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CHARALAMBOS PISSAS (No. 2)
and
THE ELECTRICITY AUTHORITY OF CYPRUS

[TRIANTAFYLLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHARALAMBOS PISSAS (No. 2),

Applicant,

and

THE ELECTRICITY AUTHORITY OF CYPRUS,

Respondent.

(*Case No.* 16/66).

Compulsory Acquisition of Land—Article 23 *of the Constitution—The Compulsory Acquisition of Property Law,* 1962, (*Law No.* 15 *of* 1962)—*Validity of the relevant Notice and Order of acquisition—Non-publication of the owner's name therein—Although desirable, the publication, however, of the owner's name in the relevant Notice and order is not necessary for the validity of the said Notice and Order—Either under the provisions of Article* 23 *of the Constitution or the provisions of the said law No. 15 of 1962* (supra), *particularly section 4 thereof—"Description" of the property—When the relevant legislation requires publication of the "description" of the property to be compulsorily acquired, it does not envisage the name of the registered owner thereof—See, also, herebelow.*

Compulsory Acquisition of Land—General principles governing compulsory acquisitions—Laid down in the case Chrysochou Bros. and CYTA (reported in this Part at p. 482 *ante*) *—The fact that the respondent Authority decided to erect its sub-station on the property of the applicant, sought to be compulsorily acquired, whereas the sub-station in question could be erected equally suitably on some other neighbouring property—Causing, on the whole, the same amount of hardship to the owner concerned, as applicant is to suffer as a result of the erection of the said sub-station on his property—Cannot lead to the conclusion that the* sub judice *decision to erect the sub-station on the applicant's property has been taken in contravention of the relevant principles laid down in* Chrysochou Bros' *case* (supra)—*Nor does it show that there has been an improper use of the*

relevant discretion on the part of the respondent Authority—Such principles could only have been contravened if a less onerous means *of achieving the purpose of the compulsory acquisition had been overlooked—And not merely because one out of equally onerous solutions has been preferred.*

Constitutional Law—Article 23 *of the Constitution—Non-publication of the name of the owner in the relevant Notice and Order of acquisition—Does not contravene the provisions of Article* 23 *of the Constitution—See, also, above.*

Administrative Law—Discretion—Proper use of—The Court is not empowered to exercise its own discretion in substitution of the discretion of the Administration—See, also, under Compulsory Acquisition above.

Administrative Law—Costs—Inasmuch as the applicant in the present case cannot be said to have acted frivolously in trying to vindicate his right by this recourse—And in view of the fact that in these proceedings there arose some pertinent legal issues—There would be no order as to costs notwithstanding that applicant lost his case.

Practice—Costs—See immediately above.

In this recourse the applicant challenges the validity of the Notice of compulsory acquisition and of the subsequent Order for compulsory acquisition, by virtue of which the respondent sought to acquire an area of 288 sq. feet at the back of the property of applicant at Ayios Dhometios for the purpose of erecting a sub-station thereon. The applicant relied on two main grounds :—

Firstly, that in the form in which the said Notice of acquisition and Order of acquisition have been published in the official Gazette of the Republic without specifically mentioning therein the name of the applicant as the owner of the property in question, they are invalid as being contrary to Article 23 of the Constitution and section 4 of the Compulsory Acquisition Law, 1962 (Law No. 15 of 1962). Secondly, that the property of the applicant was chosen for compulsory acquisition, with a view to erecting thereon a sub-station, without due enquiry by respondent in an effort to adopt the less onerous means of achieving the purpose of the compulsory acquisition in question ; in this respect reliance has been placed on the relevant principles laid down in the

case of *Chrysochou Bros. and CYTA* (reported in this Part at p. 482 *ante*).

The Court in dismissing the recourse :—

Held, I. As to the first ground :

(1) So long as it is quite clear, as held also in the decision given in this case on the 27th June last (reported in this Part at p. 634 ante), that an owner such as applicant who has not come to know within the 75 days specified under Article 146.3 of the Constitution, of the compulsory acquisition of his property (because his name has not been published in the relevant Notice and Order of acquisition) would not be precluded thereafter from challenging the validity of the acquisition, when he actually comes to know of it, I fail to see how the right of property safeguarded under Article 23 of the Constitution can be said to be prejudicially interfered with, in a manner contrary to the Constitution, by the non-publication of the name of the owner in the relevant Notice and Order of acquisition.

(2) I am further of the view that the said Notice and Order have been published in due compliance with the provisions and particularly section 4 of the Compulsory Acquisition Law, 1962. In this respect I agree with the view taken on such an issue in *Venglis and The Electricity Authority of Cyprus (1965) 3* C.L.R. *252.* I am of the opinion that when the relevant legislation speaks of " description " of the property to be compulsorily acquired it does not envisage the name of the registered onwer thereof.

Per curiam: Of course, it would be extremely desirable, and particularly with a view to enabling the time under Article 146.3 of the Constitution to begin to run, if either the name of the owner—and of any person whose proprietary rights are known to be affected by the compulsory acquisition concerned—is mentioned in the Notice and Order of acquisition, or notice of the acquisition is given directly to the owner and to such other persons affected as aforesaid, in addition to the publication of the Notice and Order of acquisition in the Official Gazette in accordance with the provisions of the aforementioned Law 15 of 1962 *(supra).*

Held, II. As to the second ground:

(1) I am satisfied that in the circumstances of this case

it was reasonably open to the respondent to erect this sub-station in question in the particular corner of the applicant's property and that such choice has been made, out of a limited number of *prima facie* suitable properties, after due enquiry and in the proper exercise of the relevant discretion.

(2) I am satisfied, therefore, that in deciding on the *sub-judice* compulsory acquisition the respondent has not acted contrary to any of the well established principles governing compulsory acquisitions (see *Chrysochou Bros and CYTA, (supra)*).

(3) The fact that the sub-station in question could, perhaps, be erected equally suitably on some other neighbouring property causing, on the whole, the same amount of hardship to the owner concerned, as applicant is to suffer in view of the erection of the sub-station on his own back-yard, cannot in my opinion lead to the conclusion that the decision to erect the sub-station on the applicant's property has been taken in contravention of the relevant principles of law; such principles could only have been contravened if a less onerous means of achieving the purpose of the compulsory acquisition had been overlooked; and not merely because one out of equally onerous solutions has been preferred, as in my opinion is the position in the present case. It is not for the Court to exercise its own discretion in substitution of the discretion of the respondent, regarding the choice among equally suitable properties, the acquisition of which would entail more or less equal hardship to those concerned.

Held: As to costs:

The recourse fails and has to be dismissed. Regarding costs I have reached the conclusion that it was not unwarranted at all, in a case of this nature, for applicant to try and vindicate his rights in the matter as seen by him. Bearing, also, in mind that in these proceedings there arise some pertinent legal issues, which called to be resolved, I have decided not to make an order for costs against the applicant and let each party bear its own costs.

Application dismissed. Each party to bear its own costs.

Cases referred to:

Chrysochou Bros and CYTA (reported in this Part at p. 482 *ante followed;*

Venglis and the Electricity Authority of Cyprus, (1965) 3 C.L.R. 252, *followed;*

Pissas and The Electricity Authority of Cyprus (No.1), reported in this Part at p. 634 *ante.*

Recourse.

Recourse against the validity of a notice of compulsory acquisition and of the subsequent order of compulsory acquisition by virtue of which Respondent has acquired an area of 288 sq. feet at the back of the property of Applicant at Ayios Dhometios (plot 219, Block B, Plan XXI, 45. W. 2).

C. Myrianthis for the Applicant.

G. Cacoyiannis with *M. Ioannou* for the Respondent.

Cur. adv. vult.

The following Judgment was delivered by:–

TRIANTAFYLLIDES, J.: In this recourse Applicant challenges the validity of the Notice of compulsory acquisition (Not. No. 553 in Supplement No. 3 to the Official Gazette of the 8th November, 1962) and of the subsequent Order of compulsory acquisition (Not. No. 146 in Supplement No. 3 to the Official Gazette of the 21st March, 1963), by virtue of which Respondent has acquired an area of 288 sq. feet at the back of the property of Applicant at Ayios Dhometios (plot 219, block B, plan XXI.45.W.2) for the purpose of erecting a sub-station thereon.

The property of Applicant is coloured yellow on the relevant survey map (*exhibit* 1) and the part compulsorily acquired is coloured red; this part is at the corner of the backyard of the residence of Applicant, which is an old house built on his said property, plot 219. In the corner in question there exists a dilapidated outside lavatory, which has been out of use for some time, a small oven, part of the hencoop, and underneath there is a cesspit. On the material before

me I am quite satisfied that whatever stands on, or is found under, the area compulsorily acquired can be moved elsewhere in the yard of Applicant's house without interfering at all with the use of such house as a residence; it is merely a question of expense.

An application for the assessment of the compensation payable to Applicant in respect of the compulsory acquisition has already been filed (No. 51/65, before the District Court of Nicosia) and it is still pending.

By a Decision given on the 27th June, 1966,* it has been held that, in the circumstances of this Case (especially in view of the fact that the name of Applicant, as owner of the property compulsorily acquired, has not been stated either in the Notice of acquisition or in the Order of acquisition, and no other notice of the compulsory acquisition had been given to him, until an application was made, as above, for the assessment of the compensation payable for the acquisition) this recourse is not out of time in the sense of Article 146(3) of the Constitution, though it has been filed nearly three years after the publication of the Order of acquisition.

It must be stated here, while on this point, that, at the time the said Decision was given, the Court did not know what has come out during the subsequent hearing, namely that a representative of Respondent had approached Applicant with a view to purchasing from him by voluntary sale, if possible, the part of his property which was eventually compulsorily acquired and that, therefore, Applicant had notice that the said part was earmarked by Respondent for the purpose of erecting a sub-station thereon. But as, after the failure of the negotiations for a voluntary sale, no notice was given to Applicant of a compulsory acquisition being intended, nor notice of such acquisition was given to him directly when the Notice of acquisition or the Order of acquisition were published in the official Gazette, I must say that, even on the basis of the facts as now known, I would still be of the same view, regarding this recourse not being out of time, as the view expressed in the aforesaid Decision of the 27th June, 1966 (supra).

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*Reported in this Part at p. 634 *ante*.

Applicant, in this Case, attacks the validity of the compulsory acquisition in question on two main grounds:-

Firstly, that in the form in which the Notice of acquisition and Order of acquisition have been published—without specifically mentioning therein the name of the Applicant, as the owner of the property compulsorily acquired—they are invalid as being contrary to both Article 23 of the Constitution and section 4 of the Compulsory Acquisition of Property Law, 1962 (Law 15/62). Secondly, that the property of Applicant was chosen for compulsory acquisition, with a view to erecting the sub-station thereon, without due enquiry by respondent in an effort to adopt the less onerous means of achieving the purpose of the compulsory acquisition in question; in this respect reliance has been placed on the relevant principles as expounded in the case of *Chrysochou Bros. and CYTA*, (reported in this Part at p. 482 ante).

Regarding Article 23, counsel for Applicant has not relied on any specific provision therein, but he has argued that it is contrary to the spirit of such Article to interfere with the right of property safeguarded thereby by means of a Notice of acquisition and an Order of acquisition not specifying the name of the owner affected. So long as it is quite clear, as held also in the Decision given in this case on the 27th June, 1966,* that an owner such as Applicant, who has not come to know, within the 75 days specified under article 146(3) of the Constitution, of the compulsory acquisition of his property (because his name has not been published in the relevant Notice and Order of acquisition) would not be prevented thereafter from challenging the validity of the acquisition, when he actually comes to know of it. I fail to see how the right of property safeguarded under Article 23 can be said to be prejudicially interfered with, in a manner contrary to the Constitution ,by the non-publication of the name of the owner in the relevant Notice and Order of acquisition. I am, therefore, of the opinion that the sub judice Notice and Order of acquisition, as published, are not unconstitutional as being contrary to Article 23.

I am, further, of the view that the said Notice and Order have been published in due compliance with the relevant provisions of Law 15/62, and particularly section 4 thereof. In this respect I agree with the view taken on such an issue

*Reported in this Part at p. 634 *ante*.

in *Venglis and The Electricity Authority of Cyprus,* (1965) 3 C.L.R. 252. I am of the opinion that when the relevant legislation speaks of the "description" of the property compulsorily acquired it does not necessarily envisage the name of the registered owner thereof.

Of course, it would be extremely desirable, and particularly with a view to enabling the time under Article 146(3) of the Constitution to begin to run, if either the name of the owner—and of any person whose proprietary rights are known to be affected by the compulsory acquisition concerned —is mentioned in the Notice and Order of acquisition, or notice of the acquisition is given to the owner—and such other person—directly, in addition to the publication of the Notice and Order of acquisition in the official Gazette in accordance with the provisions of Law 15/62.

Coming now to the second complaint of the Applicant against the validity of the compulsory acquisition concerned, I am satisfied, having heard all the evidence adduced in this Case and having paid due regard to whatever has been alleged on behalf of the parties by learned counsel, that it was reasonably open, in the circumstances, to Respondent to choose to erect the sub-station in question in the particular corner of the property of Applicant and that such choice has been made, out of a limited number of *prima facie* suitable properties, after due enquiry and in the proper exercise of the relevant discretion. I am satisfied that in deciding on the compulsory acquisition in question Respondent has not acted contrary to any of the well-established principles governing compulsory acquisitions (see *Chrysochou Bros. and CYTA*, supra).

The fact that the sub-station could, perhaps, be erected equally suitably on some other neighbouring property causing, on the whole, the same amount of hardship to the owner concerned, as Applicant is to suffer in view of the erection of the sub-station in his own backyard (and such a neighbouring property appears to be plot 222 on *exhibit* 1) cannot in my opinion lead to the conclusion that the decision to erect the sub-station on the property of Applicant has been taken in contravention of the relevant principles; such principles could only have been contravened if a less onerous means of achieving the purpose of the compulsory acquisition had been overlooked; and not merely because one out of equally

onerous solutions has been preferred, as in my opinion is the position in the present Case. It is not for this Court to exercise its own discretion, in substitution of the discretion of Respondent, regarding the choice among equally suitable properties, the acquisition of which entails more or less equal hardship.

In the circumstances, this recourse fails for the reasons given in this Judgment and it has to be dismissed accordingly. Regarding costs, I have reached the conclusion that it was not unwarranted at all, in a case of this nature, for Applicant to try and vindicate his rights in the matter, as seen by him, by means of this recourse. Though in the end he has failed to annul the sub judice Notice and Order of acquisition, I think that this is not a case where one could regard his making a recourse as frivolous. I, therefore, bearing in mind also that in these proceedings there arose some pertinent legal issues, which called to be resolved, have decided not to make an order for costs against Applicant and in favour of Respondent, and let each party bear its own costs.

Application dismissed.

Each party to bear its own costs.