1985 August 10

[L. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

DEMETRIS PANTELI HADJILOUCA AS ADMINISTRATOR OF THE ESTATE OF DECEASED PANTELIS HADJILOUCA,

Applicant,

v.

THE COUNCIL OF MINISTERS,

Respondents.

(Case No. 213/70).

Compulsory acquisition—Article 23.5 of the Constitution—Law 15/1962 ss. 15 and 23(2)—Cap. 226 s. 13 and Cap. 166 s. 84(3)—Land compulsorily acquired under Cap. 166 before the coming into operation of the Constitution—Purpose of acquisition abandoned after the coming into operation of the Constitution and of Law 15/1962—Claim for the return of such property on the same terms that it was acquired made by the administrator of the estate of its former owner—The rights of parties with respect to the return of the property crystallize at the time of acquisition.

The applicant is the administrator of the estate of P.H., who died on the 6.8.1960. The deceased was the owner of a plot of land which was compulsorily acquired for "School Purposes" by notification published on the 25.3.1954 under s. 76 of the Elementary Education Law, Cap. 203 (now s. 78 of Cap. 166). The sum of £180 was paid to the deceased and the property was registered in the name of the village authority of Limnia. The purpose of acquisition was abandoned in 1968. The applicant claimed the return of the property on the same terms that it was acquired. The Attorney-General advised that the property could not be used for the building of houses

of teachers as proposed by the school Committee of the above village and that there was no obligation under the Law to return it to its former owner. In view of the said advice the Council of Ministers dismissed the application for the return of the property. This decision was communicated to applicant's advocate by letter dated 11.5.1970. As a result the present recourse was filed.

The submission of counsel for the applicant was that as the property became surplus property or property not required any longer for the purposes of the acquisition, the provisions of section 23(2) of Law 15/1962 are applicable and, therefore, the proper law to be applied is section 13 of Cap. 226 which, in view of the provisions of Art. 188 of the Constitution, must be read subject of the provisions of Art. 23.5 of the Constitution. In the alternative counsel submitted that even if Law 15/1962 is not applicable, Art. 23.5 of the Constitution applies.

Held, dismissing the recourse (1) The rights of the parties, with respect to the return of property cumpulsorily acquired, crystallize at the time of the acquisition. The provisions of Art. 23.5 of the Constitution do not apply in the present case because the acquisition took place in 1954, long before the coming into operation of the Constitution and the rights of the parties had already crystalized in 1954.

(2) The provisions of the Compulsory Acquisition of Property Law 15/1962 do not apply in the present case since it is made clear by section 15(1) of the said Law that they applied to properties acquired after the coming into operation of the Constitution.

(3) Section 23(2) of Law 15/1962 applies in the present case as it is applicable and applicable only to cases where land compulsorily acquired before the date of the coming into force of Law 15/1962 turns out to be surplus land or no longer required in relation to the object of its acquisition after the date of coming into force of Law 15/1962. As a result of the application of s. 23(2), section 13 of Cap. 226 is applicable in the present case. In the case of *HadjiLoizou* (infra) the view was taken that since no repeal of any other Law is made by Law

15/1962 (except Caps. 226 and 216) the proper Law to be applied was not Cap. 226 but the Law under which the acquisition was made, which, in the present case is, Cap. 166.

(4) The question, however, which of the two aforesaid Laws (Cap. 226 - Cap.166) is applicable in the present case is immaterial, because no provision is made in either of them for the return of the property compulsorily acquired at the acquisition price.

Recourse dismissed.
No order as to costs.

Cases referred to:

Kaniklides v. *The Republic,* 2 R.S.C.C. 49;

Ktenas v. *The Republic,* (1966) 3 C.L.R. 64;

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

HjiLoizou and others v. *The Republic,* (1984) 3 C.L.R. 70.

Recourse.

Recourse against the refusal of the respondents to return to the heirs of the late Pantelis HadjiLouca the property under plot No. 209 of Sheet/plan 24/25 situated at Limnia village which had been compulsorily acquired and the purpose for the acquisition had been abandoned.

Ch. Mylonas, for the applicant.

Cl. Antoniades, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

L. LOIZOU J. read the following judgment. The applicant prays for a declaration that the decision of the respondents not to return to the heirs of the late Pantelis HadjiLouca the property plot No. 209 of Sheet/plan 24/25 situated at Limnia village which had been compulsorily acquired and the purpose of the acquisition had been abandoned, is null and void and of no legal effect.

The applicant is the administrator of the estate of the deceased Pantelis HadjiLouca, late of Limnia in the district of Famagusta, who died on the 6th August, 1960.

The deceased was the owner of plot No. 209, Sheet/plan 24/25 at Limnia village, under registration No. 1281, of an extent of two donums and two evleks. The said property was compulsorily acquired, by notification No. 203 published in the official Gazette of the 25th March, 1954, under s. 76 of The Elementary Education Law Cap. 203 (now s. 78 of Cap. 166) for "school purposes" which it was later decided to use for the erection of a new school building. The sum of £180, having been agreed by the parties, was paid to the deceased and the property was registered in the name of the village authority of Limnia.

In September, 1968, the village authority started erecting the school building on certain other property, more specifically on hali-land granted to them by the government.

The applicant applied together with the other heirs of the deceaced (to be referred to as the applicants) through their advocate, to the District Officer of Famagusta for the return of the property since the purpose of the acquisition had not been attained. The District Officer wrote to the Director-General of the Ministry of Education a letter dated 31st October, 1968, (attached to the Opposition) informing him about applicants' application and stating that the village authority was not willing to return the property at the same price as same was acquired and also expressed the intention of building on the plot in question houses for use by the teachers but since they did not know whether this could be done the views of the Ministry were sought on the matter.

The Ministry relying on the fact that the acquisition was made for "school purposes" and not for the specific purpose of the erection of a school building, informed the District Officer that in its view the School Committee of Limnia was not bound to return the property if they intended to use it for building houses for teachers. The District Officer informed the applicants accordingly who, as a result, addressed through their advocate, a letter dated 11th January,

1969, to the Council of Ministers (exhibit 1) claiming the return of the said property, under Article 23.5 of the Constitution, on the ground that the purpose for which it had been acquired was abandoned, as far as the property in question was concerned, and it was, therefore, surplus property. The matter was then put before the Attorney-General for his views who advised that the property could not be used for the building of houses for the teachers but there was no obligation, under the Law to return it to its owners.

The Ministry of Education eventually sent a letter to the District Officer dated 25th August, 1969 (exhibit 5) informing him that the matter would be discussed at a meeting between applicants' advocate and a counsel of the Republic. As a result of the said meeting, which took place on the 17th October, 1969, applicants' advocate addressed a letter dated 15th November, 1969 (exhibit 6) to the respondents setting down what in his view the legal position was and requesting to have their final reply as to whether they were prepared to return the property to his clients at the price at which it was acquired. The advice of the Attorney-General was sought once more and he again advised that there was no obligation to return the property to its previous owner. The matter was then put before the Council of Ministers, by submission of the Ministry of Education No. 839169 dated 5th December, 1969 (exhibit 10) and on the 18th December, 1969, they decided "under the circumstances stated in the Submission and in view of the advice of the Attorney-General of the Republic, to dismiss the said application" (decision No. 9281 11 attached to the Opposition).

The decision of the Council of Ministers was communicated to applicants' advocate by letter dated 11th May, 1970 (exhibit 8) as a result of which the present recourse was filed.

Counsel for applicant submitted that the property in question is surplus property or property not required any longer for the purposes of the acquisition and s. 23(2) of Law 15/62, which provides for properties compulsorily acquired before the coming into operation of the said Law,

applies and that, therefore, the proper Law to be applied is s. 13 of Cap. 226 which, must be read subject to the provisions of Article 23.5 of the Constitution in view of the provisions of Article 188 thereof. He also argued, in the alternative, that even if Law 15/62 is not applicable, Article 23.5 of the Constitution applies.

Counsel for the respondents simply adopted the submission to the Council of Ministers (exhibit 10) which contains the advice of the Attorney-General of the Republic.

The claim of the applicants is for the return of the property on the same terms that it was acquired, that is by refunding to the acquiring authority the sum of £180 which was paid to the deceased at the time of the acquisition. Such a course is open to an applicant either under Article 23.5 of the Constitution or under s. 15 of Law 15/62.

In the case of *Kaniklides* v. *The Republic*, 2 R.S.C.C. 49, it was held, at p. 57, that:

> "As to any question concerning the alleged non-atainment of the purposes for which the land in question had been acquired since the date of the coming into operation of the Constitution, the matter is governed by paragraph 5 of Article 23, and the corresponding provisions of CAP 226 must, in accordance with Article 188 of the Constitution, be read subject to the said paragraph."

In *Ktenas* v. *The Republic* (1966) 3 C.L.R. 64 Triantafyllides J., as he then was, expressed at pp. 75-76 the view, with regard to Article 23.5 of the Constitution that:-

> "Such Article came into effect together with the Constitution, but if it is at all applicable to an acquisition effected before then, it would only be so applicable in case the non-attainment of the purpose of the acquisition has taken place after the 16th August, 1960, (vide in this respect also *Kaniklides and the Republic*, 2 R.S.C.C., p. 49)."

Later on it was held by the Full Bench in the case of *Pikis* v. *The Republic* (1968) 3 C.L.R. 303, at pp. 307-308

that the rights of the parties, with respect to the return of property acquired, crystalize at the time of the expropriation, that is the time of the acquisition and as a consequence the Law applicable is the Law in force at the time of the acquisition. In that case, however, no question of the applicability of Article 23.5 arose.

Such a question arose in the case of *HjiLoizou and Others* v. *The Republic* (1984) 3 C.L.R. 70, where it was held, by Stylianides, J., at pp. 80-81, after making reference to the *Pikis* case (supra) that:-

> "The rights of the parties in the present case crystalized 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 crystalized 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 prospective and not retrospective."

It is clear from the above that the provisions of Article 23.5 of the Constitution do not apply in the present case, where the acquisition took place in 1954, long before the coming into operation of the Constitution and the rights of the parties had already crystalized in 1954.

Similarly, the provisions of the Compulsory Acquisition of Property Law, 1962 (Law 15/62), which embody the provisions of Article 23 of the Constitution in this respect, do not apply since it is made clear by s. 15(1) that they apply to properties acquired after the coming into operation of the Constitution.

With regard to the applicability of s. 23(2) of Law 15/62, counsel for applicants argued that if it applies we must go to s. 13 of Cap. 266 which, however, in view of Article 188, must be read subject to the provisions of Article 23.5 of the Constitution, so that paragraph 13 (2) (a) (ii) relating to the ten years period must be revoked and the provision

relating to sale of the property must also be modified so as to comply with Article 23.5 which provides for the return of the property.

Section 23 (2) of Law 15/62 reads as follows:

«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 ἰσχύϊ νομοθεσίας, ἥτις εἴτε ἀποδεικνύεται ὅτι ὑπερβαίνει τὰς πραγματικὰς ἀνάγκας, ἢ μὴ οὖσα περαιτέρω ἀναγκαία, διὰ τὸν σκοπὸν δι' ὃν ἐγένετο ἡ ἀπαλλοτρίωσις, δύναται νὰ διατεθῇ καθ' ὃν τρόπον προβλέπεται ἐν τῷ περὶ Ἀπαλλοτριώσεως Γαιῶν Νόμῳ τῷ καταργηθέντι διὰ τοῦ παρόντος Νόμου, ὡς ἐὰν ὁ παρὼν Νόμος δὲν ἐθεσπίζετο.»

("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 for 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").

The exact ambit of s. 23(2) has been decided in the case of *Pikis* v. *The Republic* (1967) 3 C.L.R. 562, where it was held at p. 571 that:

"The question of the exact ambit of section 23(2) has been left open in the recently decided case of *Forsyth* v. *The Republic*, (1967) 1 C.L.R. p. 101; but it has become necessary to decide it for the purposes of the present Case. As already indicated in this Judgment, I am of the opinion that section 23(2) of Law 15/62, both on a proper construction of its Greek official text and in view of its object in the context of Law 15/62 and of the series of relevant legislative enactments, must be treated as applicable only to cases where land compulsorily acquired before the

date of the coming into force of Law 15/62 turns out to be surplus land or no longer required in relation to the object of its acquisition after the date of the coming into force of Law 15/62. In the event of the surplus or the non-requirement having occurred prior to such date then the provisions which are applicable are those of section 13 of Cap. 226, as by virtue of the provisions of section 10 of the Interpretation Law (Cap. 1) the application of section 13 of Cap. 226 to a proper case is not affected by the fact that Cap. 226 has been repealed by Law 15/62."

In that case, where the abandonment of the purpose of the acquisition took place before the commencement of Law 15/62, it was decided that the Law applicable was s. 13 of Cap. 226, although not indirectly by virtue of s. 23(2), but directly as such, by virtue of the provisions of s. 10 of Cap. 1.

An appeal against the above judgment ((1968) 3 C.L.R. 303) was dismissed on another ground and nothing was said about the findings of the learned Judge in the first instance judgment regarding the applicability and ambit of s. 23(2).

In the light of the above, s. 23(2) applies in the present case, with the result that s. 13 of Cap. 226 applies as well.

In case of *HadjiLoizou* (supra) it was said (at p. 81) that s. 23(2) is a saving provision, safeguarding the rights of owners where property was compulsorily acquired prior to independence and is consonant to s. 10(2)(c) of the Interpretation Law, Cap. 1. In that case, the view was taken that since no repeal of any other Law is made by Law 15/62 (except Caps. 226 and 216) the proper Law to be applied was not Cap. 226, but the Law under which the acquisition was made, which, in the present case is Cap. 166.

In view of my conclusion as above that the provisions of Article 23.5 of the Constitution do not apply in the present case, it is immaterial as to which of the two aforesaid Laws is applicable since no provision is made in either of them for the return of property acquired at the acquisition

price. If Cap. 166 were to apply the only relevant provision is s. 84(3) which provides that "No disposition of such immovable property shall hereafter be made without the authority of the Council of Ministers".

No other provision is made as to how the disposition is to be made, or for the return of property compulsorily acquired.

The relevant provision in Cap. 226 is to be found in s. 13 where the right of pre-emption is given to the applicant before the disposition of the surplus property. Such right is, however, restricted by sub-section (2) (a) (ii) to cases where the abandonment of the purpose for which the acquisition was made takes place less than ten years after the date of the acquisition. In the present case such event took place in 1968, when the school was built on another piece of land, that is more than ten years after the date of the acquisition, which took place in 1954.

In any event no such claim was raised by the applicants who restricted their case to the return of the property in question upon payment of the acquisition price, which, as I have already found cannot succeed for the reasons stated earlier.

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

Recourse dismissed.
No order as to costs.