IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION
CYPRUS TANNERY LTD.,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTER OF PUBLIC COMMUNICATIONS AND WORKS,

Respondent.

(*Case No.* 387/74).

Compulsory acquisition of land—For "port development" and "for construction of port"—Claim for its return on the ground that the purpose for which it has been acquired has not been attained within 3 years of the acquisition—Article 23.5 of the Constitution—Purpose of acquisition attained by the construction of the port—Fact that acquired property has not been used for the actual construction of the port basin and its quays and wharfs and no buildings have been erected thereon does not make it unnecessary for the purposes for which it was acquired—As "port development" and "port" should be taken to include not only the part covered with water, but also the adjacent land which will be necessary for the construction of, inter alia, *administration buildings and warehouses.*

By means of an order of acquisition dated February 20, 1969 the Council of Ministers compulsorily acquired a piece of land belonging to the applicant company for the purpose of construction of a port at Larnaca. Three years later the applicant company, acting under Article 23.5 of the Constitution applied to the respondent Minister for the return of the said property on the ground that more than three years have elapsed since the acquisition and the purpose for which it was acquired has not been attained. The respondent Minister turned down this application and hence the present recourse.

Counsel for the applicant company contended that the said property has not been used for the construction of the port or its functioning and that the refusal or omission of the admini-

stration to comply with the provisions of Article 23.5 of the Constitution and sections 7, 14 and 15 of the Compulsory Acquisition of Property Law, 1962 (Law 15/62) constitute a violation of the Constitution and the Law.

The property in question has not been used for the actual construction of the port basin and its quays and wharfs and no buildings have been erected thereon. A senior Engineer of the Ministry of Communications and Works who is a qualified Coastal and Harbour Engineer, and who has been concerned with the project in question testified that a port is a living entity and when plans are made for its construction its future needs are always taken into consideration; that such needs include not only the area to be used for the quays and water basin but also that required for administration buildings, warehouses, parking space, open stacking areas and transit sheds; and that this was followed in the present case and from the outset the property of the applicant was found to be and still is required for the purposes of the port.

Held, that the provisions of Article 23.5 take effect if within three years of the acquisition the purpose for which the land in question had been acquired has not become attainable (see *Kaniklides v. The Republic*, 2 R.S.C.C. 49 at p. 58); that in this case no such situation has arisen because the purpose for which the property in question together with other properties has been acquired has been attained by the construction of the port of Larnaca and the land in question is being used and is needed for the purposes for which it has been acquired; that the fact that the acquired property has not been used for the actual construction of the port basin and its quays and wharfs, or that no buildings have been erected thereon, does not make the property unnecessary for the purposes for which it was acquired, namely, the port development of the district of Larnaca and the construction of a port; that "port development" and "port" should be taken to include not only the part covered with water in which a ship would be afloat but also the adjacent land which will be necessary for the construction thereon of warehouses, offices or is to be left as an open space for storage or parking or any other use incidental to the construction of a port and in general the port development of an area; and that, accordingly, the recourse must fail.

Application dismissed.

Cases referred to:

Kaniklides and Republic, 2 R.S.C.C. 49 at p. 58.

Recourse.

Recourse against the refusal of the respondent to offer or return the property of the applicant, situated at Larnaca, which was acquired for the purpose of constructing a port at Larnaca, on the ground that more than three years have elapsed since the acquisition and the purpose for which it was acquired has not been attained.

P. L. Cacoyiannis, for the applicant.

C. Kypridemos, Counsel of the Republic, for the respondent.

Cur. adv. vult.

The following judgment* was delivered by:-

A. LOIZOU, J.: The applicant Company by the present recourse seeks a declaration of the Court that "the refusal or omission of the Minister of Communications and Works to release from the acquisition or to revoke the respective order of acquisition of the property belonging to the applicant situated at Larnaca, known and registered as Tannery Plot No. 334 under registration No. D.367 dated 14.2.1961 and offer or return such property to the applicant on the ground that more than three years have elapsed since the acquisition and the purpose for which it was acquired has not been attained or the attaining of such purpose in respect of the above property has been abandoned or the whole of such property was found to be in excess of its actual requirements for such purpose, ought not to have been made and that whatever has been omitted or refused should have been performed such refusal or omission being contrary to paragraph 3 of Article 23 of the Constitution and sections 7 and 14 of the Compulsory Acquisition of Property Law, 1962 and/or in excess or abuse of his powers".

The aforesaid property of the applicant Company was among other immovables in the town of Larnaca which were included in a Notice of Acquisition dated 17.4.1968 and published under Notification No. 266, in the official

* An appeal has been lodged against this judgment which is still pending.

Gazette of the Republic, No. 648 of the 18th April, 1968. The applicant Company objected to the said acquisition by letter dated the 29th April, 1968 (*exh.* 2'A') on the ground that their plot was not a building site or house, but an industry and pointed out that other industrial plots next to them were left out.

The District Officer through whom the said objection was forwarded, observed that for more than the two preceding years the said industry had not been functioning and there did not exist a reason for the annulment of the notice of acquisition.

The Council of Ministers by decision No. 8537 of the 20th February, 1969, dismissed the objection of the applicant Company and decided to proceed with the acquisition, whereupon an order of acquisition under section 6 of Law 15/62 dated the 20th February, 1969, was published in Supplement No. 3 to the official Gazette of the 21st February, 1969, under Notification No. 122. The purpose of public benefit for which the said property—together with the others enumerated in the said order—was required, was the port development of the district of Larnaca and the acquisition was necessary for the construction of a port at Larnaca.

Soon afterwards an order of requisition of this property was published in Supplement No. 3 of the official Gazette of the 28th February, 1969, under Notification No. 138. No recourse was filed against either of those two orders.

The Ministry of Communications and Works by letter dated the 5th April, 1969 (*exh.* 4 'A') informed the applicant Company about the acquisition and requisition of its property, that instructions were given to the Lands and Surveys Department for estimating the compensation payable to them and of its intention to enter into its property the soonest possible, for which, reason, the applicant Company was asked to arrange for the removal of all immovable and fixed equipment, installations and machinery from their property by the 21st April, of the same year.

There followed another letter dated the 25th April 1969 (*exhibit* 4 'B'). There was then a meeting between the two sides on the 3rd June, 1969, but there is disagreement

about what ensued at it. There was also correspondence whether the subject property had been excluded from the area required for the construction of the new Larnaca port or not. The main subject of this correspondence was the meaning of the term "immovable property" applied to the subject matter of the proceedings, in view of the fact that there were installations and fixtures of the said factory thereon. (See *exhibits* 1(1), (2), (3) and (4) of the 15th January, 17th February, 23rd February and 9th April, 1970, respectively).

Some three years later, that is, on the 3rd November, 1973, the applicants addressed a letter (*exhibit* 1(5)) to the Director-General, Ministry of Communications and Works, by which the attention of the respondents was drawn to para. 5 of Article 23 of the Constitution, calling upon them to exclude within 45 days from the acquisition and requisition, their property known as The Cyprus Tannery, Plot 334 at Larnaca reserving their rights to claim also reasonable compensation for the occupation and use of the said property by or on behalf of the Government and for any damage caused thereto from the date of the acquisition up to the date of requisition of such property and delivery to their clients.

On the 15th January, 1974 by letter (*exh.* 1(8)), the applicants were informed as follows:

(a) In your letter you refer generally to para. 5 of Article 23 of the Constitution and you do not specify for which reason you allege that the aforesaid Plot No. 334 must be excluded from the acquisition and requisition.

(b) Under these circumstances, you realise that it is not possible to examine the subject in the light of any reasons unknown to us on which you base your allegation, and in our opinion, there do not and does not exist any violation of the Law with regard to the said acquisition and requisition.

On the 14th October, 1974 by letter (*exh.* 1(9)), the applicants, through their advocate, wrote to the Director-General of the respondent Ministry:

"As you know our letter dated 3rd November, 1973 is a continuation of previous correspondence and interview of the 14th December, 1970, with the then Minister of Communications and Works, Mr. Nicos Roussos, by virtue of which we allege that Plot No. 334 in Larnaca of our client's Company Cyprus Tannery Ltd. was excluded from the area which was necessary for construction of the Larnaca port and for this it should be released from the acquisition and requisition and be returned to our client Company (see our letters to you dated 15.1.1970, 23.2.1970 and interview of the 14th December, 1970 at 4 p.m. with the then Minister Mr. Nicos Roussos, our letter dated 3.11.1973 and your letter dated 15.1.1974 and our reply dated 25.1.1974). It is very regrettable to allege in your letter dated 11.10.1974 that we do not specify in our letter dated 3.11.1973 the reasons for the applied release. This was completely unnecessary because our letter dated 3.11.1973 was, as we mentioned hereinabove, a continuation of previous correspondence and interview. Also, para. 5 of Article 23 of the Constitution, speaks for itself and applies only in cases as the present one. Consequently, your allegations in paras. (a) and (b) of your under reply letter is an unfortunate argumentation which you make only after the lapse of almost one year from our letter dated 3.11.1973 . . . . ."

It is disputed that the then Minister informed the applicants' lawyer that the property in question was excluded from the acquisition and it is invoked in support of the contrary, the fact that a month afterwards the previous order of requisition was renewed.

In the meantime the new port as such was constructed and started operating.

By letter dated the 27th June, 1974 (*exh.* 4'H') the District Lands Officer, Larnaca, asked Mr. Sarafian who was acting all along for the applicant Company to furnish him with his claim with a view to a settlement of the question of compensation, but it was after the filing of the present recourse and in fact on the 29th May, 1975, (*exh.* 2'K') that an offer for £20,000 was made to the applicant Company as compensation for the value of their property

under acquisition, which offer, was turned down on the 3rd June, 1975 (*exh.* 2 'L').

It has been the case for the applicant Company that their said property has not been used for the construction of the port or its functioning and that the refusal or omission of the administration to comply with the provisions of Article 23.5 of the Constitution and of the Compulsory Acquisition of Property Law, 1962, (Law 15/62), sections 7, 14 and 15 constitute a violation of the Constitution and the Law and an abuse or excess of the powers entrusted to the Minister of Communications and Works, from which the applicant Company is directly affected and consequently has a legitimate interest to exercise a right of recourse under Article 146 of the Constitution.

According to learned counsel for the applicant Company, Article 23.4 (c) and 23.5 of the Constitution and sections 7, 14 and 15 of Law 15/62, make it obligatory on the Acquiring Authority to release the immovable property of the applicants from the acquisition order as no longer required.

It was further argued that the fact that the Oil Refinery Factory which was originally included in the acquisition, was excluded later by the revocation of the notice of acquisition published in Supplement No. 3 to the official Gazette dated the 14 February, 1966 under Not. No. 114 and which is nearer to the entrance to the docks, proves that the immovable property of the applicant Company is not necessary for the achievement of the purpose for which it was acquired and this omission of the Acquiring Authority constitutes an abuse of power.

Article 23.5 of the Constitution, was judicially considered and interpreted in the case of *Kaniklides and The Republic*, 2 R.S.C.C. p. 49 at p. 58, where it is stated as follows:

> "The Court is, therefore, of the opinion that the provisions of paragraph 5 of Article 23 take effect if within three years of the acquisition the purpose for which the land in question had been acquired has not become 'attainable'. Any other interpretation would lead to absurdity in that there are bound to

be many purposes for which land has been acquired in the sense of paragraph 5 of Article 23, which, by their very nature, cannot be fulfilled within the said period of three years".

In the present case no such situation has arisen because the purpose for which the property in question together with other properties has been acquired, has been attained by the construction of the port of Larnaca, and the land in question is being used and is needed for the purpose for which it has been acquired. The fact that the acquired property has not been used for the actual construction of the port basin and its quays and wharfs, or that no buildings have been erected thereon, does not make the property unnecessary for the purposes for which it was acquired, namely, the port development of the district of Larnaca and the construction of a port. "Port development" and "port" should be taken to include not only the part covered with water in which a ship would be afloat but also the adjacent land which will be necessary for the construction thereon of warehouses, offices or is to be left as an open space for storage or parking or any other use incidental to the construction of a port and in general the port development of an area.

This is apparent from the evidence adduced upon the reopening of the case. Mr. Mikis Christodoulides, a Senior Engineer of the Ministry of Communications and Works, a qualified Coastal and Harbour Engineer, who has been concerned with the project in question all along, testified that a port is a living entity and when plans are made for its construction, its future needs are always taken into consideration. Such needs, include, not only the area to be used for the quays and water basin, but also that required for administration buildings, warehouses, parking space, open stacking areas, transit sheds, etc. This was followed in the present case, and from the outset the property of the applicant Company was found to be and is still required, for the purposes of the port.

With regard to the issue raised in relation to the Oil Refinery Factory, it may be stated that with the exception of a strip of land along its boundary, as indicated on the plan (*exh.* 5), same was never the subject of an acquisition, and what was released, following the objection lodged by

its owners, was part of this strip of land. According to the evidence, there were valid reasons for its non acquisition, being an industry in operation, useful to the economy of the Island, and the costs of its acquisition would be tremendous. In such circumstances, no claims for discrimination could validly stand, which, if at all, should have been raised within the prescribed period after the determination of the objections.

For all the above reasons, the present recourse is dismissed, but in the circumstances, I make no order as to costs.

Application dismissed.
No order as to costs.