1965
March 19,
April 20,
May 18
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MARIA CH. VENGLIS,
and
THE ELECTRICITY AUTHORITY OF CYPRUS

[MUNIR, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MARIA CH. VENGLIS,

Applicant,

and

THE ELECTRICITY AUTHORITY OF CYPRUS,

Respondent.

(Case No. 50/64).

Acquisition—Land—The Compulsory Acquisition of Property Law, 1962 (Law 15 of 1962), sections 4 and 6—Acquisition of immovable property of Applicant—Validity of procedure followed for such acquisition—Provisions of sections 4 and 6 of the Law duly complied.

Administrative Law—Decision of Respondent to acquire the property of the Applicant a proper exercise of discretion after taking into account all relevant factors—No abuse of the powers vested in it and no action contrary to the principles of administrative law.

Constitutional Law—Compensation for compulsory acquisition of property—Provisions in Article 23.4(c) of the Constitution of Cyprus and in Part III, sections 8 to 12, of Law 15 of 1962 (supra).

Applicant by the present recourse, filed under Article 146 of the Constitution, seeks:

"1. A declaration of the Court that the notice of acquisition by respondent of 266 sq. feet of her property under plot No. 262 published in the Gazette of the 8.11.62 under Not. No. 553 is *null* and *void* and of no effect whatsoever;

2. A declaration of the Court that the order of acquisition by respondent of 266 sq. feet of her property under plot No. 262 published in the Gazette of the 8.11.62 (sic 21.3.63) under Not. No. 553 (sic 146) is *null* and *void* and of no effect whatsoever".

The submissions of counsel for Applicant, may be summarised under the following two heads:

(1) That the Respondent did not comply with the respective provisions of sections 4 and 6 of Law 15/62 in respect of the notice of acquisition and the order of acquisition, respectively;

(2) That the Respondent, in deciding to acquire the property in question of the Applicant, acted in abuse of the powers vested in it.

With regard to submission (1) above, counsel for Applicant argued that the omission of the Respondent to specify the name of the Applicant in the notice of acquisition was a defect which invalidated it.

Counsel for Applicant also submitted that as the notice of acquisition was thus invalidated for not complying with the requirements of section 4 then it must follow that the order of acquisition made under section 6 of Law 15/62, itself being based on an invalid notice of acquisition, must also be invalid.

Counsel for Respondent submitted that both the notice of acquisition and the order of acquisition complied with the respective provisions of sections 4 and 6 of Law 15/62 and were perfectly valid.

Held, I. On submission (1).

(a) Neither the statutory provisions of section 4 of Law 15/62 nor the form of notice set out in the Schedule thereto require the publication of the name of the Applicant in the notice of acquisition caused to be published by the Respondent under the said section. The form of notice of acquisition, being, in accordance with the practice in force in this country for very many years as well as being in accordance with the statutory requirements of Law 15/62, no injustice was caused to the Applicant by virtue of the omission of her name from the notice of acquisition and the notice of acquisition was validly issued and published.

(b) Likewise, the order of acquisition under section 6 of Law 15/62, which was based on, and made consequent upon, the notice of acquisition, was also validly made and published.

II. On submission (2)

(a) In exercise of the statutory powers vested in it the Respondent having exercised a discretion, which I am satisfied has been properly exercised after taking into account all relevant factors, to acquire the property in question of the Applicant, this Court is not prepared to substitute its own discretion for the Respondent's discretion and to say that the discretion should have been exercised in some other way by the acquisition of some other property.

(b) The Respondent has not acted in abuse of the powers vested in it, and has not acted contrary to the principles of administrative law.

Order: This application cannot succeed and is dismissed accordingly.

Application dismissed.

Cases referred to:

Decisions Nos. 1059(39), 878(52) and 300(36), *Digest of Greek Council of State,* 1929-1959 p. 87;

Decisions No. 1023(49), 1252(57), *Digest of Greek Council of State,* 1929-1959;

Decision No. 92(47), *Digest of Greek Council of State,* 1929-1959.

Recourse.

Recourse for a declaration that the notice and order of acquisition by respondent of 266 sq. feet of applicant's property under plot No. 262, is *null* and *void* and of no effect whatsoever.

L.N. Clerides for the applicant.

G. Cacoyiannis with M. Ioannou for the respondent.

Cur. adv. vult.

The facts of the case sufficiently appear in the following judgment delivered by:—

MUNIR, J.: By this recourse under Article 146 of the Constitution the Applicant seeks the following declarations:—

"1. A declaration of the Court that the notice of acquisition by respondent of 266 sq. feet of her property under

plot No. 262, published in the Gazette of the 8.11.62 under Not.No. 553 is *null* and *void* and of no effect whatsoever;

2. A declaration of the Court that the order of acquisition by respondent of 266 sq. feet of her property under plot No. 262 published in the Gazette of the 8.11.62 (sic 21.3.63) under Not. No. 553 (sic 146) is *null* and *void* and of no effect whatsoever".

The relevant uncontested facts of this Case may briefly be summarised as follows:—

The Applicant is the registered owner of immovable property situated in the St. Antonios Quarter of Nicosia. The said property, which comprises a house and adjoining garden, stands on plot No. 262 of Government Survey Plan-Block 24, Sheet-plan No. XXI.54.3.II (hereinafter referred to as "plot No. 262"). The area comprising plot No. 262 is shown as the areas coloured in green, yellow, blue and red on the plan Exhibit 2. The Respondent is the Electricity Authority of Cyprus which is a statutory public corporation on which a right to acquire property compulsorily is conferred by law.

The Respondent, acting as the acquiring authority under the powers vested in it by the provisions of the Compulsory Acquisition of Property Law, 1962 (No. 15/62) (hereinafter referred to as "Law 15/62"), caused a notice of acquisition dated the 6th November, 1962, to be published in the official Gazette whereby notice of the intended acquisition by the Respondent of the 7 items of property set out in the Schedule to the said notice of acquisition was given by the Respondent. Item No. 5 of the aforesaid 7 items of property relates to an area of 266 square feet of the Applicant's property on plot No. 262. This area of 266 square feet is the area coloured red on the plan *Exhibit* 2 and is hereinafter in this judgment referred to as "the property under acquisition". The property under acquisition was required by the Respondent for the purpose of constructing thereon an electricity sub-station. The aforementioned notice of acquisition (hereinafter referred to as the "notice of acquisition") was published under Notification No. 553 in Supplement No. 3 to the Gazette of the 8th November, 1962. On the 21st March, 1963,

the Respondent, acting under section 6 of Law 15/62, caused to be published in Supplement No. 3 to the official Gazette of that date, under Notification No. 146 an order of acquisition dated the 12th February, 1963, (hereinafter referred to as "the order of acquisition") whereby, *inter alia*, the acquisition of the property under acquisition was authorised. On the 10th June, 1964, the Respondent addressed a letter to the Applicant drawing her attention to the publication in the official Gazette of the order of acquisition which had been made in respect of her property in question. On the 1st July, 1964, the present Application was filed on behalf of the Applicant, by which the validity of both the notice of acquisition and the order of acquisition are challenged.

The submissions of counsel for Applicant, by which he seeks to attack the validity of the acquisition procedure taken by the Respondent in respect of the property under acquisition and which culminated in the order of acquisition, may be summarised under the following two heads:—

(1) that the Respondent did not comply with the respective provisions of sections 4 and 6 of Law 15/62 in respect of the notice of acquisition and the order of acquisition, respectively;

(2) that the Respondent, in deciding to acquire the property in question of the Applicant, acted in abuse of the powers vested in it.

With regard to submission (1) above, counsel for Applicant argued that the omission of the Respondent to specify the name of the Applicant in the notice of acquisition was a defect which invalidated it. He submitted that the object of a notice of acquisition under section 4 of Law 15/62 was to notify the owners concerned of the intention to acquire their properties. He went on to submit that if the name of the owners of the properties to be acquired are not stated in the notice of acquisition then such owners concerned cannot be expected to know that the descriptions of the properties given in the notice of acquisition related to their own property. In the submission of counsel for Applicant the requirement in section 4 of Law 15/62 that the notice of acquisition must call "upon any person interested in such property" to submit any objections which he may wish to raise, means that the name of the property owner must be specifically

and expressly stated in the notice of acquisition, so that such property owner can know that the notice relates to his property and can then make his objections. Counsel for Applicant stated that as it happened the Applicant was not aware until she received the Respondent's letter of the 10th June, 1964 (*Exhibit* 1) that a notice of acquisition had been published in the Gazette on the 8th November, 1962, in respect of her property in question and was not, therefore, able to raise any objections to the proposed acquisition within the period of two weeks specified in the notice. Counsel for Applicant also submitted that as the notice of acquisition was thus invalid for not complying with the requirements of section 4 then it must follow, in his submission, that the order of acquisition made under section 6 of Law 15/62, itself being based on an invalid notice of acquisition, must also be invalid.

Counsel for Respondent submitted that both the notice of acquisition and the order of acquisition complied with the respective provisions of sections 4 and 6 of Law 15/62 and were perfectly valid.

I have given careful consideration to this submission of counsel for Applicant and I have come to the conclusion, for the reasons given hereinafter, that neither the notice of acquisition nor the order of acquisition is invalid as submitted by him and that both instruments were validly issued, made and caused to be published by the Respondent in accordance with the respective statutory provisions under which they were so issued, made and published.

It will be observed that section 4 of Law 15/62 provides, *inter alia*, that a notice of acquisition shall be "in the form set out in the Schedule" to Law 15/62. The form of notice of acquisition is duly set out in the said Schedule. The notice of acquisition caused to be published by the Respondent in this Case substantially follows the form set out in the said Schedule. The said form, as set out in the said Schedule, is not such as to require the insertion in such notice of acquisition of the name of the owner of the property to be acquired. The form set out in the said Schedule, which follows, quite properly in my opinion, the wording of the operative provisions contained in section 4 of Law 15/62, states, *inter alia*, that "*Any person* claiming to have any right or interest in the said property who objects to the proposed acquisition thereof

is required within.....". This form of notice of acquisition, whereby the intended acquisition of property is made public by publication and which was commonly known as a "notice to treat", has been a familiar feature of acquisition proceedings in this country for very many years. The form of notice of acquisition set out in the Schedule to Law 15/62 is similar in substance to the form of notice of intended acquisition which used to be published under section 6 of the old Land Acquisition Law (Cap. 226), which was repealed and replaced by Law 15/62. The form of notice under section 6 of Cap. 226 was, likewise, set out in the Schedule to Cap. 226. The history of Cap.226 itself goes as far back as the year 1899 and the form of notice under section 6 was introduced into Cap. 226 by sections 3 and 6 of Law 12 of 1944. It will be seen, therefore, that the particular form of notice of acquisition in question has been a familiar feature of our land acquisition procedure since, at any rate, as far back as 1944.

The notice of acquisition in the form set out in the Schedule to Law 15/62, and as required by section 4 thereof is, in my opinion, intended by the legislature to be, not a personal notice to the individual property owners concerned, but a general notification to the public at large notifying the public generally of the intended acquisition of the properties in question and calling on those members of the public who claim to have any right or interest therein to submit their objections. In other words, a notice of acquisition under section 4 of Law 15/62 and in the form set out in the Schedule to the said Law (like its predecessor under section 6 of Cap. 226 and the Schedule thereto), is a notice *in rem* and not a notice in personam. Furthermore, the notice of acquisition in question is clearly a "public notice" as defined in section 2 of the Interpretation Law, Cap. 1, namely, it is an "announcement not of a legislative nature which is gazetted", and having been published in the official Gazette, the provisions of paragraph (*b*) of section 43 of Cap.1 apply to it.

For the above reasons I am of the opinion that neither the statutory provisions of section 4 of Law 15/62 nor the form of notice set out in the Schedule thereto require the publication of the name of the Applicant in the notice of acquisition caused to be published by the Respondent under the said section. The form of notice of acquisition, being in accordance with the practice in force in this country for very many

years as well as being in accordance with the statutory requirements of Law 15/62, I am of the opinion that no injustice was caused to the Applicant by virtue of the omission of her name from the notice of acquisition and I am, therefore, of the opinion that the notice of acquisition was validly issued and published. Likewise, I am of the opinion, for the same reasons, that the order of acquisition under section 6 of Law 15/62, which was based on, and made consequent upon, the notice of acquisition, was also validly made and published.

Coming now to submission (2) above, counsel for Applicant submitted that the Respondent had acted in abuse of the powers vested in it under Law 15/62 because it had violated the following principles of administrative law:-

(*a*) that the administration should not resort to compulsory acquisition, which is an onerous measure, when its purpose can be obtained by a less onerous measure, e.g. by a right of way. In support of this principle citations were made from the Digest of Greek Council of State, 1929-1959 p. 87—Decisions Nos. 1059(39), 878(52) and 300(36);

(*b*) that resort to compulsory acquisition should only take place if absolutely necessary (Digest of Greek Council of State, cited *supra*, Decisions Nos. 1023(49), 1252 (57); and

(*c*) that the administration in selecting the best property for acquisition must enquire as to the existence of other properties suitable for acquisition and to prefer that one, the acquisition of which will render less onerous deprivations to the owner than others (Digest of Greek Council of State, cited *supra*, Decisions Nos. 1023(49) and 92(47)).

The crux of the submission of counsel for Applicant on this issue is that, in his submission, it was possible for the Respondent to acquire other property in the area in question for the purpose of constructing a sub-station the consequences of which acquisition would cause less hardship to the owners of such property than the acquisition of the property under acquisition would cause to the Applicant. In support of this contention counsel for Applicant called as

an expert witness Mr. Yiangos Mavroudis, who is a land valuer with more than 30 years experience.

Mr. Mavroudis produced a plan of the area (*Exhibit* 2) on which plot No. 262 is coloured in green, yellow, blue and red. The green colour shows that part of the area of plot 262 on which the Applicant's present house is standing; the yellow area shows the garden of the house. The red area, as already stated, shows the property under acquisition and the area coloured blue shows the proposed access from the property under acquisition to Androklis Street. Various possible alternative sites for the construction of the sub-station were put to Mr. Mavroudis by counsel for Applicant. Mr. Mavroudis conceded in his evidence that of all the building sites abutting on the cross-roads at the junction of Androklis and Pindarou Streets the only other possible alternative to the Applicant's plot is plot No.315.

Mr. Papageorgis, the Senior Engineer of the Respondent in charge of the Construction Department, who was called by counsel for Respondent as an expert witness, gave evidence in which he explained that it was necessary for technical and other reasons to construct a sub-station in an area in the region of the junction of Androklis and Pindarou streets within a radius, if possible, of about 100 yards from that junction. He produced a plan (*Exhibit* 4) on which is shown in blue all the existing sub-stations of the Respondent in that part of Nicosia. He stated that, having regard to the position of the existing sub-stations as shown on *Exhibit* 4 and bearing in mind the requirements of the supply of electrical energy in that area, it was necessary to construct another sub-station within a radius, if possible, of approximately 100 yards of the junction of Androklis and Pindarou streets. He said that he had discussed various other alternatives with the responsible officers of the Town Planning Department and he was satisfied that the only possible site for the construction of the proposed sub-station, which would both meet the technical requirements of the Respondent and the technical requirements of the Town Planning Department and, at the same time, would cause the least hardship to the owner of the property to be acquired, was the property under acquisition of the Applicant. The witness explained that the site for the proposed sub-station (shown in red both on *Exhibit* 2 and on *Exhibit* 4) is at the far corner of the garden of the Applicant as far away as possible from the main

thoroughfares and is so situated as to cause the least possible hardship to the Applicant. With regard to the possibility of constructing the proposed sub-station on plot 315 (which Mr. Mavroudis had conceded was the only possible practical alternative to plot 262) Mr. Papageorgis hatched in ink on *Exhibit* 4 the site where it has been suggested on behalf of Applicant that the sub-station could be constructed on plot 315. It will be observed that the site so hatched in ink would be visible from Pindarou Street and would not be far from that street. This witness stated that the Town Planning Department would not be prepared to make any relaxation of the relevant provisions of the Streets and Buildings Regulations or to give a permit for the construction of a sub-station on plot 315.

In the light of the evidence adduced by Applicant and Respondent, respectively, the Court decided to call Mr. Constantinos Ioannides, who is a Town Planning Officer of the Department of Town Planning and also the Divisional Officer of the Department for Nicosia and Kyrenia, and as such is immediately responsible to the Director of the Department for matters relating to the construction of sub-stations throughout the Republic. This witness impressed me as being a very able and competent person and as someone who obviously had a sound knowledge of his subject. He explained to my satisfaction why it was not possible to construct a sub-station on plot 315 on the site suggested by Mr. Mavroudis and expressed the opinion that the only practical and feasible site in that area for the construction of the proposed sub-station, which would meet both the technical requirements of the Respondent and which would comply with the Streets and Buildings Law, and Regulations, and meet also the technical requirements of the Town Planning Department, was the site which was ultimately chosen by the Respondent on plot 262 of the Applicant.

I am satisfied that a site for the construction of a sub-station was required by Respondent in the area in question and that such a site had to be, as far as possible, within a radius of about 100 yards of the junction of Androklis and Pindarou Streets; I am also satisfied that the Respondent, in exercising its discretion as to which would be the best possible site from all aspects of the matter, exercised that discretion properly and did not act in abuse of the powers vested in it (in the sense of paragraph 1 of Article 146 of the Constitution) in

deciding to acquire the property in question of the Applicant. It is true that the acquisition of the Applicant's property might cause some hardship to the Applicant. There is, however, express provision in paragraph 4(c) of Article 23 of the Constitution, for "the payment in cash and in advance of a just and equitable compensation" to her. Likewise, based on the said Article of the Constitution, there is ample provision contained in Part III of Law 15/62 (sections 8 to 12) for the payment of just and equitable compensation. I am not satisfied, on the material before me, that it would have been feasible for the Respondent to acquire alternative property, i.e. other than the property under acquisition of the Applicant, for the purpose of erecting a sub-station in the area in question in such a way that the hardship caused to the owner of such alternative property would be less than the hardship caused to the Applicant. In this connection it is pertinent to note the following passage from the evidence of the witness Mr. Constantinos Ioannides:—

> "The hardship on the owner of plot 315 *would be greater* than the hardship on the owner of plot 262 if they both decided to extend their existing buildings".

In conclusion, I would state that in exercise of the statutory powers vested in it the Respondent having exercised a discretion, which I am satisfied has been properly exercised after taking into account all relevant factors, to acquire the property in question of the Applicant, this Court is not prepared to substitute its own discretion for the Respondent's discretion and to say that the discretion should have been exercised in some other way by the acquisition of some other property. I am, therefore, of the opinion that the Respondent has not acted in abuse of the powers vested in it, as alleged by counsel for Applicant, and has not acted contrary to the principles of administrative law referred to by counsel for Applicant.

For all the reasons given above this application cannot, in my opinion, succeed and is dismissed accordingly.

Application dismissed.
No order as to costs.