1984 February 25

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DESPINA HJILOIZOU AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE DISTRICT OFFICER AS CHAIRMAN OF AYIOS DHOMETIOS IMPROVEMENT BOARD,

Respondents.

(*Case No.* 264/82).

Compulsory acquisition—Abandonment of purpose of—Claim by owners to offer to them back the land for sale—Law applicable is the Law obtaining at the time of the crystallization of the rights of the parties on the 22nd July, 1954, *which is the law under which the land was acquired—In this case section* 38 *of the Villages (Administration and Improvement) Law, Cap.* 243—*By virtue of which the Acquiring Authority has a discretion but no obligation to sell—Land Acquisition Law, Cap.* 226 *not applicable—But even if it were applicable abandonment of purpose took place long after the* 10 *years' period prescribed by section* 13(2)(*a*)(*ii*) *of Cap.* 226 *and, therefore, owners are precluded by lapse of time to any right on the subject property—Article* 23.5 *of the Constitution not applicable.*

Statutes—Repeal—Section 38 *of the Villages (Administration and Improvement) Law, Cap.* 243 *not repealed by the Compulsory Acquisition Law,* 1962 (*Law* 15/62) *either expressly or by implication.*

Villages (Administration and Improvement) Law, Cap. 243—*Section* 38 *of the Law not repealed by the Compulsory Acquisition of Property Law,* 1962 (*Law* 15/62) *either expressly or by implication —Construction of "may" in the above section* 38.

In 1954 the Improvement Board of Ayios Dhometios decided to erect a public market and selected for the purpose an immovable property owned by the applicants situated at Ayios Dhometios. Thereupon as it could not be acquired by agreement it was compulsorily acquired by virtue of the specific provisions of section 36 of the Villages (Administration and Improvement) Law, 1950 (Law 12/50); and following the payment of compensation to the applicants the property vested in the Board. Until to-day the public market has not been erected. The respondent Board rejected the claim of the applicants to offer to them the land back and hence this recourse in which the following issues arose for consideration:

(a) Law applicable.

(b) Has the Board a discretion or an obligation to offer back the land?

(c) In view of the lapse of more than 10 years from the date of acquisition till the date of the alleged abandonment, what are the rights of the applicants under section 13* of the Land Acquisition Law, Cap. 226.

Regarding (a) above Counsel for the respondents submitted that the law applicable is the Villages (Administration and Improvement) Law, now Cap. 243, s.38, under which the subject-property was compulsorily acquired; and counsel for the applicants maintained that land acquired before the coming into operation of the Constitution must be dealt with in the same way as land acquired after the coming into operation of the Constitution for the purpose of offering it back to the owners and, if not so, the law applicable is s.13 of Cap. 226 pursuant to the provisions of s.23(2) of Law 15/62.

Issue (b) turned on the construction of section 38** of Cap. 243.

Held, that the Law applicable to the present case is neither Article 23.5 of the Constitution nor the Land Acquisition Law, nor the Compulsory Acquisition of Property Law, 1962 (Law 15/62); that the Law applicable is the Law obtaining at the time of the crystallization of the rights of the parties, on 22.7.1954,

* Section 13 is quoted at pp. 85-86 post.

** Section 38 is quoted at p. 84 post.

i.e. s.37 of Law No. 12/50, now s.38 of the Villages (Administration and Improvement) Law, Cap. 243, under which the land was acquired by the respondent Board.

Held, further, that section 38 of the Villages (Administration and Improvement) Law, Cap. 243 has not been repealed either expressly or by implication by the Compulsory Acquisition of Property Law, 1962 (Law 15/62).

(2) That the word "may" in section 38 of Cap. 243 is clearly permissive; that it gives a permissive power to the Board to deal with the question of compulsorily acquired immovable property in excess of the extent actually required for the purpose in respect of which it had been acquired; that "may" cannot be interpreted as mandatory in the context of section 38 and it does not impose an obligation on the Board; accordingly the Board has a discretion but no obligation to sell.

(3) That even if there was abandonment of the purposes of acquisition the time of abandonment is long after the 10 years' period prescribed by section 13(2)(a)(ii) of the Land Acquisition Law, Cap. 226; and that, therefore, even if this section were applicable the applicants are precluded by lapse of time to any right on the subject-property.

Application dismissed.

Cases referred to:

Kaniklides v. *Republic*, 2 R.S.C.C. 49 at p. 57;

Pikis v. *Republic* (1967) 3 C.L.R. 562 at pp. 571–572;

Pikis v. *Republic* (1965) 3 C.L.R. 131 at p. 140;

Ramadan v. *Electricity Authority of Cyprus*, 1 R.S.C.C. 49 at 57;

Anastassiou v. *Municipal Commission of Nicosia*, 3 R.S.C.C. 111;

Pikis v. *Republic* (1968) 3 C.L.R. 303;

R. v. *Ratcliffe* [1882] 10 Q.B.D. 74;

Ali and Another v. *Vassiliko Cement Works Ltd.* (1971) 1 C.L.R. 146;

Vassiliko Cement Works Ltd. v. *Violaris* (1975) 1 C.L.R. 256;

Vassiliko Cement Works v. *Republic* (1983) 3 C.L.R. 719:

Sheffield Corporation v. *Luxford, Sheffield Corporation* v. *Morrell* [1929] 2 K.B. 180 at pp. 183, 184;

Re Shuter (*No.* 2) [1959] 3 All E.R. 481 at p. 483;

R. v. *Governor of Brixton Prison, Ex parte Enahore* [1963] 2 All E.R. 477;

Border R.D.C. v. *Roberts* [1950] 1 All E.R. 370.

Recourse.

Recourse against the refusal of the respondent to offer back to applicants property compulsorily acquired in 1954.

Chr. Chrysanthou with *A. Dikigoropoulos*, for the applicants.

K. Michaelides, for the respondents.

Cur. adv. vult.

STYLIANIDES J. read the following judgment. Ayios Dhometios is a village at the western outskirts of Nicosia. On the coming into operation of the Villages (Administration and Improvement) Law, 1950 (Law No. 12/50) it was declared to be an improvement area and the local government is run by the Improvement Board.

Early in 1954 the Improvement Board of Ayios Dhometios decided to erect a public market and selected for the purpose an immovable property owned by the applicants situated at Ayios Dhometions, being part of Plot 49, Block "N", comprising 2 donums, 2 evleks and 240 sq. ft. or thereabout, as delineated in red on the Government survey plan signed by the Chairman of Ayios Dhometions Improvement Board dated 21st April, 1954. Thereupon, as it could not be acquired by agreement, it was compulsorily acquired in virtue of the specific provisions of s.36 of Law No. 12/50.

On 4th May, 1954, notice of acquisition under s. 36(2) was published in the Official Gazette under Notification No. 324 and the Governor approved the plan submitted and sanctioned the acquisition of such immovable property on 14th July, 1954 - (See Notification No. 459 under s. 36(4) published in Supplement No. 3 to the Cyprus Gazette of 22nd July, 1954 (exhibit No. 5)). As no agreement was reached between the acquiring Improvement Board and the owners of the land on the compen-

sation, Application No. 85/54 was filed on behalf of the Improvement Board whereby it prayed for reference by the Court to an arbitrator for the determination of the amount of the compensation. (See exhibit No. 2).

That application was based on the Villages (Administration and Improvement) Laws 1950-53 and the Acquisition of Land Law, Cap. 233, and Law 26/52, as s. 36(4) of the Villages (Administration and Improvement) Law provided that "if the owner of the immovable property does not agree with the Board as to the sum to be paid as compensation for it, the same shall be determined in accordance with the provisions of any law in force for the time being, providing for the acquisition of immovable property for public purposes."

The compensation was paid and the property vested in the Board. Until today the public market has not been erected.

In 1966 the owners started claiming the offer to them of the land in question on the ground that the undertaking in connection with which the land had been acquired was abandoned. (See letter dated 10.6.66 - Blue 12 in the file, exhibit No. 3).

On 19.8.66 the Chairman of the Board informed the applicants' advocate that the undertaking had not been abandoned. (See letters of 19.8.66 and 19.10.66). Drawings were prepared by architects and tenders were invited in 1967.

In 1968 the Board decided to make certain modifications to the drawings. Due to financial difficulties and other reasons the project has not yet been implemented. The applicants persistently as from 1973 demanded unsuccessfully the offer to them of the land.

On 13.4.82 the Chairman of the Improvement Board sent to applicants' advocate the following letter:-

"Κύριε,

Ἐπιθυμῶ νὰ ἀναφερθῶ εἰς τὴν ἐπιστολήν σας ἡμερ. 9.3. 1982, καὶ σᾶς πληροφορῶ ὅτι τὸ Συμβούλιον Βελτιώσεως Ἁγίου Δομετίου, οὐδέποτε ἐγκατέλειψε τὸν σκοπὸν διὰ τὸν ὁποῖον ἐγένετο ἡ ἀναγκαστικὴ ἀπαλλοτρίωσις, καὶ ὅτι

προτίθεται νὰ προχωρήσει προσεχῶς εἰς τὴν πραγμάτωσίν του ἤτοι τὴν ἀνέγερσιν δημοσίας ἀγορᾶς.

Τὰ σχετικὰ σχέδια ὑφίστανται ὁ δὲ λόγος τῆς μὴ ὑλοποιήσεως εἰσέτι τῆς ὡς ἄνω προθέσεως τοῦ Συμβουλίου ὀφείλεται εἰς οἰκονομικοὺς λόγους λόγῳ τῶν ἐκ τῆς Τουρκικῆς ἀνταρσίας δημιουργηθεισῶν συνθηκῶν τοῦ ἔτους 1963 καὶ ἐντεῦθεν καὶ κυρίως λόγῳ τῆς κατσλήψεως μεγάλης περιοχῆς τοῦ Συμβουλίου ὑπὸ τῶν Τούρκων".

("Sir,

I wish to refer to your letter dated 9.3.1982, and to inform you that the Improvement Board of Ayios Dhometions, has never abandoned the purpose for which the compulsory acquisition was made, and that it intends to proceed in the near future with its realization i.e. the erection of a municipal market.

The relative plans are in existence and the reason for the non-materialization as yet of the above intention of the Board is due to financial reasons as a result of the circumstances created by the Turkish insurrection of 1963 and onwards and especially due to the occupation of a large area of the Improvement Board by the Turks").

As a result of this letter this recourse ensued whereby the applicants seek "declaration that the act and/or decision of the respondents communicated to them through their advocate under cover of letter dated 13.4.82 whereby respondents refused to offer back to the applicants the property compulsorily acquired in 1954 under Notification No. 459 in the Official Gazette No. 3771 dated 22.7.54 is null and void and of no effect whatsoever having been made and/or taken contrary to the provisions of the Law and/or of the Constitution and/or in excess and/or abuse of their powers if any."

The respondents in their opposition raise a number of points of law. At the commencement of the hearing on the application of both counsel the Court directed that the said points of law be determined preliminary to the hearing of the substance of the case. The points of law raised are:-

(1) Law applicable to the present case;

(2) Has the Board a discretion or an obligation to offer back the land?

(3) In view of the lapse of more than 10 years from the date of acquisition till the date of the alleged abandonment, what are the rights of the applicants under s.13 of the Land Acquisition Law, Cap. 226? And,

(4) Is the act challenged an executory administrative act or a confirmatory one, and, therefore, the recourse is out of time?

QUESTION No. 1 - LAW APPLICABLE:

Counsel for the respondents submitted that the law applicable is the Villages (Administration and Improvement) Law, now Cap. 243, s.38, under which the subject-property was compulsorily acquired.

Counsel for the applicants maintained that land acquired before the coming into operation of the Constitution must be dealt with in the same way as land acquired after the coming into operation of the Constitution for the purpose of offering it back to the owners and, if not so, the law applicable is s.13 of Cap. 226 pursuant to the provisions of s.23(2) of Law 15/62. He based his argument on dicta in the judgments of *Jason Kaniklides v. The Republic,* 2 R.S.C.C. 49, at p. 57, and *Pikis v. The Republic,* (1967) 3 C.L.R. 562, at pp. 571-72.

In this country there was a general law governing compulsory acquisition enacted in 1899 - the Land Acquisition Law, Cap. 233, of the 1949 edition.

On 2.6.50 the Villages (Administration and Improvement) Law, 1950 (Law No. 12/50) was enacted. Section 36 thereof provided for compulsory acquisition of immovable property which could not be acquired by agreement. Under subsection (4) if the owner of the immovable property does not agree with the Board as to the sum to be paid as compensation for it, the sum shall be determined in accordance with the provisions of any law in force for the time being, providing for acquisition of immovable property for public purposes.

In the present case no agreement was reached and reference to the Court was made under the Land Acquisition Law. This

is the reason why exhibit No. 2 is intituled "In the Matter of the Villages (Administration and Improvement) Law, 1950-1953 and Land Acquisition Law, Cap. 233, and Law 26/52". It is only the mechanism for the determination of the compensation provided in the general law that was used in accordance with the specific provisions of s.36(4) of Law 12/50.

As it is clear from exhibit No. 4 - Notice under s. 36(2) - and exhibit No. 5 - Notification under s.36(4) - the acquisition was made under the specific law (No. 12/50) for the objects stated in the notice and the notification.

In *Kaniklides* case (supra), a case decided before the enactment of Law 15/62, it was said at p.57:-

> "As to any question concerning the alleged non-attainment of the purposes for which the land in question had bee acquired since the date of the coming into operation of th Constitution, the matter is governed by paragraph 5 o Article 23, and the corresponding provisions of Cap. 22 must, in accordance with Article 188 of the Constitution be read subject to the said paragraph 5".

In *Pikis v. The Republic of Cyprus,* (1965) 3 C.L.R. 131, a p.140, Triantafyllides, J., as he then was said:-

> "Without deciding in this Case whether or not Articl 23(5) of the Constitution can apply to the case of a com pulsory acquisition, which though it was completed befor the 16th August, 1960, its purpose has not yet been attaine even after the said date - and *Kaniklides and the Republi* (2 R.S.C.C. p.49, at p.57) seems to point to such a conclu sion - I have no doubt ".

After the establishment of the Republic and pursuant to Art 23 of the Constitution the Compulsory Acquisition Law, No 15/62, was enacted repealing the Land Acquisition Law, Cap 226 in the 1959 edition of the Laws of Cyprus (Cap. 233 of th 1949 edition as amended by Laws 26/52, 43/55 and 22/56)

In *Pikis v. The Republic,* (1967) 3 C.L.R. 562, Triantafyllides J., as he then was, said at p.572:-

> "I might state, also, at this stage, that I cannot agree either, with a submission regarding the non-applicability o

section 13 of Cap. 226 on the ground that the matter is governed by the law as it stood when the property of the Applicant was compulsorily acquired in May, 1952, when in the place of the said section 13 there was in force section 19 of Cap. 233 (as the Land Acquisition Law was then to be found in the 1949 edition of the Cyprus Statutes). In my opinion the disposal of compulsorily acquired land, when it becomes surplus or is no longer required, is not governed by the law in force at the time of the acquisition, but by the law in force when the question of disposal arises; and such question arose, if at all, in the present Case, in 1955, when the Leper Farm was moved to Larnaca; and then there was in force section 13 of Cap. 226."

It is to be noted that Cap. 233 was amended by s.10 of Law 26/52 of 7.11.52 and that amended section was s.19 of Cap. 233. In the 1959 edition of the Laws the provisions of that section are to be found in s.13 of Cap. 226.

Paragraph 5 of Article 23 of the Constitution reads as follows:-

"5. Οἱαδήποτε ἀκίνητος ἰδιοκτησία, ἢ δικαίωμα ἢ συμφέρον ἐπὶ τοιαύτης ἰδιοκτησίας ἀπαλλοτριωθεῖσα ἀναγκαστικῶς θὰ χρησιμοποιηθῇ ἀποκλειστικῶς πρὸς τὸν δι' ὃν ἀπηλλοτριώθη σκοπόν. Ἐὰν ἐντὸς τριῶν ἐτῶν ἀπὸ τῆς ἀπαλλοτριώσεως δὲν καταστῇ ἐφικτὸς ὁ τοιοῦτος σκοπός, ἡ ἀπαλλοτριώσασα ἀρχή, εὐθὺς μετὰ τὴν ἐκπνοὴν τῆς ρηθείσης προθεσμίας τῶν τριῶν ἐτῶν ὑποχρεοῦται νὰ προσφέρῃ τὴν ἰδιοκτησίαν ἐπὶ καταβολῇ τῆς τιμῆς κτήσεως εἰς τὸ πρόσωπον παρ' οὗ ἀπηλλοτρίωσεν αὐτήν. Τὸ πρόσωπον τοῦτο δικαιοῦται ἐντὸς τριῶν μηνῶν ἀπὸ τῆς λήψεως τῆς προσφορᾶς νὰ γνωστοποιήσῃ τὴν ἀποδοχὴν ἢ μὴ ταύτης. Ἐφ' ὅσον δὲ γνωστοποιήσῃ ὅτι ἀποδέχεται τὴν προσφοράν, ἡ ἰδιοκτησία ἐπιστρέφεται εὐθὺς ἅμα ἀποδοθῇ παρὰ τοῦ προσώπου τὸ τίμημα ἐντὸς περαιτέρω προθεσμίας τριῶν μηνῶν ἀπὸ τῆς τοιαύτης ἀποδοχῆς".

("5. Any immovable property or any right over or interest in any such property compulsorily acquired shall only be used for the purpose for which it has been acquired. If within three years of the acquisition such purpose has not been attained, the acquiring authority shall, immediately after the expiration of the said period of three years, offer

the property at the price it has been acquired to the person from whom it has been acquired. Such person shall be entitled within three months of the receipt of such offer to signify his acceptance or non-acceptance of the offer, and if he signifies acceptance, such property shall be returned to him immediately after his returning such price within a further period of three months from such acceptance").

Paragraph 3 of Article 23.3 provides:-

"Restrictions or limitations which are absolutely necessary in the interest of the public safety etc. may be imposed by law on the exercise of such right.

Just compensation shall be promplty paid for any such restrictions or limitations which materially decrease the economic value of such property....".

In *Hussein Ramadan and Electricity Authority of Cyprus and Another*, 1 R.S.C.C. 49, it was held at p.57:-

"Paragraph 3 of Article 23 is not as a rule applicable to restrictions or limitations lawfully existing before the coming into force of the Constitution on the 16th August, 1960, and which continue to exist, without contravening the Constitution, after that day. It can be resorted to in respect of restrictions or limitations which have been imposed after the 16th August, 1960."

This was affirmed in *Maria Costa Anastassiadou and Others v. The Municipal Commission of Nicosia*, 3 R.S.C.C. 111.

In *Pikis v. The Republic*, (1968) 3 C.L.R. 303, the Full Bench dealing with the appeal of Case No. 12/66 (reported in (1967) 3 C.L.R. 562, above referred to) held that the rights of the parties crystallized at the time of the expropriation when the relevant acquisition order was published in the Official Gazette. Vassiliades, P., in delivering the judgment of the Court said at p.307:-

"The claim is based, as already stated, on the provisions of section 13 of the Land Acquisition Law (now Cap. 226, in the 1959 - Edition - of the Cyprus Statutes) as it stood at the time of the claim in April 1961. The provisions in this section were first introduced in the Land Acquisition

Law on the 7th November, 1952, as an amendment by Law No. 26 of 1952. It is common ground that, but for this amendment, such a claim could not be made; and no such right could be said to exist.

It is the case of the Appellant that the effect of the amendment in question, was to create the right claimed, by virtue of which, the Appellant seeks the relief pursued by this recourse. Learned counsel on his behalf based his client's claim on the wording of the section, particularly the words '. the land had been acquired' in line 8; and submitted that the Appellant was entitled to claim that property which 'had been acquired' under the Land Acquisition Law, and was not actually used for the purposes of the original public utility project, be offered back to him as the expropriated owner, as provided in section 13 after the amendment in November 1952.

I am clearly of opinion that it was neither the intention of the legislator in enacting the amendment introduced by Law 26 of 1952, nor is it the effect of the amendment to create such a right in connection with expropriations effected prior to the amendment. Had the legislator intended such a result, he would have used language to that effect. In my opinion the rights of the parties herein crystallized at the time of the expropriation on May 7, 1952, when Notification 188 was published in the Official Gazette. This, I think, is quite sufficient to dispose of the application on its merits. And I, therefore, find it unnecessary to enter into the other matters raised in this appeal; and for that matter, into the other reasons on which the trial Judge founded his decision. So long as I hold the view that no such a right existed in November 1952 when Law 26 of 1952 introduced section 13 in its present form, and no such a right was created by the section in respect of earlier expropriations, I am of the opinion that the recourse must fail".

The rights of the parties in the present case crystallized on the date of the publication of the notification on 22.7.1954—(see exhibit No. 5). The constitutional provisions of Article 23 do not apply, firstly, because the acquisition took place long before the coming into operation of the Constitution and,

secondly, because the rights of the parties crystallized on the date of the acquisition and it was not the intention of the drafters of the Constitution to bestow rights on persons who had none on the coming into operation of the Constitution. The Constitution is perspective and not retrospective.

The constitutional provisions were embodied in s.15 of Law 15/62. They apply to property acquired after the coming into operation of the Constitution. Section 23(2) of Law 15/62 reads:-

"(2) Τηρουμένων τῶν διατάξεων τοῦ ἐδαφίου (1) τοῦ ἄρθρου 14, ἀνεξαρτήτως ὅμως πάσης ἑτέρας διατάξεως τοῦ παρόντος Νόμου, ἀκίνητος ἰδιοκτησία ἀπαλλοτριωθεῖσα πρὸ τῆς ἐνάρξεως τῆς ἰσχύος τοῦ παρόντος Νόμου, δυνάμει τῶν διατάξεων τῆς τότε ἐν ἰσχύι νομοθεσίας, ἥτις εἴτε ἀποδεικνύεται ὅτι ὑπερβαίνει τὰς πραγματικὰς ἀνάγκας, ἢ μὴ οὖσα περαιτέρω ἀναγκαίο, διὰ τὸν σκοπὸν δι' ὃν ἐγένετο ἡ ἀπαλλοτρίωσις, δύναται ἰὰ διατεθῇ καθ' ὃν τρόπον προβλέπεται ἐν τῷ περι 'Απαλλοτριώσεως Γαιῶν Νόμῳ τῷ καταργηθέντι διὰ τοῦ παρόντος Νόμου, ὡς ἐὰν ὁ παρὼν Νόμος δὲν ἐθεσπίζετο"

("(2) Subject to the provisions of sub-section (1) of section 14 but notwithstanding any other provision of this Law, any immovable property acquired before the coming into operation of this Law, under the provisions of legislation then in force, and later found to be in excess of the extent actually required or to be no longer required for the purpose of which it has been acquired may be disposed of as provided in the Land Acquisition Law repealed by this Law, as if this Law had not been enacted").

This is a saving provision; it safeguards the rights of owners whose property was compulsorily acquired prior to independence. This is consonant to s.10(2)(c) of the Interpretation Law, Cap. 1, that reads:-

"10. (1)

(2) Where a Law repeals any other enactment, then, unless the contrary intention appears, the repeal shall not -

(a)

(b)

(c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed".

Law 15/62 repealed expressly the Compulsory Acquisition of Land Law, Cap. 226, and the Compensation Assessment Tribunal Law, Cap. 216. The wording of s.24(2) is significant in that it provides that any reference in any other law to the Compulsory Acquisition of Land Law, Cap. 226, is deemed as reference to the present Law and the provisions of any such Law shall be adopted mutatis mutandis to the provisions of the present Law.

It was submitted that the General Law No. 15/62 by implication repealed the provisions of s.38 of the Villages (Administration and Improvement) Law.

The Compulsory Acquisition Law No. 15/62 was enacted belately pursuant to the directive of Article 23.4(a) of the Constitution that compulsory acquisition will be regulated by a general law to be enacted within a year from the date of the coming into operation of the Constitution. "General Law" in this sense does not mean a general law in contradistinction to special laws but a comprehensive Law of a very special application.

With regard to repeal by implication in *Halsbury's Laws of England*, 4th Edition, Volume 32, paragraph 966, it is stated:-

"Repeal by implication is not favoured by the Courts, for it is to be presumed that Parliament would not intend to effect so important a matter as the repeal of a law without expressing its intention to do so. However, if provisions are enacted which cannot be reconciled with those of an existing statute, the only inference possible is that, unless it failed to address its mind to the question, Parliament intended that the provisions of the existing statute should cease to have effect, and an intention so evinced is as effective as one expressed in terms.

The rule is, therefore, that one provision repeals another by implication if, but only if, it is so inconsistent with or repugnant to that other that the two are incapable of standing together. If it is reasonably possible so to construe the provisions as to give effect to both, that must be done,

and their reconciliation must in particular be attempted if the later statute provides for its construction as one with the earlier, thereby indicating that Parliament regarded them as compatible, or if the repeals expressly effected by the later statute are so detailed that failure to include the earlier provision among them must be regarded as such an indication".

Other laws were expressly repealed by Law No. 15/62. The provisions about compulsory acquisition, and particularly s.38 of the Villages (Administration and Improvement) Law, were neither repealed expressly nor there is any indication of a particular intention to do so. It is always assumed that Parliament knew the existing state of the Law. The omission to repeal expressly this particular statutory provision is a strong indication of the intention not to repeal it. (*R.* v. *Ratcliffe*, [1882] 10 Q.B.D. 74).

The same view was taken by the Supreme Court with regard to the Cement Industry (Encouragement and Control) Law, Cap. 130; and the Mines and Quarries (Regulation) Law, Cap. 270. in *Ali and Another* v. *Vassiliko Cement Works Ltd.*, (1971) 1 C.L.R. 146, and *Vassiliko Cement Works Ltd.* v. *Ioannis Lambrou Violaris*, (1975) 1 C.L.R. 256.

The principle of "generalia specialibus non derogant" applies to the present case. The Court leans against the repeal of Laws. (*Vassiliko Cement Works* v. *The Republic*, (1983) 3 C.L.R. 719).

In conclusion the Law applicable to the present case is neither Article 23.5 of the Constitution nor the Compulsory Acquisition Law, Cap. 226, nor Law No. 15/62. The Law applicable is the Law obtaining at the time of the crystallization of the rights of the parties, on 22.7.1954, i.e. s.37 of Law No. 12/50, now s. 38 of the Villages (Administration and Improvement) Law, Cap. 243, under which the land was acquired by the respondent Board.

Question No. 2:

As already said, the Law applicable is the Villages (Administration and Improvement) Law and particularly s. 38 (s.37 in the 1949 edition of the Laws).

Rival arguments were put forward on the interpretation of this section. It reads:-

"38. Any Board may, with the consent of the Administrative Secretary, sell, lease or exchange any immovable property compulsorily acquired under the provisions of this Law in excess of the extent actually required for the purposes in respect of which it has been acquired:

Provided that the person from whom the immovable property was acquired shall have the right to pre-emption at the price at which it was acquired from him by the Board or, if only a portion of such immovable property is in excess of requirements, at a price proportionate to that at which the whole was acquired from him".

Counsel for the applicants argued that "may" should be interpreted as "must" and that consequently the Improvement Board had a duty to dispose of the land no longer required for the purposes in respect of which it had been acquired and, according to the proviso of the said section, offer the land to the owners at the price at which it was acquired from them as they have a right to pre-emption.

Counsel for the respondents, on the other hand, submitted that "must" bears its ordinary meaning. In the context of this section it conferred only a power on the Improvement Board: the power was either to sell, lease or exchange, and this subject to the consent of another authority, the Colonial Secretary—later the Administrative Secretary.

"May" is permissive or enabling—"must" is mandatory and imperative—in their ordinary usage and meaning. There are cases in which, for various reasons, as soon as the person who is within the statute is entrusted with the power it becomes his duty to exercise it. One of those cases is where he applied to use the power which the Act gives him in order to enforce the legal right of the applicant. (*Sheffield Corporation* v. *Luxford, Sheffield Corporation* v. *Morrell*, [1929] 2 K.B. 180, D.C., per Talbot, J., at pp. 183, 184).

In the cases to which the Court was referred by Mr. Dikigoropoulos, "may" was construed as mandatory in view of the context of the statutory provision, the wording that followed

"may" and the duty imposed on the relevant authority. (*Re Shuter* (*No.* 2), [1959] 3 All E.R. 481, at p. 483; *R. v. Governor of Brixton Prison, ex-parte Enahore*, [1963] 2 All E.R. 477; *Border R.D.C.* v. *Roberts*, [1950] 1 All E.R. 370).

In s.38 "may" is clearly permissive. It gives a permissive power to the Board, subject to the consent of the Administrative Secretary (now the Minister of the Interior—Article 188.3(c) of the Constitution), to deal with the question of compulsorily acquired immovable property in excess of the extent actually required for the purposes in respect of which it had been acquired in three different ways: either to sell, lease or exchange. "May" cannot be interpreted as mandatory in the context of this section. It does not impose an obligation on the Board. If an imperative meaning is attributed to "may", then what would be expected from the Board to do as the three powers are completely different in nature. The proviso is only applicable when the Board exercises its power to sell. If they decide to sell, then the owners have a right of pre-emption. The property has to be offered to them at the price at which it was acquired from them, give them the right of first refusal and then sell to somebody else. If the Board does not decide to sell, then the proviso is inapplicable. The word "may" is distinctly a word of permission only; it is an enabling and empowering word. The Board has a discretion but no obligation to sell.

QUESTION No. 3:

If the provision of s.13 of the general law—Land Acquisition Law—were the law applicable, again the applicants are faced with an unsurmountable obstacle. The acquisition took place in July 1954. Definitely, in 1967 the purpose for which the property had been acquired was not abandoned as the respondent Board had prepared plans and invited tenders for the erection of the public market. Mr. Dikigoropoulos submitted that in 1981 the object was abandoned.

Section 13(2)(a) of the Land Acquisition Law, Cap. 226, reads:-

"13. (1) . . . . . .

(2) (a) Before any sale as in subsection (1), the land shall, unless—

(i) it has, in the meantime, been built upon or used for building purposes; or

(ii) the abandonment, as in the said subsection provided, takes place more than ten years after the date of the acquisition,

be offered for sale, as in paragraph (b) of this subsection provided, to the person from whom the land has been acquired who shall signify his desire to purchase the land within six weeks from the date when the offer was made, otherwise he shall be deemed to have refused the offer".

This creates a right of pre-emption for the owner if the abandonment takes place before the expiration of 10 years from the date of acquisition.

In this case the respondent does not admit that the object has been abandoned. The applicants' contention is that abandonment took place. The time of abandonment, however, is long after the 10 years' period prescribed by s. 13(2)(a)(ii). Therefore, even if this section were applicable, the applicants are precluded by lapse of time to any right on the subject-property.

In view of the above I deem it unnecessary to embark on the fourth question, i.e. whether the contents of the letter of 13.4. 1982 amount to an administrative executory act or a confirmatory one.

In the result this recourse fails and it is hereby dismissed but in the circumstances no order as to costs is made.

Recourse dismissed. No order as to costs.