1982 December 20

[TRIANTAFYLLIDES, P., HADJIANASTASSIOU, MALACHTOS, SAVVIDES, JJ.]

VASSOS HJIIOANNOU AND ANOTHER,

Appellants,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE COUNCIL OF MINISTERS,

Respondents.

(Revisional Jurisdiction Appeals Nos. 193 and 194).

Compulsory Acquisition of Property Law, 1962 (*Law 15 of 1962*)—"*Town and country planning or housing*"—*In section* 3(2) (i) *of the Law—Meaning—Compulsory acquisition of land for the purpose of creating a housing estate—Such a purpose a "public benefit" purpose within the meaning of the said section* 3(2)(i).

Administrative Law—Compulsory acquisition of land—Principles of administrative law applicable—Compulsory acquisition may be resorted to without a prior offer to the owner of the property to purchase it privately if such property is the only one suitable for the achievement of the purpose—Use of the words "technically suitable" by trial Judge does not introduce a new notion into the principles of administrative law.

Compulsory acquisition of land—Principles of administrative law applicable—Compulsory acquisition may be resorted to without a prior offer to the owner of the property to purchase it privately if such property is the only one suitable for the achievement of the purpose.

Administrative Law—Administrative acts or decisions—Reasoning—Due reasoning—Appears in the files of the administration.

These appeals were directed against the dismissal of the recourses of the appellants by means of which there was challenged the validity of compulsory acquisition orders relating to immovable property of theirs. The purpose of the acquisition was the creation of a housing estate by the laying out and the const-

ruction of streets and drains, the division of the said immovable property into building sites and the construction either on all or on a number of them of houses suitable for the lower middle social class, and the disposition of the building sites to be created and or the houses to be built thereon by hire purchase and or on lease.

Counsel for the appellants mainly contended:

(a) That the purposes for which the acquisition order was made are not purposes of public benefit within the meaning of Article 23 of the Constitution and section 3 of the Acquisition of Property Law, 1962 (Law 15/62) in that the schemes in question are neither town and country planning nor housing and that the trial Judge was wrong in reaching a different conclusion.

(b) That the trial Judge was wrong in finding that the properties in question were the only suitable for the purposes of the acquisition and that in so deciding he introduced into Law 15/62 the wording "technically suitable" upon which he relied, whereas there is nothing in the law or the jurisprudence applicable about "technically suitable".

(c) That there was violation of the principles of administrative law, concerning acquisitions, to the effect that the onerous measure of compulsory acquisition should not be resorted to without exhausting the efforts for the acquisition of the property by private agreement.

(d) That the decision of the Council of Ministers to acquire the property compulsorily instead of by private agreement, is not duly reasoned.

Held, per Savvides J., Malachtos J. concurring and Hadji-Anastassiou J. dissenting:

(1) That the purposes for which the acquisition was made were purposes of public benefit coming within the provisions of section 3(2)(i) of Law 15/62; accordingly contention (a) must fail.

(2) That the taking away of property belonging to a private individual, through compulsory acquisition is an onerous measure and that the principles of proper administration and of lawful use of discretionary powers demand that before resorting to such measure, the State should exhaust the possibilities of

either using for the relevant purpose State land or finding property which is being voluntarily offered by its owners and which is more or less equally suitable for the purpose concerned; that on the material before this Court the discretion of the Acquiring Authority was properly exercised in the present case, in the light of all relevant matters taken into consideration, after a due inquiry into the matter, and this Court cannot interfere with the exercise of such discretion and exercise its own discretion in substitution to that of the respondent, as to the choice of the most suitable area.

Held, further, that the use of the words "technically suitable" by the trial Judge does not in any way introduce a new notion into the principles of administrative law or into the text of the Law. It is merely a conclusion reached by the trial Judge in the circumstances of the case; accordingly contention (b) should fail.

(3) That it is well settled that the compulsory acquisition may be resorted to if the required immovable property is considered the only suitable for the achievement of the purpose, when a prior offer to its owner to purchase it privately is not necessary; accordingly contention (c) should fail.

(4) That a perusal of the various exhibits before the Court which were extracts from the files of the administration, show that such reasons for acquiring the property compulsorily appear in detail therein; that a thorough study is included about all the areas under consideration and the reasons why the area in question was preferred as the most suitable for the purpose of the scheme; that in the circumstances, once the property in question was found the most suitable and such finding was based on proper inquiry, as in the present case, the decision was sufficiently reasoned; accordingly contention (d) should fail.

Per Triantafyllides, P.:

Since the onus was on the appellants to satisfy us that these appeals should succeed I have, after much anxious consideration, and not without quite some reluctance, reached the conclusion that I am not satisfied that, in the light of their particular circumstances, these appeals should succeed. I agree, therefore, that they should be dismissed.

Appeals dismissed.

Cases referred to:

Chrysochou Bros v. *CYTA and Another* (1966) 3 C.L.R. 482 at p. 497;

Venglis v. *Electricity Authority of Cyprus* (1965) 3 C.L.R. 252;

Tikkiris and Others v. *Electricity Authority of Cyprus* (1970) 3 C.L.R. 281;

Mammidou and Others v. *Attorney-General* (1977) 3 C.L.R. 462;

Pissas (No.2) v. *The Electricity Authority of Cyprus* (1966) 3 C.L.R. 784 at pp. 791, 792;

Decisions Nos. 300/1936, 1023/1949, 92/1957, 826/1969, 505/68, 3409/70, 2034/52, 2579/69, 2575/69, 1344/70 of the Greek Council of State.

Appeals.

Appeals against the judgment of a Judge of the Supreme Court of Cyprus (A. Loizou, J.) given on the 29th December, 1977 (Revisional Jurisdiction Cases Nos. 201/75 and 204/75*) whereby appellants' recourses against the validity of a compulsory acquisition order affecting their properties were dismissed.

P. Ioannides, for appellant in appeal No. 193.

M. Christofides, for appellant in appeal No. 194.

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

Cur. adv. vult.

TRIANTAFYLLIDES, P.: The first judgment of the Court will be delivered by Mr. Justice Hadjianastassiou.

HADJIANASTASSIOU, J.: In these two Revisional Jurisdiction Appeals Nos. 193 and 194 the appellants, Mr. Vassos Hjioannou and Sofoclis Hjissif Real Estate Limited, challenge the decision of a Judge of this Court, under section 11(2) of the Administration of Justice (Miscellaneous Provisions) Law 1964 in dismissing their two Recourses Nos. 201 and 204/75 for the compulsory acquisition of their lands by the Acquiring Authority, the Republic of Cyprus.

The Compulsory Acquisition of Property Law 1962 was enacted on the 1st March, 1962 and section 6 which deals with the order of acquisition says:

* Reported as *Mammidou and Others* v. *Attorney-General* (1977) 3 C.L.R. 462.

"(1) On the expiration of the period specified in the notice of acquisition, the acquiring authority or, where the acquiring authority is the Republic, the appropriate Minister shall proceed with all reasonable speed to the examination of any objections to the acquisition made during the period aforesaid and, unless such authority is a municipal corporation or a Communal Chamber, shall forward to the Council of Ministers the objections aforesaid together with such observations and recommendations as the acquiring authority or the appropriate Minister, as the case may be, may deem fit to make thereon.

(2) Where, regard being had to all circumstances of the case, it is considered expedient that any property to which the notice of acquisition relates shall be acquired for the purposes stated therein, the acquisition of such property may, subject to the provisions of the Constitution and this Law, be authorised by an order (in this Law referred to as an 'order of acquisition') published in the official Gazette of the Republic:

(3) Subject to the provisions of the Constitution, the order of acquisition shall be made -

(a) where the acquiring authority is the Republic, by the Council of Ministers;

(b) where the acquiring authority is not the Republic, by the acquiring authority;

Provided that where the acquiring authority is a public corporation or a public utility body, no order of acquisition shall be made by such acquiring authority without the sanction of the Council of Ministers previously obtained".

According to the facts related by the learned trial Judge the Compulsory Acquisition Order published on 26th September, 1975, and the purposes of public benefit and the reasons for the acquisitions in question are set out in the Notice of Acquisition published in Supplement No. 3 to the offiicial Gazette of the Republic, No. 1183 of the 25th April, 1973, which reads as follows:

".... the immovable property set out in the Schedule is necessary for the following purposes of public benefit, namely, for housing and town planning, and the acquisition is required for the following reasons, i.e.

(a) the creation of a housing estate by the laying out and the construction of streets and drains, the installation of electricity cables and water supply system and the creation of any necessary, in relation thereto, installations, the creation of open green spaces as well as the division of the said immovable property into building sites and the construction either on all or on a number of them (building sites) of houses suitable for the lower middle social class, from the point of view of income, and or the lower social class, from the point of view of income, of the type of semi-detached houses of blocks of flats and terrace houses, as well as the construction of shops and other buildings for the use, convenience and comfort of the inhabitants of the housing estate;

(c) the lease of the shops and other buildings which will be constructed, and

(d) provided that the legislation in force at the time will permit this grant, with the approval of the Council of Ministers, part of the said immovable property to organisations which may be set up by law, the purpose of which will be the solution of the housing problem either by granting of housing loans or by the disposal of building sites and or houses under such terms as the Council of Ministers would deem appropriate to impose at the time of such disposal".

The immovable property affected by this acquisition, when the learned Judge heard the case was of an extent of about 145 donums, 3 evleks and 1800 sq. ft. consisting of 22 plots situated outside the Nicosia Water Supply Area. In addition, Government owned land of a total extent of 7 donums and 200 sq. ft. under plots 200, 172, 150 and 560 was granted by the Government for the needs of the said scheme.

The first appellant, applicant in Recourse No. 201/75 is

the one-half owner of plots Nos. 169 and 173, and the other half is owned by a certain Loucas P. Hadjioannou. These two plots, as it appears from the plan produced, are of a considerable extent, although their size is not actually given.

The appellant company, applicants in Recourse No. 204/75, of Strovolos, are the owners of three plots, namely, (a) plot 199 of an extent of 3 donums, 1 evlek and 3000 sq. ft. under Reg. No. H 183, Sheet Plan XXX 5 WII, Block H, (b) plot 174 of an extent of 16 donums, 3300 sq. ft. under Reg. No. H 159, Sheet Plan XXX 6WII, Block H and (c) plot 203 of an extent of 3 donums, 2 evleks and 3400 sq. ft. under Reg. No. H 187, Sheet Plan XXX 6 WII, Block H. The two appellants are developers in land, as shown from the relevant files, and in particular, exhibit "B" in Recourse No. 201/75, and the letter of the Chairman of the Strovolos village Committee dated 6th June, 1975, who said that he was shocked when he saw the Notice of Acquisition, because the opinion of the village authority was not asked on such a serious matter, and further stated that one basic reason for their objection was the fact that their information was given orally to them at various periods, the Hadjiosif Estate Co. Ltd. in co-operation with the Hadjioannou brothers of Greece, made plans for the development of a total area of about 70 donums which is now affected by the said Notice of Acquisition and which development included the construction of a big modern housing estate. There is no doubt, as the learned Judge says, that the housing project of the Government was conceived before the tragic events of 1974. Several studies were carried out by the Housing and Country Planning Department, as well as by experts of the United Nations, who ascertained the existence of an acute housing problem in Cyprus especially affecting the lower income and the lower middle income classes.

The Government in order to face this problem took a number of decisions, one of which was the construction of low cost houses, intended for the lower income and lower middle income classes, and, for that purpose, it was found necessary to find suitable areas. Unfortunately in spite of the fact that suitable land was found, because of the Turkish invasion, were no longer suitable as being either within the part occupied by the Turkish army or too near to it to be used for the purposes needed. In addition, the implementation of that housing

scheme was brought to a standstill until October, 1974, when because of the additional needs caused by the displacement of people the intention of the Government to increase its activity in the field of Government house schemes, instructions were given to the Housing and Town Planning Department to find other suitable areas for such purposes. In fact three areas were chosen by the said Department, identified as Strovolos A, Strovolos B and Latsia, outside the water supply area, and the Lands and Surveys Department was asked by a letter dated 1st October, 1974, (see Appendix 1 of exhibit 1), for the assessment of their market value, the category of ownership, i.e., whether State, Church, private, Greek or Turkish, owned, and information regarding the extent of the whole or part of each plot affected by the scheme. By a letter dated 30th January, 1975, (Appendix 2), the Director of the Department of Lands and Surveys having given his views about the market value of the lands in question, attached also a table of the approximate price of each as on July 1974. He further made an observation that the anomalous situation had created new conditions which should be noted. Then he went on to add that prices of land had suffered a drop which differed, depending on the locality of the property. In the cases under examination, that drop was assessed at 20 per cent, but as under the then prevailing circumstances such prices were very sensitive depending on developments, and it was possible to have a spectacular increase in case of improvement of the political situation, given that the areas examined were in the south part of the Island which in the light of the new circumstances, was deemed safer for the expansion of the town and the absorption of the displaced population. Then the Director further pointed out that in Strovolos A area there were four plots, in Strovolos B area two plots and in Latsia area three plots of State owned land. See also the study of the Housing and Town Planning Department containing also their recommendations on the matter, contained in their letter dated 29th February, 1975, which was addressed to the Minister of Interior (Appendix 3).

In addition there was a comparative table of the cost and other information set out in para. 3 thereof, for which it appears that the per donum cost of the land in Strovolos B area is higher by about £1,090 or about 81.5 per cent, as compared with Strovolos A area. This makes the price of Strovolos B area almost double in value than that of Strovolos A area.

In the said exhibit in para. 4 are to be found further factors relative to the ultimate choice of area A. In fact, both Strovolos A and B areas are with in the boundaries of and are compatible, regarding their use to the requirements of the "Local Nicosia Plan"; and both are outside the boundaries of the Greater Nicosia Water Supply plan but area A is only a short distance from an inhabited area, which, from the point of view of social services, such as schools, church, public transport and shops gives it an advantage over area B which is also on a plateau, but it is so slopy and rough in certain parts that additional expense will be needed for its development. It is true that it is near certain industries and for that suitable for housing schemes, yet, it is at a disadvantage with regard to area A from the point of view of position in general and other factors.

The area of Latsia is outside the boundaries of the "Local Nicosia Plan" although it forms an extension of a village and it consists of good quality agricultural land, densely planted with olive trees, the water supply may present problems and it is likely that there will be an increase in the problems of public transport, so that the intended hire purchasers will have to pay additional trasport expense of about 100 mils per day, than the hire purchasers of Strovolos A area. Pausing here for a moment, it appears that the main purpose of the acquisition of the lands in question was to facilitate the low income earners to acquire a home on hire purchase agreement.

Turning once again to the facts of these cases, according to the learned Judge the conclusions and recommendations of that Department, as they are set out ir paras 5 -11 of the said Appendix are briefly to the effect that both areas A and B should be acquired as a matter of a long term policy, as the acquisition of the necessary land is a prerequisite to a housing programme and this will render unnecessary future acquisitions of adjacent land which, inevitably, will have its price enhanced by the carrying out of a housing scheme in the vicinity, and so any future extensions of such housing schemes will still be possible at a low cost. Further, if a Housing Finance Agency or a Land Development Corporation is established it will inevitably need land for housing purposes and part of the acquired land may, if necessary, be placed at its disposal for its purposes.

With that in mind, the learned Judge goes on it was also considered whether, in view of the economic difficulties of the State, it would be more beneficial for the Government to prefer Strovolos B area, half of which was Government owned land and consequently its purchase price would not have to be paid but it was observed, and rightly so, that for the hire purchasers the situation would not be changed and they would still have to pay the extra costs for this more expensive land, unless the Government decided to reduce the price of its land to the level of the price of land within Strovolos A area. Then the learned Judge goes on that elaborate reasons are further given in the said exhibit in support of the recommendations of the Department. There was also the view of the Director of the Planning Bureau and according to Appendix 4, his view was that Strovolos A area should be preferred, and in addition to the existing Government land lying therein to acquire only about 153 donums of privately owned land, as against 290 donums proposed by the Housing and Town Planning Department.

Eventually, a submission (Appendix 5) was made by the Minister of Interior to the Council of Ministers for the approval of a housing scheme under the said Law. The Council of Ministers at its meeting of 27th March, 1975, approved the scheme by its Decision No. 13884 (Appendix 6) which reads as follows:

"2. The Council:

(a) considered the housing scheme prepared by the Housing and Town Planning Department under section 3 of the Housing Law, Cap. 222 as same is described in detail in para. 3 of the submission and decided on principle to approve it under section 4 of the Housing Law, Cap. 22.

(b) Decided to approve the acquisition by the Government, either by private agreement or by compulsory acquisition, of the Immovable Property in the area of Strovolos of an extent of 145 donums, 3 evleks and 1800 sq. ft. which is shown delineated with green colour on the survey plan lodged with the secretary of the Council and which was approved as suitable

for the implementation of the said scheme at the estimated expense of £185,600.

(c) Decided to grant under section 18 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224 and Laws 3/60, 78/65, 10/66, 75/68 and 51/71 and section 2 of the Government Loans Law, Cap. 221 and Law 54/72, to the Director of the Housing and Town Planning Department of Government owned land of a total extent of 7 donums and 200 sq. ft. which is shown delineated with yellow colour on the survey plan for the needs of the said housing scheme and,

(d) it decided to authorize the Minister of Finance to find the necessary funds and if necessary by submitting a supplementary budget to the House of Representatives".

Finally in pursuance the notice of the intended acquisition was published in the official Gazette in spite of the fact that four objections were made by the owners of the land affected and together with the views of the District Officer of Nicosia, the Director of Housing and Town Planning and the legal advice from the office of the Attorney-General, were submitted to the Council of Ministers by the Minister of Interior (see Appendices 12, 13, 14, 15 and 16), but on 11th September, 1975, the objections were rejected by the Council of Ministers by its Decision No. 14620 (see Appendix 17).

Finally, the learned trial Judge having listened to a number of legal arguments by all counsel concerned in dismissing the recourses had this to say at pp. 95 and 96 regarding the principle to acquire private property by agreement in the first place.

"This principle, however, is not complete, unless it is added that the onerous measure of compulsory acquisition may be resorted to if the required immovable property is considered 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. (See paras. 19 and 20 and Decisions 505/68, 2579/69, 1344, 3409/70).

It was argued on behalf of the respondents that this was a principle of law which they had in mind when they were deciding the making of the order of the acquisition. Appendix 14 of Exhibit 1 is the legal advice from the office of the Attorney-General attached to the submission made to the Council of Ministers, together with the objections filed pursuant to the publication of the Notice of Acquisition and the other views expressed by the appropriate Government Departments to which I have already referred. It is stated clearly in the said advice, that compulsory acquisition may be resorted to without prior offer to purchase privately the property in question, if it is the only suitable for the achievement of the desired purpose, and reference is made to some of the decisions of the Greek Council of State, to which I have already referred. That the area in question was found to be, after a proper inquiry, the only technically suitable for the purpose, it is apparent from the whole approach of the matter as emanating from the relevant file. It had to be acquired as a compact area and the exclusion of any part therefrom would frustrate the realisation of the object of the acquisition.

The option given by the decision of the Council of Ministers of the 27th March, 1975 (Appendix 6) to acquire the property either by private treaty or by compulsory acquisition, does not change the situation, because, after that decision, we have the decision to acquire the property compulsorily when examining the objections made which, incidentally, it may be mentioned, were only in respect of six plots out of the 22 affected by the Notice of Acquisition".

Now regarding the question of compulsory acquisition, time and again it was said, that the requirements of proper administration and the proper use of the relevant discretionary powers render it imperative that a compulsory ac-

quisition 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. Moreover, 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 Triantafyllides J., as he then was, in *Chrysochou Bros. and* (1) *The Cyprus Telecommunications Authority*, (2) *The Republic of Cyprus, through The Council of Ministers*, (1966) 3 C.L.R. 467 at p. 497; see also *Maria Ch. Venglis and The Electricity Authority of Cyprus* (1965) 3 C.L.R. at p. 252. These principles are in line with the Conclusions from the Jurisprudence of the Greek Council of State 1929-1959.

Turning now to the Decisions of the Greek Council of State, in Decision No. 300/1936 it was held that it is not permissible to take away from a private individual, through compulsory acquisition more than what is indispensably necessary for the achievement of the relevant public utility purpose and it is, thus, not proper for the acquisition to go to the extent of taking away ownership if the said purpose may be achieved by less onerous means, such as the acquisition of a servitude on the property concerned.

In Decision 1023/1949 it was held that the principles of proper administration and of lawful use of discretionary powers demand that the Administration should not resort to the very onerous method of compulsory deprivation of ownership, before it exhausts the possibilities of either using for the relevant purpose State land or of finding property which is being voluntarily offered by its owner and which is more or less equally suitable for the purpose concerned; and if State land is not available and it has been established that it is not possible to secure the necessary land by means of an ordinary purchase, then the Administration has to choose for compulsory acquisition, out of the suitable properties, the one the acquisition of which entails less onerous consequences, both

from the point of view of the use being served by the property to be acquired and from the point of view of the interests of the fiscus.

In Decision 608/1955 it was held that the Administration should not resort to the extremely onerous measure of deprivation of onwership, except only in case of absolute necessity.

In Decision 92/1957 it was held that the Administration when exercising its discretionary powers and choosing for acquisition a property as suitable to serve a particular lawful public utility purpose has, among other things, to examine if there are other properties equally suitable for the purpose of acquisition, and has to prefer the property the acquisition of which will entail for its owner a deprivation of ownership less onerous in comparison to the cases of owners of other properties which may be equally suitable for the purpose of the acquisition.

In *Costas G. Tikkiris and others and The Electricity Authority of Cyprus* (1970) 3 C.L.R. 281, in delivering the judgment of the Court, I had this to say with regard to the extent of the area of the land acquired by the authority in question, at pp. 300, 301, 305 and 306:

> "With regard to the fourth submission of counsel, with due respect, the position is different because this point is covered by a Greek authority. In decision 300/1936 it was held by the Greek Council of State, that is not permissible to take away from a private individual, through compulsory acquisition, more than what it is indispensably necessary for the achievement of the relevant public utility purpose and it is, thus, not proper to go to the extent of taking away ownership if the said purpose may be achieved by less onerous means, such as the acquisition of a servitude concerned; the question, however, of the necessary extent of the acquisition is, as a rule, a matter within the decision of the acquiring authority. It is in evidence that the acquiring authority in this case, required more land in extent than the one acquired from the Applicants, in order to achieve the purpose of this big public utility project. Moreover, it has already acquired

government land of about 26 donums in extent, which is next to the land of the Applicant, as well as other private land by private agreement of an extent of 5 1/2 donums.

Having in mind the principles of proper administration with regard to the use of lawful discretionary powers, and the fact that the necessary extent of the acquisition to meet both the technical point of view as well as the other purposes of the acquiring authority is within its discretion, I have reached the view that the said authority has properly exercised its discretionary powers under the law. In any event, the Applicants have failed to adduce any evidence to show to the Court that really the extent of the property acquired by the acquiring authority was more than necessary to achieve its public utility purpose. I would, therefore, dismiss also this contention of counsel".

Then dealing with the evidence of the experts I continued in these terms:

"In view of the main contention of counsel for Applicants, after considering the whole evidence before me with regard to the properties lying in the Pouyeros area and in the forest, I am satisfied that the land in Pouyeros area does not meet with the technical requirements needed for the construction of a sub-station for the reasons given in evidence by Mr. Papageorghis and Mr. Jubb. Moreover, I have approached this problem from another angle viz., that assuming that I am wrong and, that the properties in question are also equally suitable, then again, I would have been prepared to say that the Respondent, in exercising its discretionary powers as to which would be the best possible property from all aspects, has done so properly in deciding to acquire the property of the Applicants. In my view, therefore, the Respondent did not act in abuse of the powers vested in it...."

See Decision 92/1957 of the Greek Council of State already quoted in Revisional Jurisdiction Appeals Nos. 193 and 194.

Then I proceeded as follows:

"In the present case, regarding the fact that this substation could possibly be erected on to the private pro-

perties within the Pouyeros area - and this point has not been pressed by counsel for the Applicants - it would appear that the same amount of hardship would have been caused to those owners as to the Applicants. In my view, therefore, I cannot reach the conclusion that the decision of the Respondent has been taken in contravention of the administrative principles. It goes without saying, of course, that such principles could have been contravened if less onerous means of achieving the purpose of the compulsory acquisition had been overlooked by the acquiring authority; and not because one out of equally onerous solutions has been preferred. I would reiterate once again that the Respondent has properly exercised its discretion, and it is not for this Court to exercise its own discretion in substitution of the discretion of the Respondent regarding the choice among equally suitable properties the acquisition of which entails more or less equal hardship. See *Pissas (No. 2)* v. *E.A.C.* (1966) 3 C.L.R. 784 at pp. 791–792.

Counsel for the applicants mainly argued with force, relying on a passage from the well-known text-book of Kyriacopoulos 4th edn., Vol. 3 at p. 732, that the Respondent has failed to utilize State land for its relevant purpose of erecting a sub-station the acquisition of which would be less onerous to the Government"

See Decision 1023/49 of the Greek Council of State.

Then I had this to say at pp. 309, 310, 311:

"There is no doubt that the construction of the sub-station is intended to be an important feature of the Respondent's transmission system for the best deployment and use of generation and for the security of supply of electricity; and quite rightly in my view the experts of the Electricity Authority have considered which is the most suitable property from every technical point of view, including also the point of view of the interest of the fiscus.

In view of the evidence, I am satisfied that the decision of the acquiring authority to acquire the property of the Applicants was validly taken for the purpose of constructing an electricity sub-station, which, no doubt, is a project of public benefit. With regard to the evidence

of the experts, I would like to make it clear, that I am indebted to Mr. Jubb who has been so fair and so lucid, and I accept his evidence. As regards the evidence of Mr. Georghios Lartides, my opinion of this witness is that he has been very frank and that his evidence has also helped the Court to have before it the technical version of the Applicants. In view, however, of the fact that he had no practical experience in designing or constructing a sub-station, I would definitely prefer the evidence of Mr. Papageorghis who has a lot of experience in these technical matters viz., with regard to the location of the sub-station and the technical consideration as to how the lines will enter into that sub-station.

In view, therefore, of the evidence as a whole, I have reached the conclusion that from the technical and other reasons put forward, the property under acquisition is the most suitable from every point of view compared to the lands covered by the forest... ...

At the same time, I would like to make it quite clear, that if the property at Athalassa was not utilized as a forest, then I would perhaps have been prepared to find in favour of the Applicants, because I accept the principle enunciated by the Greek Council of State, that the administration should not resort to the more onerous method of compulsory deprivation of private property before it exhausts the possibility of using for the relevant purpose State land which is more or less equally suitable, even if it would cost more to the administration for its public utility purpose.

For the reasons I have endeavoured to explain, I have reached the view that the decision of the acquiring authority to acquire the property of the Applicants is the most suitable from every point of view, and is not contrary to any of the provisions of this Constitution or of any law or is made in excess or in abuse of powers vested in such authority".

Reverting once again to the Greek Council of State, in Decision No. 826/1969, a case of acquisition of land by the Electricity Authority of Greece, in annulling the decision the Council had this to say at pp. 4-6:

" Ἐπειδή, κατὰ τὴν ἔννοιαν τῶν διατάξεων τούτων, ἑρμηνευομένων ἐν τῷ πλαισίῳ καὶ τῶν διὰ τῆς νομολογίας τοῦ *Δικαστηρίου τούτου διαμορφωθεισῶν σχετικῶν γενικῶν τοῦ* δικαίου ἀρχῶν, ἡ κατ' ἐφαρμογὴν αὐτῶν κηρυσσομένη ἀναγκαστικὴ ἀπαλλοτρίωσις, ἀκινήτου, ὡς ἀναγομένη εἰς τὴν λῆψιν μέτρου ἐπαχθοῦς εἰς βάρος τοῦ πολίτου, συνισταμένου εἰς τὴν ἀκουσίαν στέρησιν τῆς συνταγματικῶς προστατευομένης ἰδιοκτησίας του, δέον πλήρως νὰ αἰτιολογῆται εἴτε ἐν αὐτῇ τῇ πράξει τῆς ἀναγκαστικῆς ἀπαλλοτριώσεως, εἴτε ἐκ τῶν συνοδευόντων αὐτὴν στοιχείων. Πλήρης δὲ εἶναι ἡ αἰτιολογία κατ' ἀρχὴν ὁσάκις ἐξ αὐτῆς προκύπτει σαφῶς ἡ ἀνάγκη τῆς λήψεως, κατὰ περίπτωσιν, τοῦ ὡς ἄνω ἐξαιρετικοῦ μέτρου καὶ δὴ ἀπὸ τῆς ἀπόψεως ὅτι ὁ δι' οὗ ἡ ἀναγκαστικὴ ἀπαλλοτρίωσις σκοπὸς δημοσίας ὠφελείας, συγκεκριμένως προσδιοριζόμενος, δὲν δύναται νὰ ἐκπληρωθῇ ἐπαρκῶς κατ' ἄλλον τρόπον, ὡς ἐπὶ παραδείγματι διὰ τῆς ἀπ' εὐθείας ἀγορᾶς καταλλήλων ἰδιοτικῶν ἀκινήτων οἰκειοθελῶς προσφερομένων ὑπὸ τῶν εἰδικῶς προσκαλουμένων πρὸς τοῦτο ἰδιοκτητῶν των, ἐκτὸς ἐὰν τὸ διὰ τῆς ἀναγκαστικῆς ἀπαλλοτριώσεως πλησσόμενον ἀκίνητον, κρίνηται ὡς τὸ μόνον κατάλληλον διὰ τὴν ἐπίτευξιν τοῦ ἐπιδιωκομένου συγκεκριμένου σκοποῦ.

Ὡς προκύπτει ὅμως ἐκ τῶν λοιπῶν στοιχείων τοῦ φακέλλου, ὑπεδείχθη ὑπὸ τῆς αἰτούσης πρὸς τὴν Δ.Ε.Η. ἀντὶ τοῦ ἀπαλλοτριωθέντος γηπέδου ἕτερον τοιοῦτον τῆς αὐτῆς ἐκτάσεως, κείμενον ὡσαύτως ἐπὶ τῆς Ἐθνικῆς Ὁδοῦ καὶ ἐπὶ τῆς αὐτῆς πλευρᾶς, εἰς ἀπόστασιν 90 μ. περίπου, ἀνῆκον ἐν μέρει εἰς τὴν αἰτοῦσαν καὶ ἐν μέρει εἰς ἑτέρους ἰδιοκτήτας. Ἡ προταθεῖσα αὕτη ἔκτασις ἀπερρίφθη ὡς μειωνεκτοῦσα τῆς ἐπιλεγείσης, λόγῳ ὑπάρξεως ἐν αὐτῇ 'χωματερῆς' καὶ διότι 'ἡ ὁδευσις καὶ εἴσοδος τῶν γραμμῶν 150 Κ εἰς τὸν ὑποσταθμὸν ὡς καὶ ἡ προσπέλασις ἐκ τῆς Ἐθνικῆς Ὁδοῦ εἶναι δυσχερέστεραι' καὶ διότι οἱ λοιποὶ ἰδιοκτῆται 'ὡς φαίνεται δὲν εἶναι διατεθειμένοι νὰ πωλήσουν τὰ μερίδιά των' (ἔγγραφον Δ.Ε.Η. ὑπ' ἀριθ. πρωτ. 2644/11/23.5.1968).

Ἐπειδή, ἐκ τῶν ἐν τῇ προηγουμένῃ σκέψει ἀναφερομένων, αἰτιολογεῖται μὲν ἡ ἀνάγκη τῆς κηρύξεως τῆς ὑπὸ κρίσιν ἀπαλλοτριώσεως, δὲν δύναται ὅμως νὰ θεωρηθῇ ὡς πειστικὴ καὶ ἐπαρκὴς ἡ ἀνωτέρω αἰτιολογία, ἐπὶ τῇ ὁποίᾳ ἡ Δημοσία Ἐπιχείρησις Ἠλεκτρισμοῦ δὲν ἐδέχθη τὴν ὑπὸ τῆς αἰτούσης

ὑποδειχθεῖσαν λύσιν τῆς χρησιμοποιήσεως ἐκτάσεως κειμένης ἐγγύτατα πρὸς τὴν ἀπαλλοτριωθεῖσαν τοιαύτην καὶ ἥτις ἔχει πρόσωπον ἐπὶ τῆς αὐτῆς ὁδοῦ, ἐν ὄψει καὶ τοῦ λίαν ἐπαχθοῦς διὰ τὴν αἰτοῦσαν τοῦ ληφθέντος μέτρου τῆς ἀναγκαστικῆς ἀπαλλοτριώσεως, πλήττοντος τὴν συνταγματικῶς κατωχυρουμένην ἰδιοκτησίαν αὐτῆς, δοθέντος ἄλλωστε ὅτι ὁ ἰσχυρισμὸς τῆς Δ.Ε.Η., ὅτι ἡ ὁδευσις καὶ ἡ προσπέλασις πρὸς τὴν ὑποδειχθεῖσαν ἔκτασιν εἶναι δυσχερέστεραι, τυγχάνει τελείως ἀόριστος καὶ ἀσαφής. Κατ' ἀκολουθίαν, δέον ὅπως ἀκυρωθῇ ἡ προσβαλλομένη πρᾶξις, λόγῳ ἀναιτιολογίτου ὡς πρὸς τὴν ἐπιλογὴν τοῦ ἀπαλλοτριωθησομένου γηπέδου, ἵνα ἐπανερχόμενη ἡ Διοίκησις, ἐφ' ὅσον τυχὸν ἤθελεν ἐξακολουθεῖ κρίνουσα ἀναγκαίαν τὴν ἀπαλλοτρίωσιν, αἰτιολογήσῃ πλήρως καὶ διὰ συγκεκριμένων στοιχείων τὴν ἀπόρριψιν τοῦ ἑνὸς γηπέδου καὶ τὴν πρόκρισιν τοῦ ἑτέρου"

("Whereas according to the meaning of these provisions, interpreted within the framework of the relative general rules of law formed by the jurisprudence of this Court, the declared compulsory acquisition of an immovable by their application as attributed to the taking of a measure onerous to the citizen, founded on the involutary deprivation of his constitutionally protected ownership, must be duly reasoned either in the act of compulsory acquisition itself or in the particulars accompanying it. The reasoning, as a rule, is full when there appears evidently the need of the taking, in each case, of the above exceptional measure and especially in view of the fact that the purpose of public utility for the compulsory acquisition, specially defined, cannot be duly effected in any other way, as for instance by the direct purchase of suitable private properties, voluntarily offered by the owners specially invited for the purpose, unless the affected by the compulsory acquisition property, is considered as the only suitable for the achievement of the required express purpose.

But as it appears from the rest of the particulars in the file, another site was pointed out by the applicant D.E.H. instead of the acquired site, of the same extent, situated also on the National Highway, and on the same side, at a distance of about 90 m. belonging in part to the applicant

and in part to other owners. This offered site was refused as lacking regarding the one chosen due to the existence in it of 'chomateri' and because 'the installation of lines 150 k in the sub-station as well as access from the National Highway are difficult' and because the rest of the owners 'as it seems are not inclined to sell their shares' (Document D.E.H. No. F. 2644/11/23.5.1968).

Whereas from what is referred to in the aforequoted reasoning though the need to declare the acquisition under consideration is reasoned, the above reasoning cannot be considered as convincing and adequate by virtue of which the Public Electricity Company did not accept the solution, proposed by the applicant, for the use of land situated very near to the acquired land and which faces the same road, in view of the very onerous, for the applicant, measure taken of the compulsory acquisition, affecting her constitutionally protected ownership, in view also of the allegation of D.E.H. to the effect that movement upon and access to the proposed property are more difficult, is altogether vague. Therefore the sub judice act must be annulled due to lack of reasoning as to the choice of the acquired field, so that the Administration may, in reverting, if it would still continue to consider necessary the acquisition, reason duly and by express particulars the refusal of one site and the preferment of the other").

On appeal, Mr. Ioannides, counsel for appellant No. 193, having agreed to adopt the address of Mr. Christofides, counsel for appellants No. 194, very ably indeed argued in support of his grounds of law (a) that the learned Judge wrongly and in violation of the principles enunciated regarding the compulsory acquisition, and the principles of administrative law did not annul the order of acquisition of the properties in question; (b) the trial Judge wrongly and contrary to law came to the conclusion that the properties in question acquired by the respondents were the only ones technically suitable for the purpose as emanating from the relevant file; and that he wrongly accepted to introduce into Law 15/62 the wording "technically suitable", once the word "suitable" is the one accepted by the Courts.

Finally, he argued that the learned Judge wrongly reached the conclusion that the acquiring authority has considered

all the possibilities and investigated all matters before issuing the order of acquisition and has completely failed to consider the true principles, as expounded in our case law, and relied only on the wording of "technically suitable" in order not to follow the principles regarding acquisition.

There is no doubt, going through the various files, that the Council of Ministers was fully aware of the principles regarding the compulsory acquisition, and particularly that it should not be ordered if its object could be achieved in a less onerous manner, and after exhausting the possibility or probability of purchasing other suitable property which could be voluntarily offered for sale. That this is so, it appears from the decision of the Council of Ministers of 27th March, 1975, and which shows that the Council approved the acquisition and decided to do so either by private agreement or by compulsory acquisition of immovable property in the area of Strovolos of the extent of 145 donums, and which was also approved as being suitable for the implementation of the housing scheme in question.

It is equally true to add that in spite of that decision, nothing was done to implement their decision to acquire land by a private agreement and/or to utilize the Government land on the pretext that such land was an expensive one, as compared to the other land acquired by compulsory acquisition. Indeed, this became very clear because the Council of Ministers, when the notice was published in the official Gazette that they had resorted to acquiring land by compulsory acquisition only and when the notice of acquisition was published in the official Gazette, all the objections put forward by the owners of the land in question were rejected on 11th September, 1975 by counsel without giving any reasons at all. It is also true to say that the Council of Ministers has failed to follow their own decision and the principles regarding compulsory acquisition in spite of the fact that recommendation was made by the officials that both A and B areas of Strovolos were suitable and should be acquired for the reasons stated.

Finally, it appears that one of the reasons of choosing Strovolos area A was that the Government land which was considered by all the experts as being more expensive should not

be utilized, in accordance with the accepted principles of administrative law, and that land of lower prices should be preferred for the scheme in question. What is surprising, however, is that, as far as we are aware, no reasons were given to the owners of the land and no reasons were given in the opposition why the land of the applicants was the only technically suitable land for the purpose of acquisition. We would go even further and state that this point, in spite of the fact that no evidence was called, was put forward in the present case before the learned trial Judge.

Counsel for the respondent, in arguing his case, put forward that regarding the omission of the administration to try to purchase the properties of the appellants by private agreement, he contended that argument cannot stand once the property in question, under acquisition is considered to be the only technically suitable land for the purpose of the acquisition. He further invited this Court to accept that in spite of the general principle which lays down that the Government has to utilize its own property, and in the alternative to try to acquire property by private agreement before it resorts to the onerous method of acquisition, that principle, counsel contended, is not applicable to the present cases, because he repeated, the property under acquisition is the only technically suitable for the purpose, and that the Government was not bound to follow the principles formulated by the Courts.

We have considered very carefully the decisions of the Full Bench of the Greek Council of State and our decisions, and we have reached the conclusion that the argument of counsel cannot succeed because the cases relied upon, 505/68 and 3409/70, are distinguishable. With that in mind, we turn once again to the decisions of the Greek Council of State, and in Decision No. 505/68, the Full Bench had this to say in dismissing the case at p. 543

" 'Επειδὴ κατὰ τὴν ἔννοιαν τῶν διατάξεων τούτων, ἑρμηνευομένων ἐν τῷ πλαισίῳ καὶ τῶν διὰ τῆς νομολογίας τοῦ Δικαστηρίου τούτου διαμορφωθεισῶν σχετικῶν γενικῶν τοῦ δικαίου ἀρχῶν, ἡ κατ' ἐφαρμογὴν αὐτῶν κηρυσσομένη ἀναγκαστικὴ ἀπαλλοτρίωσις ἀκινήτου, ὡς ἀναγομένη εἰς τὴν λῆψιν μέτρου ἐπαχθοῦς εἰς βάρος τοῦ πολίτου συνισταμένου εἰς τὴν ἐκουσίαν στέρησιν τῆς συνταγματικῶς

προστατευομένης ἰδιοκτησίας του, δέον πλήρως νὰ αἰτιολογῆται εἴτε ἐν αὐτῇ τῇ πράξει τῆς ἀναγκαστικῆς ἀπαλλοτριώσεως, εἴτε ἐκ τῶν συνοδευόντων αὐτὴν στοιχείων. Πλήρης δὲ εἶναι ἡ αἰτιολογία κατ' ἀρχὴν ὁσάκις ἐξ αὐτῆς προκύπτει σαφῶς ἡ ἀνάγκη τῆς λήψεως, κατὰ περίπτωσιν, τοῦ ὡς ἄνω ἐξαιρετικοῦ μέτρου καὶ δὴ ἀπὸ τῆς ἀπόψεως ὅτι ὁ δι' οὗ ἡ ἀναγκαστικὴ ἀπαλλοτρίωσις σκοπὸς δημοσίας ὠφελείας, συγκεκριμένως προσδιοριζόμενος, δὲν δύναται νὰ ἐκπληρωθῇ ἐπαρκῶς κατ' ἄλλον τρόπον, ὡς ἐν παραδείγματι διὰ διαθέσεως προσφορῶν δημοσίων κτημάτων, ἢ διὰ τῆς ἀπ' εὐθείας ἀγορᾶς καταλλήλων ἰδιωτικῶν ἀκινήτων οἰκειοθελῶς προσφερομένων ὑπὸ τῶν εἰδικῶς προσκαλουμένων πρὸς τοῦτο ἰδιοκτητῶν των, ἐκτὸς ἐὰν τὸ διὰ τῆς ἀναγκαστικῆς ἀπαλλοτριώσεως πλησσόμενον ἀκίνητον κρίνηται ὡς τὸ μόνον κατάλληλον διὰ τὴν ἐπίτευξιν τοῦ ἐπιδιωκομένου συγκεκριμένου σκοποῦ, ὁπότε ἡ ἀξίωσις περὶ προηγουμένης προσκλήσεως τοῦ ἰδιοκτήτου αὐτοῦ ὑποχωρεῖ.

Ἐπειδὴ ἐν προκειμένῳ ἐκ τῆς προσβαλλομένης πράξεως καὶ τῶν σχετικῶν πρὸς ταύτην προπαρασκευαστικῶν πράξεων προκύπτει ὅτι ἀναγκαστικὴ ἀπαλλοτρίωσις τῆς ἐπιδίκου ἐκτάσεως ἐκρίθη ἀναγκαία πρὸς ἐπέκτασιν τοῦ εἰς τὴν περιφέρειαν Ρούφ λειτουργοῦντος ὑποσταθμοῦ τῆς παρεμβαινούσης καὶ τὴν ἐν αὐτῇ ἀνέγερσιν ἐγκαταστάσεων, αἵτινες θὰ τροφοδοτήσουν τὰ νέα κέντρα κατανομῆς ἠλεκτρικῆς ἐνεργείας τῆς περιοχῆς Ἀθηνῶν–Πειραιῶς καὶ Περιχώρων. Εἰδικώτερον, ἐκ τῆς ὑπ' ἀριθ. 473/1966 ἀποφάσεως τοῦ Διοικητικοῦ Συμβουλίου τῆς ΔΕΗ, πρὸς τὸν Πρόεδρον τοῦ Διοικητικοῦ Συμβουλίου σχετικῆς ἀπὸ 25.7.1966 εἰσηγήσεως τοῦ Γενικοῦ Διευθυντοῦ αὐτῆς καὶ τοῦ ὑπ' ἀρ. 32659/11.6.1966 διαγράμματος τῆς ἠλεκτρολογικῆς διατάξεως τοῦ ὑπὸ ἐπέκτασιν ὡς ἄνω Ὑποσταθμοῦ προκύπτει ὅτι ἡ ἐκλογὴ τῆς ἀπαλλοτριωθείσης ἐκτάσεως ἐγένετο ὑπὸ μηχανικῶν τῆς διευθύνσεως μελετῶν, παραγωγῆς καὶ μεταφορᾶς κατόπιν προηγηθείσης μελέτης, κατὰ τὰ πορίσματα τῆς ὁποίας ἐπεβάλλετο ἡ ἐπέκτασις τοῦ ὑποσταθμοῦ κατὰ τὸν ἄξονα τῶν ὑφισταμένων πύργων γραμμῶν μεταφορᾶς 150 ΚΥ καὶ τοῦ λοιποῦ ἐν λειτουργίᾳ ἠλεκτρολογικοῦ ἐξοπλισμοῦ αὐτοῦ καὶ ὅτι ἡ περὶ ἧς πρόκειται ἔκτασις θέλει χρησιμοποιηθῇ: α) διὰ τὴν ἐπ' αὐτῆς ἐγκατάστασιν κυψελῶν αἵτινες θέλουσιν ἐξυπηρετήσει διὰ καλωδιακῶν ἐγκαταστάσεων 150 ΚΥ τὰ ὑπὸ μελέτην κέντρα κατανομῆς περιοχῆς

πρωτευούσης, β) διὰ τὴν ἐκτέλεσιν ἐκτὸς τῶν βάσεων τῶν πύργων τῶν μεταλλικῶν ἱκριωμάτων καὶ ἑτέρων δομικῶν ἔργων ἐξυπηρετούντων τὴν λειτουργίαν τοῦ Ὑποσταθμοῦ ἐν τῷ συνόλῳ του καὶ γ) διὰ τὴν δημιουργίαν προσπελάσεως πρὸς τὴν ὁδὸν Σαλαμῖνος τόσον τῆς ἀπαλλοτριουμένης ἐκτάσεως, ὅσον καὶ τῶν προσφάτως ἀγορασθεισῶν ὑπὸ τῆς Δ.Ε.Η. ἐκτάσεων πρὸς δημιουργίαν ἐγκαταστάσεως αὐτῆς. Τὸ εἰς τὴν αἰτοῦσαν 1360 τ.μ. προώρισται κυρίως ὅπως χρησιμοποιηθῇ ὡς ὁδὸς προσπελάσεως πρὸς τὴν ὁδὸν Σαλαμῖνος. Ὑπὸ τὰ δεδομένα ταῦτα ἡ προσβαλλομένη πρᾶξις παρίσταται πλήρως ἡτιολογημένη, ἐφ' ὅσον δὲ ἐκ τῶν μνησθέντων στοιχείων προκύπτει ὅτι τὸ ἀκίνητον τῆς αἰτούσης, γειτνιάζον πρὸς τὰς λοιπὰς ὡς ἄνω ἐγκαταστάσεις τῆς ΔΕΗ, ἦτο, διὰ τοὺς ἐκτεθέντας τεχνικοὺς λόγους, καὶ τὸ μόνον κατάλληλον διὰ τὴν ἐπέκτασιν τοῦ ὑποσταθμοῦ Ρούφ, δὲν ἀπητεῖτο, προηγουμένη, πρόσκλησις αὐτῆς πρὸς διεξαγωγὴν διαπραγματεύσεων διὰ τὴν ἀπ' εὐθείας, πώλησιν τοῦ ὡς ἄνω ἀκινήτου της πρὸς τὴν παρεμβαίνουσαν".

("Whereas according to the meaning of these provisions, interpreted within the framework of the relative general rules of law formed by the jurisprudence of this Court, the declared compulsory acquisition of an immovable by their application as attributed to the taking of a measure onerous to the citizen, founded on the involuntary deprivation of his constitutionally protected ownership, must be duly reasoned either in the act of compulsory acquisition itself or in the particulars accompanying it. The reasoning, as a rule, is due when there appears evidently the need of the taking, in each case, of the above exceptional measure and especially in view of the fact that the purpose of public utility for the compulsory acquisition, specially defined, cannot be duly effected in any other way, as for instance, by offering for use public properties or by the direct purchase of suitable private properties, voluntarily offered by the owners specially invited for the purpose, unless the affected by the compulsory acquisition property, is considered as the only suitable for the achievement of the required express purpose, when the claim for the previous invitation of this owner subsides.

Whereas, in this respect, from the attacked act and the relative to it preparatory acts it appears that the compulsory

acquisition of the subject property was considered necessary for the extension of the sub-station operating at Roof locality by the intervening party and the erection in it of structures, which will provide the new distribution centres for electric power in the area of Athens, Piraeus and suburbs. Especially by decision No. 473/1966 of the Managing Committee of D.E.H., to the Chairman of the Managing Committee relevant, as from 25.7.1966, submission of its Director-General and to the diagram No. 32659/11.6.1966 of the electrical arrangement of the above under extension sub-station, it appears that the choice of the acquisitioned site was made by the engineers of the Study, Supply and Transport Section, after a prior study and according to its conclusions the extension of the sub-station was necessary on the axis of the existing towers of transmission lines 150 KY and the rest of its in use electrical equipment and that the said site will be used: a) for the installation on it of transformers which will serve by cable installations 150 KY the distribution centres under consideration for the area of the capital, b) for the construction outside the base of the towers and the metal scaffolding, of other building works serving the operation of the sub-station in its entirety, and c) for the creation of an access to Salamina Street, by the acquired site as well as of the recently bought sites by D.E.H. for the creation of its structures. That of the applicant of 1360 sq.m. is mainly intended to be used as an access street to Salamina street. On these facts the attacked act is duly reasoned since from the referred facts it appears that the immovable of the applicant, which is near the other above installations of D.E.H., was, for the technical reasons stated, the only suitable for the extension of the Roof sub-station, no requirement was necessary for the prior invitation for carrying out negotiations for the direct sale of her above immovable to the acquiring authority".

In case No. 3409/70, the Full Bench of the Greek Council of State, in dismissing the case, had this to say at p. 5248:-

"'Επειδή, ἐκ τῶν ἀνωτέρω προκύπτει, ὅτι οἱ λόγοι ἀκυρώσεως καθ' οὗς, τὸ μὲν, ὁ ἀνωτέρω σκοπὸς ἦτο δυνατὸν νὰ ἐπιτευχθῇ διὰ μέσων ὀλιγώτερον ἐπαχθῶν, ἤτοι διὰ τῆς διαθέσεως ὡρισμένης ἐκτάσεως ἀνηκούσης εἰς τὸ Δημόσιον εἰς

τὴν θέσιν Κάλαθος τῆς νήσου, τὸ δὲ, ὅτι ἡ ἐπιλεγεῖσα ἔκτασις τυγχάνει, ἐν πάσῃ περιπτώσει, ἀκατάλληλος διὰ τὴν δημιουργίαν ἀερολιμένος, προβάλλονται ἀβασίμως καὶ ὡς τοιοῦτοι τυγχάνουσιν ἀπορριπτέοι, δοθέντος ὅτι ἐκ τῶν ἐκτιθεμένων ἐν τῇ ἠγουμένῃ σκέψει ἀποδεικνύεται ὅτι ἡ ἐπιλεγεῖσα θέσις ἐκρίθη, ἐξ ὅλης τῆς νήσου Ρόδου, ὡς ἡ μᾶλλον κατάλληλος ὅπως ὑπηρετήσῃ τὸν ἀνωτέρω σκοπὸν, τῆς οὐσιαστικῆς ἐπὶ τοῦ εἰδικοῦ τούτου θέματος κρίσεως τῆς Διοικήσεως διαφευγούσης τὸν ἔλεγχον τοῦ Συμβουλίου τῆς Ἐπικρατείας, δικάζοντος ἐπὶ ἀκυρώσει.

Ἐπειδὴ, ὁσάκις ὁ σκοπὸς διὰ τὸν ὁποῖον κηρύσσεται ἡ ἀπαλλοτρίωσις ἀκινήτου τινὸς δὲν δύναται νὰ ἱκανοποιηθῇ εἰμὴ μόνον διὰ τοῦ ἀκινήτου τούτου, δὲν δύναται, κατὰ τὰ νενομολογημένα, νὰ τύχῃ ἐφαρμογῆς ἡ ἀρχὴ καθ' ἣν ἡ Διοίκησις ὑποχρεοῦται, πρὸ τῆς κηρύξεως τῆς ἀπαλλοτριώσεως, ὅπως καλέσῃ τὸν ἰδιοκτήτην νὰ διαπραγματευθῇ μετ' αὐτῆς πρὸς ἀγορὰν τοῦ ἀκινήτου (Σ.τ.Ε. 1344/1970). Ὅθεν, ἐφ' ὅσον ἡ περὶ ἧς ἡ παροῦσα ἀπαλλοτρίωσις ἔκτασις ἐκρίθη κατὰ τὰ ἐκτιθέμενα ἀνωτέρω ὡς ἡ μᾶλλον κατάλληλος πρὸς ἐγκατάστασιν τοῦ νέου ἀερολιμένος ἐν τῇ νήσῳ Ρόδῳ, δὲν ἀπητεῖτο πρόσκλησις τῶν ἰδιοκτητῶν ταύτης, ἐν οἷς καὶ οἱ αἰτοῦντες, πρὸς διαπραγμάτευσιν μετὰ τῆς Διοικήσεως ἐπὶ τῷ σκοπῷ τῆς ἀγορᾶς τῶν κτημάτων των, ἀβασίμως προβαλλομένου καὶ τοῦ τελευταίου λόγου ἀκυρώσεως καθ' ὃν ἡ εἰρημένη ἀπαλλοτρίωσις ἐκηρύχθη κατὰ παράβασιν τῆς ἀνωτέρω ἀρχῆς τῆς διεπούσης τὸ δίκαιον τῶν ἀναγκαστικῶν ἀπαλλοτριώσεων".

("Whereas from the above it appears that the grounds for annulment, by which, on the one hand, the above purpose was possible to be achieved by less onerous means, i.e. by making available a certain site belonging to the State at Kalathos locality in the island, and on the other hand, that the site chosen happens, in any case, to be unsuitable for the creation of an airfield, are unfounded and as such are unacceptable, given that from what was stated in the previous reasoning it is proved that the place chosen was considered, from the whole island of Rhodes, as the most suitable to serve the above purpose, the substantive on this special subject decision of the Administration escaping the control of the Council of State trying on annulment.

Whereas whenever the purpose for which the acquisition of any property is declared, cannot be satisfied but only by means of this property, cannot, in accordance with the jurisprudence, be applied the rule that the Administration is obliged, before the declaration of acquisition, to call the owner and negotiate with her the purchase of the property (C.S.1344/1970). Therefore, since the property in respect of which this acquisition was considered by what was stated above as the most suitable for the erection of the new airfield in Rhodes island, it was not necessary for the calling of its owners, including the applicant, for negotiations with the Administration for the purpose of the purchase of their properties, and rendering as groundless the last ground for annulment whereby the said acquisition was declared in contravention of the above rule governing the law of compulsory acquisition").

With the greatest respect, as we have said earlier, both cases are distinguishable from the facts of the present case, once it was clearly conceded by the administration that the land in question, compulsorily acquired was not the only suitable land for the purpose in question. In addition, it is clear that even the experts of the Government, in agreeing that both areas A and B were suitable for the housing project, nevertheless, they thought that the land which was the property of the Government and which was estimated at £5,000 per donum, would have been a very expensive project to carry out, and ironically, in order not to utilize an expensive land, and as it was not considered profitable, the Government proceeded to acquire the land of the appellants compulsorily because in their view it would have cost the Government less money. We would reiterate once again that the reason why the Government did not proceed to acquire land by private agreement, was the question of money, and with respect had nothing to do with the point raised now by counsel, once we repeat, all the land there was suitable for the purpose in question.

For these reasons, and for the fact that no evidence was adduced to show that it was the only area technically suitable for the purpose of the acquisition, we have reached the conclusion not to accept that principle because we think that the learned trial Judge wrongly accepted and followed such prin-

ciples. We would, therefore, annul the decision of the learned Judge.

Appeal allowed. Decision annulled.

SAVVIDES J.: These two revisional appeals are directed against the dismissal by a Judge of this Court, sitting in the first instance, of the recourses of the applicants under Nos 201/75 and 204/75 contesting the validity of a compulsory acquisition order of properties belonging to them. Such recourses were heard together with recourse 200/75 by which another owner of property affected by the same acquisition order contested both the validity of the acquisition order and the validity of a requisition order of the same property made for the purpose of facilitating expeditious entry in the properties compulsorily acquired and which recourse was also dismissed.

The subject matter properties were compulsorily acquired by the Republic of Cyprus under a compulsory acquisition order No. 714 published in Supplement No. 3 to the official Gazette of the Republic, No. 1223 of the 26th September, 1975. The requisition order in respect of the same properties was published in the official Gazette No. 1233 dated 7th November, 1977 (No. 807). The reasons for the said acquisition as set out in the notice of acquisition published in Supplement No. 3 to the official Gazette of the Republic, No. 1183 of the 25th April, 1975, are:

> "... the immovable property set out in the Schedule is necessary for the following purposes of public benefit, namely, for housing and town planning, and the acquisition of same is required for the following reasons, i.e.
>
> (a) the creation of a housing estate by the laying out and the construction of streets and drains, the installation of electricity cables and water supply system and the erection of any necessary, in relation thereto, installations, the creation of open green spaces as well as the division of the said immovable property into building sites and the construction either on all or on a number of them (the building sites) of houses suitable for the lower middle social class, from the point of view of income, and or the lower social class, from the point of view of income, of the type of semi-detached houses or blocks of flats and terrace houses, as well as the

construction of shops and other buildings for the use, convenience and comfort of the inhabitants of the housing estate;

(b) the disposition of the building sites to be created and or the houses to be built thereon by hire purchase and or on lease to citizens of the Republic of the lower middle social class, from the point of view of income, and or the low social class, from the point of view of income, who, at the time of submitting the relevant applications for the disposition of the building sites and or the concession of houses will be residing with their families within the Greater Nicosia Area (including the quarters of Omorphita, Kaimakli and Pallouriotissa, as well as the suburbs of Trachonas, Aglandjia, Strovolos, Engomi and Ayios Dhometios), and, possibly, at a second stage, in the villages of Yerolakkos, Mia Milia, Pano and Kato Lakatamia, Tseri, Yeri and Latsia, and will not possess owned houses in the said area and villages;

(c) the lease of the shops and other buildings which will be constructed, and

(d) provided that the legislation in force at the time will permit this grant, with the approval of the Council of Ministers, part of the said immovable property to organisations which may be set up by law, the purpose of which will be the solution of the housing problem either by the granting of housing loans or by the disposition of building sites and or houses under such terms as the Council of Ministers would deem appropriate to impose at the time of such disposition."

The facts material to the present appeal, as related by the learned trial judge in his judgment, are as follows: (See *Mammidou & others* v. *Attorney-General* (1977) 3 C.L.R. 462, at pp. 468 474).

"The immovable property affected by this acquisition is of an extent of about 145 donums, 3 evleks and 1800 sq. ft. consisting of 22 plots -- in fact fields -- situated outside the Nicosia Water Supply Area. In addition, Government owned land of a total extent of 7 donums and 200 sq. ft. under plots 200, 172, 150 and 560 was granted by the Government for the needs of the said scheme.

Out of the properties acquired, the applicant in Recourse No. 200/75, Vassiliki Efthymiou Mammidou, a housewife of Strovolos, married with five children is the owner of plot No. 146, a field of six donums 2 evleks and 1700 sq. ft. under Reg. No. H 133, Sheet Plan XXX 6WII, Block H at locality "Ftana". In fact, this is the only property she owns and which she says, she intended to use for building thereon for her own family.

Applicant in Recourse No. 201/75, Vassos Pelopidha Hadjioannou, of Greece, is the one-half owner of plots Nos 169 and 173, the other half is owned by a certain Loucas P. Hadjioannou. These two plots, as it appears from the plan produced, are of a considerable extent, but their size is not actually given in the material before me.

Applicants in Recourse No. 204/75, Sofoclis Hadjiosif Estate Co. Ltd., of Strovolos, are the owners of three plots, namely, (a) plot 199 of an extent of 3 donums, 1 evlek and 3000 sq. ft. under Reg. No. H 183, Sheet Plan XXX 5WII, Block H, (b) plot 174 of an extent of 16 donums, 3300 sq. ft. under Reg. No. H 159, Sheet Plan XXX 6WII, Block H and (c) plot 203 of an extent of 3 donums, 2 evleks and 3400 sq. ft. under Reg. No. H 187, Sheet Plan XXX 6WII, Block H".

The two last mentioned applicants appear to be developers in land, as shown from the relevant file, and in particular, exhibit 'B' in Recourse No. 201/75, the letter of the Chairman of the Strovolos Village Committee of the 6th June, 1975, who says that he was shocked when he read the Notice of Acquisition, as the opinion of the village authority was not asked on such a serious matter and further states that one basic reason for their objection, was the fact that their information given orally to them at various periods, the Hadjiosif Estate Co. Ltd. in co-operation with the Hadjioannou brothers of Greece, made plans for the development of a total area of about 70 donums which now is affected by the said Notice of Acquisition and which development included the construction of a big modern housing estate.

This housing project of the Government was conceived before the tragic events of 1974. Several studies carried out by the Housing and Country Planning Department as well as by experts

of the United Nations, ascertained the existence in Cyprus of an acute housing problem, especially affecting the lower income and the lower middle income classes.

The Government in order to face this problem, took a number of decisions, one of which was the construction of low cost houses, intended for the aforesaid income classes, and, for that purpose, it was found necessary to find suitable areas. Those, however, found before the Turkish invasion, were no longer suitable, as being either within the part occupied by the Turkish army or too near to it to be used for the purpose needed. Further, the implementation of this housing scheme was brought to a standstill until October, 1974, when, because of the additional needs caused by the displacement of people and the intention of the Government to increase its activity in the field of the Government house schemes, instructions were given to the Housing and Town Planning Department to find other suitable areas for such purpose.

Three areas were in fact chosen by the said Department, identified as Strovolos A, Strovolos B and Latsia -- all outside the water supply area -- and the Lands and Surveys Department was asked by letter dated the 1st October, 1974 (Appendix 1 of exhibit 1), for the assessment of their market value, the category of ownership, i.e. whether State, Church, private, Greek or Turkish, owned, and information regarding the extent of the whole or part of each plot affected by the scheme.

By letter dated the 30th January, 1975 (Appendix 2) the Director of the Department of Lands and Surveys gave his views about their market value, attached thereto a table of the approximate price of each plot as on July, 1974 and observed that the anomalous situation had created new conditions which should be noted. Prices of land had suffered a drop which differed, depending on the locality of the property. In the case under examination, that drop was assessed at 20 per cent, but as under the then prevailing circumstances such prices were very sensitive depending on developments, it was possible to have a spectacular increase in case of improvement of the political situation, given that the areas examined were in the south part of the Island which, in the new circumstances, was deemed safer for the expansion of the town and the absorption of the displaced population. He concluded that any decision regarding acquisition

should be expedited and any development should be made on a corresponding height of building density so that the waste of useful land in a safe area should be avoided. He further pointed out that in Strovolos A Area there were four plots, in Strovolos B Area two plots and in Latsia Area three plots of State owned land. A study of the Housing and Town Planning Department containing also their recommendations on the matter, is to be found in their letter of the 29.2.1975 addressed to the Minister of Interior (Appendix 3).

A comparative table of the cost and other information is set out in para. 3 thereof, from which it appears that the per donum cost of the land in Strovolos B Area is higher by about £1,090 or about 81.5 per cent, as compared with Strovolos A Area. This makes the price of Strovolos B Area almost double than that of Strovolos A Area.

Further factors relevant to the ultimate choice of Area A are to be found in para. 4 of the said exhibit. Both Strovolos A and B Areas are within the boundaries of and are compatible, regarding their use, to the requirements of the "Local Nicosia Plan"; both are outside the boundaries of the Greater Nicosia Water Supply plan but Area A is only a short distance from an inhabited area, which, from the point of view of social services, such as schools, church, public transport and shops gives it an advantage over Area B which is also on a plateau, but it is so slopy and rough in certain parts that additional expense will be needed for its development. It is true that it is near certain industries and for that suitable for housing schemes, yet, it is at a disadvantage with regard to Area A from the point of view of position in general and other factors.

The area of Latsia is outside the boundaries of the "Local Nicosia Plan" although it forms an extension of the village; it consists of good quality agricultural land, densely planted with olive trees; the water supply may present problems and it is likely that there will be an increase in the problems of public transport, so that the intended hire purchasers will have to pay additional transport expense of about 100 mils per day, than the hire purchasers of Strovolos A Area.

The conclusions and recommendations of this Department, as they are set out in paras. 5-11 of the said Appendix are

briefly to the effect that both Areas A and B should be acquired as a matter of a long term policy as the acquisition of the necessary land is a prerequisite to a housing programme and this will render unnecessary future acquisitions of adjacent land which, inevitably, will have its price enhanced by the carrying out of a housing scheme in the vicinity, and so any future extensions of such housing schemes will still be possible at a low cost. Further, if a Housing Finance Agency or a Land Development Corporation is established, it will, inevitably, need land for housing purposes and part of the acquired land may, if necessary, be placed at its disposal for its purposes.

It was also considered, whether, in view of the economic difficulties of the State, it would be more beneficial for the Government to prefer Strovolos B Area, half of which was Government owned land and consequently its purchase price would not have to be paid but it was observed, and rightly so, that for the hire purchasers the situation would not be changed and they would still have to pay the extra cost for this more expensive land, unless the Government decided to reduce the price of its land to the level of the price of land within Strovolos A Area. Elaborate reasons are further given in the said exhibit in support of the recommendations of the Department, but I need not go into them.

The view of the Director of the Planning Bureau (Appendix 4) was that Strovolos Area A should be preferred, and in addition to the existing Government land lying therein to acquire only about 153 donums of privately owned land, as against 290 donums proposed by the Housing and Town Planning Department.

Eventually, a submission (Appendix 5) was made by the Minister of Interior to the Council of Ministers for the approval of a housing scheme under the said Law. The Council of Ministers at its meeting of the 27th March, 1975, approved the scheme by its Decision No. 13884 (Appendix 6) which reads as follows:

"2. The Council:

(a) considered the housing scheme prepared by the Housing and Town Planning Department under section 3 of the Housing Law, Cap. 222 as same is

described in detail in para. 3 of the submission and decided on principle to approve it under section 4 of the Housing Law, Cap. 222.

(b) Decided to approve the acquisition by the Government, either by private agreement or by compulsory acquisition, of the Immovable Property in the area of Strovolos of an extent of 145 donums, 3 evleks and 1800 sq. ft. which is shown delineated with green colour on the survey plan lodged with the secretary of the Council and which was approved as suitable for the implementation of the said scheme at the estimated expense of £185,600.–.

(c) Decided to grant under section 18 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224 and Laws 3/60, 78/65, 10/66, 75/68 and 51/71 and section 2 of the Government Loans Law, Cap. 22 and Law 54/72, to the Director of the Housing and Town Planning Department of Government owned land of a total extent of 7 donums and 200 sq. ft. which is shown delineated with yellow colour on the survey plan for the needs of the said housing scheme and,

(d) it decided to authorize the Minister of Finance to find the necessary funds and if necessary by submitting a supplementary budget to the House of Representatives.

In pursuance thereof the notice of the intended acquisition, already set out in this judgment, was published in the official Gazette.

Four objections were made by owners of land affected thereby and together with the views of the District Officer, Nicosia, the Director of Housing and Town Planning and the legal advice from the office of the Attorney-General, were submitted to the Council of Ministers by the Minister of Interior (see Appendices 12, 13, 14, 15 and 16). The objections were on the 11th September, 1975 rejected by the Council of Ministers by its decision No. 14260 which is to be found in Appendix 17".

The legal grounds on which the recourses of the applicants were based and which were raised before the trial Court were that the notice of acquisition and the order of acquisition which were published in the official Gazette of the Republic were not in accordance with the provisions of the Law, that the objects for which the acquisition was made were not objects of public interest, that the preliminary investigations and procedure contemplated by the Law were not followed, that the respondents failed to consider the opinion of the Village Commission of Strovolos concerning other available land suitable for the acquisition, that the decision was not duly reasoned and that the respondents acted in abuse and/or in excess of power and contrary to any legal principle.

The learned trial Judge after having heard extensive argument by counsel on both sides dismissed the recourses and his reasons for doing so, appear in his elaborate judgment. It is against such judgment that appellants filed the present revisional appeals.

The grounds of appeal relied upon and argued before us in these appeals were as follows:

In recourse 201/75 (*Revisional Appeal No.* 193):

1. The Court of first instance wrongly and unlawfully and badly applying the principles of administrative law regarding Acquisition did not annul the attacked Order of Acquisition.

2. The first instance Court wrongly and unlawfully considered the acquisition of the immovable property described in the recourse as the only technically fit for the purposes of the intended acquisition.

3. The Court of first instance wrongly and unlawfully found that a due inquiry has been carried out in issuing the Order of Acquisition.

4. The appellant reserves his right to add new grounds of appeal as soon as the record of the proceedings is made available and/or at a subsequent stage.

5. The Court of first instance wrongly accepted that there existed the purpose of public benefit and/or that the

objects of the acquisition are covered by section 3(2) of Law 15/62.

In Recourse 204/75 (*Revisional Appeal No.* 194):

The decision of the trial Court, contrary to the Law and by a wrong application and/or interpretation of it, unjustifiably and by wrong evaluation of the facts, the material in the file and the evidence in general:

1. Accepted that the purposes and/or reasons of the acquisition can be considered as aiming at objects of public benefit or as covering generally the Public Interest or that they are covered by section 3(2) of Law 15/62. The Court wrongly and mistakenly accepted that there exists a case of Public Benefit and/or that the reasons advanced fall within the objects of Public Benefit.

2(A). Accepted that the acquired area was found after a proper inquiry, to be the only one technically suitable for the required object and that the respondents had not, therefore, any obligation in the sub judice acquisition, to attempt to acquire the affected immovable property by private agreement and/or by using properties voluntarily offered by their owners.

(B)(a) The respondents had an obligation to try to acquire the property by private agreement. Such obligation is imposed both by the relevant Law and the General Principles of Administrative Law. The decision of the Council of Ministers to approve the acquisition of the property by the Government either by private contract or by compulsory acquisition creates a self-binding obligation on the Administration to try and exhaust the possibilities for the acquisition of the property by private contract. The respondents not only did not take any action for the acquisition of the property by private contract but, on the contrary, they made every attempt to avoid the acquisition of such property by private contract.

(b) In the sub judice acquisition it was possible to attain the intended object by using Government property and/or by using immovable property voluntarily

offered by their owners or acquired by private contract. This is apparent in the file of the Administration.

(c) In the alternative it is not shown from the file of the Administration that the intended object could be attained only by compulsory acquisition.

3. Dismissed all the legal grounds of recourse 204/75 relevant with the above and did not annul the effected acquisition.

In dealing with grounds (1) and (5) of R.A. 193 and ground (1) of R.A. 194 counsel for appellants contended that the purposes for which the acquisition order was made are not purposes of public benefit within the meaning of Article 23 of the Constitution and section 3 of the Acquisition of Property Law, 1962 (Law 15/62) in that the schemes in question are neither town and country planning nor housing and that the trial Judge was wrong in reaching a different conclusion. Reference was made by counsel to the English legislation on matters of town and country planning and housing and submitted that under the English standards which are so strict, one cannot say that to build houses for a class of a population is town and country planning. Counsel argued that "the purposes of public benefit" (Οι σκοποι δημοσίας ώφελείας) are enumerated in section 3(2) of Law 15 of 1962 restrictively and not indicatively, a fact which means that no additional purposes can be introduced depending on the prevailing circumstances each time. Counsel added that laws interfering with the protection of the right of ownership should be interpreted strictly and concluded their argument on this ground that in any event the word "οἰκιστική" (housing) could not be construed in such a way as to include the buidling of houses for refugees.

The same arguments were advanced before the trial Court and the learned trial Judge had this to say in this respect: (pp. 474–476 of the report, supra).

"In my view, the terms 'town and country planning or housing' to be found in section 3(2)(i) of Law 15/62, should be given their ordinary meaning and not be interpreted by reference to the legislation of the United Kingdom and the powers given therein to the various appropriate

authorities for its implementation. These terms should be understood as including, inter alia, the development and use of land in relation to existing urban areas and the social and environmental requirements of a place, as well as the housing needs of the society, in particular, of those classes of the society which cannot, without public assistance or planned facilities, solve their housing needs. If anything, the creation of a housing estate is nothing but a housing purpose and the layout of the streets and other facilities are clearly town and country planning purposes. Under Article 23 para. 4 of the Constitution, any immovable property may be compulsorily acquired by the Republic only—

"(a) for a purpose which is to the public benefit and shall be specially provided by a general law for compulsory acquisition which shall be enacted within a year from the date of the coming into operation of this Constitution; and

(b) when such purpose is established by a decision of the acquiring authority and made under the provisions of such law stating clearly the reasons for such acquisition; and

(c) upon the payment in cash and in advance of a just and equitable compensation to be determined in case of disagreement by a civil court'.

The law envisaged by section 23.4(a) of the Constitution which contains a directive to the legislature that the latter was bound to comply with, is the Compulsory Acquisition of Property Law, 1962 (Law 15/62). It is obvious that the purpose of this directive was that unlike the situation that existed before Independence where different procedures were prescribed under different laws, one general law should regulate matters of compulsory acquisition. Further, under section 3 of this Law and subject to the provisions of the Constitution and of the Law, any property may be compulsorily acquired for a purpose which is to the public benefit and under sub-section (2) thereof, the purposes enumerated as being to the public benefit include, under para. (i) 'town and country planning or housing'.

In view of the aforesaid, I have no difficulty, bearing in mind the purposes of public benefit and the reasons for the acquisition as set out in the Notice of Acquisition, to say that they are indeed purposes of public benefit coming within the provisions of section 3(2)(i) of Law 15/62. It is true that a comprehensive Town and Country Planning Law was enacted in 1972 (Law 90/72) which has not, as yet, been put into operation, but that does not change the situation, nor can it be said, that because the Streets and Buildings Regulation Law, Cap. 96 considered as containing town planning powers of a rudimentary nature, does not contain powers to create housing estates, the purposes for the acquisition in question are not purposes of public benefit".
(See *Mammidou and Others* v. *The Attorney-General of the Republic* (1977) 3 C.L.R. 462 at pp. 474, 475, 476.

I fully agree with the conclusion reached by the learned trial Judge and with the reasons he gives on this issue. I wish also to refer to the following extract from the Greek Administrative Law, 4th Edition, Vol. III by Kyriacopoulos at pp. 373, 374, 375, where the learned author after considering the protection of the right to property which is safeguarded under the Constitution of Greece whereby the citizen cannot be deprived of his property except in the cases expressly provided by the Constitution, deals with such exceptions one of which is the "existence of public benefit".

"Α. Ἡ ὕπαρξις 'δημοσίας ὠφελείας'. Ἡ ἔννοια τοῦ ὅρου 'δημοσία ὠφέλεια', οὖσα ἄλλοτε περιωρισμένη, ἐπειδὴ ἀφεώρα, ἰδίως, εἰς τὴν ἀναγκαστικὴν ἀπαλλοτρίωσιν χάριν δημοσίων ἔργων (ὁδῶν, σιδηροδρόμων κ.ἄ.δ.), διηυρύνθη σὺν τῷ χρόνῳ, οὕτως ὥστε νὰ εἶναι δυνατὴ ἡ ἀπαλλοτρίωσις καὶ δι' ἄλλους σκοπούς. Ἡ ἐν λόγῳ ἔννοια, ἐξελισσομένη σὺν τῇ προόδῳ τοῦ πολιτισμοῦ, καθιστᾷ δυνατὴν τὴν ὁλονὲν εὐρυτέραν ἐξυπηρέτησιν τῶν σκοπῶν, τοὺς ὁποίους ἐπιδιώκει ἑκάστοτε τὸ κράτος, ἢ, ἄλλως, τοῦ δημοσίου συμφέροντος.

Εἰς τὴν τοιαύτην διὰ τῆς ἐξελίξεως διεύρυνσιν τῆς ἐννοίας τῆς 'δημοσίας ὠφελείας' ὀφείλεται οὐχὶ μόνον ἡ κατασκευὴ ὀχυρωματικῶν ἔργων καὶ ἡ στρῶσις ἀμαξιτῶν ὁδῶν ἢ σιδη-

ροδρομικῶν γραμμῶν καὶ ἡ ἀνέγερσις δημοσίων κτιρίων· ἀλλὰ καὶ ἡ ἐξυγίανσις περιοχῶν, ὁ ἐξωραϊσμὸς πόλεων, ἡ στέγασις προσφύγων, ἡ ἀνακάλυψις ἀρχαιολογικῶν θησαυρῶν, ἡ γεωργικὴ ἀποκατάστασις ἀκτημόνων, ἡ χρησιμοποίησις ἰαματικῶν πηγῶν, ἡ ἀστικὴ ἀποκατάστασις ἀναπήρων, ἡ ἐπέκτασις βιομηχανιῶν, ἡ ἀναδάσωσις κ.ἄ. Ὑπὸ τὴν εὐρυτάτην ταύτην ἔννοιαν ἠρμήνευσε καὶ ἡ νομολογία τὸν ὅρον 'δημοσία ὠφέλεια'.

Ἐκ τῶν ἀνωτέρω εὐνόητον ἀποβαίνει, ὅτι δὲν εἶναι δυνατὸν νὰ καθορισθῶσιν ἐπακριβῶς αἱ περιπτώσεις, καθ' ἃς δικαιολογεῖται ἀπαλλοτρίωσις, τοῦ ἡμετέρου συντάγματος οὐδενὸς περιέχοντος περιορισμοῦ σχετικῶς. Ἀρκεῖ ὅτι τὸ δημόσιον συμφέρον ἀπαιτεῖ ἐν δεδομένῃ τινὶ περιπτώσει, τὴν θυσίαν τοῦ ἀτομικοῦ δικαιώματος τῆς ἰδιοκτησίας. Ἀπαλλοτρίωσις χωρεῖ πάντοτε ὁπόταν αὕτη ὑπαγορεύηται ἔκτινος πολιτειακοῦ σκοποῦ, ὅστις οὐδέποτε ὅμως ἐπιτρέπεται νὰ εἶναι οἰκονομικός, ἤτοι ν' ἀποβλέπῃ εἰς τὸ νὰ προσπορίσῃ εἰς τὸν ὑπὲρ οὗ ἡ ἀπαλλοτρίωσις πλείονα ἔσοδα. Δημοσία ὠφέλεια δὲν σημαίνει 'ὠφέλεια τοῦ δημοσίου' ".

("A. Existence of 'public benefit'. The meaning of the term 'public benefit' being formerly restricted, because it referred, especially, to the compulsory acquisition in favour of public works (streets, railways and others) was enlarged in the meantime, so that an acquisition will be possible for other purposes. The said meaning having been developed with the progress of civilization, makes possible the continually broader service of the objects which the State aims at the time, or, otherwise, of the public benefit.

In such, by progress enlarged meaning of 'public benefit' is not only possible the construction of fortification works and the laying of asphalted roads or railroad lines and the erection of public buildings; but also the sanitation of districts, the embellishment of towns, the sheltering of refugees, the discovery of archeological treasures, the agricultural re-establishment of the poor, the use of curative springs, the civil settlement of the invalid, the extension of industries, the reforestation and others. Under this enlarged meaning jurisprudence interpreted the term 'public benefit'.

From the above it becomes obvious that it is not possible to fix precisely the cases in which acquisition is justifiable, our Constitution having no restriction on the matter. It is enough if the public interest demands in a given case, the sacrifice of the private interest of ownership. Acquisition is always possible when it is dictated by a purpose for the State, which is never allowed to be economic, that is to aim to get in addition for the one in whose favour the acquisition is, more assets. Public benefit does not mean 'benefit of the State' ").

Reference may also be made to the decision of the Greek Council of State in Case 2034/52 where it was held that the housing of citizens devoid of home accommodation, is a purpose of public benefit.

In the present case there is no room for suggesting that the object of the acquisition was one intended to fetch any profit to the Government or financially benefit the fiscus but it was a purpose of public benefit as rightly found by the learned trial Judge. In the result, grounds (1) and (5) of R.A. 193 and ground (1) of R.A. 194, fail.

I am coming now to grounds 2 and 3 of R.A. 193 and 2(A) and (B) of R.A. 194.

Counsel for applicants argued that the learned trial Judge was wrong in finding that the properties in question were the only suitable for the purposes of the acquisition and that in so deciding he introduced into Law 15/62 the wording "technically suitable" upon which he relied, whereas there is nothing in the law or the jurisprudence applicable about "technically suitable".

He further submitted that the learned trial Judge wrongly reached the conclusion that the Acquiring Authority had considered all the possibilities and investigated all matters before making the order for acquisition. Counsel contended that bearing in mind our jurisprudence and the general principles of administrative law, deprivation of property by compulsory acquisition is an onerous measure and should only be resorted to after all efforts to acquire same by private agreement or utilising property belonging to the Acquiring Authority was

exhausted, whereas, in the present case, no effort was made for the acquisition of the properties in question by private agreement or utilizing property belonging to Government. Furthermore, counsel submitted that the mode of compulsory acquisition was adopted contrary to the decision of the Council of Ministers that the property was to be acquired either by private agreement or acquisition. By such decision the Administration was "self bound", ("αὐτεδεσμεύθη") counsel contended, and, therefore, was bound to proceed to acquire properties by private agreement and if such procedure became impossible, then resort to the method of compulsory acquisition.

Counsel for appellants further submitted that the reason why area 'A' of Strovolos, in which the properties of the appellants were situated, was preferred to area 'B' was because Government did not wish to utilize its property situated within area 'B' as such land was considered more expensive than that privately owned in area 'A'.

The learned trial Judge in dealing with the issue whether the omission of the respondent to exhaust all efforts to acquire the properties in question by private agreement in the first instance before resorting to the method of compulsory acquisition had rendered the said decision null and void, had this to say at pp. 477, 478, 479 of the judgment (supra):

> "The next ground of law relied upon is that the omission of the administration to exhaust all efforts to acquire this property by private agreement in the first place and then resort to the onerous measure of acquisition, renders the sub judice decision null and void. This is a duty, it was argued, to be found in the Housing Law and also in the general principles of Administrative Law.
>
> I have already dealt with the procedural provisions of the Housing Law which have been superseded by the procedure laid down in the Acquisition Law. The issue, therefore, has to be approached with reference to the general principles of Administrative Law.
>
> For that purpose, I was referred to the Case Law of the Greek Council of State, wherein the general principles of Administrative Law on the matter are stated to be

that the act of compulsory acquisition must be fully reasoned, either in the act itself or in the accompanying elements, so that the necessity to take this exceptional measure shall appear clearly and particularly from the point of view that the purpose of public benefit could not be achieved otherwise, e.g. by the disposal of proper Government property or by the direct purchase of privately owned immovable property from owners specially contacted for that purpose. (See Digest of Cases of the Greek Council of State, (1961-1970) Vol. 1, p. 536, paras 16 and 17 and Decisions 276/66, 2136, 2660/60 referred to therein).

This principle, however, is not complete, unless it is added that the onerous measure of compulsory acquisition may be resorted to if the required immovable property is considered 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. (See paras. 19 and 20 and Decisions 505/68, 2579/69, 1344, 3409/70).

It was argued on behalf of the respondents that this was a principle of law which they had in mind when they were deciding the making of the order of the acquisition. Appendix 14 of exhibit 1 is the legal advice from the office of the Attorney-General attached to the submission made to the Council of Ministers, together with the objections filed pursuant to the publication of the Notice of Acquisition and the other views expressed by the appropriate Government Departments to which I have already referred. It is stated clearly in the said advice, that compulsory acquisition may be resorted to without prior offer to purchase privately the property in question, if it is the only suitable for the achievement of the desired purpose, and reference is made to some of the decisions of the Greek Council of State, to which I have already referred. That the area in question was found to be, after a proper inquiry, the only technically suitable for the purpose, it is apparent from the whole approach of the matter as emanating from

the relevant file. It had to be acquired as a compact area and the exclusion of any part therefrom would frustrate the realisation of the object of the acquisition".

It is well settled under our jurisprudence following in this respect the principles laid down by the jurisprudence of the Greek Council of State, that the taking away of property belonging to a private individual, through compulsory acquisition, is an onerous measure and that the principles of proper administration and of lawful use of discretionary powers demand that before resorting to such measure, the State should exhaust the possibilities of either using for the relevant purpose State land or finding property which is being voluntarily offered by its owners and which is more or less equally suitable for the purpose concerned. Such principles have been elaborated in *Chrysochou Bros and* (1) *The Cyprus Telecommunications Authority* (2) *The Republic of Cyprus, through the Council of Ministers* (1966) 3 C.L.R. 482, in which, Triantafyllides, J. (as he then was) had this to say at pp. 497, 498, 499:

"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. Moreover, 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.

The adoption of the said principles can be seen in the following Decisions of the Greek Council of State:

In Decision 300/1936 it was held that it is not permissible to take away from a private individual, through compulsory acquisition more than what is indispensably necessary for the achievement of the relevant public utility purpose and it is, thus, not proper for the acquisition to go to the extent of taking away ownership if the said purpose may be achieved by less onerous means, such as the acquisition of a servitude on the property concerned; the question, however, of the necessary extent of the acquisition is, as a rule, a matter within the discretion of the acquiring authority.

In Decision 1023/1949 it was held that the principles of proper administration and of lawful use of discretionary powers demand that the Administration should not resort to the very onerous method of compulsory deprivation of ownership, before it exhausts the possibilities of either using for the relevant purpose State land or of finding property which is being voluntarily offered by its owner and which is more or less equally suitable for the purpose concerned; and if State land is not available and it has been established that it is not possible to secure the necessary land by means of an ordinary purchase, then the Administration has to choose for compulsory acquisition, out of the suitable properties, the one the acquisition of which entails less onerous consequences, both from the point of view of the use being served by the property to be acquired and from the point of view of the interests of the fiscus.

In Decision 608/1955 it was held that the Administration should not resort to the extremely onerous measure of deprivation of ownership, except only in case of absolute necessity.

In Decision 92/1957 it was held that the Administration when exercising its discretionary powers and choosing for acquisition a property as suitable to serve a particular lawful public utility purpose has, among other things, to examine if there are other properties equally suitable for the purpose of acquisition, and has to prefer the property the acquisition of which will entail for its owner a deprivation of ownership less onerous in comparison to

the cases of owners of other properties which may be equally suitable for the purpose of the acquisition.

All the above decisions propound widely—accepted 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".

And concluded as follows at page 501:

"On the basis of the foregoing I have reached the conclusion that the sub judice 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 by 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".

In *Venglis and The Electricity Authority* (1965) 3 C.L.R. 252, referred to in the above case, Munir, J., in dealing with the exercise of discretion by the Acquiring Authority in that case, had this to say at page 262:

"In conclusion, I would state that in exercise of the statutory powers vested in it the Respondent having exercised a discretion, which I am satisfied has been properly exercised after taking into account all relevant factors, to acquire the property in question of the Applicant, this Court is not prepared to substitute its own discretion for the Respondent's discretion and to say that the discretion should have been exercised in some other way by the acquisition of some other property. I am, therefore, of the opinion that the Respondent has not acted in abuse

of the powers vested in it, as alleged by counsel for Applicant, and has not acted contrary to the principles of administrative law referred to by counsel for Applicant".

Also, in *Charalambos Pissas (No. 2) v. The Electricity Authority of Cyprus* (1966) 3 C.L.R. 784, Triantafyllides, J. (as he then was) concluded at pp. 791, 792, as follows:

"The fact that the sub-station could, perhaps, be erected equally suitably on some other neighbouring property causing, on the whole, the same amount of hardship to the owner concerned, as Applicant is to suffer in view of the erection of the sub-station in his own backyard (and such a neighbouring property appears to be plot 222 on exhibit 1) cannot in my opinion lead to the conclusion that the decision to erect the sub-station on the property of Applicant has been taken in contravention of the relevant principles; such principles could only have been contravened if a less onerous means of achieving the purpose of the compulsory acquisition had been overlooked; and not merely because one out of equally onerous solutions has been preferred, as in my opinion is the position in the present case. It is not for this Court to exercise its own discretion, in substitution of the discretion of Respondent, regarding the choice among equally suitable properties, the acquisition of which entails more or less equal hardship".

The principles of proper administration and the proper use of discretionary powers in cases of compulsory acquisition of land enunciated in the above decisions were also reiterated in *Tikkiris and others and The Electricity Authority of Cyprus* (1970) 3 C.L.R. 291. In dealing with the contention that the discretionary powers of the Acquiring Authority were wrongly exercised, Hadjianastassiou, J. had this to say at pp. 300, 301:

"Having in mind the principles of proper administration with regard to the use of lawful discretionary powers, and the fact that the necessary extent of the acquisition to meet both the technical point of view as well as the other purposes of the acquiring authority is within its discretion, I have reached the view that the said authority has properly exercised its discretionary powers under the law. In any event, the Applicants have failed to adduce any evidence to show

to the Court that really the extent of the property acquired by the acquiring authority was more than necessary to achieve its public utility purpose. I would, therefore, dismiss also this contention of counsel."

And at page 300:

"In the present case, regarding the fact that this sub-station could possibly be erected on to the private properties within the Pouyeros area - and this point has not been pressed by counsel for the Applicants - it would appear that the same amount of hardship would have been caused to those owners as to the Applicants. In my view, therefore, I cannot reach the conclusion that the decision of the Respondent has been taken in contravention of the administrative principles. It goes without saying, of course, that such principles could have been contravened if less onerous means of achieving the purpose of the compulsory acquisition had been overlooked by the acquiring authority; and not because one out of equally onerous solutions has been preferred. I would reiterate once again that the Respondent has properly exercised its discretion, and it is not for this Court to exercise its own discretion in substitution of the discretion of the Respondent regarding the choice among equally suitable properties the acquisition of which entails more or less equal hardship. See *Pissas (No. 2)* v. *E.A.C.* (1966) 3 C.L.R. 784 at pp. 791-792."

In the present appeals, it is apparent from the contents of the relevant files of the administration which were before the first instance Court and to which reference was made in these proceedings, that the Council of Ministers before taking the decision to acquire the subject properties and publishing the Notice of Acquisition, had before it, the planning scheme of the Housing and Country Planning Department (Appendix 3 to the Opposition) and the conclusions and recommendations of such Department which it studied carefully, as it appears from the minutes of the meeting of the Council of Ministers of the 27th March, 1975.

The existence of an acute housing problem for the lower middle social class from the point of income, and the lower social class from the point of income, within the greater Nicosia area, which became more pressing after the Turkish invasion, necessitated

the intervention of the Government for the solution of such problem and this necessity for intervention has not been disputed by the appellants.

Before taking its final decision for the compulsory acquisition of the properties in question, the Council of Ministers reconsidered the position in the light of the written objections (Appendices 8 - 11) made by the owners of six out of the 22 plots which were submitted by the Minister of Interior together with the written observations of the District Officer through whom the objections were made (Appendix 12), the observations of the Director of the Housing and Country Planning Department (Appendices 13 - 15) and the legal opinion from the office of the Attorney-General of the Republic as to the legal principles to be born in mind before making a compulsory acquisition order (Appendix 14). After "a careful consideration" ("ἐνδελεχοῦς ἐξετάσεως") and having taken into consideration all the circumstances of the case, the Council of Ministers rejected the objections and decided to proceed with the compulsory acquisition of the properties in question. Its decision is embodied in the letter (Appendix 17) sent to the District Officer of Nicosia by the Minister of the Interior authorising him to inform the persons whose objections were rejected, accordingly. The material part of such decision, reads as follows:

"Τὸ Συμβούλιον:-

(α) ἐμελέτησε ἐνδελεχῶς τὰς ἐνστάσεις τὰς ἐπισυνημμένας εἰς τὴν πρότασιν ὡς Παραρτήματα ΙΙ-ν ἐκ μέρους τῶν κ.κ. ..... κατὰ τῆς σκοπουμένης ἀπαλλοτριώσεως ὡρισμένης ἀκινήτου ἰδιοκτησίας αὐτῶν κειμένης εἰς Στρόβολον καὶ, λαμβανομένων ὑπ' ὄψιν ἁπασῶν ἐν γένει τῶν περιστάσεων, ἀπεφάσισεν ὅπως ἀπορρίψη ταύτας καὶ

(β) ἀπεφάσισε, λαμβανομένων ὑπ' ὄψιν ἁπασῶν ἐν γένει τῶν περιστάσεων ὅπως ἐγκρίνη, δυνάμει τοῦ ἄρθρου 6 τοῦ περὶ 'Αναγκαστικῆς 'Απαλλοτριώσεως Νόμου, ἀρ. 15 τοῦ 1962, τὴν ἔκδοσιν τοῦ Διατάγματος 'Απαλλοτριώσεως ".

("The Council:-

(a) studied thoroughly the objections attached to the

submission as Appendix II-v on behalf of Messrs.

against the proposed compulsory acquisition of some of their immovable property situated at Strovolos and taking into consideration generally all circumstances, decided to dismiss them and

(b) decided, taking into consideration generally all circumstances, to approve under section 6 of the Compulsory Acquisition Law, No. 15 of 1962, the issue of an Acquisition Order").

The planning scheme and the conclusions and recommendations of the Housing and Country Planning Department which the Council of Ministers took into consideration, appear in Appendix 3 attached to the Opposition. A perusal of these documents makes it clear that the experts of the Housing and Country Planning Department carried out a careful and extensive study for the selection of the most suitable area for giving effect to the object of the scheme which was the building of houses at a low cost for sale to the low middle social classes and lower social classes from the point of income, of citizens of the Republic. A comparative study is contained therein in respect of the three areas under consideration, setting out the advantages and the disadvantages of each one over the others, and dealing also with the social and economic aspect pertaining to each area. After such study and comparison, Appendix 3, concludes that "Area 'A' of Strovolos is the most suitable from all aspects compared both with Area 'B' of Strovolos and with that at Latsia village". It is correct that in such scheme there is a suggestion that in addition to Area 'A', Area 'B' of Strovolos should also be acquired for future extension of the scheme because if the acquisition of that area as well was left for a later stage, the price of land in Area 'B' would be enhanced on the basis of the development which would take place in Area 'A' as a result of the housing scheme. This suggestion, however, does not mean that the advantages of Area 'A' of Strovolos which make it the most suitable for acquisition, according to the opinion expressed should be ignored and Area 'B' preferred, because the latter is also deemed as suitable for the extension of the housing scheme

It has been suggested that in Area 'B' there was Government land of an extent of around 70 donums which could be utilised

for the materialisation of the housing scheme without resorting to the onerous measure of compulsory acquisition. It is abundantly clear from Appendix 3 and the other appendices to the Opposition that an area of 70 donums was not sufficient to meet the demands of the scheme, and that for effectively carrying out same, an area of about 209 donums was necessary. The acquisition of land to that extent was originally proposed by the Housing and Town Planning Department, which by a later proposal of the Director of the Planning Bureau (Appendix 4) was reduced to 153 donums of privately owned land, in addition to the existing Government land lying therein. The Council of Ministers approved the compulsory acquisition of only 145 donums, 3 evleks and 1800 sq. ft. of privately owned land in addition to the grant of an area of 7 donums and 200 sq. ft. of Government land situated in the same area.

It has not been suggested by the appellants that the Government land of 70 donums was sufficient for the purposes of the scheme, but their argument was to the effect that Area 'B' should have been preferred to that of Area 'A' within which the properties of the appellants were situated. If such submission was accepted, provided that all considerations both from social and economical aspect were the same, the compulsory acquisition of properties within Area 'B' instead of Area 'A' would have entailed shifting of the onerous measure of the acquisition upon the shoulders of the owners of land within Area 'B' instead of the appellants. I find that the discretion of the Acquiring Authority was properly exercised in the present case, in the light of all relevant matters taken into consideration, and after a due inquiry into the matter, and I have come to the conclusion that this Court cannot interfere with the exercise of such discretion and exercise its own discretion in substitution to that of the respondent, as to the choice of the most suitable area.

As to the contention that the trial Court by finding that the properties in question were the only "technically suitable" for the purpose, has introduced a new notion which is unknown in the administrative law, that is the notion of "technicality", I find myself unable to agree with such contention. The tenor of the whole judgment of the trial Court shows that the word "technically" used by the trial Judge, does not mean anything more than expressing in short terms that for technical reasons

the area in question was the most suitable for the purposes of the acquisition.

Looking at the Index of the Jurisprudence of the Greek Council of State (1961 - 1970), Vol. 1, at page 536, under para, 19 one finds the use of the expression "technically suitable" as the word summarily describing that for technical or other reasons compulsorily acquired land is the most suitable in the circumstances. The following is stated in the said paragraph: "Unless the compulsorily acquired immovable property is considered to be *the only technically suitable* for giving effect to the purpose (of the acquisition) in which case the previous invitation of the owner to negotiate, is not required". (Reference is made to the cases of the Greek Council of State Nos 505/68, 2575/69, 1344/70, 3409/70). I, therefore, find that the use of the words "technically suitable" by the learned trial Judge does not in any way introduce a new notion into the principles of administrative law or into the text of the law. It is merely a conclusion reached by the trial Judge in the circumstances of the case.

As to the contention that there was violation of the principles of administrative law concerning acquisitions, that the onerous measure of compulsory acquisition should not be resorted to without exhausting the efforts for the acquisition of the property by private agreement, it is well settled that the compulsory acquisition may be resorted to if the required immovable property is considered the only suitable for the achievement of the purpose, when a prior offer to its owner to purchase it privately is not necessary. There is ample authority in this respect in our jurisprudence adopting in this respect the principles enunciated by the decisions of the Greek Council of State (see, amongst others the decisions of the Greek Council of State 505/68, 826/69, 2575/69, 1344/70, 3409/70).

As to the contention that the decision of the Council of Ministers to acquire the property compulsorily instead of by private agreement, is not duly reasoned, I find that such contention is unfounded. A perusal of the various exhibits before the Court which were extracts from the files of the administration, show that such reasons appear in detail therein. In the various appendices and in particular Appendix A, a thorough study is included about all the areas under consideration and the reasons why the area in question was preferred as the most suitable for

the purpose of the scheme. In the circumstances, once the property in question was found the most suitable and such finding was based on proper inquiry, as in the present case, the decision was sufficiently reasoned.

Dealing lastly with the contention that the Council of Ministers was "self-bound" ("αὐτεδεσμεύθη") by its first decision that the properties should be acquired by private agreement or compulsory acquisition and that it should have first proceeded to private negotiations with the owners, and in case that the acquisition of the property in that way became impossible, then proceed to the method of compulsory acquisition, I find myself unable to agree with such contention. The Council of Ministers by its decision that the property should be acquired by private agreement or compulsory acquisition, allowed a discretion to the departments concerned, to adopt either method and not to adopt the one in preference to the other. It was after consideration of all the circumstances of the case and the recommendations made by the appropriate Departments and after consideration of the objections raised by the owners of the six plots out of the 22, and having accepted the submission made by the experts that the land under consideration was the most suitable for the purpose of the scheme, that it decided to compulsorily acquire same without any private negotiations.

No evidence was called by the appellants in this case to contradict what appears in the files from the reports of the experts that (a) the land in question was the most suitable as compared to Area 'B or (b) that the scheme could be carried out by utilising the Government land only in Area 'B' without the need of acquiring privately owned property.

For all the above reasons, the appeals are dismissed but in the circumstances of the case, I make no order for costs.

MALACHTOS J.: I have had the advantage to read both judgments just delivered and I must say that I fully agree with the judgment of my brother Judge Savvides, for the reasons given and the conclusions reached by him, and I have nothing useful to add. I, therefore, dismiss both appeals and I would make no order as to their costs.

TRIANTAFYLLIDES P.: I have had the opportunity of discussing at length these cases with all my brother Judges sitting on this Bench.

I have, in particular, discussed with Mr. Justice Hadjianastassiou the judgment which has just been delivered by him and I fully agree with all the principles enunciated therein.

Mr. Justice Savvides has, also, kindly furnished me in advance with a copy of his judgment and it is to be noted that there is really no difference of opinion, among all four of us who are dealing with these appeals or between us and the learned trial Judge, as regards the principles of law applicable to a matter of this nature.

What has to be decided is whether or not this is an instance in which, in the light of such principles, there ought to be upheld the relevant decisions of the administration, bearing in mind that such decisions were reached in the exercise of really very wide discretionary powers.

Since the onus was on the appellants to satisfy us that these appeals should succeed I have, after much anxious consideration, and not without quite some reluctance, reached the conclusion that I am not satisfied that, in the light of their particular circumstances, these appeals should succeed. I agree, therefore, that they should be dismissed.

In the result these appeals are dismissed by majority, but without any order as to their costs.

Appeals dismissed by majority. No order as to costs.