

1980 February 9

[A. Loizou, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

LEFKARITIS BROS. LTD.,

*Applicants,*

v.

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

*Respondent.*

(Case No. 301/77).

*Compulsory acquisition—Notice of acquisition—Objection to acquisition made out of time—No duty on acquiring authority to examine such objection—Sections 4 and 6(1) of the Compulsory Acquisition of Property Law, 1962 (Law 15/62).*

*Compulsory acquisition—Public benefit purpose of, the creation of protective strips on a road—Town and country planning and housing purpose which includes safety of the public on the roads—Subject property intended for construction of petrol station but no building permit could be secured as it had no access to a public road—Whether purpose of acquisition could be served by construction of petrol station—Acquisition only measure that could be resorted to for achievement of the said purpose and was decided upon after due consideration of all relevant factors.*

On July 13, 1977, the respondent published a notice of acquisition affecting, among other properties, part of a plot of land at Strovolos belonging to the applicants, and called upon any person interested to submit to the respondent, within 15 days from the publication any objection which he may wish to raise to the acquisition.

As no objection was submitted within the time specified above on September 15, 1977 the respondent decided to proceed with the acquisition and the order of acquisition was published in the

Official Gazette of the 30th September, 1977. Hence this recourse.

5 The purpose of the acquisition was the creation and development of the roads of the Republic and the acquisition of applicants' property was necessary for the creation of protective strips for the needs of the Nicosia-Agros road.

10 The applicants, who bought the property in question on April 29, 1974 for the purpose of constructing a petrol station, submitted an objection to the said acquisition on September 24, 1977, which was clearly out of time.

Counsel for the applicants contended:

- 15 (a) That the objection of applicants has not been examined by the respondents as provided by section 6(1) of the Compulsory Acquisition of Property Law, 1962.
- (b) That the construction of a petrol station would serve the purpose for which the acquisition was made, namely, the construction of a new road.
- 20 (c) That technical data not advocating in favour of the public benefit purpose of the acquisition were not taken into consideration.

25 *Held*, (1) that under section 6(1) of the Compulsory Acquisition of Property Law, 1962, on the expiration of the period specified in the notice of acquisition the appropriate Minister must proceed with all reasonable speed to the examination of any objections to the acquisition made during the said period; that, therefore, there is no room for complaint that the Acquiring Authority failed to examine applicants' objection, which was made out of time, more so even after the date the order of acquisition was finally decided; and that, accordingly, contention (a) must fail.

30 (2) That, before the notice of acquisition, the subject property never had any access to a public road so that its owner would be entitled to a building permit for a petrol station in view of the provisions of the Streets and Buildings Regulation Law, Cap. 96; and that, therefore, applicants' contention that the construction of the petrol station would serve the purpose for which the acquisition was made cannot stand as there was no obligation upon the Acquiring Authority to give access to a new

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road, which is about to construct, to which same did not exist for the benefit of the adjacent properties.

*Held*, further, that the subject acquisition is one relating to the acquisition of property for the creation of protective strips so that the adjacent owners would be prevented from having access to the road; that this is one of the purposes of public benefit which comes within the heading of town and county planning and housing, which includes the safety of the public on the roads; and that, no doubt, the acquisition was the only measure that could be resorted to for the achievement of the said purpose, in the circumstances.

(3) That it is apparent that the acquisition was decided upon after due consideration of all relevant factors; that, apparently, the method of sterilising roads for the purpose of road safety is a generally accepted one; and that, accordingly, contention (c) must, also, fail.

*Application dismissed.*

#### **Recourse.**

Recourse against an order of compulsory acquisition affecting applicants' property situated at Strovolos.

*M. Christofides*, for the applicants.

*Cl. Antoniadis*, Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

A. LOIZOU J. read the following judgment. By the present recourse the applicant Company claims a declaration of the Court that the order of acquisition under Notification No. 871, published in Supplement No. 3, Part II, to the Official Gazette No. 1391 of the 30th September, 1977, by which, among other properties, part of plot 240, of block 'E', in the village of Strovolos, was acquired, is null and void and of no effect whatsoever.

The notice of acquisition under No. 642 was published in Supplement No. 3, Part II, to the Official Gazette No. 1364 of the 13th July, 1977. It called upon any person interested in the subject properties to submit to the Ministry of Communications and Works, through The District Officer, Nicosia, within 15 days from its publication, any objection which he wished to raise to such acquisition.

The applicant Company by a contract of sale dated the 29th April, 1974, purchased plot 240 from its owner for the purpose of constructing a petrol station. The said contract of sale was lodged with the Lands Office on the 9th June, 1977. The applicant Company on 24th September, 1977, submitted an objection to the said acquisition which was clearly out of time. In fact, on the 30th August, 1977, The District Officer, Nicosia, through whom the objections in respect of the said Notice were to be submitted, informed The Director-General of the Ministry of Works and Communications, that no objection had been received against the said acquisition.

As no objection was submitted against the said acquisition within the time specified in the aforesaid notice, the acquisition was proceeded with and the order of acquisition was published in the Official Gazette of the 30th September, 1977, as above set out, for the purpose of public benefit stated in the aforesaid notice of acquisition, namely, for the creation and development of the public roads of the Republic and that the said acquisition was necessary for the reason of creating protective strips for the needs of the Nicosia—Agros (Section III) road. In fact, the said order of acquisition is dated the 15th September, 1977, that is, it was taken nine days before the applicant Company submitted its said objection.

Under section 6(1) of the Compulsory Acquisition of Property Law, 1962, on the expiration of the period specified in the notice of acquisition, or where the Acquiring Authority is the Republic—as in the present case—the appropriate Minister must proceed with all reasonable speed to the examination of any objections to the acquisition made during the said period. This section leaves no room for complaint that the Acquiring Authority failed to examine objections made out of time, more so objections which were submitted even after the date the decision was finally decided upon and authorized by the order of acquisition.

The applicants, as all other persons having an interest in the property to be acquired, failed to submit their objection within the specified time and therefore can have no complaint if same was not examined as provided by section 6(1) of the Law. This disposes of one of the three grounds relied upon by the applicants in this case, as the respondents duly complied with

the provisions of section 4 of the Law regarding the requirements of a notice of acquisition.

On the other hand, the creation of these protective strips was intended, as appearing in the relevant file, for the purpose of safety on the road by obviously limiting the access to it from its sides. The subject property never had before the notice of acquisition any access to a public road so that its owner would be entitled to a building permit and at that the building of a Petrol Station, in view of the provisions of the Streets and Buildings Regulation Law, Cap. 96, and the relevant Regulations. 5 10

The ground that the construction of a petrol station would serve the purpose for which the acquisition was made, namely, the construction of a new road, cannot stand as there was no legal obligation that I know of upon the Acquiring Authority to give access to a new road which is about to construct, to which same did not exist for the benefit of the adjacent properties. Moreover, the subject acquisition challenged by this recourse is one relating to the acquisition of property for the creation of protective strips so that the adjacent owners would be prevented from having access to the said road. This is one of the purposes of public benefit which comes within the heading of Town and Country Planning and Housing, which includes the safety of the public on the roads. No doubt the acquisition was the only measure that could be resorted to for the achievement of the said purpose, in the circumstances. 15 20 25

With regard to the last ground, i.e. that as technical data which do not advocate the creation of protective strips were not taken into consideration and therefore no purpose of public benefit existed for the acquisition, cannot succeed as there is nothing before me to that effect. It is obvious that the matter was decided upon after due consideration of all relevant factors. Apparently this method of sterilising roads for the purpose of road safety is a generally accepted one. 30

On the whole no sufficient reasons have been shown to justify my interference with the *sub judice* decision and the present recourse is, therefore, dismissed, but in the circumstances I make no order as to costs. 35

*Application dismissed. No order as to costs.*