

1978 October 27

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GLAFCOS MICHAELIDES AND ANOTHER,

Applicants,

v.

THE ATTORNEY-GENERAL OF THE REPUBLIC

Respondent.

(Case No. 197/76).

Compulsory acquisition—Order of—Revocation—Principles applicable—Whether owner must be reinstated to the possession of his property—Section 7 of the Compulsory Acquisition of Property Law, 1962 (Law No. 15 of 1962).

- 5 *Compulsory acquisition—Area where property, subject-matter of acquisition, is situated under occupation of Turkish forces—Purpose of acquisition (preservation of antiquities) could not be attained because of such occupation—Property not transferred in the name of the acquiring authority—Revocation of order of*
10 *acquisition—Validity—Section 7 of the Compulsory Acquisition of Property Law, 1962 (Law 15 of 1962).*

- 15 *Administrative Law—Compulsory acquisition—Revocation—Principles applicable—Revocation of order of compulsory acquisition because its purposes could not be attained on account of the Turkish invasion—The appreciation by the administration of the factual situation existing at time of revocation—And the changes brought about by such invasion to the factual conditions upon which the administration relied upon for the issuing of the act of*
20 *acquisition—Cannot be the subject of judicial control as there was no misconception of fact.*

The applicants are owners of three pieces of land situated within the area of Ayios Serghios village in the District of Fama-gusta which were compulsorily acquired in June 1972 for a public benefit purpose, namely for the purpose of preservation,

enhancement and development of the ancient monument of Salamis and its surroundings.

It was not in dispute that the area where this property is situate has been, since 1974, under the occupation of the Turkish forces and was inaccessible to the state and to all Greek Cypriots and that, likewise, the applicants were unable to resume possession of their said property. 5

The applicants instituted proceedings for assessment of compensation in June 1975. In July 1976, and whilst these proceedings were still pending, the acquiring authority, acting under section 7* of the Compulsory Acquisition of Property Law, 1962, revoked the compulsory acquisition order affecting applicants' said properties on the ground that "the purpose for which the order of acquisition was issued cannot be attained on account of the situation created after the Turkish invasion"; and on the ground that "the acquired property has not as yet been transferred in the name of the Government". 10 15

Hence the present recourse.

Counsel for the applicants mainly contended (a) that the real reason for revoking the order of acquisition was not because the purpose for which same was made no longer existed, but because the area in which the property lies was under the occupation of the Turkish forces and was not accessible to the Authorities of the Republic. 20

Counsel argued in this connection that both the purpose of public benefit and the reasons for which the properties in question were acquired still existed as the antiquities were there and their preservation, enhancement and development was still required; and that the impossibility to carry out the works connected with the purpose and reasons of acquisition should not result to the citizen bearing the cause of the revocation of the order. 25 30

* Section 7(1) reads as follows:

"At any time after the publication of a notice of acquisition and before the payment or the deposit of compensation as in this Law provided, the acquiring authority may, by an order published in the official Gazette of the Republic, revoke such notice and any relative order of acquisition that may have been published, either generally or in respect of any particular property or part of property referred to therein; and thereupon all proceedings consequential to such notice or order of acquisition shall abate and the acquisition shall be deemed to have been abandoned either generally or in respect of such particular property or part of property, as the case may be".

(b) That the Acquiring Authority must be in a position to reinstall the owner in the possession of his property.

5 *Held, dismissing the recourse*, (1) that an Acquiring Authority can, under section 7 of the Compulsory Acquisition of Property Law, revoke a notice and order of acquisition at any time before the payment or the deposit of the compensation as provided by that Law; that in the exercise of this discretionary power an Acquiring Authority, as every other administrative organ, must observe, in addition to the procedure laid down by the statute, 10 the spirit of the law and the conditions laid down by the general principles of law; that it has to act with discretion and not in an absolute or arbitrary manner; that the discretion must be exercised within the limits of good administration and must serve the purpose of the acquisition and not be prompted by 15 motives alien to it; and that the violation of these prerequisites to the exercise of discretion can be the basis of judicial control on the ground of wrong exercise of discretion which amounts in substance to a violation of law. (See, also, Kyriacopoulos Greek Administrative Law, 4th Ed. Vol. 'C' p. 386 20 para. 10).

(2) That the order of acquisition has not deprived the owner of his possession and therefore there is no question or re-installing him to the possession of his property.

25 (3) That the appreciation by the administration of the factual situation that existed at the time the *sub judice* decision was taken and the changes that were brought about by the intervening occupation of part of the island to the factual conditions upon which the administration relied upon for the issuing of the act of acquisition cannot be the subject of judicial control as there does not appear to arise a misconception of fact. 30

(4) That it is the impossibility of attaining the purpose of this acquisition, a fact of common knowledge, that made this acquisition no longer necessary; and that the existence of the antiquities in question and the need for their preservation, 35 enhancement and development does not change the situation as these factors could not render the purpose of acquisition attainable or foreseeably attainable at the time the *sub judice* decision was taken.

(5) That, therefore, the respondent authority in taking the

sub judice decision acted within the spirit of the Law and the limits of good administration in the exercise of its discretionary power; that since the purpose of the acquisition could not be attained the financial benefit enjoyed by the State on account of the revocation of the order of acquisition cannot substantiate a ground of abuse of power in the sense that this acquisition was made to serve a purpose other than the one provided by Law, or that the interests of the owners were not considered; that the remedy of the applicants must, therefore, be sought through another process; and that, accordingly, this recourse will be dismissed.

Application dismissed.

Cases referred to:

Antoniades v. Republic (1965) 3 C.L.R. 673 at pp. 682, 683;

Decisions of the Greek Council of State Nos. 800/1931, and 108/1932.

Recourse.

Recourse against the validity of the decision of the Acquiring Authority to revoke the orders of compulsory acquisition of applicants' properties situate within the area of Ayios Serghios village of Famagusta district.

G. Ladas, for the applicants.

N. Charalambous, Counsel of the Republic, for the respondent.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. The applicants are the owners of three fields situate within the area of Ayios Serghios village of Famagusta district under registrations:

- (a) No. 1393, dated 11.2.1970, plot 31, of Sheet/Plan XXIV/35, of an extent of one evlek and 2,000 sq. ft.;
- (b) No. 1394, dated 11.2.1970, plot 32, of the same sheet/plan, of an extent of one evlek and 1,600 sq. ft.;
- (c) No. 3100, dated 11.2.1970, plot 33, of the same sheet/plan, of an extent of two evleks and 2,000 sq. ft.

A notice of compulsory acquisition of these properties was

published in Supplement No. 3, to the official Gazette of the Republic of the 4th June, 1971, under Notification 381, as being necessary, together with other properties mentioned therein, “for the following purpose of public benefit, namely for archaeological excavations or the preservation or enhancement of ancient monuments and antiquities or the development of their surroundings and its acquisition being required for the following reasons, namely for the preservation, enhancement and development of the ancient monument of Salamis and the surrounding area”.

10 The order of compulsory acquisition was published in Supplement 3, Part II, to the official Gazette of the Republic, of the 2nd June, 1972, under Notification 353, “for the purposes of public benefit mentioned in the aforesaid notice of acquisition”.

15 On the 20th June, 1975, Reference No. 10/1975 was filed in the District Court of Larnaca which on account of the Turkish occupation of part of Famagusta district and its capital town was made the Court having jurisdiction in the matter. By it the applicants were claiming C£12,000.— as just and reasonable compensation for their aforesaid property. An appearance was entered on behalf of the Attorney-General of the Republic on the 12th July, 1975. A statement of claim together with the valuation of the applicants’ valuer was filed on the 22nd March, 1976, the delay being due to the difficulties that existed at the time for such valuation. By the said valuation the compensation claimed was reduced to C£7,000. A defence together with the valuation of the Acquiring Authority was filed on the 13th April, 1976, their valuation being for the amount of C£6,950. On the 13th April, 1976, the case was fixed for mention and adjourned to the 24th May, 1976, for hearing. On account of a misunderstanding, as claimed by the applicants as to the date of hearing, nobody appeared on their behalf and the Reference was dismissed for want of prosecution. The Court, as it appears from the relevant record, thought it probable that the applicants did not wish to pursue their case any further because of the possibility which had been mentioned on a previous session by counsel for the Republic that the order of acquisition would be revoked. In all fairness, however, to the applicants the Court, though dismissing their claim for want of prosecution, allowed them their costs on the authority that a citizen whose property is expropriated is under any circumstances

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entitled to his valuation costs for the reason that incurring such costs is absolutely necessary for the protection of a citizen's interests.

On the application of the applicants the Reference was reinstated on the 16th June, 1976. On that day counsel for the applicants accepted the valuation of the respondents and applied for judgment for that sum with 5% p.a. interest as from 2.6.1972 and costs. Counsel for the respondents, however, stated that the Council of Ministers decided to revoke the order for compulsory acquisition and therefore compensation was not payable. He also objected to the payment of interest and applied for a date of hearing. The case was fixed for hearing on 6.7.1976, on which date the Court was informed by him that the order revoking the compulsory acquisition of the said property had been published in Supplement No. 3, Part II, to the official Gazette of the Republic of the 2nd July, 1976, under Notification 511. Counsel for the applicants stated then, that they would challenge the validity of such order before the competent Court, he withdrew with reservation of their rights the said reference and applied and was awarded their costs.

It is not disputed that the area where this property is situate, has been, since 1974, occupied by the Turkish forces and is now inaccessible to the State and to all Greek Cypriots and that, likewise, the applicants are unable to resume possession of their said property and that, generally, dealing in same is really affected.

The said order of revocation is stated to have been made under section 7 of the Compulsory Acquisition of Property Law 1962, and the reasons for such revocation given therein are the following:-

“And whereas compensation has not been paid or deposited regarding the aforesaid acquisition in accordance with the provisions of the Compulsory Acquisition of Property Law, and

Whereas the Acquiring Authority considers the immovable property described in the said Notification 381 as not being necessary for the purposes of public benefit set

out in the said Notification No. 381, the Minister etc. hereby revokes”.

Section 7(1) of the law reads as follows:-

5 “At any time after the publication of a notice of acquisition and before the payment or the deposit of compensation as in this Law provided, the acquiring authority may, by an order published in the official Gazette of the Republic, revoke such notice and any relative order of acquisition that may have been published, either generally or in respect
10 of any particular property or part of property referred to therein; and thereupon all proceedings consequential to such notice or order of acquisition shall abate and the acquisition shall be deemed to have been abandoned either generally or in respect of such particular property or part
15 of property, as the case may be”.

This section gives a discretionary power to an Acquiring Authority at any time after the publication of a notice of acquisition to revoke such notice and any relative order of acquisition that may have been published. In due course I shall be dealing
20 with the principles of administrative law that lay down the limits within which the administration must move in exercising such discretionary powers. But before doing so reference should be made to the relevant decision of the Council of Ministers of the 20th May, 1976, No 14934 (*exhibit 1*) reached on
25 a submission made by the Ministry of Justice; it reads as follows:-

30 “With reference to para. 1 of the minutes of the meeting of the Council of the 21st February, 1974, the Council considered the suggestions of the Committee of Ministers appointed for the study of the subject of the delays in the payment of compensation for compulsorily acquired properties which are contained in the submission and decided to approve the revocation of the orders of acquisition referred to in sub-*paras.* (b), (c) and (d) of para. 3
35 of the submission and that the appropriate ministries proceed the soonest possible to the taking of the necessary measures for the implementation of the aforesaid decision.

With regard to the subject referred to in sub-*para.* 3 of

para. 3 of the submission, it has been agreed that the matter be further discussed in cooperation with the Attorney-General of the Republic."

Para. 3 (a), (b), (c) and (d) of the submission reads as follows:-

"(a) *Acquisitions with regard to works fully completed.* 5

For the districts of Nicosia and Larnaca, in the cases where the assessment of the compensation to be paid has been completed, the Government should pay the compensation after ascertaining that the property is free from any incumbrances. In the cases where there has been no valuation, a provisional valuation by the Land Registry Office should be made on the basis of the available elements and on a conservative basis, and thereafter compensation will be paid on condition of adjusting the height of such compensation immediately after the conditions permit the carrying out of a proper assessment and the owner in such case will be under an obligation to transfer the property under acquisition in the name of the Acquiring Authority. Provided that this undertaking will be given by the owner on the basis of a document which will be drawn up by the Attorney-General. 10
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For the districts of Kyrenia and Famagusta (in which the Land Registers are not available), no compensation will be paid by the Government, except in the cases where a Court judgment has been delivered when the compensation will be paid after the person entitled thereto will give an undertaking of indemnity that he will compensate the Government if subsequently it was established that the property was not free from any incumbrances (in this respect it has been ascertained that such cases are very few). If in the future there have been issued similar decisions by the Court, the whole subject will be re-examined, not excluding the possibility of the revocation of the acquisition. 25
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(b) *Acquisitions for works the carrying out of which commenced but remained incomplete on account of the Turkish invasion.* 35

In the cases where there has been a construction of works

and the appearance of the property has changed on account of the interference, compensation will be paid for that part of the property subject to the reservations of para. (a) above. In the remaining cases where in spite of the intervention there has been no substantial transformation or it is not possible to ascertain whether there has been substantial transformation of the property, the acquisition to be re-
 5 voked.

(c) *The acquisition for works which were not executed.*

10 The Government should revoke the acquisition orders issued because this is considered from a financial aspect in the interest of the Government. In the case of I. Mavronicolas, in which a Court judgment has been delivered, the awarded compensation should be paid provided that
 15 the person entitled gives a substantial guarantee (as in para. (a) hereinabove).

(d) *"Preservative" acquisitions for purposes of general benefit.*

20 The Government should revoke the orders of acquisitions issued."

The Director-General of the Ministry of Communications and Works was asked by the Department of Antiquities to cause an order of revocation of the relevant order of acquisition to be published in the Official Gazette with regard to the properties
 25 in Ayios Serghios village for the Salamis area among which the sub-judice properties were included. It was pointed out therein that in the said properties no work of any kind was carried out and would be considered as falling within category (d) the preservative acquisitions and that the reasoning for the said
 30 order of revocation could be the decision No. 14934 of the 20th May, 1976—hereinabove set out.

The matter was submitted to the Minister through the Director-General of the Ministry of Communications and Works and the relevant minute which forms part of the bundle of documents, exhibit 1, reads as follows:
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"The attached order of revocation of Notification No. 381 of 1971 and the order of Acquisition No. 353 of 1972 are

submitted for approval and implementation of the decision of the Council of Ministers No. 14.934 dated 20th May, 1976.

(2) The above private property was acquired for the purpose of preservation, enhancement and development (συντήρησης, άξιοποίησης και ανάπτυξης) of the ancient monument of Salamis and its surroundings. 5

(3) The issuing of the attached order of revocation is called for as the purpose for which the order of acquisition was issued cannot be attained on account of the situation created after the Turkish invasion. 10

(4) The aforesaid revocation can be made on account of the fact that the acquired property has not as yet been transferred in the name of the Government.”

This material in the file, together with the relevant decision of the Council of Ministers, constitutes the reasoning for the decision to revoke the order of acquisition in question. 15

The application is based on the following grounds of law:-

“1. Under section 7 of Law 15 of 1962, the Acquiring Authority may at any time after the publication of the Notice of compulsory acquisition and before the payment of compensation for the property affected, revoke such Notice and any order made under it, and in such a case the compulsory acquisition is considered as abandoned. 20

2. It is submitted that the true construction of the above section of the Law is: (a) That such revocation is made whenever the property compulsorily acquired is no more necessary either wholly or in part for the purposes for which it was acquired; (b) That the Acquiring Authority in case of revocation of the order for compulsory acquisition must be in a position to reinstall the owner in the possession of his property. 25 30

3. In the sub judice Order of Revocation it is stated that the reason for such revocation is that the compulsorily acquired property is not necessary for the purposes of public utility mentioned in the said Notice No. 381. 35

4. It is respectfully submitted that the real reason of the revocation of the compulsory acquisition of the property described in the said Notice No. 381, is the evasion by the Acquiring Authority of their obligation to pay compensation for the said property, which was agreed upon on the 16.6.1976 in Reference No. 10/1975 of the District Court of Larnaca”.

The argument advanced on behalf of the applicants is that the real reason for revoking the order of acquisition is not because the purpose for which same was made no longer existed, but because the area in which the property lies is under the occupation of the Turkish forces and is not accessible to the authorities of the Republic. It was urged that both the purpose of public benefit and the reasons for which the properties in question were acquired still exist as the antiquities are there and their preservation, enhancement and development is still required. The impossibility to carry out the works connected with the purpose and reasons of acquisition, should not result to the citizen bearing the cause of the revocation of the order. In fact, it was stressed that the act of revocation was not made for the reasons stated in the order, that is to say, that the property is no longer necessary for the purpose for which the order was made, but because it is impossible for the Republic to approach that area.

Before I consider, however, this main issue of the case, I would like to answer the proposition under para. (b) of the second ground of law hereinabove set out, namely, “that the Acquiring Authority in case of revocation of the order of acquisition must be in a position to reinstall the owner in the possession of his property”. In this respect it may be stated that neither the publication of a notice of the intended acquisition nor that of the order of acquisition deprives an owner of the possession of the subject property which only vests in the Acquiring Authority by virtue of section 13 of the Compulsory Acquisition of Property, Law 1962, upon payment or deposit of the sum agreed or determined to be paid as compensation for the acquisition. Therefore, the revocation of an order of acquisition before same vested in the Acquiring Authority, should be distinguished from the situation that arises under section 15 of the same law which deals with the disposal of

immovable property acquired and which is vested in the Acquiring Authority and where the purpose for which it has been so acquired is not attained or the attainment of such purpose is abandoned by the Authority or the whole of any part of such property is found by the Acquiring Authority to be in excess of its actual requirements, and in which section special provisions are set out to regulate matters. The order of acquisition in this case has not deprived the owner of his possession and therefore there is no question of reinstalling the owner to the possession of his property. This disposes, in my opinion, of this proposition.

I turn now to the relevant legal principles governing the revocation of acts of acquisition as are summed up in *Kyriacopoulos Greek Administrative Law*, 4th Ed., Vol. 'C', at p. 386, para. 10, which I find that may usefully be set out hereinafter:-

"The act of acquisition can be revoked by the administration. From the reason that by the issuing of this act the owner of the acquired property acquires a claim for the payment of compensation, in older days it was considered that the administration could not revoke without the consent of the owner such act, but this view has been abandoned early and it has been accepted that the administration may revoke the act since no right is created in favour of the owner so long as the compensation has not been paid (see *Decisions of the Greek Council of State*, 204/1929, 364/1930, 523/1934 etc.). This view constitutes now the prevailing law, the law permitting its revocation within a specified period from the publication of the act so long as the whole or part of the compensation due has not been paid (Section 2, para. 1, of A.N. 1731/1939), but the owner of the acquired property may claim the payment of compensation on account of the intervening burdening of his property. The revocation of the acquisition as well as the order of acquisition, as we have already seen, is within the free discretion of the administration. Such revocation, however, must be in accordance with the principles of good administration, the Council of State being able to control the reasoning of the act revoking the acquisition. Consequently, the act may be annulled for

abuse of power if it was issued, for example, for the purpose of reversing the already commenced Court proceedings for the fixing of the compensation.

5 Revocation made for the sake of the interest of the State only without taking into consideration and those of the owner can be annulled (ine akyrotea)—See *Decisions 800/1931 and 108/1932*”.

10 It is important, therefore, for our case, to examine more closely the aforesaid two Decisions of the Greek Council of State. Decision No. 800/1931 turned on the legality of the revocation of an act of acquisition issued for the purpose of the afforestation of an area of land, part of which belonged to those applicants, a previous act of revocation having been annulled on the ground that the necessary opinion of the Council
15 of Forests, agreeing with such decision, was not secured, as required by the Forest Code.

 Under the relevant statutory provisions the decision for afforestation and acquisition, could be revoked at any time up to the final determination by the Court of the compensation to
20 be paid. As stated in this Decision, this provision specifies simply the time up to which it is permissible, provided there exist the legal prerequisites for the Minister of Agriculture to exercise his discretionary power for the revocation of his decision of this nature. In the exercise, however, of such
25 discretionary power, he must, as every other administrative authority, observe also, in addition to the procedure laid down, all the conditions that emanate from the declared purpose and the whole spirit of the law and from the general principles of law, acting with discretion and not in an absolute or arbitrary manner,
30 and the violation of these conditions can constitute the legal basis of judicial control on the ground of wrong exercise of discretion which amounts, in substance, to violation of law.

35 This provision empowering the revocation of an act of acquisition, is similar to our section 7 of the Compulsory Acquisition of Property Law, 1962, which, likewise, sets out as the only prerequisite for the revocation of an acquisition, the fact that same should be made before the payment or the deposit of the

compensation, placing no other specific conditions in the exercise of the discretion by the administrative authority concerned. In view, therefore, of this similarity, the same principles regarding the exercise of a discretion found to be applicable in Decision No. 800/1931, should govern the exercise of the discretion under section 7 of our Law. 5

Reverting now to Decision No. 800/1931, one cannot help observing that it was pointed out therein that from the relevant file it emanated that none of the lawful prerequisites which were required for the issue of the act of acquisition ceased to exist, and, therefore, there did not stop to exist the reason for which the acquisition was made, inasmuch as shortly before the revocation, the appropriate Department made preparations for the commencement of the procedure for the assessment of the compensation and because the acquisition of the remaining area was retained; moreover, it was clearly stated in a document of the Directorate of the Forest Administration, that it came to the decision to revoke the act of acquisition, for reasons strictly financial, especially as the amount of the compensation likely to be awarded was expected to be higher than their original estimate. On these facts it was held that in the exercise of its discretionary power an administrative organ must observe the spirit of the law and the conditions suggested by the general principles of law. These conditions were ignored and it could not be accepted that financial reasons could be taken into consideration exclusively and one-sidedly, that is to say, in the interest of the State and not consider also, in reaching such a decision, the detrimental consequences which resulted to the applicants on account of the act of revocation taken after the lapse of ten years and which deprived them of the opportunity of in any way disposing or exploiting the acquired property and which, on account of the prevailing economic conditions suffered a drop in its price which could be, after the issue of the *sub judice* decision, the lawful basis for a claim for compensation. 10 15 20 25 30 35

Decision No. 108/1932 relates to the revocation, after some ten years of litigation, of an act of acquisition of land made for the purpose of afforestation; such revocation could, under the relevant statutory provision, be made at any time before the compensation was finally and conclusively fixed by the 40

Court. The same property had also been declared by the Town Plan in force as a space not to be built upon for the purposes of beautification; but it does not appear whether under this latter procedure compensation had been claimed.

5 It was clear from the material in the file that the special reasons which called for the afforestation of the area did not cease to exist and that the Ministry of Communications recommended same to be proceeded with at all costs in its answer to the document sent by the Ministry of Agriculture in which
10 the latter stated its intention to revoke the order of acquisition because of the high costs for such acquisition and in which document it was indicated that the property could instead be acquired for the purpose of beautification by the Ministry of Communications. By a subsequent document, the Ministry of
15 Agriculture notified the office in charge of the Town Plan that although the afforestation was revoked there still remained the description of the property as intended for acquisition for beautification purposes.

20 It was held that as this action of the Ministry of Agriculture showed an intention to serve the financial interests of the State in relation, however, to the provisions giving the right to declare and revoke the afforestation would be a wrong exercise of discretionary power by the administration, because even if this reason was considered to be within the purposes of the provisions for the revocation of the afforestation and the administration was entitled under the law to proceed for any reason
25 and without a time limit to the revocation of the afforestation, the lapse of 10 years from the afforestation of this property into which the administration had entered for the sake of the afforestation and partly planted, does not prove exercise of
30 discretionary power in accordance with the notions of good administration. The administration by revoking the afforestation did not exercise its discretionary power in accordance with the spirit of the statutory provision giving it this discretionary power and which presupposes its exercise within the
35 limits of good administration and from this point of view the act of revocation of the afforestation should be annulled for violation of law. Moreover this reason for the revocation of the afforestation was outside the purpose of the law as the
40 administration was entitled to revoke the afforestation for

purposes relating to it and the administration exercised its discretionary power for such revocation not for reasons serving the interest of afforestation but prompted by motives alien to that purpose. Therefore, the act of revocation should be annulled as contrary to law as having been made to serve a purpose other than the one provided by law. 5

From the aforesaid exposition of the law relevant to the question of the revocation, it may be concluded that an Acquiring Authority can, under section 7 of the Compulsory Acquisition of Property Law, revoke a notice and order of acquisition at any time before the payment or the deposit of the compensation as provided by that Law. In the exercise of this discretionary power, however, an Acquiring Authority, as every other administrative organ, must observe, in addition to the procedure laid down by the statute, the spirit of the law and the conditions laid down by the general principles of law; it has to act with discretion and not in an absolute or arbitrary manner; the discretion must be exercised within the limits of good administration and must serve the purpose of the acquisition and not be prompted by motives alien to it. The violation of these prerequisites to the exercise of discretion can be the basis of judicial control on the ground of wrong exercise of discretion which amounts in substance to a violation of law. 10 15 20

The contention of learned counsel for the respondents that when there exists a statutory provision regulating the revocation of administrative acts the general principles of administrative law on revocation do not apply,—and in this respect I have been referred to the case of *Antoniades v. Republic* (1965) 3 C.L.R. p. 673, at p. 682—though correct as such, has no direct bearing in our case as the issue before me is the manner the discretion given by the statutory provision for revoking an act of acquisition was exercised and not the existence or not of statutory provisions permitting or not the revocation of an administrative act. It is true that wherever there exist such provisions expressly providing for and regulating the question of revocation, the general principles of administrative law are not applicable, the manner the administrative discretion to revoke an act is exercised can be tested as against such general principles of administrative law as for example that of the wrong exercise of discretion or abuse of power. This is how I have 25 30 35 40

understood the proposition laid down in the *Antoniades* case (*supra*) where the learned trial Judge (pp. 682 and 683) also went on and tested the manner the administrative act in that case was revoked as against the general principles of administrative law.

With these legal principles to guide me I turn now to the case under consideration. From the facts as summed up earlier in the judgment it appears that the ground upon which the revocation was called for in implementing decision No. 14934 of the Council of Ministers was the fact that the purpose for which the order of acquisition was issued could not be attained on account of the situation created after the Turkish invasion. That was the view of the Department of Antiquities when requesting the appropriate administrative organ entrusted with the implementation of decision No. 14934 of the Council of Ministers, namely the Minister of Communications and Works to proceed with the revocation; moreover the fact that the property had not been transferred, no work of any nature had been carried out therein and the acquisition in question was considered as falling within category (d) of the submission, that is to say, the preservative acquisition made for the purpose of general public benefit, were also relevant.

The appreciation by the administration of the factual situation that existed at the time the sub-judice decision was taken and the changes that were brought about by the intervening occupation of part of the island to the factual conditions upon which the administration relied upon for the issuing of the act of acquisition cannot be the subject of judicial control as there does not appear to arise a misconception of fact.

It is the impossibility of attaining the purpose of this acquisition, a fact of common knowledge, that made this acquisition no longer necessary. The existence of the antiquities in question and the need for their preservation, enhancement and development does not change the situation as these factors could not render the purpose of acquisition attainable or foreseeably attainable at the time the sub-judice decision was taken.

For all the above reasons I have no difficulty in concluding that the respondent authority in taking the sub-judice decision acted within the spirit of the Law and the limits of good admini-

stration in the exercise of its discretionary power, since the purpose of the acquisition could not be attained the financial benefit enjoyed by the State on account of the revocation of the order of acquisition cannot substantiate a ground of abuse of power in the sense that this acquisition was made to serve a purpose other than the one provided by Law, or that the interests of the owners were not considered. The remedy of the applicants must therefore be sought through another process. 5

This recourse therefore is dismissed but in the circumstances I make no order as to costs. 10

Application dismissed. No order as to costs.