[VASSILIADES, P., JOSEPHIDES, STAVRINIDES, HADJIANASTASSIOU, JJ.]

COSTAS PIKIS,

Appellant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTER OF INTERIOR AND ANOTHER,

Respondent.

(Revisional Jurisdiction Appeal No. 34).

Compulsory Acquisition—Land compulsorily acquired no longer used or required for the purposes of the public utility project for which it had been acquired—Offer back for sale to expropriated owner—Section 13 of the Land Acquisition Law Cap. 233 (in the 1949 edition) (now Cap. 226 in the 1959 edition) as amended by Law No. 26 of 1952, on November 7, 1952—Claim of the Appellant under said section in connection with a piece of land of his which, however, was compulsorily acquired on May 7, 1952, i.e. prior to the said amendment—Rights of the parties crystallized at the time of such expropriation on May 7, 1952—Consequently the subsequent amendment cannot avail the previous owner (the Appellant).

Acquisition of land—Offer back of property acquired as no longer used or required—See above.

Statutes—Construction—Effect on previous transactions—Section 13 of the Land Acquisition Law, Cap. 226, as enacted by Law No. 26 of 1952—"..... the land had been acquired" —Meaning and effect—See, also, above.

Words and Phrases—"..... the land had been acquired" in section 13 of the Land Acquisition Law, Cap. 226.

The Appellant was the owner of a plot of land, about six donums in extent, situate in the area of Pallouriotissa, one of the suburbs of Nicosia. As far back as 1951 the then Colonial Government of Cyprus took steps under the provisions of the Land Acquisition Law, then Cap. 233 (now Cap. 226 in the 1959 edition of the Cyprus Statutes) for the expropriation of the land in question for the purposes of a project of public utility *i.e.* the better isolation of the Leper Farm. Eventually the acquisition order was

published in the Official Gazette of the 7th May, 1952, whereby as from that date the ownership of the Appellant's said property vested in the Government according to law, for the purposes of the project of public utility in question. In 1955 the Leper Farm was actually moved away; and in 1956, the construction of the Teachers' Training College commenced on the area so vacated, continuing until 1959 when it was completed and put into use accordingly. In April, 1961, the Appellant made a claim to the new Government of the Republic in respect of his aforesaid land, expropriated in 1952, the 7th May, as stated earlier. His claim was based on the provisions of section 13 of the Land Acquisition Law, Cap. 226; and it was that the Government should offer to him for sale his expropriated land, as no longer required for the Leper Farm for which it had been compulsorily acquired. This claim was turned down by the Government by their decision communicated to the Appellant by *Exhibit* 2. This is the administrative decision challenged by the present recourse which was heard in the first instance by a single Judge of this Court, under the provisions of section 11 of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law No. 33 of 1964), who dismissed the recourse for the reasons stated in his Judgment published in (1967) 3 C.L.R. 562. Against that Judgment the Appellant has taken the present revisional appeal, which, was dismissed by the Court on the following short point:

Held, (1). The claim is based on the provisions of section 13 of the Land Acquisition Law, Cap. 226 as it stood at the time of the claim in April, 1961. The provisions in this section were first introduced in the Land Acquisition Law (then Cap. 233) on the 7th November 1952, as an amendment by Law No. 26 of 1952, *i.e.* exactly six months after the land in question had been acquired *(supra)*. On the other hand, it is common ground that, but for this amendment, such a claim could not be made; and no such right could be said to exist.

(2) We are clearly of opinion that it was neither the intention of the legislator in enacting the amendment introduced by Law No. 26 of 1952, nor is it the effect of the amendment to create such a right in connection with expropriations effected prior to the amendment. Had the legislator intended such a result, he would have used lan-

guage to that effect. The rights of the parties herein crystallized at the time of the expropriation on May 7, 1952, when the relevant acquisition order was published in the Official Gazette *(supra)*. This is quite sufficient to dispose of the recourse on its merits. And we, therefore, find it unnecessary to enter into the other matters raised in this appeal; and for that matter, into the other reasons on which the trial Judge founded his decision appealed from.

Appeal dismissed. No order as to costs.

Appeal

Appeal from the Judgment of a Judge of the Supreme Court of Cyprus (Triantafyllides J.) given on the 22nd September, 1967 (Case No. 12/66) whereby Applicant's recourse, against the decision of the Respondent turning down his request that an area of land compulsorily acquired from him in 1952, be offered to him for sale, was dismissed.

A. Triantafyllides with *L. Demetriades*, for the Applicant.

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

The Judgment of the Court was delivered by:-

VASSILIADES, P.: The relief which the Appellant seeks by this recourse is a declaration that the decision of the Respondent public authority (the Council of Ministers) contained in *exhibit 2*, is *void* and of no effect. He further seeks a declaration that the omission of the Respondents to offer to the Applicant for sale certain immovable property, should not have been made; and that what has not been made in that connection, "should have been performed".

The recourse was heard in the first instance by a single Judge of this Court, under the provisions of section 11 of the Administration of Justice (Miscellaneous Provisions) Law, 33 of 1964, who dismissed the recourse for the reasons stated in his Judgment,* one of which is that there is no valid legal basis for the claim. Against that decision, the Appellant has taken the present revisional appeal. The subject matter of such an appeal continues, in substance, to be the administrative decision which is challenged by the recourse; and

Note: Judgment reported in (1967) 3 C.L.R. 562.

whether or not the Appellant is entitled to the relief claimed.

The material facts in this case are not in dispute. The Appellant was the owner of a plot of land described in the recourse, about six donums in extent, situate in the area of Pallouriotissa, one of the suburbs of Nicosia. As far back as 1951 the then Colonial Government of Cyprus took steps under the provisions of the Land Acquisition Law (then Cap. 233) for the expropriation of the land in question for the purposes of a project of public utility i.e. the better isolation of the Leper Farm. The relevant notification was published in the Official Gazette of the 24th of October, 1951. This was followed in due course by the publication of a notice to treat under section 6 of the Law in the Official Gazette of the 27th February, 1952; and eventually by the publication of Notification 188, on the 7th May, 1952, the ownership of the property in question vested in the Government according to law, for the purposes of the project of public utility in question.

Steps were then taken under the provisions of the Law in force, the Land Acquisition Law, in connection with the compensation payable for the expropriation in question, which (steps) however were not pursued to finality, as the Appellant agreed with Government that in consideration of a transfer of certain Government land, at Strovolos, presumably of equal value, to the Appellant, the latter would abandon his claim for compensation in respect of the expropriation of his land at Pallouriotissa. Transfer was thus effected of the agreed Government land at Strovolos (also a suburb of Nicosia) to the Appellant who abandoned his claim for compensation for his expropriated land at Pallouriotissa, as agreed.

Several years later, and after the expropriated land of the Appellant had been actually turned into use by the Government for the purposes of the project of public utility in question, the Government decided to remove the Leper Farm to some other part of the Island and to use its grounds (including Appellant's expropriated land) for the purpose of building a Teachers' Training College, near Nicosia.

In 1955, the Leper Farm was actually moved away; and in 1956, the construction of the Teachers' Training College commenced, continuing until 1959 when it was completed and put into use accordingly. In August, 1960, the Cyprus

Republic came into being under international treaties and public instruments to which we need not here specifically refer, under which the Colonial Government was succeeded by the Government of the new State, which took over all government property, including the Teachers' Training College.

A few months later, in April 1961, the Appellant made a claim to the new Government in respect of his land at Pallouriotissa, expropriated in 1952 as stated earlier. His claim purported to be based on the provisions of section 13 of the Land Acquisition Law; and it was that the Government should offer to him for sale his expropriated land, as no longer required for the Leper Farm for which it was acquired. This claim was turned down by the Government; and their decision was communicated to the Appellant by *exhibit 2*. This is the administrative decision challenged by the present recourse.

The claim is based, as already stated, on the provisions of section 13 of the Land Acquisition Law (now Cap. 226, in the 1959 — Edition — of the Cyprus Statutes) as it stood at the time of the claim in April 1961. The provisions in this section were first introduced in the Land Acquisition Law on the 7th November, 1952, as an amendment by Law No. 26 of 1952. It is common ground that, but for this amendment, such a claim could not be made; and no such right could be said to exist.

It is the case of the Appellant that the effect of the amendment in question, was to create the right claimed, by virtue of which, the Appellant seeks the relief pursued by this recourse. Learned counsel on his behalf based his client's claim on the wording of the section, particularly the words ".... the land had been acquired" in line 8; and submitted that the Appellant was entitled to claim that property which "had been acquired" under the Land Acquisition Law, and was not actually used for the purposes of the original public utility project, be offered back to him as the expropriated owner, as provided in section 13 after the amendment in November 1952.

I am clearly of opinion that it was neither the intention of the legislator in enacting the amendment introduced by Law 26 of 1952, nor is it the effect of the amendment to create such a right in connection with expropriations effected prior

to the amendment. Had the legislator intended such a result, he would have used language to that effect. In my opinion the rights of the parties herein crystallized at the time of the expropriation on May 7, 1952, when Notification 188 was published in the Official Gazette. This, I think, is quite sufficient to dispose of the application on its merits. And I, therefore, find it unnecessary to enter into the other matters raised in this appeal; and for that matter, into the other reasons on which the trial Judge founded his decision. So long as I hold the view that no such a right existed in November 1952 when Law 26 of 1952 introduced section 13 in its present form, and no such a right was created by the section in respect of earlier expropriations, I am of the opinion that the recourse must fail. And that it was rightly dismissed by the trial Judge.

JOSEPHIDES, J.: I agree and have nothing to add.

STAVRINIDES, J.: I also agree.

HADJIANASTASSIOU, J.: I also concur with the Judgment delivered by the President.

Mr. Talarides: I claim costs.

Mr. Triantafyllides: I oppose the application for costs because the appeal was dismissed on a ground which is not in accordance with the Judgment of the lower court. Had this been the ground of dismissal of the lower court we might not have appealed.

VASSILIADES, P.: The question of costs is determined on the facts of each particular case; and, in the circumstances of this case, we are unanimously of the opinion that there should be no order as to costs.

Appeal dismissed.
No order as to costs.