1981 December 30

[A. Loizou, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION.

STAVROS A. AGROTIS, BY HIS LAWFUL ATTORNEY ANDREAS C. AGROTIS

Applicant,

v.

THE ELECTRICITY AUTHORITY OF CYPRUS,

Respondent.

(*Case No.* 203/79).

Compulsory acquisition—Principles of Administrative law applicable—Existence of other suitable sites—No proper comparison made between them so that, before resorting to compulsory acquisition of applicant's property, to exhaust possibility of acquiring other suitable property acquisition of which would entail deprivation less onerous—Failure to inquire duly into suitability of nearby plot—And delay in responding to offer for sale of other suitable site—Sub judice *acquisition annulled for lack of due inquiry and on ground of excess and abuse of power.*

Administrative law—Inquiry—Due inquiry—Failure to make—Results to the invalidity of the relevant administrative decision.

Administrative law—Compulsory acquisition—Principles of administrative law applicable.

Administrative law—Delay—Compulsory acquisition—Delay by administration to respond to offer for sale of other suitable property—And acquiring compulsorily applicant's property when offer no longer in existence—No proper compliance with principles of good administration and the principles of administrative law governing compulsory acquisition—Sub judice acquisition annulled on the ground of abuse and excess of power.

The applicant in this recourse challenged the decision of the respondent authority to compulsorily acquire part of his immo-

vable property at Strovolos for the purpose of establishing a sub-station thereon. The respondent Authority commenced the procedure of selecting a site for the above purpose early in 1976; and at the initial stage it considered four sites as suitable. It first proposed to the owner of plot 1040 to acquire his plot but following representations by him that the erection of a sub-station on his plot would adversely affect his plans for building a second house thereon, the Authority abandoned the idea of acquiring this plot. The respondent Authority then proposed to the owner of another plot (No. 1188) to acquire his plot and at some stage, on 12th March, 1977, he offered to sell a sub-station site to the Authority at C£2,000. The respondent Authority considered this amount as rather high and two months later, on the 13th May, 1977, it asked the L.R.O. to make a valuation of the land in order to enable it to make a counter offer to the owner. On the 11th July, 1977 it was ascertained that plot 1188 changed hands and the new owners were not willing to sell the required site to the Authority. Following this development the District Engineer suggested to the Deputy Chief Engineer of the Authority that the "second best site" was applicant's plot (No. 1186) and also, suggested that "an alternative sub-station site worth considering is within plot 901 marked A2 on the attached plan. If an unconditional wayleave can be secured from the owner of plot 908 then it will be possible to establish 4 LV feeders from this sub-station". The Deputy Chief Engineer in reply authorized the District Engineer to take action, according to the standard procedure, for the acquisition of applicant's plot and made no mention of the suggestion of the District Engineer regarding plot 901. Applicant informed the respondent Authority that he was objecting to the erection of a sub-station on his plot but in the end it was compulsorily acquired; and hence the above recourse.

Held (1) (after stating the principles of administrative law governing compulsory acquisition vide pp. 511-12 *post*) that though there existed properties very suitable for the purpose of the acquisition, yet they were not chosen and in any event no proper comparison was made at the time so that before resorting to the compulsory acquisition of the subject property the respondent Authority has exhausted the possibility of acquiring compulsorily other suitable immovable property, the acquisition of which would entail a deprivation less onerous than the deprivation

entailed in the proposed acquisition; that, moreover, the respondent Authority failed to inquire duly into the suitability of plot 901 and into the possibility of acquiring it either by private purchase or compulsory acquisition; that a failure to make a due inquiry results due to the contravention of the general principles of Administrative law to the invalidity of the relevant administrative decision because the notion of "Law" in Article 146 of the Constitution has been construed as including the well settled principles of Administrative law (see *Ioannides* v. *The Republic* (1972) 3 C.L.R. 318 and the very recent case of *Mikellidou* v. *The Republic* (1981) 3 C.L.R. 461); that, therefore, the *sub judice* decision should be annulled on the ground that the matter was not duly inquired into.

Held, further, that the *sub judice* decision must be annulled on the ground of excess and abuse of power inasmuch as the respondent Authority upon being informed that there was a willing seller initiated the process of valuation by asking the Lands Registration Office to make valuation of the property but it did so after the lapse of two months, which lapse of time was unreasonable in the circumstances and as a result of this delay there has not been a proper compliance with the requirements of good administration and to the principles that before resorting to the onerous method of compulsory deprivation of ownership the possibility of finding property that is voluntarily offered to for sale should be exhausted; that, on the contrary, in this case the very offer for voluntary sale was lost because of this delay in taking advantage of same; and that no doubt an unreasonable delay by the administration that causes a detriment to the citizen as a result of changes that occur in the meantime amounts to excess and abuse of powers. (See (*Loiziana Hotels* v. *Municipality of Famagusta* (1971) 3 C.L.R. 466).

Sub judice decision annulled.

Cases referred to:

Chrysochou Bros v. *CYTA and Another* (1966) 3 C.L.R. 482;

Ioannides v. *Republic* (1972) 3 C.L.R. 318;

Mikellidou v. *Republic* (1981) 3 C.L.R. 461;

Loiziana Hotels v. *Municipality of Famagusta* (1971) 3 C.L.R. 466;

Nemitsas Industries Ltd. v. *Municipal Corporation of Limassol and another* (1967) 3 C.L.R. 134;

Angelidou & Another v. *Republic* (1975) 3 C.L.R. 404;

HadjiGeorghiou v. *Republic* (1974) 3 C.L.R. 436;

Michaeloudes & Another v. *Republic* (1979) 3 C.L.R. 56.

Recourse.

Recourse against an order of compulsory acquisition affecting part of applicant's property situated at Strovolos.

A. Dikigoropoulos, for the applicant.

G. Cacoyannis, for the respondent.

Cur. adv. vult.

A. Loizou J. read the following judgment. The applicant by this recourse seeks:-

> "A declaration that the act and/or decision of the respondents to compulsorily acquire part of the immovable property registered in his name and described in the relevant Certificate of Registration as part of plot 1186 of the L.R.O. Sheet/Plan XXX.6.W.1, of block 'H', which act and/or decision was published as Administrative Act No. 309 in the Official Gazette dated the 6.4.1979, is null and void and of no effect whatsoever as having been made and/or taken contrary to the provisions of the Law and/or of the Constitution and/or of the principles of Administrative Law and/or in excess and/or abuse of their powers".

The salient facts are briefly these: The applicant is the registered owner of a building site described in the relevant certificate of registration as plot 1186 of L.R.O. Sheet/Plan XXX/6W.1 of block 'H', Strovolos.

In a report dated 5.1.1976 to the General Manager of the respondent Authority, its District Engineer made preliminary proposals (*exhibit* 1-1) for the establishment of a sub-station at Mandres locality, Strovolos. There were named therein seven plots, namely, plots 844, 1039, 1040, 1187, 1185, 1186 and 1039. With regard to plots 844 and 1039 it was stated that the establishment of a sub-station thereon was not feasible, and with regard to the remaining four plots the following were stated:

"*Plot* 1040—Only the front part of this plot is developed

and a sub-station may be established at the back of this plot. However, the owner refuses to negotiate, maintaining that a sub-station at the back of his plot would adversely effect his future extension plans.

Plot 1187—Empty; the owner refuses to negotiate, maintaining that a sub-station at the only one available corner would adversely affect his plans of erecting a semi-detached building.

Plots 1185 & 1186—Empty, owned by one person; owner turned down the idea of establishing a sub-station in anyone of his plot. However, site S2 (in plot 1186) is considered technically suitable with less hardship to the owner, provided, of course, that these two adjacent plots will be developed independently. Alternatively the S/S could be erected at the south-western corner of plot 1186.

Plot 1188 (*site* S1)—Empty; owner refuses to negotiate. However, this site is considered technically suitable with the less hardship to the owner as compared with the other possible alternative sites mentioned above. It is suggested to establish the substation on this site. Please consider and advise".

To the above proposals there was a reply from the Deputy Chief Engineer dated 20.1.1976 (*exhibit* 1-2) which so far as relevant runs as follows:

"After a careful consideration it has been established that the most suitable s/s site in this case both technically and with the less hardship to the owner is the one in the northern corner of plot 1040.

Your suggestion to establish the s/s in plot 1188 has been noted. However, when this plot is compared with plot 1040, the latter is preferred as this is already developed and hence the extent of hardship to the owner would be less. From the technical aspect plot 1040 is better than plot 1188 for bringing out more direct LV u/g feeders, 2 on pole 7 East and West, one North and the other South of the cross roads".

From the above it appears that at the early stages of the process, that eventually led to the compulsory acquisition of

the applicant's plot, the most suitable plot was not his plot but another plot, namely, plot 1040. In reply to the above letter of the General Manager, the District Engineer by his letter dated 30.3.1976 (*exhibit* 1–3) informed the General Manager that the owner of plot 1040 after considering the matter for some time and following "consultation with his architect, has forwarded a letter, dated 22.3.1976, to this office, turning down the idea of establishing a sub-station and maintaining that the erection of a sub-station anywhere on the space available within his plot would adversely affect his plans for building a second house for his second daughter".

In answer to this last letter the Deputy Chief Engineer replied by letter dated 6.4.1976 (*exhibit* 1–4) stating that "in view of the fact that the owner of plot 1040 is in possession of plans for building a second house in his plot, the matter has now been reconsidered. Under the circumstances the second best alternative site from all aspects will have to be considered and this is at the north-eastern corner of plot 1188. You are, therefore, advised to take further action in accordance with the Standard procedure for sub-station sites".

There followed a letter from the respondent Authority to the owner of the second best alternative site, viz. plot 1188, dated 7.6.1976 (*exhibit* 1–5) informing him that after a thorough study it was ascertained that the best site for the establishment of the sub-station in question was his plot. The owner of plot 1188 made representations against the selection of his plot and the Chief Engineer by his letter dated 22.10.1976 (*exhibit* 1–6) informed him, *inter alia*, that the question had been thoroughly reconsidered and that the site in question continued to remain the best, taking into consideration all the criteria both from the technical aspect and from the point of view of causing less hardship to the owner. It was subsequently ascertained by the Authority (see the letter of the new owner dated 12.3.1977, *exhibit* 1–8) that plot 1188 changed ownership and that the new owner was willing to sell a sub-station site to the respondent Authority at the price of C£2,000. As the price of C£2,000.—was considered as rather high, the respondent Authority by letter dated 13.5.1977 asked the L.R.O. to make a valuation of the land in order to enable them to make a counter offer to the owner. It is significant to state, at this stage, that

it took the respondent Authority two whole months (the offer for voluntary sale was received on 12.3.1977) to initiate the procedure for valuation of the plot in question.

On the 11.7.1977 it was ascertained by the respondent Authority that plot 1188 changed hands and it belonged equally to two sisters who intended to construct two semi-detached houses and were in no way willing to sell the required site to the Autho- (see *exhibit* 1-9 dated 15.10.1977). In view of this development the District Engineer suggested as the "second best site" plot 1186 ("the *sub judice* plot"), which belongs to the applicant. The District Engineer in that letter (*exhibit* 1-9) also suggested that "an alternative sub-station site worth considering is within plot 901 marked A2 on the attached plan. If an unconditional wayleave can be secured from the owner of plot 908 then it will be possible to establish 4 LV feeders from this sub-station".

The Deputy Chief Engineer agreed that the second best site was the *sub judice* plot (see *exhibit* 1-10, dated 21.10.1977), authorized the District Engineer to proceed to take further action according to the standard procedure and made no mention of the alternative suggestion of the District Engineer regarding plot 901. It is convenient to state at this stage that it would have been more in accord with the realities of the situation if the *sub judice* plot had been described as the "third best site" for as we have already stated the "first best site" was plot 1040 and the "second best site" was plot 1188.

By letter of the District Engineer dated 1.6.1978, (*exh.* 1-11), the applicant was informed, *inter alia*, that "after a thorough study it was ascertained that for technical reasons the most suitable site was the site within the said plot 1186". The applicant then by his letter dated 24.6.1978 (*exhibit* 1-12) informed the respondent Authority that he was objecting to the erection of a sub-station within his plot because it would affect adversely its future development for building purposes.

The Board of the respondent Authority met on the 8.8.1978 and decided to acquire compulsorily the *sub judice* plot as it is recorded in its minutes of that date (*exhibit* 1-14). Following this decision of the 8.8.1978 a relevant notice of acquisition was published under Notification No. 938, in Supplement 3 to the Official Gazette of the 1.9.1978 and the applicant was

informed of this fact by letter dated 1.9.1978 (*exhibit* 1–15). Applicant objected by his letter dated 5.9.1978 (*exhibit* 1–16) and the Board of the respondent Authority met on the 7.10.1978 and after considering the objection it found that it was not supported by good grounds and rejected it. The matter was thereafter referred to the Council of Ministers and upon taking its sanction an Order of compulsory acquisition was published under Notification No. 309 in Supplement 3 to the Official Gazette of the 6.4.1979; hence this recourse.

Counsel for the applicant mainly contended that:

"The decision complained of is contrary to the general and well settled principles of Administrative Law as adopted by the Supreme Court in *Chrysochou Bros.* v. *CYTA and Another* (1966) 3 C.L.R. 482 in that the compulsory acquisition was ordered:

(a) Without exhausting alternative possibilities of achieving the objects of acquisition either by purchasing other suitable land voluntarily offered for sale or by compulsorily acquiring other more suitable land such as plot 1188 which was described by them as the most suitable in 1976.

(b) Without exhausting the possibility of using for the relevant purpose state land more or less equitably suitable for the purpose concerned.

(c) Without a sufficient study of possible alternatives".

Moreover that

"The sanctioning of the acquisition was made and/or taken in a manner inconsistent with all notions of proper administration and/or without the proper and/or due inquiry into all relevant facts and/or circumstances and/or in a manner inconsistent with the notion of equal treatment envisaged in Article 28 of the Constitution, applicant having never been notified of the contents of the respondents' observations and/or recommendations to the Council of Ministers or given the opportunity to present his case before the Council of Ministers".

On the other hand counsel for the respondent Authority submitted that:-

The decision of the respondents to acquire the subject property was within the powers of the respondents, within the provisions of the Constitution and the terms of all relevant legislation including the Compulsory Acquisition of Property Law 1962, the Electricity Development Law Cap. 171 and the Electricity Law Cap. 170; and that the decision of the respondents to acquire the subject property was taken in the proper exercise of the respondents' powers and a proper exercise of their discretion after a full and thorough enquiry from all possible aspects including actual and technical suitability and repercussions to the owners of alternative plots.

The principles of administrative law governing questions of the compulsory acquisition of property have been stated in *Chrysochou Bros.* v. *CYTA* (1966) 3 C.L.R. 482, where at page 497 Triantafyllides J., as he then was, said the following:

> "In this connection it is useful to bear in mind that the requirements of proper administration and the proper use of the relevant discretionary powers render it imperative that a compulsory acquisition should not be ordered if its object can be achieved in any less onerous manner; and it should only be resorted to if it is absolutely necessary to do so and after exhausting the alternative possibility of achieving its object by means of purchasing other suitable property which is voluntarily offered for sale by its owner. Moreoever, before resorting to compulsory acquisition of a particular immovable property the acquiring authority must exhaust the possibility of acquiring compulsorily other suitable immovable property the acquisition of which will entail a deprivation less onerous than the deprivation entailed in the proposed acquisition; (see Conclusions from the Jurisprudence of the Greek Council of State 1929–1959 p. 87); and the above principles render all the more striking the already found, in this Judgment, lack of proper consideration of the matter by the Board of CYTA".

He then referred to Decisions Nos. 300/1936, 1023/1949, 608/1955 and 92/1957 of the Greek Council of State and went on to say at page 499:

"All the above decisions propound widely accepted prin-

principles of Administrative Law which are, in my opinion, to be regarded as applicable to compulsory acquisition of immovable property in Cyprus, (see also *Venglis and Electricity Authority* (1965) 3 C.L.R., p. 252) in that they regulate the proper exercise of the relevant discretionary powers in accordance with the notions of proper administration; it is to be borne in mind, in this respect, that the relevant constitutional provisions (Article 23 in Cyprus and Article 17 in Greece) are provisions in pari materia".

Applying the aforesaid principles to the facts of this case as hereinabove set out, I am led to the conclusion that the *sub judice* decision should be annulled on the ground that the matter was not duly inquired into. It appears that there existed properties, very suitable for the purpose of the acquisition, and yet they were not chosen and in any event no proper comparison was made at the time so that before resorting to the compulsory acquisition of the subject property the respondent Authority had exhausted the possibility of acquiring compulsorily other suitable immovable property, the acquisition of which would entail a deprivation less onerous than the deprivation entailed in the proposed acquisition. Moreover the respondent Authority failed to inquire duly into the suitability of plot 901 and into the possibility of acquiring it either by private purchase or compulsory acquisition.

It is well settled that a failure to make a due inquiry results due to the contravention of the general principles of Administrative Law to the invalidity of the relevant administrative decision because the notion of "Law" in Article 146 of the Constitution has been construed as including the well settled principles of Administrative Law (see *Ioannides* v. *The Republic* (1972) 3 C.L.R. 318 and the very recent case of *Mikellidou* v. *The Republic* (1981) 3 C.L.R. 461.

Furthermore the *sub judice* decision must be annulled on the ground of excess and abuse of power inasmuch as the respondent Authority upon being informed that there was a willing seller initiated the process of valuation by asking the Lands Registration Office to make valuation of the property but it did so after the lapse of two months, which lapse of time was unreasonable in the circumstances and as a result of this delay there

has not been a proper compliance with the requirements of good administration and to the principles that before resorting to the onerous method of compulsory deprivation of ownership the possibility of finding property that is voluntarily offered to for sale should be exhausted. On the contrary in this case the very offer for voluntary sale was lost because of this delay in taking advantage of same. No doubt an unreasonable delay by the administration that causes a detriment to the citizen as a result of changes that occur in the meantime amounts to excess and abuse of powers. This principle is born out from what was held in the case of *Loiziana Hotels* v. *The Municipality of Famagusta* (1971) 3 C.L.R. p. 466 where a delay of about 2 1/2 months to deal with an application for a building permit, with the result that the law has changed in the meantime and the granting of the building permit as applied for was not possible, was held to amount to an excess and abuse of powers. The *sub judice* acquisition must, therefore, be annulled on this ground too.

As the *sub judice* order of acquisition is a composite administrative act in that it has been made by the respondent, Electricity Authority, and sanctioned by the Council of Ministers under section 6(3) of the Compulsory Acquisition of Property Law, 1962 (Law No. 15 of 1962), for its validity to be upheld such act has to be valid with regard to both its essential components viz. action taken by the respondent Authority and the action taken by the Council of Ministers. This is so because it is a fundamental principle of administrative law that the invalidity of part of a composite administrative action leads to the invalidity of the said action as a whole (see, *inter alia*, *Nemitsas Industries Ltd.* v. *Municipal Corporation of Limassol and Another* (1967) 3 C.L.R., 134; *Angelidou & Another* v. *Republic* (1975) 3 C.L.R., 404; *Hadjigeorghiou* v. *Republic* (1974) 3 C.L.R. 436; the *Chrysochou* case (*supra*), and *Michaeloudes & Another* v. *Republic* (1979) 3 C.L.R. 56).

Therefore, for all the above reasons I have reached the conclusion that the *sub judice* order of compulsory acquisition has to be annulled as made contrary to well established principles of administrative law and is thus contrary to law and in abuse and excess of powers. It should not be forgotten that compulsory acquisition leads to deprivation of property which contravenes the fundamental right of property, safeguarded by Article

23 of the Constitution and acquiring Authorities are expected to act in conformity with the principles of good administration, diligently and within reasonable speed.

In the result this recourse succeeds but in the circumstances I make no order as to costs. 5

Sub judice decision annulled. No order as to costs.