

1966  
July 19, 26

CHRISTAKIS  
VASSILIADES  
*and*  
THE REPUBLIC  
OF CYPRUS,  
THROUGH  
THE COUNCIL  
OF MINISTERS

[VASSILIADES, J.]

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

CHRISTAKIS VASSILIADES,

*Applicant.*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE COUNCIL OF MINISTERS,

*Respondent.*

(Case No. 171/66).

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*Immovable Property—Compulsory acquisition of land—Article 23, paragraph 4, of the Constitution—Requisition of the same piece of land pending completion of the compulsory acquisition thereof—Article 23, paragraph 8, of the Constitution—The Requisition of Property Law, 1962 (Law No. 21 of 1962)—Provisional Order restraining the respondent from taking any steps in furtherance of the requisition of such property—Principles upon which the Court will grant or not a provisional order in a case of this nature—Viz. in a case where the requisition order is made as corollary to and for the purposes of the acquisition of the property—See, also, under Constitutional Law, Practice, below—In the instant case a provisional order was granted to be discharged on certain conditions.*

*Constitutional Law—Compulsory acquisition of property—Requisition of the same property pending completion of the compulsory acquisition—Duties of the acquiring and requisitioning Authority—Article 23, paragraphs 4 and 8 of the Constitution—The Requisition of Property Law, 1962 (Law No 21 of 1962)—Steps to oust the owner from his rights of possession and enjoyment under a requisition order should be taken together and at the same time with the appropriate steps for the determination and prompt payment of the appropriate compensation—See also under Immovable Property above.*

*Practice—Provisional Order—Acquisition of immovable property—Requisition of the same land pending completion of the compulsory acquisition—Principles applicable—Substance of what the Court has to be concerned with in applications for*

provisional order suspending the effect of the requisition order—See, also, under the headings above.

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*Requisition—Compulsory acquisition—Requisition of a plot of land already made the subject of proceedings for compulsory acquisition not yet completed—Provisional order affecting the requisition order—See under the headings above.*

*Acquisition—Compulsory acquisition—See above.*

Article 23, paragraph 8, of the Constitution provides :

“8. Any movable or immovable property may be requisitioned by the Republic or .....  
and only—(a) for a purpose which is to the public benefit and shall be specially provided by a general law for requisitioning which shall be enacted within a year from the date of the coming into operation of this Constitution; and (b) ..... (c) ..... (d) upon the prompt payment in cash of a just and equitable compensation to be determined in case of disagreement by a civil court.”

In this case a requisition order was made in respect of a plot subject matter of a procedure of compulsory acquisition thereof not yet completed. The respondents were, apparently, in a hurry to get the property, but they did not seem to be in a hurry to have the appropriate compensation determined and promptly paid, as required by the Constitution and the statute (*supra*). On the application of the applicant-owner for a provisional order suspending the effect of the aforesaid requisition order, the Court in granting the application on certain conditions—

*Held*, (1) ousting the owner from his right of possession, and leaving him vested with his right of ownership without possession, amounts practically to very grave interference with his ownership-rights if it does not amount to their frustration.

(2) That being so, the steps to oust him from his rights of possession and enjoyment under a requisition order, should be taken together and at the same time with the appropriate steps for the determination and prompt payment of the compensation for the loss of his property ; to give him the feeling and assurance that “ prompt payment in cash of a just and equitable compensation ” (see Article 23,

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July 19, 26

—  
CHRISTAKIS  
VASSILIADES  
and  
THE REPUBLIC  
OF CYPRUS,  
THROUGH  
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OF MINISTERS

paragraph 8 (d) of the Constitution, *supra*), only waits to be determined according to law, the necessary steps for such determination having already been taken, and an appropriate deposit having been made.

(3) With this approach I propose making a provisional order as follows :

*Provisional Order* made restraining the Respondents from taking any steps in furtherance of the acquisition of the property in question, or of the requisition order affecting the same property, for a period of 14 days from today. On payment or deposit of the sum of £1.200, at any time within the said period of 14 days, the Provisional Order to be discharged. In default of such payment or deposit within the said period of 14 days, the Provisional Order to continue in force, pending the hearing and final determination of the acquisition proceedings, or until further order of this Court.

Costs in cause.

*Provisional Order in terms.*  
*Costs in cause.*

Cases referred to :

*Aspri and The Republic*, 4 R.S.C.C. 57.

### **Application.**

Application for a provisional order restraining the Respondent from interfering in any way upon the property of the Applicant, under plot 252, Sheet/Plan XIX/40 W.1, Ayios Mamas, Qr., Morphou, pending the hearing of a recourse against the decision of the Respondent whereby the said property was requisitioned.

*L. Demetriades*, for the Applicant.

*K. Talarides*, Counsel of the Republic, for the Respondent.

The following Decision was delivered by:-

VASSILIADES, J.: The requisition proceedings in this case are apparently taken in order to enable the acquiring Authority under an acquisition order, to exercise such of the rights

attaching to the ownership of property, as are conferred upon them by the requisition order, pending completion of the acquisition of the property required by the Authority.

Apparently this course has been followed in a number of previous cases; and the legal aspect of the matter before me, is governed by decisions and judicial pronouncements in such cases. The Judgment in *Evrydiki Aspri v. The Republic* (4 R.S.C.C. p. 57) a case very similar to the case in hand, governs, I think, most of the legal aspects of the present proceeding.

The substance of what the Court has to be concerned with, in an application for a provisional order in a case of this nature, is, I think, to preserve and protect, as far as possible, subject to the public interest, the expropriated owner's legal rights to compensation, as provided in the relative statute; in the present case, the Applicant's rights to compensation for the loss of the use and enjoyment of his property in Plot 252 (described in the recourse) as such use and enjoyment may be affected by the requisition order, and the eventual loss he may suffer as a result of the acquisition of that particular part of his plot. In my opinion, in a case of this nature, where the requisition order is made as a corollary to and for the purposes of the acquisition of the property the whole transaction should be treated as one in substance, notwithstanding that in form it results from two separate orders, under two different statutes.

Provision for such compensation, both for the requisition and the eventual acquisition of his property, is made in the relative legislation; and is guaranteed by the Constitution. Nevertheless in the present case, where the acquisition of Applicant's property has been decided as early as April last, if not before, no steps appear to have been taken by the acquiring Authority, to have the compensation provided by the statute duly determined and paid to the expropriated owner. The Authority are, apparently, in a hurry to get the property, presumably for sufficient reason; but they do not seem to be in a hurry to have the compensation determined and promptly paid, as required by the statute. They do not seem to connect the question of the compensation with the ousting of the owner from his rights. That is not my understanding, as at present advised, of the relative

1966  
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legislative provisions, read and applied with due regard to the property-rights of the Applicant, as guaranteed by the Constitution.

My attention has been drawn to the difference between the provisions in para. 4 of Article 23, and those in para. 8 of the same Article; particularly as to the payment of compensation. This matter is discussed and considered in the decision in *Aspri v. The Republic (supra)* where at p. 60 G of the report, one reads:

“The Court is of the opinion that the notion of requisition in para. 8 of Article 23 and law 21/62 made thereunder, should be construed in a manner consistent with the whole context of Article 23. By comparing the provisions of paras. 4 and 8 of such Article it will be seen that they follow the same pattern and are designed to achieve similar objects, except that under para. 8 no acquisition of property takes place, as under para. 4. This is the reason why the compensation under para. 4 is payable in advance, whereas under para. 8 it is payable promptly only”.

And further down at p. 61 D the report reads:

“The mere fact that the purpose for which a compulsory acquisition has been decided upon is being pursued *pro tempore* by means of requisition, upon payment of compensation, cannot reasonably be said to frustrate the said rights of the Applicant under sub-para. (c) of para. 4, because the ownership continues to vest in the Applicant in the meantime”.

Bearing in mind, however, that the substance of property-rights rests mainly in the right of possession and enjoyment; and that in this particular case, such rights were being exercised by the owner personally, I take the view that ousting the owner from his right of possession, and leaving him vested with his right of ownership without possession, amounts practically to very grave interference with his ownership rights if it does not amount to their frustration. And that being so, the steps to oust him from his rights of possession and enjoyment, under a requisition order, should be taken together and at the same time with the appropriate steps for the determination and prompt payment of the compensation for the loss of his property; to give him the feeling and

assurance that "prompt payment in cash of a just and equitable compensation", only waits to be determined according to law, the necessary steps for such determination having already been taken, and an appropriate deposit having been made.

In this particular case, I have it from counsel for the Applicant that his client's loss for the use and enjoyment of that particular part of his plot, amounts in the owner's estimation to a £100 per month. On the other hand, I have it that the expropriating Authority's figure for such loss, is in the region of £12 for the whole year. Apparently there is a very material difference in the two valuations; and in the circumstances of this case, I think that the higher figure should be taken as measure for the deposit. With this approach, I propose making a provisional order which shall sufficiently connect the rights conferred on the Respondents by the acquisition and requisition orders in their combined effect, with their (the Respondents) corresponding obligations to pay to the owner of the property, appropriate compensation promptly in cash, as provided by law. And at the same time, to protect practically the owner's legal rights to such compensation. My understanding of the relative legislation, as at present advised, is not that the owner must give up his property and chase after the compensation payable to him: but that, failing agreement at the time of the taking of the property, the Authority concerned must promptly and at the same time proceed with the steps prescribed by the law, for the determination of "just and equitable compensation", and the due payment thereof.

*Provisional Order made* restraining the Respondents from taking any steps in furtherance of the acquisition of the property in question, or of the requisition order affecting the same property, for a period of 14 days from today. On payment or deposit of the sum of £1,200, at any time within the said period of 14 days, the Provisional Order to be discharged, and the requisitioning Authority to be at liberty to proceed with the requisition order. In default of such payment or deposit within the said period of 14 days, the Provisional Order to continue in force, pending the hearing and final determination of the acquisition proceedings, or until further order of this Court.

Costs in cause.

*Provisional Order in terms.  
Costs in cause.*