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[MUNIR, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

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NIKOS KIRZIS
and 2 OTHERS
and
THE REPUBLIC OF
CYPRUS,
THROUGH -
1. THE DISTRICT
OFFICER,
2. THE LIMASSOL
DISTRICT LANDS
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NIKOS KIRZIS AND 2 OTHERS,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH-

1. THE DISTRICT OFFICER OF LIMASSOL,

2. THE LIMASSOL DISTRICT LANDS
OFFICER (AG.),

Respondent.

(Case No. 19/63).

Acquisition—Streets and Buildings Regulation Law, Cap. 96—Permit for the division of land into building sites issued under section 3 thereof—Permit containing condition imposed under section 3(1)(c)(v) of the Law—Vesting of ownership of land in the Republic by virtue of such condition — Vesting not amounting to a “deprivation” in the sense of Article 23.2 of the Constitution.

Acquisition—Streets and Buildings Regulation Law, Cap. 96 and the Immovable Property (Tenure, Registration and Valuation Law) Cap. 224—Provisions thereunder requiring a permit for the exercise of the right of property over land amount to a “restriction or limitation” in the sense of Article 23.2 and 3 of the Constitution—Such provisions by virtue of which the ownership of land has vested in the Republic are not unconstitutional when applied to the facts of this case subject to the provisions of Article 23.

Constitutional Law—Article 23.3 of the Constitution—Compensation payable under—Whether “restrictions or limitations” imposed by virtue of legislative provisions are such as to give rise to the right of compensation under Article 23.2, a question of fact in each case—Applicants at liberty to take proceedings before a civil court under Article 23.11.

The Applicants are some of the owners in undivided shares of a piece of land, which is situated at the locality “Limnazousa” in the Ayia Phyla area of Limassol.

On the 29th September, 1959, the Applicants had applied to the Improvement Board of Ayia Phyla (which under section 3(2)(a) of the Streets and Buildings Regulation Law, Cap. 96 is the appropriate authority under that Law) for a permit under section 3 of Cap. 96 to divide the land into separate building sites. No provision for the laying out of a public square was made in the plan for the proposed division submitted by the Applicants, and the application of the Applicants for a permit was on this occasion rejected by the appropriate authority.

Sometime before the 26th March, 1960 the Applicants made another application for a similar permit and submitted a new revised plan for the proposed division of the land into building sites. This revised plan made provision for the laying out of an open space as a square. Eventually approval was given by the appropriate authority for the proposed division and for the laying out of the public square.

The new building sites which were thus created as a result of this division were registered in the name of the Applicants on the 29th September, 1962. On the 20th November, 1962, Applicant No. 3, both on his own behalf and on behalf of the other Applicants, applied to the District Lands Officer, Limassol, to have also the public square registered in the names of the Applicants.

The District Lands Officer refused to register the public square in the Applicants' name and a similar request which was made to the District Officer on the 11th December, 1962, together with a request for the payment of compensation was also rejected by him on the 10th January, 1963.

Thereupon Applicants filed this recourse against the decision containing such rejection under Article 146 of the Constitution.

The basic question for decision in this case is whether, on the facts of this particular case, the operation of section 3 of Cap. 96, in conjunction with section 8 of Cap. 224, whereby the ownership in the land comprising the public square is transferred from the Applicants to the Republic amounts to a "deprivation" of the Applicants right of property in the sense of paragraph 2 of Article 23, or whether it amounts to a "restriction or limitation" on the exercise

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of such right (in the sense of paragraph 3 of Article 23).

Counsel for respondent submitted:-

(1) That this recourse could not be entertained because when the revised plan for the proposed division was submitted by the Applicants (i.e. some time prior to the 26th March, 1960) the Constitution was not then in force and any decision, act or omission which took place before the coming into force of the Constitution could not, in his submission, subsequently form the subject-matter of a recourse under Article 146.

(2) That the recourse is out of time.

Held, I. As to the submission that the recourse could not be entertained.

(a) Had the permit for the division of the land into building sites been issued by the Respondent prior to the coming into operation of the Constitution, then this submission of Counsel for Respondent would have been much stronger, but as the permit was issued on the 9th May, 1961, after the Constitution came into force it cannot, in my opinion, be said that the granting of the permit in question, which brought the public square into legal existence was an "act or decision" done or taken before the Constitution came into force.

II. As to the submission that the recourse is out of time :

(a) The omissions complained of by the Applicants can properly be made the subject-matter of a recourse under Article 146 and that this recourse, which is the subject-matter of continuing omissions, is not out of time under paragraph 3 of Article 146.

III. As to whether or not compensation is payable :

(a) This issue of whether or not compensation is payable under paragraph 3 of Article 23, depends on the question of fact whether or not the "restrictions or limitations" in this case have been such as to give rise to the right to compensation under paragraph 3 of Article 23. This question of fact is so closely related to the determination of the amount of such compensation and to the factual issues connected therewith that, in accordance with

the interpretation given to paragraph 11 of Article 23 by the Supreme Constitutional Court in the *Holy See of Kitium Case* 1 R.S.C.C. p. 15 and in accordance with the principles propounded by the said Court in the case of *Hussein Ramadan and the Electricity Authority of Cyprus*, 1 R.S.C.C. p. 49 at p. 58, it is within the jurisdiction of a civil court under such paragraph 11. It is, therefore, in my opinion, open to the Applicants to take appropriate proceedings before a civil court under paragraph 11 of Article 23.

IV. On the merits :-

(a) The granting of a permit to the Applicants to divide the land into building sites (whereby the proposal contained in the plan submitted by the Applicants to lay out or construct a square was approved by the appropriate authority and incorporated in such permit as a condition thereof) does not amount to a "deprivation", in the sense of paragraph 2 of Article 23, but the legislative provision requiring such a permit amounts to a "restriction or limitation", in the sense of paragraphs 2 and 3 of Article 23, on the exercise of the right of property over the land as a whole, which was sought to be divided by the granting of the permit in question.

(b) The legislative provisions in question, by virtue of which the area comprising the public square has come to vest in the Republic are not unconstitutional when applied to the facts of this case subject to the provisions of Article 23, and that the Application must be dismissed in as far as it seeks a declaration to have the said public square registered in the name of the Applicants.

Application dismissed.

Cases referred to:

Holy See of Kitium and the Municipal Council Limassol,
(1 R.S.C.C. p. 15, at pp. 26, 27, and 28).

Hussein Ramadan and the Electricity Authority of Cyprus,
(1 R.S.C.C. p. 49 at p. 58).

Recourse.

Recourse for a declaration *inter alia*, that the decision of the respondent depriving applicants of the ownership of a

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piece of land described as the "Public Square" on plot 7/I/I/I/I, at the locality "Limnazousa", in the area of Ayia Phyla, under registration No. 18455, is *null and void* and of no effect whatsoever.

H. Georghallides, for the Applicants.

P. Michaelides, on behalf of G. Cacoyiannis, for the District Officer of Limassol, Chairman of the Improvement Board of Ayia Phyla.

K.C. Talarides, Counsel of the Republic, for the *Limassol District Lands Officer (Ag.)*

Cur. adv. vult.

The following judgment was delivered by:-

MUNIR, J.: By this recourse under Article 146 of the Constitution the Applicants apply for:-

"1. A declaration against Respondent 1, to the effect that his decision regarding the applicants jointly and severally, as it was communicated to them on the 10th January, 1963, depriving them of the ownership of a piece of land described as the "public square", on plot 7/I/I/I/I, at the locality "Limnazousa", in the area of Ayia Phyla, under registration No. 18455, in the names of the Applicants in undivided shares, without the authority of any existing law and/or without the payment of compensation to them for deprivation of ownership, is *ultra vires*, *null and void* and of no effect whatsoever, as it further lacks the consent of the Applicants to part with their ownership, given jointly and/or severally.

2. IN THE ALTERNATIVE, that the decision of Respondent 1, after the imposition of limitations and restrictions on the use and enjoyment of the aforesaid piece of land, which have materially decreased its economic value, not to compensate the Applicants who are the only lawful owners and/or persons entitled to registration of the said "public square", is *null and void* and of no effect whatsoever, as it is contrary to the provisions of the Constitution and *ultra vires*.

3. That the decision of Respondent 2, not to effect registration of the so described "public square" in the names of the applicants who are the only lawful owners

thereof and the only persons entitled to registration according to their respective shares, is *null and void*, contrary to the Laws and Constitution”.

The Applicants are some of the owners in undivided shares of a piece of land, which is registered jointly in the names of the co-owners under registration No. 18455 and which is situated at the locality “Limnazousa” in the Ayia Phyla area of Limassol (hereinafter in this judgment referred to as “the land”).

On the 29th September, 1959, the Applicants had applied (*see Exhibits 1A and 1B*) to the Improvement Board of Ayia Phyla (which under section 3(2) (a) of the Streets and Buildings Regulation Law, Cap. 96 is the appropriate authority under that Law) for a permit under section 3 of Cap. 96 to divide the land into separate building sites. No provision for the laying out of a public square was made in the plan for the proposed division submitted by the Applicants, and the application of the Applicants for a permit was on this occasion rejected by the appropriate authority.

Sometime before the 26th March, 1960 (the exact date appears to be unknown) the Applicants made another application for a similar permit and submitted a new revised plan for the proposed division of the land into building sites (*Exhibits 4A and 4B*). This revised plan made provision for the laying out of an open space as a square (hereinafter in this judgment referred to as “the public square”). Eventually on the 9th May, 1961 the District Officer, as Chairman of the Improvement Board issued the permit requested for the division of the land into building sites (*Exhibit 13*) on the basis of the plan submitted by the Applicants and approval was thus given by the appropriate authority for the proposed division and for the laying out of the public square. Upon the application of the Applicants a certificate of approval under section 10 of Cap. 96 was subsequently issued to them on the 9th May, 1962, in respect of the said division.

The new building sites which were thus created as a result of this division were duly registered in the name of the Applicants on the 29th September, 1962. On the 20th November, 1962, Applicant No. 3, both on his own behalf and on behalf of the other Applicants, applied to the District Lands Officer, Limassol, to have also the public square registered in the names of the Applicants (*Exhibit 6*).

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The District Lands Officer by a letter dated the 6th December, 1962, (*Exhibit 7*) addressed to Applicant No. 3 refused to register the public square in the Applicants' name and a similar request which was made to the District Officer on the 11th December, 1962, (*Exhibit 8*) together with a request for the payment of compensation was also rejected by him on the 10th January, 1963 (*Exhibit 9*).

At the outset Counsel for Respondent submitted that this recourse could not be entertained because when the revised plan for the proposed division was submitted by the Applicants (i.e. some time prior to the 26th March, 1960) the Constitution was not then in force and any decision, act or omission which took place before the coming into force of the Constitution could not, in his submission, subsequently form the subject-matter of a recourse under Article 146. Had the permit for the division of the land into building sites (*Exhibit 13*) been issued by the Respondent prior to the coming into operation of the Constitution, then this submission of Counsel for Respondent would have been much stronger, but as the permit was issued on the 9th May, 1961, after the Constitution came into force it cannot, in my opinion, be said that the granting of the permit in question, which brought the public square into legal existence was an "act or decision" done or taken before the Constitution came into force.

As to the submission of Counsel for Respondent that the recourse is out of time, the two omissions of which the Applicants complain, namely, the omission to register the public square in their name and the omission to pay compensation to the Applicants under paragraph 3 of Article 23, have continued after the granting of the permit in question on the 9th May, 1961. These two omissions, which in the Applicants' submission still continue, formed the subject-matter of correspondence between the Respondent and the Applicants ending with the letter of the District Officer to Applicant No. 3, dated the 10th January, 1963 (*Exhibit 9*).

I am of the opinion that the omissions complained of by the Applicants can properly be made the subject-matter of a recourse under Article 146 and that this recourse, which is the subject-matter of continuing omissions, is not out of time under paragraph 3 of Article 146.

It is useful at this stage to set out the relevant provisions

of the Streets and Buildings Regulation Law, Cap. 96 and the Immovable Property (Tenure, Registration and Valuation Law) Cap. 224. The relevant provisions of section 3 of Cap. 96 read as follows:-

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“3(1). No person shall -

(a) lay out or construct a street;

(c) lay out or divide any land.....into separate sites;

without a permit in that behalf first obtained from the appropriate authority.....”

The relevant provisions of section 9 of Cap. 96 read as follows:-

“9(1). In granting a permit under the provisions of section 3 of this Law, the appropriate authority shall have power, subject to any Regulations in force for the time being, to impose conditions as hereinafter, to be set out in the permit, that is to say -

(c) with regard to the laying out or division of any land for building purposes, conditions as to -

(v) the construction of streets, ditches, bridges and culverts;”

The relevant provisions of section 11 of Cap. 96 read as follows:-

“11. Every street constructed by virtue of a permit granted under the provisions of section 3 of this Law shall, as soon as the certificate of approval has been granted, *be deemed to be a public street* and shall -

(b) in every other case (i.e. outside municipal areas), unless otherwise provided by any Law in force for the time being, come under the control of the Government and the expenses of repairing and maintaining such street shall be borne by the Government”.

Section 2 of Cap. 96 defines “street” as follows:-

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“ ‘street’ includes any road, bridle-path, pathway, blind alley, passage, foot-way, pavement or *public square*”.

The relevant provision of Cap. 224, which is section 8 thereof, reads as follows:-

“8. All public roads and such part of the foreshore as is not privately owned at the date of the coming into operation of this Law shall be vested in the Crown (now Republic) for the use of the public”.

The expression “public road” is defined in section 2 of Cap. 224 as meaning -

“any street, *square*, pathway, open place or space over which the public has a right of way and includes any land set apart by, or with the consent of, the appropriate authority as a public road”.

It will be observed from the legislative provisions set out above that the public square which is the subject-matter of this recourse has come into being not as the result of compulsory acquisition by the Republic or by any public authority, nor has it been created in furtherance of, or for the purpose of implementing, any scheme prepared by the Republic or by any public authority. The public square in question has come about as a result of an application by the Applicants for a permit under section 3 of Cap. 96 to divide the land into building sites. This is clearly not a case where the Republic or the appropriate public authority concerned has itself decided to create a public square or to prepare some development project of its own in consequence of which the creation of a public square has become necessary. It is a case where the Applicants, in order to develop their property and to be able to convert their land into marketable building sites, have themselves, of their own free will and accord and without any obligation on them to do so, applied for a permit to divide their land into building sites. In order to make the division in the form in which it was considered advisable by the technical experts of the appropriate authority, Applicants themselves included the laying out of a public square in the plan for the proposed division. It is true that had they not prepared the plan in a form which could be accepted by the appropriate authority and its experts their application for a permit would have been (and on a previous occasion

had actually been) rejected.

When the Applicants submitted their revised plan for the division of the land into building sites in 1960 in support of their application for a permit under section 3 (which plan included the laying out or construction of streets and the public square) the Applicants must be regarded as, in fact, also applying for a permit to lay out or construct the streets and public square in question under paragraph (a) of sub-section (1) of section 3 of Cap. 96, as well as for a permit to divide the land into building sites under paragraph (c) of the said sub-section. Furthermore, the appropriate authority concerned is empowered, under section 9 (1) (c) (v) to impose a condition, inter alia, requiring the person, to whom a permit to divide land into building sites has been granted, to construct, inter alia, "streets" (which term includes public squares).

Once a street or public square, etc. has been laid out or constructed by virtue of, and in accordance with, a permit under section 3 of Cap. 96, then section 11 of Cap. 96 expressly provides that every such street or public square shall be deemed to be a public street (which includes a public square), and by virtue of section 8 of Cap. 224 the ownership of the land comprising such public street or "public square" vests in the Republic.

There is no doubt, and neither counsel for the parties to this recourse has submitted otherwise, that the relevant provisions of Cap. 96 and Cap. 224 have to be read, since the 16th August, 1960, subject to the Constitution and in particular subject to Article 23 thereof, and to be applied with necessary modifications (see the *Holy See of Kitium v. Municipal Council Limassol*, 1 R.S.C.C. p. 15, at p. 27).

Thus, the relevant provisions of section 3 of Cap. 96. (whereby the owner of land is, inter alia, restricted from dividing his land into building sites and which provides that he can only do so by virtue of a permit granted under that section), the requirement of section 11 of Cap. 96 (that any street or square so constructed by virtue of such a permit shall be deemed to be a public street) and the provisions of section 8 of Cap. 224 (that such public streets, roads, or squares shall be vested in the Republic), must all be read subject to the provisions of the Constitution and particularly subject to Article 23 thereof.

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There can be no doubt, in my opinion, that the requirement of applying for a permit to divide land into building sites under section 3 of Cap. 96 is connected with the right of property safeguarded by paragraph 1 of Article 23, which includes the right to possess and enjoy property.

Paragraph 2 of Article 23 provides that no deprivation or restriction or limitation of any such right shall be made except as provided in the said Article, and paragraph 3 thereof provides, *inter alia*, that "Restrictions or limitations which are absolutely necessary in the interest of town and country planning or the development and utilization of any property to the promotion of the public benefit may be imposed by law on the exercise of such right".

As was pointed out by the Supreme Constitutional Court in the case of the *Holy See of Kitium v. Municipal Council of Limassol*, cited *supra* at p. 28. it is noteworthy and significant that whereas "deprivation" is specifically mentioned in paragraph 2 of Article 23 in addition to "restriction or limitation", paragraph 3 provides only for "restrictions or limitations".

The Supreme Constitutional Court held in the *Holy See of Kitium Case*. (p. 28) that:-

"In each case where a building permit is applied for it is a question of fact and of degree, depending upon the circumstances of the particular case whether the decision of the appropriate authority thereon amounts to a "deprivation" (within the meaning of the above provisions) and which can only be achieved under paragraph 4 of Article 23, or whether it amounts to a "restriction or limitation" (within the meaning of the above provisions) which can only be imposed under paragraph 3 of the said Article".

In that particular case the Supreme Constitutional Court went on to express the opinion that, applying this principle to the facts of that particular case, "at any rate the outright prevention of the Applicant for building at all on the property in question would amount to "deprivation" within the meaning of "paragraph 2 of Article 23".

Likewise, applying the above-mentioned principle laid down in the *Holy See of Kitium Case* (which in my opinion applies with equal force to the case of a permit for division

of land into building sites under section 3 of Cap. 96 as it does to the case of a building permit), the basic question for decision in this Case is whether, on the facts of this particular case, the operation of section 3 of Cap. 96. in conjunction with section 8 of Cap. 224, whereby the ownership in the land comprising the public square is transferred from the Applicants to the Republic amounts to a "deprivation" of the Applicants right of property in the sense of paragraph 2 of Article 23, or whether it amounts to a "restriction or limitation" on the exercise of such right (in the sense of paragraph 3 of Article 23).

As also pointed out by the Supreme Constitutional Court in the above-mentioned passage from its judgment in the *Holy See of Kitium Case*, "deprivation" of the right of property can only be achieved under paragraph 4 of Article 23. An examination of the provisions of paragraph 4 of Article 23 makes it quite clear what the drafters of the Constitution meant when they used the word "deprivation" in paragraph 2 of Article 23, namely, "deprivation" as the result of compulsory acquisition of movable or immovable property or any right over or interest in any such property by the Republic, a municipal corporation, or a Communal Chamber by virtue of a general Law for compulsory acquisition as is referred to in the said paragraph 4. It follows, therefore, from a reading of paragraphs 2 and 4 of Article 23 that in order for there to be "deprivation" of the property rights of a person there must be an element of *compulsion* (as in the case of compulsory acquisition under paragraph 4 of Article 23). The very word "deprivation" itself implies that the property in question is being taken away from the owner, *against his will*, by direct or indirect compulsion. In the case, however, of a permit to divide land into building sites under section 3 of Cap. 96 (in which is included a condition for the laying out or construction of a street or square) the owner of the land is *not being compelled to give up his property in order to meet the requirements of the Republic or the public authority concerned*. In such a case the creation of a street or square, (the property in which ultimately vests in the State) is merely incidental to, and arises consequentially upon, the voluntary request of the citizen himself for a permit to divide his land into building sites.

As the land comprising the public square in this Case has not been compulsorily acquired under paragraph 4 of Article

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23 (or by any form of constructive compulsory acquisition) and as it was not on the initiative of the appropriate authority that the legislative machinery in question was put into motion for the division of the Applicants' land into building sites which has resulted in the creation of the square and its vesting in the Republic, I am of the opinion that the vesting of the ownership of the land comprising the public square in the Republic does not amount to a "deprivation" in the sense of paragraph 2 of Article 23.

What has happened in this Case is that "restrictions or limitations" have been placed by Cap. 96, and in particular by sections 3 and 9 thereof, on the exercise of the right of property safeguarded by paragraph 1 of Article 23 in as much as the owner of such property is not free to divide it into building sites without a permit. In my opinion these "restrictions or limitations" have been imposed as being "absolutely necessary in the interest of . . . the town and country planning or the development and utilization of any property to the promotion of the public benefit", in the sense of paragraph 3 of Article 23 and are, therefore, covered by the said paragraph (c.f. the *Holy See of Kitium Case*, cited *supra*).

In the implementation of the provisions of the relevant provisions of Cap. 96 and Cap. 224, (applied with necessary modifications by virtue of Article 188 of the Constitution) "restrictions or limitations" have clearly been imposed on the applicants in this Case on the exercise of their right to divide their property into building sites. In applying for the necessary permit to divide the land in question, as a whole, into building sites such "restrictions or limitations" have resulted in the creation of public streets and a public square the property in which must by Law vest in the Republic. It is difficult to envisage legislative provision in any country which required or permitted public streets or squares to be owned by private individuals with the resulting burdens placed on them as owners to repair and maintain such public streets and squares.

It should be observed that counsel for the Applicants has not suggested that the property in the streets created by virtue of the permit in question should not vest in the Republic nor has he suggested that any compensation should be paid to the Applicants under paragraph 3 of Article 23 in

respect of such streets. He has confined his submissions to registration and payment of compensation in respect of the square. In my opinion whether the area of land given up to the Republic by virtue of the "restrictions or limitations" imposed by the legislative provisions in question comprises a street or a square makes no difference to the Constitutional and legal position, for the difference between a "street" and a "square" as far as ownership of the property in it is concerned, is not one of substance but is merely one of degree.

For all the reasons given above, the Court is of the opinion that the granting of a permit to the Applicants to divide the land into building sites (whereby the proposal contained in the plan submitted by the Applicants to lay out or construct a square was approved by the appropriate authority and incorporated in such permit as a condition thereof) does not amount to a "deprivation", in the sense of paragraph 2 of Article 23, but the legislative provision requiring such a permit amounts to a "restriction or limitation", in the sense of paragraphs 2 and 3 of Article 23, on the exercise of the right of property over the land as a whole, which was sought to be divided by the granting of the permit in question.

In the light of the above I am of the opinion that the legislative provisions in question, by virtue of which the area comprising the public square has come to vest in the Republic are not unconstitutional when applied to the facts of this case subject to the provisions of Article 23, and that the Application must be dismissed in as far as it seeks a declaration to have the said public square registered in the name of the Applicants.

Coming now to the question of compensation, the second part of paragraph 3 of Article 23 provides that -

"Just compensation shall be promptly paid for any such restrictions or limitations which materially decrease the economic value of such property; such compensation to be determined in case of disagreement by a civil court".

Counsel for Respondent has submitted that no compensation is payable in this case under paragraph 3 of Article 23 because not only has the economic value of the property in question not materially decreased as a result of any "restrictions or limitations", but on the contrary, such economic

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value has materially increased as a result of the division of the land into building sites and the constructions of streets and a square, whereby the sum total of the value of the building sites comprising the whole land in question amounts to far more than the value of the land as a whole prior to such division. He submitted that if the economic value of the property in question would not so have materially increased then the Applicants would not have divided their land into building sites and incur the expenses of constructing streets, etc. Counsel for Applicants on the other hand submitted that compensation was payable to them under paragraph 3 of Article 23.

This issue of whether or not compensation is payable under paragraph 3 of Article 23, depends on the question of fact whether or not the "restrictions or limitations" in this case have been such as to give rise to the right to compensation under paragraph 3 of Article 23. This question of fact is so closely related to the determination of the amount of such compensation and to the factual issues connected therewith that, in accordance with the interpretation given to paragraph 11 of Article 23 by the Supreme Constitutional Court in the *Holy See of Kitium Case* (cited supra, at page 26) and in accordance with the principles propounded by the said Court in the case of *Hussein Ramadan v Electricity Authority of Cyprus*, 1 R S C C p 49 at p. 58, it is within the jurisdiction of a civil court under such paragraph 11. It is, therefore, in my opinion, open to the Applicants to take appropriate proceedings before a civil court under paragraph 11 of Article 23.

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

*Application dismissed
No order as to costs.*