[L. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHARALAMBOS MENIKOU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE COUNCIL OF MINISTERS AND ANOTHER,

Respondents.

(Case No. 47/71).

1973
Feb. 2

CHARALAMBOS MENIKOU

v.

REPUBLIC (COUNCIL OF MINISTERS AND ANOTHER)

Compulsory acquisition of land for the promotion of tourism —Not made prematurely or without a proper study of the proposed scheme—Carried out on the basis of expert advice which recommended securing of land control—Not contrary to principles of administrative law applicable to compulsory acquisition of property—Extent of land required—A matter of a technical nature falling within the discretion of the acquiring authority—Whether object of acquisition might have been achieved by land owner himself—Glyki and Another *v.* The Municipal Corporation of Famagusta *(1967) 3 C.L.R. 677,* distinguished.

This is a recourse under Article 146 of the Constitution whereby the applicant land owner challenges the validity of the decision of the respondents to acquire compulsorily his piece of land in the area of Ayios Epiktitos, in the District of Kyrenia for the promotion of tourism. The learned Judge of the Supreme Court dismissed the recourse on the grounds a summary of which is set out hereabove in the rubric. The facts sufficiently appear in the judgment.

Cases referred to :

Glyki and Another v. *The Municipal Corporation of Famagusta* (1967) 3 C.L.R. 677;

Chrysochou Bros. v. *The Cyprus Inland Telecommunications Authority and Another* (1966) 3 C.L.R. 482;

1973
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CHARALAMBOS MENIKOU

v.

REPUBLIC (COUNCIL OF MINISTERS AND ANOTHER)

Venglis v. *The Electricity Authority of Cyprus* (1965) 3 C.L.R. 252.

Recourse.

Recourse against an order of compulsory acquisition of applicant's property situated in the area of Ayios Epiktitos in the District of Kyrenia.

A. Triantafyllides with *M. Christofides*, for the applicant.

L. Loucaides, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

The following judgment was delivered by :-

L. Loizou, J. : By this recourse the applicant applies for a declaration that the decision of the respondents to acquire compulsorily his property in the area of Ayios Epiktitos, in the District of Kyrenia, under registration No. 1142, plot 119, sheet/plan 12/24 of an extent of 12 donums and two evleks is null and void and of no effect whatsoever.

The notice of acquisition was published in the Gazette of the 6th February, 1970, under Notification No. 117. The undertaking of public utility given in the notice is the promotion and development of tourism. The applicant objected to the acquisition; his objection was considered by the Council of Ministers together with the objections made by other owners and in the light of all circumstances it was decided to proceed with the acquisition. The order of acquisition was published under Notification No. 13 in Supplement No. 3 to the Gazette of the 15th January, 1971.

At the hearing of the recourse learned counsel for the applicant based his case on four grounds :

Firstly, he argued that the decision complained of was taken in abuse of powers in that the respondents hastened to acquire applicant's property and, therefore, deprived him of it before it was absolutely necessary.

His second ground was that at the time of the publication of the notice and order of acquisition there was

not a full and comprehensive plan for the achievement of the purpose of the acquisition.

His third ground was that the object for which the property was compulsorily acquired might have been achieved by the applicant himself but he was not given an opportunity to develop his property himself either alone or in conjunction with others.

Lastly, learned counsel submitted that the respondents have to satisfy the Court that the whole of the acquired land is necessary for the purpose and that the Government land available there is not sufficient; the purpose of the acquisition, he argued, is vague and the Government land might be sufficient. Learned counsel did not pursue the ground regarding the legality of the object of the acquisition which appears in the grounds of law in support of his application.

Grounds 1 and 2 may conveniently be dealt with together.

The first ground was based on the statement made at paragraph 2 of the facts in support of the Opposition to the effect that the Ministry of Commerce and Industry came to the decision to hasten the publication of the necessary notices of acquisition at the localities Pakhy-Ammos and Alakati, in the District of Kyrenia, because the public started talking about Government's intention as a result of leakage of certain information and apart from the natural increase of the price of land in the said areas with the lapse of time, any further delay would certainly lead to sales of land, genuine or otherwise, on the basis of which prices would go up beyond every logical limit.

This passage, learned counsel argued, shows that if there was no leakage of information—for which, in any case, the applicant was not responsible—he would have enjoyed his property for some considerable time more with the consequent result that the property would be worth more by the time it was acquired and he might have sold it at a higher price; and also that the respondents tried to safeguard themselves not only from fictitious but also genuine transactions because they seem to have been with the impression that the sale price of any sale of

land in the area at that time, even of any genuine sales, would have been unreasonable.

On the part of the respondents it was argued that when the decision of the Council of Ministers to proceed with the acquisition was taken a final project prepared on the basis of a careful expert study was ready for immediate implementation and that the applicant was only deprived of his property when it was absolutely necessary for the purpose of the acquisition.

It would appear that the area of Pakhy-Ammos, where applicant's property is situated was one of the areas which a French team of experts on tourism considered suitable for tourist development as far back as 1963 and recommended that Government should secure land control and in this respect one of the alternatives suggested by them was compulsory acquisition. The relevant part of the study appears in the extract produced which is part of *exhibit* 2 and reads as follows :

> "RECREATION and SPORTS FACILITIES : Cyprus suffers from a great dearth in this particular field, often enough stressed to call for no further comment here. A great effort is required entailing an investment estimated at £2.0 million. This effort should not be spread thinly over the whole island, it should be concentrated on the creation of TWO SEA-SIDE ATTRACTION CENTRES in the regions where tourist development presents few difficulties at the moment : One on the Famagusta, the other on the Kyrenia Coast. These two centres should be completed within two years : Studies for their development must be undertaken at once without even waiting to set up the organization described above.
>
> Establishment of a recreation and sports centre at Pakhy-Ammos to the east of Kyrenia. Here the problem of land control will arise since it is privately owned property, but a solution must be found without delay. As this is, however, the only fine sandy

beach near to Kyrenia and Nicosia (the next beach being 12 miles from Kyrenia), it is one of the strategic points in tourist development which should not be allowed to be built up haphazardly. Land control therefore must be secured. In the circumstances, the State could even declare the site of 'public interest' and carry out an expropriation order. Otherwise, a different procedure might be adopted which, in other countries, has met with the immediate approval of the proprietors :

a) the State purchases the whole of the land from the owners, these latter preferably forming a syndicate,

b) the State has all the necessary plans drawn up for the full equipment of the whole area, which it undertakes itself,

c) the State then sells again the land :

— either to the first owners who re-purchase, at the price they sold it for, the now fully equipped land in plots, as required for the construction of all the items of equipment which later they may operate themselves (restaurant, hotel, etc.)—re-purchase being limited, however, to a quarter (a third, or a half) of their former property;

— or to individuals or companies interested in building features as set out by the site plan."

In 1967 the Council of Ministers, on a submission by the Ministry of Commerce and Industry (*exhibit* 7) decided :

(a) That Government itself develop certain selected areas and then invite international tenders for running them.

(b) That an international competition be proclaimed for the development and running of the sea-side Government areas which are indicated by the French experts.

(c) That a Committee composed of the Ministers of Commerce and Industry, Finance and Labour and Social Insurance be authorised to negotiate with foreign financiers

who had submitted or would submit offers for the running of Government areas on the basis of a 99 year lease. The final approval of any agreement to be given by the Council of Ministers.

Then, in 1969, the firm of tourism consultants, N. A. Phocas, acting on the basis of the decision of the Council of Ministers set out above, also prepared a study on tourist development and they also recommended the development, *inter alia*, of the area of Pakhy-Ammos. The relative part of their note (*exhibit* 1 in these proceedings) reads as follows:

«(α) Προτείνομεν ὅπως, παραλλήλως πρὸς τὴν ἀξιοποίησιν τῆς 'Χρυσῆς 'Αμμουδιᾶς' 'Αμμοχώστου, ἀντιμετωπισθῇ κατὰ προτεραιότητα ἡ ἀξιοποίησις τῆς περιοχῆς Παχυάμμου Κυρηνείας, κειμένη περὶ τὸ 6ον μίλιον ἀνατολικῶς τῆς πόλεως ταύτης

'Η ἐν λόγῳ περιοχή, χαρακτηρισθεῖσα ἀπὸ μακροῦ ὡς 'Τουριστικὴ Ζώνη', καταλαμβάνει ἔκτασιν 520 στρεμμάτων, ἐξ ὧν τὰ 183—εἰς τὰ ὁποῖα περιλαμβάνεται ἡ ἀμμώδης ζώνη τοῦ αἰγιαλοῦ καὶ οἱ ὑπερθεν αὐτῆς εὑρισκόμενοι ἀμμόλοφοι—εἶναι κυβερνητικῆς ἰδιοκτησίας γαῖαι καὶ τὰ 337 ἰδιωτικῆς.

Διὰ τὴν πραγματοποίησιν οἱασδήποτε τουριστικῆς ἀξιοποιήσεως τῆς περιοχῆς ταύτης, δεδομένου ὅτι κατὰ τὸ κτηματολογικὸν σχέδιον αἱ ἀνωτέρω ἰδιωτικαὶ γαῖαι ἀνήκουν εἰς μέγαν ἀριθμὸν ἰδιοκτητῶν, θεωροῦμεν σκόπιμον καὶ προτείνομεν ὅπως ἡ Κυβέρνησις συγκεντρώσῃ εἰς χεῖρας αὐτῆς τὸ σύνολον τῆς περιοχῆς, δι' ἀπαλλοτριώσεως τῶν μὴ ἰδιοκτήτων αὐτῆς τεμαχίων».

("(a) We suggest that along with the development of 'Golden sands' Famagusta, priority be given to the development of Pakhy-Ammos, Kyrenia, which is situated at about six miles to the east of this town.

The said area having been designated as a 'touristic zone' a long time ago consists of 520 donums, out of which 183—which include the sandy part of the beach and the sand hills above it—are government property and 337 are private property.

For the carrying into effect of any touristic development of this area, given that according to the Land Registry plan the aforesaid private properties belong to a great number of owners, we deem it expedient and we suggest that Government may secure control of the whole of the area, by acquisition of the plots not belonging to it").

And the note goes on to suggest the necessary measures for the development of this area.

The question that falls for consideration is whether in the light of this background it can be said that the respondents have acted contrary to the principles of Administrative Law applicable to cases of compulsory acquisition and more particularly whether they have acted prematurely in the sense that they have proceeded with the acquisition before it was necessary for them to do so and without any comprehensive study or plan having first been made but with the purpose of acquiring the land at a low price.

Regarding such principles useful reference may be made to the Conclusions from the Jurisprudence of the Greek Council of State 1929 - 1959 at p. 87.

In support of his case learned counsel for applicant has cited the case of *Glyki and Another* v. *The Municipal Corporation of Famagusta* (1967) 3 C.L.R. 677 (in which reference is made to the earlier cases of *Chrysochou Bros.* v. *The Cyprus Inland Telecommunications Authority and Another* (1966) 3 C.L.R. p. 482 and *Venglis* and *the Electricity Authority of Cyprus* (1965) 3 C.L.R. p. 252 and the principles adopted therein approved).

That was a case against the decision of the respondent corporation to compulsorily acquire applicants' property for the purpose of erecting what is described as a Cultural Palace. The case for the respondents was that before deciding to acquire applicants' property they had carried out an examination of the matter and decided that the

area in question was the more suitable. In the course of the hearing, however, it transpired that no architectural or other study had been made in relation to the proposed Cultural Palace and that no report or other material existed regarding considerations which led to, or the steps which were taken, in deciding on the compulsory acquisition of the property of the applicants. In view of this the Court held that the respondent Commission had no sufficient material before it to enable it to decide finally and safely on the site, extent of space required, or indeed on the feasibility of the project in question. In addition to the above the Court found that the respondents were themselves the owners of property equally suitable for the purpose of the proposed undertaking. And in the light of the above findings the Court concluded that the respondents had acted contrary to the principles of Administrative Law applicable to land acquisition cases and in excess and abuse of their powers.

There is no question that compulsory acquisition resorted to before it is absolutely necessary and otherwise than as a last resort is contrary to the principles of Administrative Law applicable and, therefore, null and void.

In the present case although paragraph 2 of the facts in support of the Opposition, which is taken from the submission to the Council of Ministers part of *exhibit* 3, may give the impression that the Ministry of Commerce and Industry hastened to proceed with the acquisition in order to forestall any increase of the price of land in the area, it is, in my view, abundantly clear from the material before the Court, and in particular from *exhibits* 1, 2 and 3, that when the Council of Ministers took the decision complained of all necessary preparatory work had been completed and before any further step could be taken towards the completion of the undertaking it was necessary for the property involved, including the property of the applicant, to be acquired; because the intention was for Government to acquire the land as a first step and that, subsequent to this, development would be undertaken by private enterprise. (Paragraph 3(c) of the submission to Council *exhibit* 3).

In this respect the present case is clearly distinguishable

from the *Glyki* case where the whole undertaking was to have been carried out by the respondents and they had taken no steps at all towards the preparation of any plans nor did they have any material before them which would enable them to properly consider and evaluate the question of the acquisition of applicants' property.

In the light of these circumstances I am not satisfied that the respondents acted prematurely and without a proper study of the proposed scheme. Quite clearly in taking the decision complained of they relied on expert advice which, in my view, was the proper and reasonable thing to do.

The same applies to ground four also *i.e.* to the question of the extent of the land acquired. This is a matter of a technical nature and one which falls within the discretion of the acquiring authority and there is nothing before me to justify the view that in arriving at this decision they have acted in any way that would warrant the annulment of such decision.

With regard to the remaining ground *i.e.* that the object of the acquisition might have been achieved by the applicant himself and he was not given an opportunity to develop his property either alone or in conjunction with others, I am of the view that there is no merit in this ground either. It appears from the submission to the Council of Ministers (part of *exhibit* 5) that this question was raised by some of the owners and was considered by the Council of Ministers, who, in the light of the expert advice, decided to reject the idea. The aim was for a uniform and comprehensive touristic development of the whole area, avoiding haphazard and piecemeal development by the various owners of their respective plots and I do not think that it can be seriously argued that it was possible or, at least, practical for this aim to be achieved otherwise than by securing land control as suggested by the experts.

For all the above reasons this recourse fails and must be dismissed.

In all the circumstances there will be no order as to costs.

Recourse dismissed.
No order as to costs.