

1982 October 14

[HADJIANASTASSIOU J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

EVANGELOS EVANGELOU

Applicant,

v.

THE MUNICIPAL COMMITTEE OF PAPHOS

Respondent.

(Case No. 11/78).

Administrative Law—Omission—May not only consist of failure of an administrative Authority to respond, when called upon to act but, also, of an express refusal to exercise its relevant powers—Refusal of respondents to issue building permit to applicants or to give a reply to his letter regarding such permit—Too long in time, contrary to the Constitution and or the Law—Annulled.

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At the beginning of October 1977 the applicant applied to the respondent Municipal Committee for a building permit to erect shops on a plot of land of his at Paphos. By his letter dated 7th November, 1977 which he addressed to the respondents he called upon them to issue the building permit applied for within three days and added that in case the permit was refused he reserved all his rights "and to pursue them through the Court". Respondents did not reply to applicant's letter and on the 9th November, 1977, acting in pursuance of a decision taken by them on the 25th August, 1977, they caused a notice of the intended acquisition of applicant's property to be published in the official gazette. Hence this recourse.

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Held, that an omission in administrative Law may not only consist of failure on the part of an authority to respond, when called upon to act, but, also, of an express refusal to exercise the relevant powers vested in such authority; that the refusal of the respondent to issue the building permit applied for and/or

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to reply to the applicant regarding such permit was too long in time and contrary to the constitution and/or the Law; accordingly it has to be annulled and declared null and void and of no effect whatsoever (reasoning in *Georghiades v. Republic* (1966) 3 C.L.R. 153 at p. 168 adopted and applied).

Sub judice decision annulled.

Cases referred to:

- Georghiades v. The Republic* (1966) 3 C.L.R. 153 at p. 168;
London and Others v. The Republic (1968) 3 C.L.R. 427 at p. 433;
 10 *Loiziana Hotels Ltd. v. The Municipality of Famagusta* (1971)
 3 C.L.R. 466 at p. 472.

Recourse.

Recourse against an order of compulsory acquisition affecting applicant's property situated at Paphos and against the refusal
 15 of the respondent to reply to applicant's application for a building permit.

A. S. Angelides, for the applicant.

K. Crystostomides, for the respondent.

Cur. adv. vult.

20 HADJIANASTASSIOU J. read the following judgment. In the present recourse against an order of acquisition, the applicant seeks (a) an order of the Court that the failure of the respondents to reply to his application for a building permit dated
 25 12th October, 1977, with reference to plot No. 825/1 in Paphos, as well as to his letter dated 7th November, 1977, on the same subject is contrary to the law and is null and void and of no effect whatsoever; (b) a declaration of the Court that the act
 30 and/or decision of the respondent published in the Official Gazette of the Republic under No. 1407 dated 9th December, 1977, under Notification No. 1120 for the compulsory acquisition of the land which is within the town of Paphos should be declared as null and void and of no effect whatsoever.

THE FACTS

35 The applicant is a merchant by profession and has purchased a plot of land with the intention to erect shops for the purpose of carrying on his business in those shops. On 7th November,

1977, he addressed a letter to the Chairman of the Municipal Committee of Paphos and had this to say:

“I Evangelos I. Evangelou of Geroskipou the owner of a piece of land under No. 825/1 S/P LI/2,6 IV, situated at the Market street in Paphos, you are called by this letter that within three days as from today you will issue to me a building licence on the said building side in accordance with the application made to the Municipality of Paphos at the beginning of October, 1977.

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In case you refuse to me the application for a building licence, I reserve all my rights and to pursue them through the Court.”

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See exhibit 3.

It appears further that the Municipal Committee was interested to acquire the said building side and at their meeting dated 25th August, 1977, had this to say:

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“The Municipal Committee in accordance with a scheme which will improve the municipal market and the road network of the area unanimously decides that the said area of plot 825/1 S/P LI/2,6 IV which appears on that in colour red and is signed by the Chairman of the Municipal Committee bearing today’s date the property of Mrs. Aila Feizi Jemil of Paphos to be compulsorily acquired for purposes of public interest and particularly for the improvement of the municipal market and of the road network of the area.”

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See exhibit 5.

There was no reply to the applicant and on 9th November, 1977, the Municipal Committee under the compulsory acquisition of property for public benefit purposes caused a notice of the intended acquisition to be published in the Official Gazette of the Republic containing the description of the property intended to be acquired and stating clearly the purpose for which it was required and the reasons for the acquisition and calling upon any person interested in such property to submit to such

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authority within the time specified therein being not less than two weeks from the date of the publication thereof, any objection which he may wish to raise to such acquisition.

5 The applicant feeling aggrieved instructed his counsel to raise an objection to such acquisition of his land and Mr. Angelides addressed a letter to the Municipal Committee of Paphos opposing the compulsory acquisition of the land and his reason for his opposition were these: “(a) It is a fact that my client asked by an application made from the Municipal Committee
10 as from the 12th October, 1977, a building permit with regard to the said land. That application is obvious that it has been made a long time before the compulsory acquisition and without receiving a reply in spite of the fact that the case law of the Supreme Court and the Constitution itself imposes a reply
15 within a period of thirty days. That application of my client ought to have been decided with the existing legal situation which was in force during the time it was made. The delay for the issue of a decision and/or the failure to give any kind of reply is considered that it was made in the expectation of the
20 creation of new situation, viz., the issuing of a notice of acquisition, a fact which is contrary to the Constitution and the case law. (b) The acquisition only of the land of my client from the whole of the area is entirely unreasonable and does not serve any substantial public interest.” Finally, the writer
25 concludes as follows: “I take the opportunity to inform you that the damage of my client is possible to be made irreparable because of your omission to reply to his application.”

It appears further that after a long delay when Mr. Angelides warned the Municipal Committee, the Secretary of the Municipality on 14th September, 1978 addressed a letter to the applicant making it clear that they were reserving all their rights and had this to say:

“Sir,

35 I refer to your application dated 12th October, 1977, for a building permit within your piece of land under No.825/1 S/P LI/2, 6 IV and I have been asked to inform you that, as we have informed you orally in time, was unable to proceed with the study of your case for the issue of a building permit because the said authority was bound by a
40 decision of the Municipal Committee dated 25th August,

1977, by which the said piece of land would have been compulsorily acquired for purposes of public interest and particularly for the improvement of the municipal market as well as the nearby popular market and of the improvement of the road network of the area." 5

The writer then went on to say:

"It is necessary to point out that during the meeting of 25th August, 1977, in which the decision was taken by the Municipal Committee for the compulsory acquisition of that piece of land the owner was Aila Feizi Jemil..... 10

As regards to your opposition through your lawyer Mr. A. S. Angelides dated 19th December, 1977, I have been instructed also to inform you that the Municipal Committee during the meeting of 30th December, 1977, having studied that letter decided to dismiss it as unacceptable and unreasonable because the Municipal Committee from many years decided at various dates to acquire land round the municipal market for the purposes connected with its improvement and the improvement of the nearby popular market as well as the road network of the area of the town of Paphos." 15 20

THE OPPOSITION

The opposition of the Committee was based on the following facts: (1) Since the year 1973 the Committee of Paphos has compulsorily acquired for public benefit purposes houses and other lands around the municipal market for the purposes of improving it as well as the surrounding streets of the area of the city of Paphos. Since that time the Committee had acquired loans for the purposes in question and bought in all fifteen delapidated houses in order to put into effect the said purposes. (2) In addition the employees of the Municipal Committee were working on a new project and they have given notice for the acquisition of the land which was close to the municipal market always with a view of putting into effect that scheme, viz., the improvement of the municipal market as well as the widening of the streets in that area. (3) The acquisition of the land, now the property of the applicant, has been delayed to be put into effect because the owner of that piece of land was a Turkish Cypriot and as it is well known after the Turkish invasion restrictions 25 30 35

were put regarding the Turkish properties. (4) By a way which has not been made known to the Committee the applicant became the owner of the said piece of land on 27th September, 1977. (5) The application for a building permit was delivered to the municipal engineer towards the end of October and has been examined along with a number of applications for building purposes and it was found out that it was not possible to grant to the applicant such a permit, because there was already a decision taken by the Committee dated 25th August, 1977 for compulsory acquisition of the said land and for purposes of public benefit; and (6) it was known to the present owner of the said piece of land that the nearby lands and buildings were earmarked to be compulsorily acquired by the Committee.

Furthermore, the Committee gave notice that they were intending to oppose the application and the opposition was based on the following legal grounds: (1) That the act or omission of the respondent is entirely lawful and was taken in accordance with the law and the Constitution of the Republic of Cyprus for a purpose of public interest. Furthermore, the said act or omission was fully in accordance with the accepted principles of administrative law and does not conflict with the well accepted principles of administrative law and of natural justice. The said act or omission does not create discrimination, is duly reasoned from the material of the respondent and the respondent did not act under misconception of facts or in abuse of power. And, (2) the said act or omission is in accordance with the provisions of section 23 of the Constitution and of Law 15/62.

Before dealing with the address of Mr. Angelides, it is necessary to add that when Mr. Chrysostomides was informed by him that the committee had issued building permits to others within the municipal market, the latter had applied for an adjournment of the hearing of the case to receive further instructions and inevitably the hearing of the case had to be adjourned to 23rd January, 1979. On that date, the secretary of the committee in a sworn statement said that the exhibits produced are the true copies of the plans prepared by the municipality. Furthermore, the copies of the minutes taken by the municipality are copies from the book of the minutes. Dealing with the budget of the municipality (exhibit 19) he added that there was a re-

ference to an amount of £4,000 which would have been utilized for the improvement of the market and the adjacent roads.

With regard to the allegation put forward by the other side that permits have been issued by the municipal authority, he added that as far as he knew no such permits were issued in the particular area. With regard to the application of the applicant in this case, the municipal engineer and himself approached the applicant with a view to finding a common denominator about the plot in question. He further added that they made it clear to him that it was not possible to issue to him a building permit for the reasons that the municipality has earmarked that plot along with others because it was for the purpose of improving the market. He was present he said at the meeting of the committee on 31st December, 1977 and the whole matter was discussed regarding the granting of a building permit. As a result of that meeting, he added, they addressed a letter to the District Officer of Paphos dated 10th January, 1978, in which they put their case to him. (See exhibit 17). Questioned further he said that it was equally an anticipated fact that the amounts which have been earmarked for the compulsory acquisition of properties in that area are still available today. The plot of the applicant he said is situated next to the municipal market. The plans for the improvement of the market as well as the nearby streets have been in force or in operation since 1970.

When the examination, in chief was concluded, Mr. Chryso-stomides made this statement:-

"I am sorry to interrupt for a moment, but because I anticipate the questions of my learned colleague, I am making this declaration on behalf of my clients: We concede that the plot in question has already been affected by the street widening scheme, but the new title deeds show that the plot which has been affected and the extent of the plot referred to in the title is the extent as it is now, and therefore, I withdraw what I said before that it would have been substantially affected to almost half of its extent if the street widening scheme was to be applied now. This was a miscalculation on my part and the extent of the plot is as presently shown on the title."

Then Mr. Angelides in reply, said:

“I am grateful to my learned friend for his statement, and I need not question the witness further on this point. There is no definite decision as yet, though the committee
. 5 is working on it. I agree that exhibit 13 is not a final plan and it is a preliminary draft”.

Then counsel put this question to the witness:

Q. I put it to you that having regard to plots 13 and 14 and your plans for the future, nevertheless you have granted three
10 permits for building purposes within the market itself and/or round that area.

A. I did not have in mind that such a question would be put to me to make enquiries in order to help counsel.

Questioned further, he said that it is true that these plans are
15 in existence since the year 1970. The reason why they had not proceeded at a faster pace in putting into effect their plans, he said, is because these plans are going to cost a lot and they were trying to convince the Government to help them financially. In the meantime, he said, with the limited financial means they
20 had in their hands, they were still buying land either by compulsory acquisition or by private treaty. This plan has not been put before the Government so far, he said, but that they would do so when they had a definite answer by the Government that they would finance this project. Until then they thought that
25 there was no reason to put the plans before them. These plans which are not final are known to the Government and were known even to the deceased President Makarios.

With regard to the change of the new owner of the plot, they got to know for the first time when the applicant had applied
30 for a building permit. The plots referred to earlier (exhibit 15) belong to various owners and have been also earmarked for compulsory acquisition. They had never made any record in their minutes about Leila, the previous owner, once she sold the land to the applicant, nor informed the District Officer
35 about the land. With regard to the other plots of land which have been earmarked for acquisition, the orders have been published in the Gazette. See exhibits 13 and 14, and were

known to a lot of people who have property round that area. It had never been published.

Questioned further, he said: "It is true that the prices which we have been paying for the plots of land from 1970 to 1978 have increased in value. I agree that had the plans been completed in 1970 for the acquisition of all the properties it would have cost less. I also agree that by the time the scheme will be completed, the prices and the expenses will increase much more. It is true that the applicant has come to me personally and I told him that we are not going to give him a permit, but I do not know as from what period, whether it was before the notification or after." 5 10

Finally, the witness said:

"All decisions taken by the Municipality of Paphos were based solely on those plans which are before the Court, exhibits 13 and 14." 15

On 25th April, 1979, counsel for the committee gave notice that "the respondents intend to adduce further evidence during the trial on the 8th May, 1979, in order to produce the correct plans for the proposed municipal market of the town of Paphos dated June, 1973, as same were by an oversight not produced. To this effect, the secretary of the Municipality of Paphos will be recalled and the municipal engineer at the time of the completion of such plans will also give evidence." 20

On 8th May, 1979, Mrs. Ioannidou informed the Court that her senior colleague had to leave urgently abroad. As there was no objection by Mr. Angelides, the case was adjourned and was fixed for further hearing on 3rd July, 1979. On that date Mr. Stephanos Demetriou was recalled and had this to say:- "The plans really were not finalized, there was a mistake and by an omission the new scheme which was prepared in June 1973, and which we traced in the file was not produced in Court. It has been amended in order to cost less money. (See exhibit 19, the budget of the municipality, see also exhibit 20). It is the final scheme and it is signed by the Municipal Engineer, Mr. Christodoulides which has been also approved by the Municipal Committee of Paphos. The new plan of the Municipal Market and the Popular Market was approved by the Committee." 25 30 35

Regarding the allegation that a permit was issued which refers to plots 660 and 660/1, that permit was issued on the 29th July, 1978 for the two plots. That permit was granted because of an improvement plan which was made by the Municipal Engineer and it does not affect the two plots 660 and 660/1 because they were not within the scheme of improvement of the Municipal Market. The permit was issued on the 29th July, 1978."

Then counsel put this question to the witness:

10 "There is an allegation that an application was made by the applicants and the permit was issued on 8th November, 1978. Furthermore, it is said that another permit was issued for another piece of land No. 612, what do you have to say with regard to this."

15 "A. The permit was issued on 5.8.67 because plot 612 was not affected either by the first and/or by the second plan for the improvement of the municipal market.

Q. These plans were the preliminary schemes which have been made in 1966?

20 A. Yes.

Q. The plot 612 with regard to the new scheme, is it within the scheme of improvement or outside?

A. No, it is outside.

25 Q. Is there anything with regard to the permit which is related with the present case and with the permits which possibly would have been issued?

A. There was a certain query with regard to plot 807, but that does not relate to a building permit but to a change of the front of a shop after the schemes were put into effect.

30 Q. The plot of the applicant which bears No. 825, is it within the scheme of improvement of the municipal market?

A. Yes".

35 Questioned by Mr. Angelides, he said that he remembers the evidence which he had given in the previous sitting of the Court. He further said that he has given an oral statement to

the applicant that it was impossible to grant a building permit with regard to plot 825. With regard to the schemes which have been produced and marked exhibit 21, and/or the schemes exhibit 13, he said that he had in mind the plans but he could not say which plans because the plot which is to be found in the centre of the space would influence the municipal market. With regard to the plot of the applicant, he explained that it would have been utilized for the improvement of the municipal market. He further added that the plans were not put before the Government for approval.

Questioned further as to whether these plans have been altered, he said that the municipality is not bound to notify the Government. He added that the people knew the schemes which have been approved by the committee under s.12. There was further questioning, and the witness said with regard to exhibits 13 and 14 that he did not exclude the fact that it was perhaps known to a lot of people. In addition, he said that after those plans and particularly for that area notifications were issued for the compulsory acquisition of certain plots which are nearby the plot in question of the applicant, but the compulsory acquisition did not take place because the Court made it clear not to proceed with the issue of the compulsory acquisition until the present trial was concluded. Finally, he said that he was sure that he would not be required to prepare a new plan. For that, he repeated, he was sure. In re-examination by counsel for the respondent he said that the plans were not secret, anybody could ask to see them.

Then Mr. Christodoulides was called to give evidence, and said that he was the municipal engineer as from 1939 till 1979 when he retired. In addition he said that the plans which have been produced in Court as exhibit 14 and the scheme which has not been produced by mistake the previous time, bears his signature and is dated June, 1973. Furthermore, he said that originally he had prepared a scheme which was slightly revolutionary and was intending to widen the streets and to make bigger the present municipal market, and which scheme was condemned at the end because it was very costly.

After his own suggestions to the Committee, he introduced

a second solution for the scheme and had prepared a new plan in June, 1973, with a view to put in force a scheme which would be less costly for the Municipality of Paphos. It appears that by mistake of the previous witness the original plan which was providing for the general street plan of the town and the widening of the municipal market was not produced. This, he said, was the first scheme and the new market would be made from the bigger parts of the place of the existing municipal market and in addition of other compulsory acquisitions in the existing market and other neighbouring places for the completion of a general scheme such as the scheme which was prepared in June, 1973.

Finally, the witness said that there was no fear that they were going to ask for further compulsory acquisitions. As to the issue of building permits, he said that the Municipal Secretary had no right to answer to the applications for the issuing of building permits. He further added that he had knowledge of the schemes and of the building permits issued.

Questioned further, he said that in the new scheme the plots are not included and that in the final scheme plot 612 is not included because it is a shop and is not influenced by the street alignment. Finally, he said that plot 825, the building site of the applicant is within the scheme for the improvement and indeed, is considered absolutely necessary.

Questioned by Mr. Angelides, he said that he was present at the meeting in which a decision was taken for the new plan because he added, he was the only person who has explained to the committee the consequences of the original scheme and of the new one. Furthermore, he added that the scheme contains the final plans. Indeed, he explained, the previous schemes of 1970 which have been submitted by him were not the final plans. He further agreed that at that moment there were buildings on plots 805 and 806, and that as from 1969 there were no architectural schemes. Pressed further as to who is responsible for issuing building permits, he said that the appropriate authority is the municipality and particularly the technical department. In addition, he said that in order to be issued a building permit, the permit must be issued by himself and is based on his own report.

Regarding the application of the applicant, he agreed that five or six days after the application, his department made a report to the committee and advised them not to issue a building permit to him. Furthermore, he added that the plans are open to general inspection in accordance with a decision of the municipal committee and after publication.

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In re-examination, he said that the appearance of the municipal market is in a very miserable state and that is why new schemes were prepared, with a view of improving its condition.

SUBMISSIONS

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Counsel in support of his long submissions argued (a) that it was the duty of the respondent to reply to the applicant under the provisions of Article 29.1 of our Constitution; (b) that the respondent kept silent for a whole year and in order to justify their stand evidence was given that an oral refusal was given to the applicant but again this finds no answer in law and the principles which have been expounded in a number of cases.

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In going through the evidence, one finds that the appropriate authority kept silent for a long time and refused to exercise their obligations in order to enable them to put into operation the provisions of the Compulsory Acquisition of Property Law 1962 for purposes of public benefit. Time and again in a number of cases, it was said that a public authority is bound to exercise their powers when called upon by a citizen because of Article 29.1 of our Constitution.

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In *Yiannakis Georghiades v. The Republic*, (1966) 3 C.L.R. 153, Triantafyllides, J. as he then was had this to say at p. 168:

“On the totality of the material before me I have come to the conclusion that respondent is only guilty of an omission to exercise his powers, under section 67 of Cap. 240, in relation to the appointment and salary of Applicant.

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It has been urged upon the Court, by counsel for Applicant, that exhibit 5, the letter of Respondent of the 13th June, 1961, is a decision in the matter. In this connection attention was drawn to exhibit 9, in which Respondent describes exhibit 5 as a decision.

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But, in my opinion, when exhibit 5 is viewed in the

context of the whole history of events in this Case, it is obvious that it is not a decision taken in the course of the exercise of the powers of Respondent under section 67, but only a decision not to exercise such powers for the time being; in other words, a refusal to exercise statutory powers, which amounts to an omission, in the sense of Article 146, and not a decision. It is hardly necessary to stress, I think, that an omission, in Administrative Law, may not only consist of failure on the part of an authority to respond, when called upon to act, but, also, of an express refusal to exercise the relevant powers vested in such authority."

Then at p. 169, the learned Justice continued:

"Even after the lapse of the two months' period, as from the 1st October, 1960, a duty remained to act in accordance with the requirements of s.67 of Cap. 240 - and as soon as possible. Failure to act within the statutory period laid down in sub-section (6) of section 67 did not result in absolving, any organ concerned, of the duty to take due action, even after the expiration of such period which is provided for by way of a directive (*vide Aspri and the Republic*, 4 R.S.C.C. p. 57 at p. 60).

In any case, even in the absence of a provision such as subsection (6), the delay of respondent in dealing with the matter of the appointment and salary of Applicant is so unjustifiably long that it renders clearly the relevant omission of Respondent, both an omission contrary to the spirit of section 67, as a whole, as well as an omission in excess or abuse of powers."

As to the next complaint of counsel, I have no difficulty in adopting the view that the respondent kept silent and in order to justify their stand an allegation was made that the applicant was informed orally that it was not possible to grant him a permit. With due respect, I find it difficult to follow the thinking of the person who put forward this allegation and in any event I am not prepared to accept that statement. Indeed, counsel in trying to vindicate the rights of his client went even further and argued that an applicant is entitled to be given his

rights by the administration before the change of a legal situation.

In *Andriani G. Lordou and Others and the Republic of Cyprus through the Council of Ministers* (Respondent), (1968) 3 C.L.R. 427, Triantafyllides, J. as he then was, dealing with the refusal of an applicant to issue to him a building permit, had this to say at p. 433:-

“The Applicants have based, mainly, their argument on the decision of the Greek Council of State in case 1235 (56), in which it was held that an application regarding a building permit had to be dealt with under the legislation in force at the time when it was made - and under which all the conditions relevant to the grant of the permit had been satisfied - and that such application was not to be governed by legislation which had come into effect in the meantime, after the making of the application.”

Then the learned Judge said:-

“A perusal of the aforementioned decision shows, at once, that the situation in that case is clearly distinguishable from the situation in the present case: There, before the coming into effect of the new legislation, there appears to have arisen a duty of the appropriate authority to issue the permit applied for, in view of the fact that the application therefor complied fully with all relevant conditions. In the present case, the application of the Applicants was submitted on the 17th May, 1967; it was studied, within reasonable time, by the technical services of Respondent 2; and on the date when the Notice in question was published the position was that the Applicants were still required to supply some further collateral plans and effect a modification to those already submitted; it could not be said that by the 25th May, 1967, the matter had ripened to such an extent that the building permit applied for by the Applicants could, and should, have been issued already.”

In *Loiziana Hotels Ltd. v. The Municipality of Famagusta*, (1971) 3 C.L.R. 466, Mr. Justice A. Loizou, in dealing with the refusal of the respondents to issue to applicants a building for the erection in Famagusta of a building of five storeys; and having quoted a passage from the judgment in *Andriani*

Lordou v. The Republic, (1968) 3 C.L.R. 427, had this to say at p. 472:

5 "It appears that in Greece itself the legal principles set out in Decision 1235/56 came under consideration in a subsequent case, Decision 1477/56, where observations were made regarding the legal effect of the first Decision as follows:

10 'Given that, that in accordance with established principles of Administrative Law the validity of an administrative act is determined on the basis of the legal status existing at the time of its issue unless same is issued so that the administration may conform with an omission to act which had already occurred prior to the alteration of the legal status or unless the law otherwise expressly provides'

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From the aforesaid exposition of the law, as it is established both here and in Greece, it appears that independently from the construction of the relevant legislation, the general principle that the validity of an administrative act is determined on the basis of the legal status existing at the time of its issue, is subject to the exception that the pre-existing legislation is applicable when there has been an omission on the part of the administration to perform within a reasonable time what it was duty bound to do before the change of the law.

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The unreasonable delay by the respondent in determining the application of the applicant and their subsequent application of the law as it was on the 15th March, 1971, amounts, to my mind, to a misdirection as to the law applicable and in fact to an excess and abuse of power. The law applicable is the law as it was before the 29th January, 1971, under which it is common ground the permit could be issued as a matter of course.

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The applicant having complied with the requirements of the law by the 10th December, 1970, cannot be punished merely because the respondents, as the appropriate authority, were, on the one hand, refraining from deciding finally the applicant's application and, on the other hand, were

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themselves considering, deciding upon and publishing new legislation whereby restrictions were imposed on the use of applicant's property. In the circumstances, the decision of the respondents whereby the applicants were refused the building permit applied for should be annulled..... 5

For all the above reasons the refusal of the respondents to issue the building permit applied for has to be annulled and is hereby declared null and void".

Having considered very carefully the stand and able arguments of both sides, I would reiterate that the appropriate authority not only had refused to exercise their obligations under the law and/or the Constitution, but went even further and made it open that they intended to acquire compulsorily the land in question as from 25th August, 1977, and in effect had refused to consider further the application of the applicant. 10
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For all the above reasons and in the light of the authorities quoted earlier and particularly the *Yiannakis Georghiades* case (supra), I would adopt and apply their reasoning in the present case. Indeed, the refusal of the respondent to issue and/or to reply to the applicant regarding the building permit applied for was too long in time and contrary to the Constitution and/or the Law and for all these reasons it has to be annulled and declared null and void and of no effect whatsoever. 20

Having reached this conclusion, I have decided not to deal with the question raised in the present case regarding the notice of acquisition once this matter will finally be argued and decided in the new Recourse No. 326/78 which will be fixed for hearing by the Registrar. 25

No order as to costs.

Sub judice decision annulled. 30
No order as to costs.