

1983 February 26

{A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

EFTYCHIA K. ATHANASSIOU AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE COUNCIL OF MINISTERS,

2. THE MINISTER OF INTERIOR,

Respondents.

(Case No. 231/81).

Compulsory acquisition—Justified if it could not be achieved by the disposal of government property or by direct purchase of privately owned property from owners specially contacted for the purpose—Compulsory acquisition of land for the purpose of constructing housing estate for displaced persons—Applicants' site the only one technically suitable for the achievement of the purpose—A prior offer to its owner to purchase it privately not necessary—And no obligation to acquire immovable property by private treaty exists.

The respondents acquired compulsorily a piece of land at Ayios Pavlos Quarter, Nicosia, which belonged to the applicants for the purpose of constructing a housing estate for displaced persons. The acquired land abutted the already constructed housing estate at Ayios Pavlos and the respondents intended to take advantage and utilize existing roads and other facilities that were already serving that estate. The choice of applicants' site was made in such a way as to satisfy concrete and multiple criteria, such as town planning, social and economic, with the main purpose to serve in the best possible way the public interest.

Upon a recourse by the applicants:

Held, that the necessity to take the exceptional measure of compulsory acquisition in order to achieve the purpose of

public benefit is justified if it appears clearly that it could not be achieved otherwise, e.g. by the disposal of government property of by the direct purchase of private owned immovable property from owners specially contacted for the purpose and that it has been resorted to as the acquired immovable property is considered, as in this case, the only technically suitable for the achievement of the purpose, when a prior offer to its owner to purchase it privately is not necessary; that in such instances, the ground that there exists an obligation to acquire immovable property by private treaty as a matter of general principle of law cannot stand; that in the circumstances the subject decision was lawfully taken and neither in abuse or excess of power nor without a proper inquiry, nor through any misconception of fact or law; accordingly the recourse should fail.

Application dismissed. 15

Cases referred to:

Chrysochos v. CYTA (1966) 3 C.L.R. 482 at p. 501;
Agrotis v. Electricity Authority of Cyprus (1981) 3 C.L.R. 503;
Alakati Investment and Another v. Republic (1973) 3 C.L.R. 255;
Mammadou and Others v. Attorney-General of the Republic (1977) 3 C.L.R. 462. 20

Recourse.

Recourse against an order of compulsory acquisition affecting applicants' property situated at Ayios Pavlos Quarter, Ayios Dhometios. 25

P. Petrides, for the applicants.

A. Vassiliades, for the respondents.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By the present recourse the applicants, who are the owners of five donums of immovable property under registration No. H.85, dated the 27th February, 1959, plot No. 51, Sheet/Plan XXI.45.3.1, situate at Ayios Pavlos Quarter, in the village of Ayios Dhometios, Nicosia, seek a declaration of the Court that the Notice of Acquisition No. 66, published in Supplement No. III to the official Gazette of the Republic, dated 6th February, 1981, and the Order of Acquisition published in Supplement No. III to the official Gazette of the Republic dated the 23rd 35

April, 1981, under Notification No. 346, are null and void and of no effect whatsoever.

5 The facts of the case are as follows: The necessity to solve the acute problem of housing of about 200,000 persons displaced as a result of the Turkish invasion, led the Government to the decision to construct housing estates for the purpose. For their creation it became necessary to acquire private land, though for understandable reasons the use of State land was preferred wherever that was possible.

10 The Council of Ministers by its decision No 18830, dated 28.2.1980, approved, inter alia, the erection of 1,500 housing units, 1,000 of which in the Nicosia district. The Town Planning and Housing Dept. was charged with the selection of suitable sites for their construction in Nicosia district. The choice
15 of places is made, as stated by the respondents, in such a way as to satisfy concrete and multiple criteria, such as, town planning, social and economic, with the main purpose to serve in the best possible way the public interest. For this purpose an area in Ayios Pavlos quarter, abutting the already constructed
20 housing estate "Ayios Pavlos" was chosen, to construct there more houses in the form of expanding the said estate. This area, which includes the subject property, of an extent of about 26 donums, was chosen on the basis of the criteria so herein-above mentioned. This locality is within the area of the Local
25 Plan of Nicosia which defines the future urban development of the town in accordance with the principles, the targets and aims of the general town planning policy of the Government, as appearing in the Plan for the whole Island. Furthermore, it offers advantages to the inhabitants as it is part and parcel
30 of the inhabited area of the town of Nicosia which means the offering of basic services at a low cost and also easier social link of the inhabitants of this estate with a wider social structure of the capital.

35 It was also contended on behalf of the respondents that the selection of the place is the result of a thorough and detailed study and no other motive was taken into consideration except how best to serve the public interest.

The main advantages of the chosen area are summed up in

the last paragraph of the Opposition which I need not reproduce here verbatim as I have already referred to most of them. But in order to complete the picture, it may be mentioned that the area is near the dividing line and the efforts to revive it has been considered as a fundamental factor and that in any event in the said area there did not exist a suitable government (hali) space for the purpose of constructing the housing estate, which could have been preferred.

The grounds upon which the present recourse was argued on behalf of the applicants are the following:-

- (1) The respondents in deciding to acquire compulsorily the immovable property of the applicants acted in excess and/or abuse of power entrusted to them.
- (2) The respondents in their decision to acquire compulsorily the immovable property of the applicants, omitted to take into consideration all the material facts.
- (3) The respondents in their decision to acquire compulsorily the immovable property of the applicants took into consideration extraneous matters.

In support of these arguments I have been referred to the case of *Chrysochos v. CYTA* (1966) 3 C.L.R., p. 482, where at p.501 it was stated that:-

“On the basis of the foregoing I have reached the conclusion that the sub judge Order of acquisition has to be annulled as made contrary to well-established principles of Administrative Law (and, thus, contrary to law - see *PEO and Board of Films Censors and Another* (1965) 3 C.L.R., p.27) and in abuse and excess of powers, in that it was made without sufficient study of possible alternatives, especially from the point of view of the possibility of acquiring access through any other suitable property, either be means of voluntary sale or, if by compulsory acquisition, with less onerous consequences than those existing in the case of the acquisition of Applicants’ property”.

It was argued that this statement of the law applies squarely to the facts of the present case as the respondents neither carried out a due enquiry as to whether there existed suitable property

which could be disposed by means of a voluntary sale or if there was no such possibility, whether there was other property the acquisition of which would have less onerous consequences than those existing in the acquisition of the applicants' property, this property being the only one left to the applicants. I was also referred to the case of *Agrotis v. The Electricity Authority of Cyprus* (1981) 3 C.L.R., p.503 where the principles set out in the *Chrysochou* case (supra) were reiterated and followed.

In the present case, as it appears from the statement of the fact appended to the Opposition, there has been a proper and thorough inquiry into all other possible alternatives, but the immovable property of the applicants, for the reasons already given, was found to be suitable for the housing of the displaced persons. The outstanding feature of this case is that the acquired land, subject of this recourse, abuts the already constructed housing estate "Ayios Pavlos" and obviously there was no alternative but to take advantage and utilize existing roads and other facilities that were already serving that estate.

The argument that the respondents could have utilized a small plot of government land cannot stand as that land is part of the Prisons farms and necessary for the purposes of the Prisons. I do not intend to repeat here the principles governing the compulsory acquisition of property as they have been repeatedly stated in a number of cases and in addition to the two ones already referred to, reference may be made to the case of *Alakati Investment Ltd. & Another v. The Republic* (1973) 3 C.L.R., p.255, and *Mammidou & Others v. The Attorney-General of the Republic* (1977) 3 C.L.R., p.462, where these principles are reviewed and reiterated. Suffice it to say here that the necessity to take the exceptional measures of compulsory acquisition in order to achieve the purpose of public benefit is justified if it appears clearly that it could not be achieved otherwise, e.g. by the disposal of government property or by the direct purchase of private owned immovable property from owners specially contacted for the purpose and that it has been resorted to as the acquired immovable property is considered, as in this case, the only technically suitable for the achievement of the purpose, when a prior offer to its owner to purchase it privately is not necessary. In such instances, the ground that there exists an

obligation to acquire immovable property by private treaty as a matter of general principle of law cannot stand.

For all the above reasons and as I am satisfied that in the circumstances the subject decision was lawfully taken and neither in abuse or excess of power nor without a proper inquiry, nor through any misconception of fact or law, I have come to the conclusion that this recourse should fail and is hereby dismissed. In the circumstances, however, I make no order as to costs. 5

Recourse dismissed. No order as to costs. 10