had been used in the past as "Inn". In the future the "Inn" will be acquired and will be used by the Government ...".

In the submission to the Council of Ministers for its acquisition it was laid stress to the fact that the property of the appellant was forming part of a compound building unique in its character which should be preserved as such in its totality and not only partly by excluding the appellant's property.

The purposes of its acquisition as mentioned earlier are clearly stated in the notice of acquisition. They are for the public interest and specifically for the maintenance and useful valorization (αξιοποίησης) of ancient monuments. The useful valorization of such monument can taken several forms and various ideas have been expressed by the Antiquities Department. We do not agree with the submission of counsel for the appellant that all such purposes are outside the scope of useful valorization (αξιοποίησης) of the property, to serve its purpose as an ancient monument in its character as an "Inn". We reject the submission made by counsel for the appellant that the property was acquired to serve extraneous motives and not for purposes of public interest.

We come now to the last point raised by counsel for the appellant that the learned trial Judge in finding that the discretion of the respondent was reasonably exercised relied on facts which were never brought to the knowledge of the appellant. Reference to the relevant part in the judgment has already been made. The

learned trial Judge made reference in his judgment to the letter of the Director of Antiquities dated 7th August, 1976. In fact in such letter no mention is made of the indifference of the appellant to maintain her part of the property but to the objection of the Director to the repairs carried out by the appellant which in his opinion were unacceptable as they were made for the purpose of converting part of the Inn into a dwelling house for the needs of the appellant and her family, a use which did not coincide with the use of the "Inn" in its totality as such and thus prevented the maintenance and useful exploitation of the Inn as a whole. Furthermore, in the said letter reference is made to "some of the owners" as having abandoned the property in a ruinous condition and it is clear that such reference is not extended to the appellant for whom specific reference is made. The letter of the Director of Antiquities is clear and reference by the learned trial Judge to the lack of interest by the owners for its restoration should be treated as reference to the owners of the other 2/3rds of the "Inn" in question.

Further in his judgment the learned trial Judge gave as one of the reasons for justifying the acquisition, the fact that applicant "showed no willingness to co-operate with the Department of Antiquities despite the attempts on a number of occasions by that Department to enter the property for that purpose". The appellant has strongly contested that she refused to co-operate with the Antiquities Department ever since her property was declared as an Ancient Monument and in fact we could not trace anything in the file whereby the attention of the appellant was drawn to this fact and no evidence was called in support of such contention. We, therefore, consider that this fact should not have been relied upon and given any weight. Nevertheless from the material before us it emanates that the appellant's property though covered by separate title is part of one and the same compound building which forms the "Inn" in question. The Conversion of the 1/3rd of such Inn by the appellant to a dwelling house for herself and her family and the repairs which she carried out for such purpose cannot coincide with the maintenance and useful valorization of the "Inn" as a whole, compound and unique structure. We agree with the observations contained in the letter of the Director

of Antiquities that the repairs carried out by the appellant and the use made by her cannot be in line with the maintenance of the character of the "Inn" as such once part of it cannot be restored and be maintained in its original condition. It is our conclusion that the discretion of the acquiring authority was properly exercised in this case. 5

For all the above reasons this appeal fails and is hereby dismissed but in the circumstances we make no order for costs.

PIKIS J.: The appellant is part-owner of an inn of traditional architecture situate on the outskirts of Kaliana village, on the old road connecting Solea valley with the upper reaches of Troodos mountains. In 1976 the property was declared an ancient monument in the interest of preservation of our architectural and environmental heritage. The property was listed an ancient monument under Schedule B'. The objections of the appellant to the declaration were rejected. She omitted to pursue them further. So, the property remained listed an ancient monument under Schedule B'. 10  
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Soon afterwards the property was requisitioned for the purposes of facilitating restoration to its original condition. Government policy with regard to the preservation of ancient monuments is reflected in a note of Mr. Karageorghis, the Director of the Department of Antiquities, dated 24/6/79. The preservation of Schedule B' Ancient Monuments, was best achieved by allowing the owners to occupy them while engaging them to preserve the character of the properties. Acquisition of the property should only be contemplated in the event of the owner expressing a wish to demolish the premises. The policy of government reflected in the above note is compatible with the ultimate object of preserving Schedule B' Ancient Monuments, in a usable condition, on the one hand and, the objects of the Antiquities Law - Cap. 31, as amended by Laws 48/64 and 32/73. Section 8 of the law, in particular, prohibits the making of any additions or alterations to Schedule B' Ancient Monuments, except in the manner and for the purposes indicated in the law. Specific provision is made in 20  
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subsection 2 of the s. 8 for financial assistance to the owners of ancient monuments to maintain, preserve and restore them in a state as proximate as possible to their original condition.

5 Despite the policy of the appropriate government departments elicited above, and notwithstanding the absence of any intention on the part of the appellant to demolish the premises, the property was compulsorily expropriated. The intention to acquire the property was signified on 22/9/78 and within the period envisaged by the law the acquisition was completed by the publication of  
10 notice of acquisition. Obviously, the decision was in conflict with declared government policy.

Vague suggestions were made, as can be gathered from examination of the file, that appellant did not take measures necessary for the preservation of the property. It is not at all clear whether  
15 these complaints referred to a period before the declaration of the property as an ancient monument and its requisition for purposes of facilitating restoration. In any event, the material in the file does not establish that appellant failed to respond to any suggestion deemed necessary for the preservation of the character of the  
20 property. It is indeed probable that the Authorities confused the actions or, more pertinently, omissions of co-owners of the property with those of the appellant. The appellant, it must be added, resided in the property with her aged parents and so far as a visit of the locus could enlighten the Court about the state of the pre-  
25 mises, the impression formed was that the property is properly maintained.

It appears it was in the contemplation of the Acquiring Authority to make the property available, after acquisition, for use as a restaurant for the attraction of tourists in that area. A hint in that  
30 direction was made in the letter of Mr. Karageorghis of 7th August, 1976, whereas the possibility of such development was not ruled out but, on the contrary, it was favourably viewed by the Cyprus Tourism Organisation.

Now: The use of the property for tourist purposes is not in it-  
35 self an act necessary for the preservation of the property. On the



contrary, it may legitimately be argued that a change of use would bring about a change of the character of the property. Use of the property as a residence by the owners would be nearer to the original use of the property, save that because of the improvement and change of the means of communication demand for the services of the inn-keeper has ceased. Hence we cannot accept that acquisition of the property for use as a restaurant would promote the ends of the acquisition specified in the notice of acquisition, namely, the maintenance or utilisation of ancient monuments in the village of Kalia. The Acquiring Authority laboured, it seems to us, under a misconception of the objects of the law with regard to the preservation of ancient monuments and equally certainly failed to appreciate the facts relevant to the preservation of the property. For these reasons, we are unable to sustain the judgment of the trial Court or validate the act of acquisition.

In the result the appeal is allowed and the judgment of the trial Court is set aside. Moreover, the sub judice decision is annulled and is hereby declared to be wholly void pursuant to the provisions of article 146.4(b) of the Constitution.

Let there be no order as to costs.

COURT: In the result the appeal is dismissed by majority with no order as to costs.

*Appeal dismissed by majority.  
with no order as to costs.*