

1984 November 15

[TRIANTAFYLLIDES, P., L. LOIZOU, HADJIANASTASSIOU, MALACHTOS,
DEMETRIADES, SAVVIDES, JJ.]

DR. GLAFCOS MICHAELIDES, AND ANOTHER,

Appellants,

v.

THE ATTORNEY-GENERAL OF THE REPUBLIC,

Respondent.

(*Revisional Jurisdiction Appeal No. 200.*)

*Compulsory acquisition—Order of—Revocation—Principles applicable
—Whether owner must be reinstated to the possession of his
property—Area where property, subject-matter of acquisition,
situated under occupation of Turkish invasion forces—Purpose
of acquisition could not be attained because of such occupation 5
—Property not transferred in the name of acquiring authority
and compensation not yet paid to owners—Revocation of order
of acquisition—Validly made—Section 7 of the Compulsory
Acquisition of Property Law, 1962 (Law 15 of 1962)*

*Administrative Law—Compulsory acquisition—Revocation—Principles 10
applicable—Revocation of order of compulsory acquisition because
its purposes could not be attained on account of the Turkish
invasion—Validly made—Appreciation by the administration of
the factual situation existing at time of revocation—Cannot 15
be subject of judicial control as there was no misconception of
fact.*

The appellants were owners of three pieces of land, situated
within the area of Ayios Sergios village in the District of Fama-
gusta, which were compulsorily acquired in June, 1972 for a
public benefit purpose, namely for the purpose of preservation, 20
enhancement and development of the ancient monuments of
Salamis and its surroundings. The area where the above pro-
perty was situate had been, since 1974, under the occupation
of the Turkish invasion forces and inaccessible to the State
and appellants were unable to resume possession of it. 25

5 The appellants instituted proceedings in June 1975 for assessment of the compensation payable for the compulsory acquisition of their above properties. In July, 1976 and whilst these proceedings were still pending, the acquiring authority, acting under section 7* of the Compulsory Acquisition of Property Law, 1962, revoked the compulsory acquisition order affecting appellants' said properties on the ground that "the purpose for which the order of acquisition was issued cannot be attained on account of the situation created after the Turkish Invasion", and on the ground that "the acquired property has not as yet been transferred in the name of the Government". The trial Judge dismissed appellants' recourse against the validity of the above revocation order and hence this appeal.

15 *Held*, (1) that the question of reinstalling appellants to the possession of their properties does not arise in the present case, as the appellants have never been deprived of the possession of their properties and the ownership and possession of which remained vested in them under section 13 of the Compulsory Acquisition of Property Law, 1962 (15/62) and no requisition order has been made in this case depriving them of their possession till the determination of the compensation payable and the vesting of the property to the Acquiring Authority, notwithstanding the fact that the publication of an acquisition order creates a burden on the properties acquisitioned restricting the owners from alienating or charging them or carrying out any works on same.

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30 (2) That though under section 7 of the Compulsory Acquisition of Property Law, 1962 a decision for acquisition can, at any time, upto the final determination by the Court of compensation to be paid, be revoked by the Acquiring Authority, nevertheless, such power is not an absolute power but a discretionary one which cannot be exercised arbitrarily but in a proper manner bearing in mind the spirit of the law and the conditions laid down by the general principles of administrative law; that, also, the revocation of an acquisition with the exclusive object of serving the financial interest of the State only, without at the same time taking into consideration the interest of the owner amounts to a wrong exercise of discretion; that since no works

* Section 7 is quoted at pp. 1600-1601 post.

whatsoever were carried on the properties of the appellants and that the purpose of the acquisition could not be attained; that since there was such a disastrous change in the factual situation as it existed at the time of the acquisition and the time of the revocation due to the Turkish invasion, as to justify the Government, in the application of a general policy for facing needs which were more pressing than acquisition of properties in respect of which no work was carried out this Court is satisfied that the respondent authority in taking the sub judice decision did not act arbitrarily or in abuse of power but exercised its discretion in the proper way and without violating the principles of goods administration; accordingly the appeal must fail. 5 10

Held, further, that the appreciation by the administration of the factual situation that existed at the time the sub judice decision was taken and the changes that were brought about by the intervening occupation of part of the island to the factual conditions upon which the administration relied upon for the issuing of the act of acquisition cannot be the subject of judicial control as there does not arise a misconception of fact. 15 20

Appeal dismissed.

Cases referred to:

Michaelides and Another v. Attorney-General of the Republic
(1978) 3 C.L.R. 285.

Appeal. 25

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (A. Loizou, J.) given on the 27th October, 1978 (Revisional Jurisdiction Case No. 197/76)* whereby appellants' recourse against the decision of the respondent to revoke a notice of acquisition and a subsequent order of compulsory acquisition of properties belonging to the appellants was dismissed. 30

A. Ladas, for the appellants.

N. Charalambous, Senior Counsel of the Republic, for the respondent. 35

Cur. adv. vult.

* Reported in (1978) 3 C.L.R. 285.

TRIANTAFYLIDES P.: *The judgment of the Court will be delivered by Mr. Justice Savvides.*

5 SAVVIDES J.: This is an appeal against the judgment of a Judge of this Court sitting in the first instance whereby he dismissed the recourse of the appellants challenging the decision of the respondent to revoke a notice of acquisition and a subsequent order of compulsory acquisition of properties belonging to the appellants.

10 The appellants are the owners of three fields situate at Ayios Serghios village, Famagusta District, in respect of which a notice of compulsory acquisition was issued and published in Supplement No. 3 to the official Gazette of 4.6.1971, under Notification 381 as being necessary, together with other properties mentioned therein, "for the following purpose of public
15 benefit, namely for archaeological excavations or the preservation or enhancement of ancient monuments and antiquities or the development of their surroundings and its acquisition being required for the following reasons, namely for the preservation, enhancement and development of the ancient monument of Salamis and the surrounding area".
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Subsequently, an order for compulsory acquisition of the said properties was made which was published in Supplement No. 3 to the official Gazette of the Republic of the 2nd June, 1972, under Notification 353, "for the purposes of public benefit
25 mentioned in the aforesaid notice of acquisition".

On the 20th June, 1975, the appellants filed, in accordance with the provisions of the Law, Reference No. 10/1975 in the District Court of Larnaca, claiming C£12,000.—as just and reasonable compensation for the aforesaid properties. By
30 their statement of claim, filed together with the valuation of appellants' valuer on the 22nd March, 1976, the compensation claimed was reduced to C£7,000.—. A defence together with the valuation of the Acquiring Authority was filed on the 13th April, 1976, their valuation being for the amount of C£6,950.—.
35 On the 13th April, 1976, the case was fixed for mention and adjourned to the 24th May, 1976, for hearing. On account of a misunderstanding, as claimed by the appellants, as to the date of hearing, nobody appeared on their behalf and the Reference was dismissed for want of prosecution.

On the application of the appellants the Reference was reinstated on the 16th June, 1976. On that day counsel for the appellants accepted the valuation of the respondents and applied for judgment for that sum with 5 1/2 p.a. interest as from 2.6.1972 and costs. Counsel for the respondents, however, stated and the Council of Ministers decided to revoke the order for compulsory acquisition and therefore compensation was not payable. He also objected to the payment of interest and applied for a date of hearing. The case was fixed for hearing on 6.7.1976, on which date the Court was informed by him that the order revoking the compulsory acquisition of the said property had been published in Supplement No. 3, Part II, to the official Gazette of the Republic of the 2nd July, 1976, under Notification 511. Counsel for the appellants stated then, that they would challenge the validity of such order before the competent Court, he withdrew with reservation of their rights the said reference and applied and was awarded their costs.

The said order of revocation is stated to have been made under section 7 of the Compulsory Acquisition of Property Law, 1962 (Law 15 of 1962), and the reasons for such revocation given therein are the following:

“And whereas compensation has not been paid or deposited regarding the aforesaid acquisition in accordance with the provisions of the Compulsory Acquisition of Property Law, and

Whereas the Acquiring Authority considers the immovable property described in the said Notification 381 as not being necessary for the purposes of public benefit set out in the said Notification No. 381, the Minister etc. hereby revokes”.

Sub-section (1) of section 7 under which the powers of revocation was exercised, reads as follows:

“At any time after the publication of a notice of acquisition and before the payment or the deposit of compensation as in this Law provided, the acquiring authority may, by an order published in the official Gazette of the Republic, revoke such notice and any relative order of acquisition that

5 may have been published, either generally or in respect of any particular property or part of property referred to therein; and thereupon all proceedings consequential to such notice or order of acquisition shall abate and the acquisition shall be deemed to have been abandoned either generally or in respect of such particular property or part of property, as the case may be”.

10 It was a common ground that the area within which these properties are situate, has been since 1974, occupied by the Turkish Forces which invaded Cyprus, and is now inaccessible to the State and to all Greek Cypriots and the appellants are unable to resume possession of same.

15 Prior to the making of the aforesaid revocation order the Council of Ministers at its meeting of the 20th May, 1976, considered a submission made by the Ministry of Justice as to steps which should be taken in connection with properties which had been compulsorily acquired and the delays in the payment of compensation in respect thereof and took the following decision (Decision No. 14934):

20 “With reference to para. 1 of the minutes of the meeting of the Council of the 21st February, 1974, the Council considered the suggestions of the Committee of Ministers appointed for the study of the subject of the delays in the payment of compensation for compulsorily acquired properties which are contained in the submission and decided
25 to approve the revocation of the orders of acquisition referred to in sub-paras. (b), (c) and (d) of para. 3 of the submission and that the appropriate ministries proceed the soonest possible to the taking of the necessary measures
30 for the implementation of the aforesaid decision.

With regard to the subject referred to in sub-para. 3 of para. 3 of the submission, it has been agreed that the matter be further discussed in co-operation with the Attorney-General of the Republic”.

35 Para. 3(a), (b), (c) and (d) of the submission reads as follows:-

“(a) *Acquisitions with regard to works fully completed*

For the districts of Nicosia and Larnaca, in the cases where the assessment of the compensation to be paid has

been completed, the Government should pay the compensation after ascertaining that the property is free from any incumbrances. In the cases where there has been no valuation, a provisional valuation by the Land Registry Office should be made on the basis of the available elements and on a conservative basis, and thereafter compensation will be paid on condition of adjusting the height of such compensation immediately after the conditions permit the carrying out of a proper assessment and the owner in such case will be under an obligation to transfer the property under acquisition in the name of the Acquiring Authority. Provided that this undertaking will be given by the owner on the basis of a document which will be drawn up by the Attorney-General.

For the districts of Kyrenia and Famagusta (in which the Land Registers are not available), no compensation will be paid by the Government, except in the cases where a Court judgment has been delivered when the compensation will be paid after the person entitled thereto will give an undertaking of indemnity that he will compensate the Government if subsequently it was established that the property was not free from any incumbrances (in this respect it has been ascertained that such cases are very few). If in the future there have been issued similar decisions by the Court, the whole subject will be re-examined, not excluding the possibility of the revocation of the acquisition.

(b) *Acquisition for works the carrying out of which commenced but remained incomplete on account of the Turkish invasion.*

In the cases where there has been a construction of works and the appearance of the property has changed on account of the interference, compensation will be paid for that part of the property subject to the reservations of para. (a) above. In the remaining cases where in spite of the intervention there has been no substantial transformation or it is not possible to ascertain whether there has been substantial transformation of the property, the acquisition to be revoked.

(c) *The acquisition for works which were not executed.*

5 The Government should revoke the acquisition orders issued because this is considered from a financial aspect in the interest of the Government. In the case of I. Mavronicolas, in which a Court judgment has been delivered, the awarded compensation should be paid provided that the person entitled gives a substantial guarantee (as in para. (a) hereinabove).

(d) *“Preservative” acquisitions for purposes of general public benefit.*

10 The Government should revoke the orders of acquisitions issued”.

15 As a result of the decision of the Council of Ministers of the 20th May, 1976, the Director-General of the Ministry of Communications and Works was asked by the Department of Antiquities to cause an order of revocation of the relevant order of acquisition to be published in the official Gazette with regard to the properties in Ayios Serghios village for the Salamis area among which the sub judice properties were included. It was pointed out therein that in the said properties no work of any kind was carried out and could be considered as falling within category (d) the presevative acquisitions and that the reasoning for the said order of revocation could be the decision No. 14934 of the 20th May, 1976—hereinabove set out.

25 The matter was submitted to the Minister through the Director-General of the Ministry of Communications and Works and the relevant minute (which formed part of the bundle of documents, exhibit 1 before the Court) reads as follows:

30 “The attached order of revocation of Notification No. 381 of 1971 and the order of Acquisition No. 353 of 1972 are submitted for approval and implementation of the decision of the Council of Ministers No. 14.934 dated 20th May, 1976.

35 (2) The above private property was acquired for the purpose of preservation, enhancement and development (συντήρησης, αξιολόγησης και ανάπτυξης) of the ancient monument of Salamis and its surroundings.

(3) The issuing of the attached order of revocation is called for as the purpose of which the order of acquisition

was issued cannot be attained on account of the situation created after the Turkish invasion.

(4) The aforesaid revocation can be made on account of the fact that the acquired property has not as yet been transferred in the name of the Government".

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Following the above, the order annulling the acquisition of certain properties at Ayios Serghios, including those of the appellants was made and published in the official Gazette.

The validity of such order was challenged by the applicants and the learned trial Judge after consideration of the arguments of counsel of both parties and in the light of the material before him dismissed the recourse. In so doing, he dealt at some length in his elaborate judgment with the principles underlining the annulment of administrative acts and decisions under the Greek administrative law as well as the provisions in our law and concluded as follows:

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"I have no difficulty in concluding that the respondent authority in taking the sub judice decision acted within the spirit of the law and the limits of good administration in the exercise of its discretionary power, since the purpose of the acquisition could not be attained the financial benefit enjoyed by the State on account of the revocation of the order of acquisition cannot substantiate a ground of abuse of power in the sense that this acquisition was made to serve a purpose other than the one provided by Law, or that the interests of the owners were not considered. The remedy of the applicants must, therefore, be sought through another process".

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The appellants appealed against such decision, on the following grounds:

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1. The learned trial Judge erroneously found that the acquisition Order "has not deprived the owner of his possession and therefore there is no question of re-installing him to the possession of his property".
2. The learned trial Judge erroneously found that decision No. 14934 of the Council of Ministers was a proper basis for the exercise by the acquiring authority of its

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discretion to revoke the Order and/or that the said decision and the revocation based on it were within the principles of good administration.

- 5 3. The learned trial Judge erroneously found that the factual background of this revocation cannot be the subject of judicial control.
- 10 4. The learned trial Judge erroneously found that there is an impossibility of the attainment of the purpose of the acquisition in the foreseeable future; and that the existence of the antiquities and the need for their preservation etc. does not change the situation.
- 15 5. The learned trial Judge erroneously found that "the respondent authority in taking the sub judge decision acted within the spirit of the Law and the limits of good administration in the exercise of its discretionary powers".
- 20 6. The learned trial Judge erroneously found that the said revocation and the financial benefit enjoyed by the State by it do not constitute an abuse of power in the sense that this acquisition was made to serve a purpose other than one provided by Law.
7. The learned trial Judge erroneously found that the interests of the owners were considered.

In advancing the grounds of appeal, counsel for appellant argued his grounds as falling within two groups: The one group consisting of grounds 2, 4 and 5 touching the principles of revocation of acquisition orders, and the second group consisting of grounds 1, 3, 6 and 7, touching the principles of good administration and/or abuse of powers. In arguing the first group, (grounds 2, 4 and 5), he contended that the discretion of the respondents to revoke the order, was not properly exercised and though section 7 of Law 15/62 gives a wide discretion to the Acquiring Authority, nevertheless, such discretion cannot reach the limits of arbitrariness, as it did in the present case. He further contended that an order for compulsory acquisition cannot be revoked on the ground that the property is not required for the purpose of acquisition, after the process for compensation has started and, therefore, the obligation to pay compensation cannot be abandoned after a reference has been filed in Court

for the assessment of the compensation. He further submitted that the trial Judge erroneously found that there was an impossibility of the attainment of the purpose of the object for which the acquisition was made, counsel submitted, never ceased to exist and there was no impossibility for attaining the objects for which the acquisition was made. The ancient monuments, counsel added, are there, their preservation and maintenance is necessary irrespective of the fact that for the time being they have become inaccessible due to the Turkish occupation. He further added that in this case the Minister in issuing the order for revocation failed to exercise his own discretion and considered himself as bound by the decision taken by the Council of Ministers. Each case, counsel submitted, should have been considered on its own merits and in considering each case, the Minister should have taken into consideration the facts pertaining to it, as by implying a decision taken by the Council of Ministers, he has failed to exercise his own discretion. 5 10 15

In dealing with the remaining grounds, counsel contended that the finding of the trial Judge that the acquisition order has not deprived the owner of his possession and that no question of reinstalling him to the possession of his property arises was wrong, as though the right of possession and ownership was technically vested in the owners, as a result of the acquisition order such a right of possession or ownership was but of no value, since by the acquisition order any right of disposition of the property or freely utilizing it, had been impeded. But assuming that the right still existed, this does not mean that there has not been abuse of administrative process in the present case. 20 25

The allegation that it was in the public interest that such acquisition should be revoked as the Government could not spend money on a project which could not be utilized, due to the Turkish invasion, and, in particular, of the needs which the Government had to face as a result of the refugee problem, is entirely unfounded. The Government, counsel submitted, has no right to abandon any claim on the ancient monuments of Salamis or the rest of Cyprus, and, therefore, the acquisition of property which was necessary for the preservation of such monuments could not be abandoned. 30 35

Counsel for the respondents, on the other hand, submitted that there was a policy decision taken in this case which was 40

necessary as a result of the events which followed the Turkish invasion and the occupation of the area within which the said property was situated. The Minister in this case who was a member of the Council of Ministers which took this policy decision, acted in such a way as to give effect to this general policy. He contended that the decision for the revocation of the acquisition was lawfully taken in the special circumstances of the case and in the exercise of powers vested in the Acquiring Authority under section 7 of the Law, which gives a wide discretion to the administration so to act. It has never been the intention of the legislator to limit the power of the administration to annul an acquisition in cases where there has been substantial change of the factual situation.

In the present case there has been a substantial change of the situation, which was the result of the Turkish occupation, the loss of the Registry books, etc.

Counsel further added that the need to maintain the ancient monuments has never ceased to exist, but the object of maintaining them has ceased. The claim over the ancient monuments has never ceased, but the object of their preservation cannot be accomplished. The Turkish invasion created other physical needs, such as the caring and housing of refugees etc. and spending money for the acquisition of properties where the object of acquisition has ceased to exist would have amounted to a waste of public funds. Taking into consideration the situation created after the Turkish invasion, the Government had to evaluate the needs of the refugees which resulted from the Turkish invasion and the money to be spent for such purpose out of public funds. The fact that the applicant might have suffered any loss, is not such as it might influence the discretionary powers of the Acquiring Authority. In the present case the only action that the Government has taken was the issue of the acquisition order, and it has never taken possession of the property or has deprived the owners from the possession and enjoyment of their property. He concluded, that the applicant in this case failed to establish any abuse of powers and/or that the object of annulling the acquisition was extraneous to the letter and spirit of the Law.

We shall deal briefly with the first ground of appeal which is directed against the finding of the learned trial Judge that

the acquisition order has not deprived the owners of their possession and, therefore, there is no question of reinstalling them to the possession of their properties.

We agree with the learned trial Judge that the question of reinstalling appellants to the possession of their properties does not arise in the present case, as the appellants have never been deprived of the possession of their properties the ownership and possession of which remained vested in them under section 13 of the Compulsory Acquisition of Property Law, 1962 (15/62) and no requisition order has been made in this case depriving them of their possession till the determination of the compensation payable and the vesting of the property to the Acquiring Authority, notwithstanding the fact that the publication of an acquisition order creates a burden on the properties acquisitioned restricting the owners from alienating or charging them or carrying out any works on same. Therefore, ground 1 fails.

Before proceeding to examine the other grounds of law, we find it necessary to embark on the construction of section 7 of the Compulsory Acquisition Law, under which the sub judge decision was taken. The construction of this section has been considered at some length by the learned trial Judge in his judgment (1978) 3 C.L.R. 285 at pp. 297, 298, 300 and 301).

We consider it unnecessary to repeat the whole of such part of the judgment of the learned trial Judge, as we find ourselves in agreement with what is stated therein. At pages 296-297 reference is made by him to the exposition of the law by Kyriacopoulos, Greek Administrative Law, 4th Edition, Vol. C at p. 286, para. 10 and at pages 297, and 298 of the judgment he concludes:

“This acquisition empowering the revocation of an act of acquisition, is similar to our section 7 of the Compulsory Acquisition of Property Law, 1962, which, likewise, sets out as the only prerequisite for the revocation of an acquisition, the fact that same should be made before the payment or the deposit of the compensation, placing no other specific conditions in the exercise of the discretion by the administrative authority concerned. In view, therefore, of this similarity, the same principles regarding the exercise of a discretion found to be applicable in Decision No.

800/1931, should govern the exercise of the discretion under section 7 of our Law”.

And at page 300:

5 “In the exercise of this discretionary power, however, an Acquiring Authority, as every other administrative organ, must observe, in addition to the procedure laid down by the statute, the spirit of the law and the conditions laid down by the general principles of law; it has to act with discretion and not in an absolute or arbitrary manner; 10 the discretion must be exercised within the limits of good administration and must serve the purpose of the acquisition and not be prompted by motives alien to it. The violation of these prerequisites to the exercise of discretion can be the basis of judicial control on the ground of wrong 15 exercise of discretion which amounts in substance to a violation of law.

The contention of learned counsel for the respondents that when there exists a statutory provision regulating the revocation of administrative acts the general principles of administrative law on revocation do not apply—and in this respect I have been referred to the case of *Antoniades v. Republic* (1965) 3 C.L.R. p. 673, at p. 682—though correct as such, has no direct bearing in our case as the issue before me is the manner the discretion given by the 20 statutory provision for revoking an act of acquisition was exercised and not the existence or not of statutory provisions permitting or not the revocation of an administrative act. It is true that wherever there exist such provisions expressly providing for and regulating the question of 25 revocation, the general principles of administrative law are not applicable, the manner the administrative discretion to revoke an act is exercised can be tested as against such general principles of administrative law as for example that of the wrong exercise of discretion or abuse of power. 30 This is how I have understood the proposition laid down in the *Antoniades* case (*supra*) where the learned trial Judge (pp. 682 and 683) also went on and tested the manner the administrative act in that case was revoked as against the general principles of administrative law”.

40 The principles of the Greek Administrative Law concerning the annulment of an acquisition, are useful in construing section

7 of the Compulsory Acquisition Law, No. 15/62. In Kyriacopoulos, Greek Administrative Law, 4th Edition, Vol. C at page 388, we read:

“Also revocation is not allowed after the completion of the procedures of acquisition by settlement because of this a legal situation of subjective rights is created precluding further unilateral act of the administration so long as this is not based on a term or reason in the order of acquisition”.

This is in line with the provisions of sub-section (1) of section 7 of our Law, that a revocation can only take place before the payment or deposit of compensation as provided in the Law.

This position does not arise, as the payment of compensation has never been agreed or finally determined by a decision of the Court. The act of annulment took place in the process of the hearing of a reference for the determination of compensation.

And at p. 386 of the same book, we read the following concerning the legal principles governing the revocation of acts of acquisition.

“The act of acquisition can be revoked by the administration. From the reason that by the issuing of this act the owner of the acquired property acquires a claim for the payment of compensation, in older days it was considered that the administration could not revoke without the consent of the owner such act, but this view has been abandoned early and it has been accepted that the administration may revoke the act since no right is created in favour of the owner so long as the compensation has not been paid (See *Decisions of the Greek Council of State*, 204/1929, 364/1930, 523/1934 etc.). This view constitutes now the prevailing law, the law permitting its revocation within a specified period from the publication of the act so long as the whole or part of the compensation due has not been paid (section 2, para. 1, of A.N. 1731/1939), but the owner of the acquired property may claim the payment of compensation on account of the intervening burdening of his property. The revocation of the acquisition as well as the order of acquisition, as we have already seen, is within the free discretion of the administration. Such revocation, however, must be in accordance with

the principles of good administration, the Council of State being able to control the reasoning of the act revoking the acquisition. Consequently, the act may be annulled for abuse of power if it was issued, for example, for the purpose of reversing the already commenced Court proceedings for the fixing of the compensation.-----

5 Revocation made for the sake of the interest of the State only without taking into consideration and those of the owner can be annulled (είναι ακυρωτέα)—See *Decisions* 10 800/1931 and 108/1932”.

We find it unnecessary to embark at length on the two cases (800/1931 and 108/1972) referred to in Kyriacopoulos, and the principles underlying them, as the learned trial Judge has explicitly done so in his judgment. It suffices here to say briefly

15 that from both these cases it emanates that though under the relevant statutory provisions in Greece, which are similar to section 7 of our Compulsory Acquisition of Property Law, 1962, a decision for acquisition can, at any time, upto the final determination by the Court of the compensation to be paid,

20 be revoked by the Acquiring Authority, nevertheless, such power is not an absolute power but a discretionary one which cannot be exercised arbitrarily but in a proper manner bearing in mind the spirit of the law and the conditions laid down by the general principles of administrative law. Also, that the revocation

25 of an acquisition with the exclusive object of serving the financial interest of the State only, without at the same time taking into consideration the interest of the owner amounts to a wrong exercise of discretion.

Having narrated the facts of the case and bearing in mind

30 the legal principles already expounded we are coming to consider whether the power of the Acquiring Authority under section 7 of the Compulsory Acquisition of Property Law, 1962, has, in the present case, been exercised arbitrarily or with due regard to the principles underlying the exercise of discretionary

35 powers. To reach our conclusion we have to consider, whether (a) there was such considerable change in the factual situation as it existed at the time of the acquisition and the time of revocation as to necessitate the revocation of the acquisition, and

40 (b) in the light of all surrounding circumstances the purpose of the acquisition could be accomplished.

It is an undisputed fact that since July and August, 1974, as a result of the Turkish invasion of Cyprus, about 40 per cent of the territory of Cyprus has been under the occupation of the invading forces and one-third of the whole Greek population of Cyprus which was residing in the occupied area was forced to move away and seek refuge to the free area which remained under the control of the Government of the Republic. Enormous needs had arisen as a result, for the housing, accommodation and relief of the refugees for which all available funds of the Government had to be utilised. In evaluating priorities of expenditure of public funds it was the duty of the Government of the Republic to give priority to the pressing needs of the refugees, for the facing of which, inter alia, land had to be acquired for housing, accommodation and other needs of the refugees and in the circumstances the existing acquisition order for properties in respect of which the purpose of the acquisition had not been achieved or could not be achieved, might have to be revoked.

The purpose of the public benefit for which the present acquisition was made, as mentioned in the notice of acquisition was "for archaeological excavations or the preservation and enhancement of ancient monuments and antiquities or the development of their surroundings". Though the reasons given in such notice appear in the alternative they are nevertheless interwoven and are directed to one target, that of carrying out archaeological excavations in the area of the ancient monuments of Salamis and the preservation and enhancement of such monuments.

As already mentioned the properties in question remained registered in the name of the owners, irrespective of the acquisition order, as the acquisition had not been completed by the payment of compensation either by agreement or by an award of the Court and no excavations or any other work whatsoever was carried out therein by the acquiring authority. At the time when the decision to revoke the acquisition was taken the purpose for which the acquisition order was made could not be attained due to the situation created as a result of the Turkish invasion and the occupation by the Turkish forces of the part of the Republic within which such properties were situated. Not only the purpose could not, at the time of the revocation, be attained, but it could not be foreseeably attainable in the

near future. It is for this reason that the Department of Antiquities expressed the view that the acquisition of the subject property should be revoked.

5 From the material before us we are satisfied, on the one
hand that no works whatsoever were carried on the properties
of the appellants and that the purpose of the acquisition could
not be attained and on the other hand that there was such a
disastrous change in the factual situation as it existed at the
10 time of the acquisition and the time of the revocation due to
the Turkish invasion, as to justify the Government, in the appli-
cation of a general policy for facing needs which were more
pressing than acquisition of properties in respect of which no
work was carried out and which in the circumstances had to be
revoked, in the light of paragraph 3(d) of the submission approved
15 by the Council of Ministers and embodied in decision 14934
to request the appropriate organ entrusted by the Council of
Ministers with the implementation of the decision, namely,
the Minister of Communications and Works, to proceed with
the revocation order. In the circumstances of the present
20 case we agree with the learned trial Judge that there does not
appear to arise a case of misconception of fact and with his
finding (at p. 301) that:-

25 “The appreciation by the administration of the factual
situation that existed at the time the sub judice decision
was taken and the changes that were brought about by
the intervening occupation of part of the island to the
factual conditions upon which the administration relied
upon for the issuing of the act of acquisition cannot be
the subject of judicial control as there does not appear to
30 arise a misconception of fact”.

We find ourselves unable to accede to the contention of
counsel for appellants that the Minister in issuing the revocation
order failed to exercise his own discretion and considered him-
self bound by the decision of the Council of Ministers. The
35 Minister of Communications and Works was a member of
the Committee of Ministers appointed by the Council of Mini-
sters for the study of the subject of the delays in the payment
of compensation for compulsorily acquired properties which
was pending. The said Committee, after consideration of the
40 matter, agreed as to the general policy to be followed in respect

of such acquisitions and its recommendation was embodied in the submission made by the Minister of Justice to the Council of Ministers, which was considered and approved by the Council of Ministers on 20th May, 1976. He was also present at the meeting of the Council of Ministers at which the decision approving the submission made by the Minister of Justice on behalf of the Committee of Ministers was taken and he participated in the taking of such decision. It is clear in this case that the Minister of Communications and Works took an active part in the taking by the Council of Ministers of the policy decision concerning pending acquisitions and therefore it cannot be argued that he failed to exercise any discretion and that he considered himself bound by the decisions of others.

Bearing in mind all the circumstances of the case and in the light of all the material before us, we are satisfied that the respondent authority in taking the sub judice decision did not act arbitrarily or in abuse of power but exercised its discretion in the proper way and without violating the principles of good administration and, we agree with the conclusion reached by the learned trial Judge that the respondent authority "acted within the spirit of the Law and the limits of good administration in the exercise of its discretionary powers".

For the above reasons this appeal fails and is hereby dismissed with no order for costs.

*Appeal dismissed with no order
as to costs.*