

CASES
DECIDED BY
THE SUPREME COURT OF CYPRUS
IN ITS REVISIONAL JURISDICTION AND IN ITS
REVISIONAL APPELLATE JURISDICTION

[TRIANTAFYLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

GEORGHIOS HADJIKYRIAKOU AND OTHERS
(No. 1),

Applicants,

and

1. THE COUNCIL OF MINISTERS

2. THE MUNICIPALITY OF NICOSIA,

Respondents.

(Cases No. 216/67, 220/67, 222/67, 252/67, 253/67).

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Requisition—Requisition of premises—Order for requisition of premises already compulsorily acquired, but ownership where-in still not vested in Respondent 2 because the question of compensation payable not yet finalized—Requisition resorted to for a public benefit purpose—Demolition of the premises in furtherance of the public benefit purpose for which the Order of Requisition was made—Provisional Order—Application for provisional Order suspending the effect of the requisition order pending final determination of the recourse—The Supreme Constitutional Court Rules, 1962—Practice—Affidavit evidence—Factors to be considered in deciding whether or not the provisional order applied for should be granted—Merits of the case—Serious legal issues involved—Urgency of the public benefit project—Degree of such urgency, material—Appropriate balance of conflicting interests: The public interest and the personal interest of the Applicants—Instances where the latter should not necessarily have to be subjugated to the former—Irreparable harm to Applicants if provisional order is refused—Loss of business and other hardship which cannot be adequately compensated in terms of

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money later on—Probability that the order of requisition was made under the influence of material misconception of fact—Failure of the Respondents to act in a manner commensurate to their constitutional obligation under Article 23.8(d) of the Constitution to effect prompt payment of compensation in respect of the Requisitions in hand—Prompt payment—Meaning and effect of this expression in paragraph 8(d) of Article 23 of the Constitution—Duty to pay compensation has to be discharged promptly—Procrastination in the matter on the part of the person affected is no excuse for the authority concerned to delay payment.

Practice—Provisional Order—The Supreme Constitutional Court Rules, 1962—See above and below.

Requisition—Compensation—Constitutional obligation to effect prompt payment of compensation—Article 23.8(d) of the Constitution—See, also, above.

Constitutional Law—Requisition—Duty to effect prompt payment of compensation—See immediately above.

Provisional Order—Suspending effect of order of requisition—Practice—Factors to be considered—See above.

Recourse under Article 146 of the Constitution—Application therein for a provisional order—The Supreme Constitutional Court Rules, 1962—See above.

Town Planning—Requisition of premises for demolition—See under Requisition above.

Words and Phrases—“Prompt payment” of compensation in respect of requisition orders—Duty to pay promptly such compensation—Meaning and effect of the expression in Article 23.8(d) of the Constitution—See, also, above.

The several Applicants in these five cases—which were heard together—complain against an order of requisition made by Respondent 1 in respect of premises possessed by them, and published on the 29th October, 1967; and, also, against the decision of Respondent 2—to which Respondent 1 made available the requisitioned premises—requiring the Applicants to evacuate the premises by the 8th January, 1968, in view of its intention to proceed, under the Order of requisition, with their demolition, in furtherance of the public benefit purpose on the basis of which

the Order of requisition was made; such intention was communicated to all Applicants by letters dated the 8th November 1967. The public benefit purpose involved is the opening of a junction of three streets towards Metaxas square, Nicosia, so as to ensure better traffic conditions. The premises occupied by the Applicants and requisitioned as aforesaid had also been—previous to the order of requisition—acquired compulsorily by Respondent 2 in March 1967, but the ownership in such premises has not yet vested in Respondent 2 by virtue of the acquisition, because the question of the compensation payable for the purpose to the owners of the premises has not yet been finalized.

When each of the Applicants filed his recourse there was filed simultaneously an application for a provisional order under the Supreme Constitutional Court Rules, 1962—suspending the effect of the subject-matter of the recourse until final determination thereof. It was directed by the Court, *inter alia*, that all relevant evidence be put in, in the first instance, by affidavits, and that the affiants be available in case it would be necessary for any one to be questioned orally regarding the contents of his affidavit; but in the end none of the affiants was called upon to give evidence orally. Thus, only arguments of counsel were heard regarding the issue of making or not the provisional orders applied for. The Applicants in the first four cases are only tenants of their premises, (some statutory some contractual), carrying on business therein; the Applicant in case No. 253/67 is the owner of the premises in which she resides and of the shop occupied as a tenant by Applicant in Case No. 220/67.

In granting Provisional Orders, the Court:-

Held, (1). Bearing in mind the relevant principles governing an application for a Provisional Order in a matter of this nature (see, *inter alia*, *Georghiades* (No. 1) and *The Republic* (1965) 3 C.L.R. 392, and on the basis of all the material before the Court, I have decided to make in cases Nos. 216/67, 220/67 and 222/67 Provisional Orders suspending the effect of the *sub judice* Order of requisition until the determination of these cases. My reasons for adopting such a course are as follows:-

(a) There is no doubt that there are serious legal issues

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to be tried, which are obvious on the face of the record and into which I need not go at this stage.

(b) Furthermore, there appears to exist a probability that the *sub judice* Order of Requisition has been made under the influence of a material factual misconception, because in the submission made for the purpose to the Council of Ministers, dated the 26th September, 1967 it is stated that the relevant works had already commenced, whereas it is clear from the affidavit of the Town Clerk of Respondent 2 that such works have not yet commenced.

(c) I am satisfied that the three Applicants concerned will suffer, to a certain extent, irreparable harm, *i.e.* harm which cannot be estimated adequately, later in terms of money, if they are forced, at this stage, because of the Order of requisition, to evacuate their premises-shops, especially when one bears in mind the nature of their business and the location of such shops.

(d) On the other hand, I am quite satisfied that the postponement until the determination of the proceedings of the execution of the public benefit project, which has led to the making of the Order of requisition, will not cause such serious difficulties as to lead me to the conclusion that this is an instance in which the personal interests of these Applicants have to yield to the public interest. The situation is not the same as that in *Kouppas and The Republic*, (1966) 3 C.L.R. 765, where it was absolutely necessary to proceed at once with the completion of a new municipal market.

(e) Respondent 2, itself, has not acted in a manner indicating an extreme urgency of the matter, because though the Order for compulsory acquisition was made in March, 1967, it was not until the end of August, 1967, that it was decided to move the Government to make the *sub judice* Order of Requisition.

(f) In this connection I have to comment, too, on the fact that Respondents have not acted in a manner commensurate with their constitutional obligation to effect prompt payment of compensation in respect of the requisitions in hand (see Article 23, paragraph 8 (d), of the constitution)

(g) It is correct that by letter of the 16th November 1967, Respondent 2 called upon all the five Applicants to negotiate regarding the compensation payable to them. But nothing has as yet been agreed upon, nor have any references been filed before the competent Court under the relevant Law, either by the Applicants or by the Respondents, for the assessment of such compensation.

(h) My understanding of the obligation for prompt payment of compensation is that, when the exceptional measure of requisition is resorted to, the authority concerned should be then in a position to make an offer at once to the person affected, and if such offer is not accepted then a reference to the Court should be made without delay. Procrastination in the matter on the part of the person affected is no excuse for the authority concerned; the duty to pay compensation is cast upon such authority and it has to be discharged by it promptly. In the present cases it does not appear that any formal offer of compensation has been made to the Applicants till this day.

(2) With regard to the two remaining Cases Nos. 252/67 and 253/67, I am of the view that irreparable harm will be suffered if the business of Applicant in case 252/67 were to be uprooted from the present premises at once, as from the 8th January, 1968 (see *Kouppas* case *supra*), and if the family of Applicant in Case 253/67 (who is a widow living with her mother and student son—her other son being in the army) were to have to move home as from the said date; the former would suffer loss of business and the latter would suffer hardship which could not be estimated, and compensated for, adequately in terms of money, later on.

(3) I have, therefore, rather reluctantly—because these two Applicants have slept too long on their rights and they have filed their recourses only on the 23rd December, 1967—decided to make Provisional Orders suspending, in relation to the premises occupied by them, the effect of the *sub judice* Order of requisition until the 5th February, 1968.

(4) I would like to conclude by saying that every possible priority will be given to these Cases, so that their determination will take place as soon as conveniently possible.

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(5) Costs in cause.

*Provisional Order in terms.
Order for costs as aforesaid.*

Cases referred to:

Georghiades (No. 1) and The Republic (1965) 3 C.L.R. 392
followed;

Kouppas and The Republic (1966) 3 C.L.R. 765, *distin-
guished.*

Applications.

Applications for a provisional order suspending the effect of the subject matter of Recourses, against the validity of an order of requisition made by Respondent 1 in respect of premises possessed by Applicants and against the decision of Respondent 2 requiring the Applicants to vacate such premises by the 8th January 1968, pending the final determination of such recourses.

G. Constantinides, for the Applicants.

K. Michaelides, for the Respondents.

Cur. adv. vult.

The following Decision was delivered by:-

TRIANTAFYLLIDES, J.: The several Applicants in these five Cases—which are being heard together—complain against an Order of requisition, of Respondent 1, made in respect of premises possessed by them, and published in the official Gazette of the 20th October, 1967, (Not. 859, 3rd Supplement); and, also, against the decision of Respondent 2—to which Respondent 1 made available the requisitioned premises—requiring the Applicants to evacuate such premises by the 8th January, 1968, in view of its intention to proceed, under the Order of requisition, with their demolition, in furtherance of the public benefit purpose on the basis of which the Order of requisition was made; such intention was communicated to all Applicants by letters dated the 8th November, 1967 (see *exhibit* 1).

The premises concerned are all blocked together and they stand between Metaxas square and the junction of Ledra Street, Onasagoras Street and Philokypros Street in Nicosia

(see plots 120, 121, 123 and 124, coloured yellow on the map *exhibit 2*).

The public benefit purpose involved is the opening up of the said junction towards Metaxas square, by demolishing all the premises coloured yellow on *exhibit 2*, so as to ensure better traffic conditions; it is not in dispute that there does exist there, at times, considerable traffic congestion.

The premises occupied by the Applicants had also been—previous to the Order of requisition—acquired compulsorily by Respondent 2 (in March 1967), but the property in such premises has not yet vested in Respondent 2, by virtue of the acquisition, as the question of the compensation payable for the purpose to the owners of the premises has not yet been finalized.

The Applicants in the first four of these Cases (216/67, 220/67, 222/67, 252/67) are only tenants of their premises (some statutory and some contractual); the Applicant in Case 253/67 is the owner of the premises in which she resides and of the shop occupied as a tenant by Applicant in Case 220/67. In the said premises the Applicant in Case 216/67 carries on business in novelties and gifts, the Applicant in Case 220/67 carries on the business of a merchant-tailor, the Applicant in Case 222/67 carries on business in cosmetics and perfumes and the Applicant in Case 252/67 has a car-hire agency.

When each of the Applicants filed his recourse there was filed simultaneously an application for a Provisional Order—under the Supreme Constitutional Court Rules 1962—suspending the effect of the subject-matter of the recourse until the final determination thereof.

The applications for Provisional Orders were not heard at once because it was felt that it would be better to commence the hearing, on the merits, of these Cases, so as to know exactly what are the issues arising for determination; the nature of such issues being a factor relevant to the making or not of the Provisional Orders.

The hearing of these Cases has commenced on the 2nd January, 1968, and, after the opening addresses of counsel, it was directed that the applications for Provisional Orders be heard on the 4th January, 1968; it was, further, directed that all relevant evidence be put in, in the first instance, by

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affidavits, and that the affiants be available in case it would be necessary for any one to be questioned orally regarding the contents of his affidavit; but in the end none of the affiants was called upon to give evidence orally. Thus, only arguments of counsel were heard regarding the issue of making or not of the Provisional Orders applied for; and the Decision thereon has been reserved until today.

Bearing in mind the relevant principles governing an application for a Provisional Order in a matter of this nature (see, *inter alia*, *Georghiades (No. 1) and The Republic*, (1965) 3 C.L.R. p. 392, and on the basis of all the material before the Court in these proceedings, I have decided to make in Cases 216/67, 220/67 and 222/67 Provisional Orders suspending the effect of the *sub judice* Order of Requisition until the determination of such Cases.

My reasons for adopting such a course are as follows:-

There is no doubt that there are serious legal issues to be tried, which are obvious on the face of the record and into which I need not go at this stage. Furthermore, there appears to exist a probability that the *sub judice* Order of requisition has been made under the influence of a material misconception, because in the submission made for the purpose to the Council of Ministers, dated the 26th September, 1967 (see *exhibit 7*), it is stated that the relevant works had commenced already, whereas it is clear from the affidavit evidence of the Town Clerk of Respondent 2 that such works have not yet commenced.

I am satisfied that the three Applicants concerned will suffer, to a certain extent, irreparable harm, i.e. harm which cannot be estimated adequately, later, in terms of money, if they are forced, at this stage, because of the Order of requisition, to evacuate their premises, especially when one bears in mind the nature of their businesses and the location of such premises.

On the other hand, I am quite satisfied that the postponement until the determination of the proceedings of the execution of the public benefit project, which has led to the making of the Order of requisition, will not cause such serious difficulties as to lead me to the conclusion that this is an instance in which the personal interests of these Applicants have to be subjugated to the public interest; I do not doubt

for a moment that such project is a necessary one, and the earlier it takes place the better it will be, but Nicosia has somehow carried on this far with the traffic difficulties which the project is going to alleviate, and it can surely carry on with them a little bit longer. The situation is not the same as that in *Kouppas and The Republic*, (1966) 3 C.L.R., p. 765, where it was absolutely necessary to proceed at once with the completion of a new municipal market.

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Respondent 2, itself, has not acted in a manner indicating an extreme urgency of the matter, because though the Order for compulsory acquisition was made, as already stated, in March 1967, it was not until the end of August 1967 that it was decided to move Government to make the Order of requisition (see the relevant request, *exhibit 8*).

In this connection I have to comment, too, on the fact that Respondents have not acted yet in a manner commensurate with the constitutional obligation (under Article 23) to effect prompt payment of compensation in respect of the Order of requisition. It is correct that by letters of the 16th November, 1967 (see *exhibit 6*) Respondent 2 called upon all the five Applicants to negotiate regarding the compensation payable to them; but nothing has as yet been agreed upon, nor have any references been filed before the competent Court, either by the Applicants or by Respondents, for the assessment of such compensation. My understanding of the obligation for prompt payment of compensation is that when the exceptional measure of requisition is resorted to the authority concerned should be then in a position to make an offer, at once, to the person affected, and if such offer is not accepted then a reference to Court should be made without delay. Procrastination in the matter on the part of the person affected is no excuse for the authority concerned; the duty to pay compensation is cast upon such authority and it has to be discharged by it *promptly*. In all the present Cases it does not appear that any formal offer of compensation has been made to the Applicants till this day.

I pass on next to deal, in particular, with the question of the Provisional Orders applied for by Applicants in Cases 252/67 and 253/67:

Regarding these two Applicants I am not satisfied, on the material before me, that they will suffer irreparable harm if Provisional Orders are not made suspending the effect of the

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Order of requisition until the determination of these proceedings. But, I am of the view, that such harm will be suffered if the business of Applicant in Case 252/67 were to be uprooted from the present premises at once, as from the 8th January, 1968 (see *Kouppas* case *supra*), and if the family of Applicant in Case 253/67 (who is a widow living with her mother and student son—her other son being in the army) were to have to move home as from the said date; the former would suffer loss of business and the latter would suffer hardship, which could not be estimated, and compensated for, adequately, in terms of money, later on.

I have, therefore, rather reluctantly—because these two Applicants have slept too long on their rights and they have filed their recourses only on the 23rd December 1967—decided to make Provisional Orders suspending, in relation to the premises occupied by them, the effect of the *sub judice* Order of requisition until the 5th February, 1968.

In taking the above course I have again borne in mind, *inter alia*, that I am not satisfied that there does exist absolute urgency about the public benefit project which led to the Order for requisition, nor, as already explained, has Respondent 2 moved with real urgency, indeed, in the matter of securing an Order of requisition.

Counsel for Respondents has stated, in answer to a question by the Court, that it would not be advisable to proceed with the demolition of part of the block of the premises concerned and that such partial demolition would not really serve the public benefit purpose for the sake of which the Order of requisition was made. I would remark, then, that Respondent 2 might be well advised, in the circumstances, to show restraint and not to proceed to unnecessarily early partial demolitions, by demolishing, after the 5th February, 1968 and before the conclusion of these proceedings, only the premises of Applicants in Cases 252/67 and 253/67.

In the light of all the foregoing there shall be Provisional Orders suspending the effect of the *sub judice* Order of requisition, until the determination of the present proceedings, in relation to the premises occupied by the Applicants in Cases 216/67, 220/67 and 222/67, and until the 5th February, 1968, in relation to the premises occupied by the Applicants in Cases 252/67 and 253/67; there shall be, further, consequential Provisional Orders preventing Respondent 2, its

servants, agents and anybody acting on its instructions or its behalf, from interfering in any way whatsoever with the premises concerned so long as Provisional Orders suspending the effect of the Order of requisition are in force.

Regarding costs, I have decided, in the circumstances, to make the costs of the hearing regarding the applications for Provisional Orders costs in the cause.

I would like to conclude by saying that every possible priority will be given to these Cases, so that their determination will take place as soon as conveniently possible.

*Provisional Orders in terms.
Order for costs as aforesaid.*

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