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[TRIANTAFYLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

PHOTINI
INJEIANNI
AND ANOTHER
v.
REPUBLIC
(MINISTRY OF
COMMUNICATIONS
AND WORKS)

PHOTINI INJEIANNI AND ANOTHER,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF COMMUNICATIONS AND WORKS,

Respondent.

(Case No. 268/68).

Requisition of property—Acquisition of property—Construction of a new road—Order of requisition of land for the said purpose and in respect of which land a notice of compulsory acquisition had already been published—In view of the nature of the property affected and the urgency of the matter, there is nothing unconstitutional, illegal or in abuse or excess of powers in the relevant works being commenced and pursued pursuant to the Order of requisition—See, also, below.

Requisition—Order of requisition of land—Validity—Construction of a new road—Representations for alternative ways duly considered—Onerous interference—Duty to choose the less onerous way when interfering compulsorily with private property—Such duty has to be fulfilled in the light of all relevant considerations—Principles applicable—Such considerations duly taken into account in the instant case—Requisition—Compensation has to be paid “promptly” under Article 23.8 (d) of the constitution, not in advance as required under Article 23.4(c) in cases of compulsory acquisition—“Promptly” in Article 23.8(d) cannot be construed as meaning simultaneously with the order of requisition, or with the taking of action thereunder by the requisitioning authority.

Constitutional Law—Requisition and acquisition of land—Article 23, paragraphs 4 and 8 of the Constitution—Requisition—Prompt payment of compensation under Article 23.8(d)—Meaning—Onerous interference—Duty to choose the less onerous way when compulsorily interfering with private property—Principles applicable—See also above.

Compulsory acquisition—See above.

Words and Phrases—“Promptly” in Article 23.8(d) of the Constitution.

“Promptly”—Prompt payment of compensation in cases of requisition of property—Article 23.8(d) of the Constitution—See above.

Recourse under Article 146 of the Constitution—Costs—Award of costs against Applicants in a proper case—Controlling, through costs, the proper exercise of the right of recourse.

Costs—Award of costs against Applicants—See above.

By this recourse under Article 146 of the Constitution the Applicants challenge the validity of an Order of requisition published on the 12th July, 1968 in the Official Gazette (Supplement 3, Not. 474), affecting part of the property of Applicant I under Plot 55 as shown on the map *Exhibit 8*. A week earlier *i.e.* on the 5th July, 1968, a Notice of compulsory acquisition concerning the same part of Plot 55 was published in the Official Gazette (Supplement 3, Not. 468). The public benefit purpose for the sake of which both steps were taken is the construction of a new road.

The Applicants have attacked the validity of the said order of requisition on three main grounds:

(1) That it contravenes Article 23.8(d) of the Constitution, in that compensation therefor has not been paid *promptly* to the Applicants.

(2) That no due regard was paid to the representations of the Applicants against the manner the said proposed road will cross Plot 55, and to their suggestions for alternative ways to be resorted to in connection therewith.

(3) That in planning the road in question there has not been chosen the less onerous way of doing so.

It is common ground that the construction of the said road is in progress and it is about to interfere with Plot 55.

Dismissing the recourse, the Court:—

Held, (1). In the circumstances of this case, including particularly the nature of the property affected (*viz.* Plot 55) and the urgency of the matter, and in the light of the case of *Aspri and The Republic*, 4 R S.C.C. 57, I find nothing

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unconstitutional, illegal or in excess or abuse of powers in the relevant works being commenced and pursued pursuant to an Order of requisition, for the time being, once the relevant Notice of compulsory acquisition has already been published, too.

(2)(a) The process of assessing the compensation payable to the Applicants is in progress and an offer will be made to them as soon as possible. Bearing in mind that under Article 23.8(d) of the Constitution compensation in cases of requisition has to be paid "promptly", and not in advance as under Article 23.4(c) in cases of acquisition, I cannot find that there has been, as yet, such delay to offer or pay compensation to the Applicants as to amount to a contravention by Respondent of the Constitution.

(b) I cannot construe "promptly" in Article 23.8(d) as meaning simultaneously with the order of requisition or with the taking of action thereunder by the requisitioning authority.

(3) As regards the second point raised by the Applicants (*supra*) I fail to see on the evidence how it can be said that no due regard was paid to their representations.

(4)(a) Regarding the third point raised (*supra*), I am satisfied on the evidence that this matter was rightly approached by the Respondent. The duty to choose the less onerous way, when interfering compulsorily with property, has to be fulfilled in the light of all relevant considerations, including the criteria which should lead to the proper decision regarding the planning of the relevant project.

(b) Moreover, this duty had to be fulfilled in the light of the onerous interference with other affected properties; the course of the new road as a whole had to be looked in this respect, and other properties should not have been unnecessarily and more onerously interfered with in order to ameliorate somehow, if at all, the interference with the said Plot 55. I am satisfied that this aspect of the matter, also, has been rightly approached by the Respondent.

(5) This is a proper case in which costs should be awarded against Applicants; a line has to be drawn somewhere in controlling, through costs, the proper exercise of the right of recourse under Article 146 of the Constitution. I, there-

fore, award to the Respondent £30 costs against the Applicants.

Recourse dismissed.
Order for costs as aforesaid.

Cases referred to:

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

Recourse.

Recourse against the validity of an order of requisition concerning part of the property of Applicant 1.

P. Laoutas, for the Applicants.

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

Cur. adv. vult.

The following Judgment was delivered by:-

TRIANTAFYLLIDES, J.: In this case the Applicants challenge the validity of an Order of requisition, which was published on the 12th July, 1968 in the official Gazette, (3rd Supplement, Not. 474).

This Order of requisition—as well as a Notice of compulsory acquisition, published on the 5th July, 1968, in the official Gazette (3rd Supplement, Not. 468)—concerns only part of the property of Applicant 1, which is shown as plot 55 on the map *exhibit 8*.

The public benefit purpose for the sake of which both steps were taken is the construction of a new road, which is described as the Karavas-Lapithos by-pass road, and it is intended to lead directly to Kyrenia, from the present Myrtou-Lapithos road, without going through the villages of Lapithos and Karavas.

The affected area of plot 55 is one donum in extent; it is about 300 ft. long and 40 ft. wide.

Applicant 1 owns also an adjoining property, appearing on *exhibit 8* as plot 17 (actually, it is plot 17/10).

Applicant 2 is the owner of two other adjoining properties, appearing on *exhibit 8* as plot 42 and plot 17/4.

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On plot 17, there exists now a seaside bar and restaurant business belonging to Applicant 2, who, apparently, since 1961, has had the intention of building a far larger tourist enterprise complex, by using both plots 42 and 17; he has applied since 1961 for the relevant building permit, and though it has not yet been granted to him it does not appear that he has taken any legal steps in respect of this matter.

Applicant 2 has a registered right of way, 18 feet wide, along the eastern boundaries of plots 55 and 17.

None of the aforesaid properties, other than plot 55, is affected, as such, by the *sub judice* Order of requisition, or the related Notice of compulsory acquisition, or by the road which will pass through plot 55.

It is common ground that the construction of the new road is in progress and it is about to interfere with plot 55.

I should say, at this stage, that in the circumstances of this case, including particularly the nature of the property affected, *viz.* plot 55, and the urgency of the matter, and in the light of the case of *Aspri and The Republic* (4 R.S.C.C. p. 57), I find nothing unconstitutional, illegal or in excess or abuse of powers in the relevant works being commenced and pursued pursuant to an Order of requisition, for the time being, once the relevant Notice of compulsory acquisition has already been published, too.

The Applicants have attacked the validity of the Order of requisition on three grounds: First that it contravenes Article 23.8(d) of the Constitution, in that compensation therefor has not been paid promptly to the Applicants. Secondly, that no due regard was paid to the protests of the Applicants against the manner in which the said road will cross plot 55, and to their suggestions for alternative ways in which plot 55 could be interfered with in constructing the road; and, that, therefore, the Order of requisition was made in excess and abuse of powers. Thirdly, that in planning the road in question and in consequently affecting plot 55, there has not been chosen the less onerous way of doing so.

I have had the benefit of hearing evidence in this case from the Senior Roads Engineer, Mr. M. Iordanous, who has been in charge of the project of this new road—which is shown marked in red on the map *exhibit 8*—as well as

from Mr. Palmiris, a P.W.D. Executive Engineer, who is again dealing with this matter. I have also heard evidence from an expert called by the Applicants, Mr. E. Avraam, who has produced a plan (*exhibit 1 and 1A*) indicating how the road in question could follow a different direction, so as to affect, according to him, in a less onerous manner plot 55.

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Dealing with the first point raised by the Applicants, it has been stated by counsel for Respondent—and it does not seem to be disputed by the other side—that the process of assessing the compensation due to the Applicants is in progress and an offer will be made to them as soon as possible. Bearing in mind that under Article 23.8(d) of the Constitution compensation has to be paid promptly, and not in advance as under Article 23.4(c) of the Constitution, I cannot find, in the particular circumstances of this case, that there has been, as yet, such a delay to offer or pay compensation to the Applicants as to amount to a contravention by Respondent of the Constitution. I cannot construe “promptly” as meaning simultaneously with the Order of requisition, or with the taking of action thereunder by the requisitioning authority.

Coming, next, to the second point raised by the Applicants, it is in evidence by Mr. Palmiris that he went on the spot—to plot 55—where the Applicants were present, he heard their views, and he investigated the alternatives suggested by them, but found that it was not possible to adopt them; therefore, I fail to see how it can be said that no due regard was paid to the representations of the Applicants.

Lastly, I have to deal with the question of whether or not the less onerous, in the circumstances, manner has been chosen, in the course of interfering with plot 55.

Bearing in mind the nature of plot 55, I am of the view that there would be, practically, no vital difference, as regards onerous interference, in whatever way the road might cross through it, so long as the two remaining separate parts of such plot could still be reasonably used for purposes of cultivation or building purposes; and the way in which the road marked on *exhibit 8* is to cross plot 55 does not prevent either of the two remaining parts of plot 55 from being used as aforesaid.

The duty to choose the less onerous way, when interfering compulsorily with property, has to be fulfilled in the light of all relevant considerations, including the criteria which should lead to a proper decision regarding the planning of the relevant project; and I am quite satisfied, on the evidence of Mr. Iordanous and of Mr. Palmiris, that such duty was duly discharged.

Moreover, this duty had to be fulfilled in the light of the onerous interference with other affected properties; the course of the new road as a whole had to be looked into in this respect, and other properties should not have been unnecessarily and more onerously interfered with, in order to ameliorate somehow, if at all, the interference in the case of plot 55; again, in the light of the evidence adduced for the Respondent, I am satisfied that this matter was approached rightly as regards this aspect.

The evidence of Mr. Avraam, who was called by the Applicants, though honestly given, has not managed to tip the scale in favour of the Applicants, on this point of the onerous interference.

Regarding this point much play has been made, by the Applicants, of the fact that future tourist development plans of Applicant 2 will be affected. In the first place, I find that such plans should be treated, on the material before me, as a too remote consideration; but even if they were to be treated otherwise, the fact remains that he does not intend to build, in furtherance of such plans, on plot 55 itself, but on his adjoining property plot 42, and on the other property of Applicant 1, plot 17; thus, I cannot really see how, in so far as Applicant 2 is concerned, it can be argued that a less onerous way should have been chosen by the Respondent in planning the new road in question and crossing, thereby, plot 55. Applicant 2 has, indeed, a right of passage along the eastern side of plot 55, but he will still be able to use it, subject to having to cross the new road, irrespective of how such road crosses plot 55.

The assessment of the compensation due to the Applicants for the interference with their proprietary rights by the *sub judice* requisition Order is a matter for a civil Court, and nothing which I have said in this Judgment should be taken as prejudging such issue, in the least; I leave it entirely open.

For all the foregoing reasons I have found no merit in this recourse and I dismiss it accordingly. In my opinion it was all along a matter of compensation and nothing more; and, therefore, it is a proper case in which costs should be awarded against the Applicants; a line has to be drawn somewhere in controlling, through costs, the proper exercise of the right of recourse under Article 146. I, therefore, award to the Respondent £30 costs against the Applicants.

Application dismissed.

Order for costs as aforesaid.

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