1986 April 23

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

1 LAVRENTIOS A. DEMETRIOU.
2 IACOVOS A DEMETRIOU,
3 MICHAEL A DEMETRIOU, MINOR THROUGH HIS MOTHER AND NEXT FRIEND LLENI A DEMETRIOU

*Applicants,*

*v.*

THE REPUBLIC OF CYPRUS, THROUGH
1 THE COUNCIL OF MINISTERS,
2 THE MINISTER OF INTERIOR,

*Respondents.*

*(Case No 170/79)*

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*Compulsory acquisition—Principles applicable—The Compulsory Acquisition of Property Law 15/62, sections 2, 3(2)(i), 4, 5 and 7(1)—Public benefit—Power to revoke the Notice of Acquisition and the Order of Acquisition—Effect of non publishing the Order of Acquisition within the period of 12 months from the publication of the Notice of Acquisition—Order of Acquisition exempting properties referred to in the Notice of Acquisition*

*Natural justice—Right to be heard—No such right in respect of matters of a purely administrative nature—Except when the law or regulation otherwise provides—Compulsory acquisition—Its nature is a purely administrative one—In the absence of a provision in the Compulsory Acquisition of Property Law 15/62 the Acquiring Authority is not bound to afford to a person, who filed an objection under s. 4 of Law 15/62, the opportunity of an oral hearing*

*Administrative Law—Due inquiry*

Part of applicants' land under Reg. No. 1282 at Zyghi Village was made subject of Notice of Acquisition published on 21.7.78. The applicants objected, but the Council of Ministers dismissed the objection. The relevant order of acquisition was published on the 23.1.79. As a result applicants filed the present recourse challenging the validity of the acquisition order.

The object of the acquisition was "the creation of a housing establishment by the construction of houses, shops and other buildings including a Police Station, for the housing, accomodation and facility of displaced persons". The acquisition was considered necessary due to the existence in Cyprus of an acute housing problem caused by the displacement of a large part of the population of Cyprus, as a result of the Turkish invasion of Cyprus.

It should be noted that apart from the said part of applicants' property the Notice of Acquisition related to other properties belonging to other persons, but plots 43, 44, 45, 46, 154 and 155, which were subject to the Notice of Acquisition, were specifically exempted from the Order of Acquisition.

The grounds upon which the applicants challenge the validity of the order are: (1) The respondents acted under a misconception of fact in that they disregarded or failed to give due weight to the objection of the applicants, (2) The respondents acted contrary to the rules of natural justice in that they did not afford the opportunity to the applicants of being heard, (3) The respondents in excluding from the order of acquisition plots 43, 44, 45, 46, 154 and 155 belonging to K. N. Patihis Ltd. in which the former Minister of Communications and Works, Mr. Patihis had an interest, acted in a discriminatory manner towards the applicants. In dealing with this ground counsel for the applicants submitted that the order of acquisition in which mention is made that the said properties are exempted from the acquisition is a nullity as a revocation of the Notice of Acquisition could only be made by a decision revoking the same and not by an exemption

clause in the Order of Acquisition that such properties are exempted, (4) The respondents failed to carry out a preliminary investigation in accordance with section 5 of Law 15/62, (5) The respondents acted under a misconception of fact in that by the sub judice decision the continuity of the housing estate is disrupted. In support of this ground applicants' counsel argued that the non acquisition of certain plots in the area belonging to Turkish Cypriots is unjustified and amounts to discrimination against the applicants, (6) The sub judice order is arbitrary and was not based on any reasonable and fair study in that by reason of the order the property of the applicants is divided into three pieces in such a way as to become useless. In support of this ground applicants' counsel sought to rely on the opinion of the District Officer, which was among the material placed before the respondents, that there was a great possibility of Tourist Development of applicants' property due to its proximity to the sea, and (7) The purpose of acquisition does not fall within the objects of public benefit as required by Law 15/62.

The objection which the applicants has filed as aforesaid after the publication of the Notice of Acquisition together with the relevant observations of the District Officer were referred by the Minister of Interior to the Department of Town Planning and Housing, which carried out investigations, as a result of which it sent a letter to the Director-General of the Ministry of Interior, referring to the conclusions it reached and advising dismissal of the applicants' objections.

*Held*, dismissing the recourses: A) As regards grounds 1, 4, 5, and 6 above: The compulsory acquisition may be resorted to if the required immovable property is considered the only suitable for the achievement of the purpose, when a prior offer to its owner to purchase it privately is not necessary (*Hadjioannou* v. *The Republic* (1983) 3 C.L.R. 536 followed). A perusal of the relevant documents placed before the respondents makes it abundantly clear that the experts of the Town Planning and Housing Department carried out a careful and meticulous

study for the selection of the most suitable sites for giving effect to the objects for which the acquisition was deemed necessary. The applicants did not adduce any evidence contradictory to the conclusion of the said Depatrment that their property was the most suitable for the purpose of the acquisition site. In the circumstances it was reasonably open to the respondents to prefer the conclusions of the said Department, which is a specialised one, instead of the views of the District Officer.

All matters raised, touching the possibilities of the development of applicants' property, its value and qualities, had been examined and taken into consideration. The contention that there had been discrimination against the applicants by reason of the non-inclusion in the order of acquisition of certain properties belonging to Turkish Cypriots is untenable, because such properties were already in the possession of the Government by virtue of requisition order 820/75.

B) As regards ground 2 above: The right to be heard is safeguarded in cases of proceedings of a penal or disciplinary character as well as where an administrative decision assumes the character of a sanction and has sufficiently adverse effect on the position of an individual. No comparable duty, however, is cast upon administrative bodies to afford a party the opportunity to be heard with regard to purely administrative matters, unless such obligation is imposed by Law or Regulation. In land acquisition cases the right to make an objection is contemplated by section 4 of Law 15/62. There is no provision in the law imposing upon the Acquiring Authority the duty to afford the opportunity of an oral hearing to the party objecting to the acquisition. The matter in this case is a purely one of an administrative nature and once there is no express provision in the law to the contrary the applicants had no right of an oral hearing.

C) As regards ground 3: In the light of the material before the Court it was reasonably open to the respondents to exclude the relevant plots from the acquisition order and in doing so they did not act in discrimination to the applicants.

Section 7(1) of Law 15/62 empowers the Council of Ministers to revoke not only notices of acquisition but also orders of acquisition of any property or part thereof before the payment of any compensation; and section 2 of the same law provides that in case of a notice of acquisition, if no order of acquisition is published within 12 months from the publication of the notice, the whole procedure of acquisition is nullified.

In the present case the fact that the revocation order in respect of some properties referred to in the Notice was published in the order of acquisition does not nullify the proceedings. The Notice of Acquisition would, in any event, have ceased in respect thereof to have any effect, if no acquisition order was made in respect of such properties within the period of 12 months of the notice of acquisition.

D) As regards ground 7 above: There is no room for suggesting that the object of acquisition was not one of a public benefit *(Hajioannou and Another* v. *The Republic* (1983) 3 C.L.R. 536 followed).

*Recourse dismissed.*
*No order as to costs.*

Cases referred to:

*Chrysochou Bros* v. *CY.T.A. and Another* (1966) 3 C.L.R. 482;

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

*P.E.O.* v. *The Board of Cinemotograph Films Cencors and Another* (1965) 3 C.L.R. 27;

*Hadjioannou and Another* v. *The Republic* (1983) 3 C.L.R. 536;

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

*Republic* v. *Mozoras* (1966) 3 C.L.R. 356;

*Haros* v. *The Republic*, 4 R.S.C.C. 39;

*Morsis* v *The Republic* 4 R.S.C.C. 133;

*Menelaou* v. *The Republic* (1980) 3 C.L.R. 467;

*Papacleovoulou* v. *The Republic* (1982) 3 C.L.R. 187;

*Kazamias* v. *The Republic* (1982) 3 C.L.R. 239;

*Kontemeniotis* v. *C.B.C* (1982) 3 C.L.R. 1027;

*Co-operative Store Famagusta Ltd.* v. *The Republic* (1974) 3 C.L.R. 295;

*HjiLouca* v. *The Republic* (1969) 3 C.L.R. 570;

*Petrou* v. *The Republic* (1980) 3 C.L.R. 203;

*Constantinou* v. *The Republic* (1972) 3 C.L.R. 116;

*Five Bus Tour Ltd.* v. *The Republic* (1983) 3 C.L.R. 793;

*Republic* v. *Georghiades* (1972) 3 C.L.R. 594;

*Karatsi* v. *The Republic* (1984) 3 C.L.R. 488.

**Recourse.**

Recourse against the validity of an acquisition order affecting part of applicants' property situated at Zyghi village.

*L. Papaphilippou*, for the applicants.

*N. Charalambous*, Senior Counsel of the Republic, for the respondents.

*Cur. adv. vult.*

SAVVIDES J. read the following judgment. Applicants are co-owners of a piece of land of an extent of 5 donums under Registration No. 1282, Plot 188 of Sheet Plan LV/37 situated at Zyghi village. Part of the said property was the subject of a Notice of Acquisition dated 29th June, 1978 published on 21.7.1978 under Notification 793 in Supplement No. 3 of the official Gazette of the Republic for the object of public benefit, as stated therein, of "the creation of a housing establishment by the construction of houses, shops and other buildings including a Police Station, for the housing, accommodation and facility of displaced per-

sons." Also, an Order of Requisition of the same property was made and published in the official Gazette of the Republic of the same date for the purpose of enabling the respondents to take possession of such property for the objects for which the Notice of Acquisition was made.

The acquisition of the said property was considered necessary due to the existence in Cyprus of an acute housing problem caused by the displacement of a large part of the population of Cyprus, as a result of the Turkish invasion of 1974. The selection of the approriate sites was entrusted to the Town Planning and Housing Department.

By letter dated 29.5.1978 the Director of Town Planning and Housing Department informed the Ministry of Interior that among the sites selected for such purpose and in particular for the construction of about 100 houses was an area of 36 donums, 2900 sq ft at Zyghi village, of which 32 donums, 2 evleks and 2,400 sq. ft. belonged to Greek Cypriots and an area of 3 donums, 1 evlek and 500 sq. ft. belonged to Turkish Cypriots who were forced by their compatriots to move to the areas occupied by the Turkish Forces. The properties belonging to such Turkish Cypriots had already been the subject of a Requisition Order previously made which extended to all properties owned by Turkish Cypriots who fled to the North.

The applicants by letter dated 2nd August, 1978, written on their behalf by their advocate, objected to the Minister of Interior against the acquisition of their property, giving their grounds for such objection which briefly are that such property consisted of highly furtile land, was very near the the sea, with sufficient underground water, there was a prospect of its development as a hotel unit with houses and garden, and that its value was over £50.000. Also, that by the acquisition of part of such property, the property is split up into three pieces, leaving outside the acquired property two pieces which could not be utilised for any purpose. They further contended that there existed in the same area other properties belonging to Turkish Cypriots which could be utilised for such purpose instead of the property of the applicants.

The District Officer of Larnaca through whom all objections were submitted, made the following observation concerning applicants' objection:

"The objection (copy of which is attached in duplicate) concerns Plot 188, Sheet Plan 55/37 part of which that is, five donums, is compulsorily acquired. The objecting owners reside at Larnaca and their financial condition is considered as very good. The said plot is near the residential area of Zyghi and is near the sea. Its value, as well as the value of other properties in the area, is higher compared to other properties which are far from the sea.

It should be noted that due to its proximity to the sea there is a great prospect for tourist development in view of the fact that other properties near the sea have been lost."

The objection of the applicants as well as the observations of the District Officer, were referred by the Minister of Interior to the Department of Town Planning and Housing, which carried out investigations and by letter dated 14th December, 1978, addressed to the Director-General of the Ministry of Interior, made its comments on the objection and expressed its views in the matter. In the said letter the following are stated (inter alia):

"The objection on behalf of Lavrentios, Iacovos and Michael L. Demetriou dated 2.8.78 concerns Plot 188 (Part) Sheet Plan 55/37. The objectors filed recourse 342/78 in the Supreme Court by which they apply for an interim order against the execution of the subject matter work. As a result of such application, our Department has prepared a statement of facts which was sent to you with my letter No. F. 212/18/35 (L) dated 30.8.78, in which the reasons militating for the use of Plot 188 (Part) are explained in detail. Concerning the questions raised by the opposition which are not covered by the said statement of facts, the following should be noted:

(i) The Department, as it emanates from the letter

of the District Officer in File 57/78 dated 28.8.1978, has no evidence that the owners had in fact been seriously concerned, before the publication of the notice of acquisition, with the establishment of a hotel unit on the said plot. Furthermore, they themselves mention in their objection only prospects for such development.

(ii) The allegation that the acquisition divides Plot 188 in such a way that its value is considerably diminished is unfounded. In particular, on both sides of the acquired property, there remain two pieces of a total extent of more than four donums and one evlek one of which, two donums and 2,500 sq. ft. in extent, has already access to the existing road, whereas, for the other part a road access is created by the works to be constructed. Generally, it may be said that the remaining parts are of such extent that beneficial use may be made of them.

(iii) The reasons that this area was chosen instead of other areas suggested by the objectors have been expounded at length in the statement of facts submitted previously and any further reference on this subject is unnecessary."

The statement of facts, to which reference is made in the above letter of the Director of the Department of Town Planning and Housing, is contained in a report submitted by him on the 30th August, 1978 and which appears under Reds 51 - 54, in File 212/18/35 (L), was produced as exhibit 1 in Recourse 342/78 which is directed against the requisition. In the said statement, the Director of the Town Planning and Housing Department, after making reference to the acute housing problem created by the displacement of 200,000 Cypriots as a result of the Turkish invasion, which necessitated the taking of a series of measures for the housing of displaced persons, one of which being the acquisition of certain properties in various parts of the Republic, goes on as follows:

"

3. Generally, the selection of suitable sites is made in such a way as to satisfy certain town planning financial and social criteria, and the central idea is to serve, in the best possible way, the well understood public interest.

4. For the purpose of the promotion and materialisation of the said decision referred to in para. 2, an area was earmarked at Zyghi village which was considered as suitable for the erection of 100 houses and a number of shops. The area so selected was the result of careful technical inquiry and it satisfies fully the following criteria:

(i) *Financial:*

The area is near the village and, as a result, the expenses for the supply of services, such as water, electricity, streets, is minimized, on one hand and on the other the exploitation of existing but not yet fully utilised social capital becomes possible.

(ii) *Social:*

The selected area is situated on the two sides of Zyghi village which makes possible the incorporation of the houses to be erected with the existing ones, so that the present inhabitants and the new ones will form one unit.

(iii) *Town Planning:*

By the erection of 100 houses and the new commercial centre which is adjacent to the existing one, the revival of the village will be achieved which, from the town planning point of view and bearing in mind the prospects of development of the area and the existing opportunities for employment, was considered as highly desirable."

The statement then goes on to describe the subject matter properties and the extent to which such properties will be affected by the acquisition.

The Director of the Town Planning and Housing De-

partment concluded his letter of the 30th August, 1978, by expressing the view that in the circumstances the requisition and acquisition of the property of the applicants was necessary and that their objection should be dismissed.

Applicants' objection was, after examination, rejected and the Council of Ministers decided on the 8th February, 1979, to proceed with the acquisition of the properties referred to in the Notice of Acquisition, with the exception of some of them, and made an order to that end, which was published in the official Gazette of the Republic of the 23rd February, 1979, Supplement No. 3, Part II under Notification 198. As a result, applicants filed the present recourse challenging the validity of the acquisition order. Also, by a separate recourse under No. 342/78 the applicants are challenging the order for the requisition of the subject properties and pray for its annulment.

The recourse is based on the following grounds of law:

(1) The respondents acted under a misconception of fact in that they disregarded and/or they failed to take into consideration and/or they did not give due weight to the objection of the applicants contained in their advocate's letter dated 2.8.78.

(2) The respondents acted contrary to the rules of natural justice in that they did not hear and/or they did not afford the opportunity to the applicants of being heard.

(3) The respondents acted in a discriminatory manner towards the applicants in that by the sub judice order of acquisition they exempted plots 154, 155, 43, 44, 45 and 46, belonging to K. N. Patihis Ltd. in which the former Minister of Communications and Works, Mr. Patihis had an interest.

(4) The respondents acted under a misconception of fact in that they failed to carry out a preliminary investigation in accordance with section 5 of Law 15/62 and/or in carrying out such preliminary investigation they did not take it into consideration.

(5) The respondents acted under a misconception of fact

in that by the sub judice decision the continuity of the housing estate is disrupted.

(6) The sub judice acquisition is arbitrary and was not based on any reasonable or fair study in that by the acquisition of part of the property of the applicants their property is partitioned into three pieces in such a way as the whole of Plot 188 becomes useless.

(7) The respondents acted in abuse and/or in excess of powers in that the purpose of the acquisition does not fall within the objects of public benefit, as required by Law 15/62.

By his written address counsel for applicants in expounding on the above grounds of law, advanced the following arguments in support of the first ground of law:

(a) That the respondents failed to examine the alternative solutions suggested by the applicants in their objection.

(b) In the present case they failed to examine the possibility of acquiring land by private agreement.

(c) They failed to examine and/or take into consideration the value and the qualities of applicants' property which are explained in their objection.

(d) By the acquisition of part of the property, the property is split up in three, leaving on each side of the property acquired one piece entirely useless with the result of considerable financial loss to the applicants. Furthermore, the Acquiring Authority has, as a result of the acquisition, prevented the tourist and social development of the area.

(e) They disregarded and failed to take into consideration the facts stated in the applicants' objection concerning other properties which were more suitable for such purpose and situated nearer to the commercial centre of Zyghi village and they have exempted from the acquisition plots 43, 44, 45, 46, 154 and 155 which are nearer to the village and adjacent to applicants' properties.

(f) The respondents failed to take into consideration the fact that the value of the land of the applicants was high

compared to other properties in the same area and, therefore, the cost of the housing project will be higher.

(g) The respondents failed to inquire as to whether there were other properties suitable for acquisition. the acquisition of which would have been less onerous compared to applicants' property.

As regards the second ground, it was the contention of the applicants that once they had filed an objection, they had the right, under the rules of natural justice, to be heard and argue the grounds of their objection and that their deprivation of such right renders the acquisition a nullity.

In expounding on his third ground, counsel for applicants contended that the reasons given for exempting from the acquisition order plots 43, 44, 45, 46, 154 and 155 are vague and shadowy and it is only a pretext for exempting properties belonging to a company in which the ex-Minister of Communications and Works has a legal interest. Also, by exempting such properties, the Acquiring Authority acted in a way causing discrimination against the applicants whose objection to the acquisition though substantiated by the facts set out therein, was rejected.

In dealing with this ground of law counsel also submitted that the order of acquisition in which mention is made that the said properties were exempted from the acquisition, is a nullity, as revocation of a notice of acquisition can only be made by a decision revoking such notice and not by an exemption clause in the order of acquisition that such properties are exempted. He raised also the question of estoppel from exempting certain properties from the acquisition, in view of the statement of facts by them in Recourse 342/78 in which it is stated that it was recommended that a proposal should be made to the Council of Ministers for the acquisition of the properties involved.

On ground 4, counsel submitted that the respondents failed to take cognisance of the fact that the District Of-

ficer who carried out an investigation on behalf of the Acquiring Authority recommended that the objection of the applicants should be allowed for the reasons stated in his letter accompanying the objection. Such opinion of the District Officer should have been accepted as the opinion of a competent organ, and the Acquiring Authority should not have acted on the opinion expressed by the Town Planning and Housing Department which is not hierarchically superior to the District Officer or in a position to exercise control over the actions of the District Officer.

Counsel further added that in the present case the Council of Ministers was misled by the Town Planning and Housing Department which, together with its recommendations for the acquisition of the property drafted the order of acquisition to be made by the Council of Ministers, and which, in fact, was adopted by the Council of Ministers without a substantial inquiry of the facts alleged by the applicants or the facts stated by the District Officer in expressing his opinion that the objection of the applicants should be accepted.

In support of ground 5, counsel for applicants contended that the reasons given for the non-acquisition of plot 160/5 and other plots belonging to Turkish Cypriots is unjustified and amounts to a discrimination against the applicants.

The fact that such plots were under a requisition order, a general requisition order which was made for the administration of properties belonging to Turkish Cypriots who had filed to the areas occupied by the Turkish Forces, did not empower the respondents to use such properties for any purpose not provided for by the requisition order and in particular for the objects set out in the acquisition order.

In support of ground 6 counsel for applicants sought to rely on the opinion expressed by the District Officer in his letter accompanying the objections, that there was a great possibility of tourist development of applicants' property due to its proximity to the sea.

Counsel for applicants in addressing the Court on the last ground, contended that the objects for which the acquisition order was made, as set out therein, do not fall within the terms of town planning and housing, as provided by section 3(2) of Law 15/62. Therefore, the Order of acquisition in the present case was made in abuse and excess of powers and is ultra vires the Law (Law 15/62).

Counsel for the respondents by his written address submitted that from the material before the Court, it emanates that a meticulous and responsible study was carried out by experts of the Town Planning and Housing Department, who had the required technical knowledge and who opined that the properties acquired, including that of the applicants, were the most suitable for the purposes of the acquisition. All matters, counsel submitted, which had been raised by the applicants in their objection, had been considered by the Acquiring Authority. Matters touching any adverse effect on the remainder of applicants' property or any diminution of its value as a result of the acquisition, are matters which the appropriate Court, in dealing with the assessment of compensation payable, has to take into consideration.

Respondents' counsel submitted that the respondents have not violated the principles of natural justice. There was no obligation on the respondents to hear orally the applicants once they afforded them the opportunity of making their representations in writing by submitting an objection, setting out all facts in support thereof.

As to the opinion expressed by the District Officer of Larnaca, counsel contended that the District Officer is not a direct organ of the State whose powers originate from the Constitution but he is simply an administrative officer of the Ministry of Interior. The Council of Ministers decided to accept the views of the Department of Town Planning and Housing, which is the appropriate Department with specialised technical knowledge on matters of housing and town planning and which, acting in the field of its expertise, explained the reason why the views of the District Officer, as expressed in his letter, could not be accepted.

Concerning the exemption of certain properties from the acquisition order without previously making a revocation order in this respect, counsel submitted that such revocation order was not necessary, in view of the fact that a notice of acquisition ceases to have any effect unless prior to the expiration of 12 months from its publication an order of acquisition is made.

He concluded his address by submitting that matters touching the value of applicants' property or affecting the remainder of their property, are matters which can be dealt with by a civil Court in considering the amount of compensation to be awarded.

It is well settled under our jurisprudence, following in this respect the principles laid down by the jurisprudence of the Greek Council of State, that the taking away of property belonging to a private individual, though through compulsory acquisition, is an onerous measure and the principles of proper administration and of lawful use of discretionary powers render it imperative that a compulsory acquisition should not be ordered if its objects can be achieved in any less onerous manner and it should only be resorted to if it is absolutely necessary to do so and after exhausting an alternative possibility of achieving its objects by means of purchasing other suitable property which is voluntarily offered for sale by its owners. Moreover, before resorting to a compulsory acquisition of a particular immovable property, the Acquiring Authority must exhaust the possibility of acquiring compulsorily other suitable immovable property the acquisition of which will entail a deprivation less onerous than the one entailed in the proposed acquisition. See, in this respect, *Chysochou Bros* v. 1. *The Cyprus Telecommunications Authority and 2. The Republic of Cyprus through the Council of Ministers* 1966, 3 C.L.R. 482, per Triantafyllides, J., as he then was, at pp. 497, 498, 499. Also the references to the Conclusions from the Case Law of the Greek Council of State (1929 - 1959) and the Decisions of the Greek Council of State 300/36, 1023/49, 608/55 92/57 which are referred to in the said judgment. Also, *Venglis* v. *The Electricity Authority* (1965) 3 C.L.R. 252; *P.E.O.* v. *The Board*

*of Cinematograph Films Cencors and another* (1965) 3 C.L.R. 27.

The above principles have been reiterated in the case of *Hadjioannou and another* v. *The Republic* (1983) 3 C.L.R. 536, in which our case law on the matter is reviewed.

I shall deal first with the last ground of law concerning the validity of the objects for which the acquisition was made, and whether such objects fall within the ambit of Law 15/62.

The same question was raised and considered in the case of *Hadjioannou* v. *The Republic* (supra) by the Full Bench in which counsel for the appellants contended that the purposes for which the acquisition order was made were not purposes of public benefit within the ambit of Article 23 of the Constitution and section 3 of the Compulsory Acquisition of Property Law, 1962, (Law 15/62), in that the schemes for which the acquisition was made, were neither town and country planning, nor housing and that the trial Judge was wrong in reaching a different conclusion.

The first instance trial Judge, in the above case, in dealing with this issue, expressed the following view: (see *Mammidou and Others* v. *The Attorney-General of the Republic* (1977) 3 C.L.R. 462, at pp. 474 - 475).

> "In my view, the terms 'town and country planning or housing' to be found in section 3(2)(i) of Law 15/62, should be given their ordinary meaning and not be interpreted by reference to the legislation of the United Kingdom and the powers given therein to the various appropriate authorities for its implementation. These terms should be understood as including, inter alia, the development and use of land in relation to existing urban areas and the social and environmental requirements of a place, as well as the housing needs of the society, in particular, of those classes of the society which cannot, without public assistance or planned facilities solve their housing needs. If anything, the creation of a housing estate is nothing but a housing purpose and the layout of

the streets and other facilities are cearly town and country planning purposes."

The learned trial Judge after expounding on the provisions of the Constitution, came to the conclusion that the purposes of public benefit and the reason for the acquisition set out in the notice of acquisition were purposes of public benefit within the provisions of section 3(2)(i) of Law 15/62.

The view expressed by the trial Judge was approved by the Full Bench and in delivering the majority judgment in that case, I said the following at pages 574, 575 and 576:

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

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

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

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

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

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

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

the reforestation and others. Under this enlarged meaning jurisprudence interpreted the term 'public benefit'.

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

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

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

In the light of the above, I have reached the conclusion that in the present case there is no room for suggesting that the object of acquisition was not one of a public benefit and, therefore, this ground fails.

I shall next deal with grounds 1, 4, 5 and 6.

The question of acquiring property by private agreement has been considered in a number of cases. It suffices if reference is made to the recent decision of the Full Bench in *Hadjioannou* v. *The Republic* (supra) in which the principles emanating both from our case law as well as from the Decisions of the Greek Council of State, in this respect, are reviewed. The following appears in the majority judgment delivered by me in that case, at page 587:

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

The various documents embodying the recommendations of the Town Planning and Housing Department which the Council of Ministers took into consideration, appear in the various appendices attached to the opposition and the addresses. A perusal of these documents makes it abundantly clear that the experts of the Town Planning and Housing Department carried out a careful and meticulous study for the selection of the most suitable sites for giving effect to the objects for which the acquisition was deemed necessary.

Applicants have not adduced any evidence contradictory to the conclusions reached by the Town Planning and Housing Department that the properties, subject to this acquisition, were not in fact the most suitable for the purpose of the acquisition. The applicants failed to satisfy me that the decision of the Council of Ministers to accept the recommendations of the Town Planning and Housing Department or the inquiry which was carried out by it before reaching its decision of making the acquisition order was wrong. In the circumstances it was reasonably open to the Council of Ministers to prefer and act upon the recommendations of the Town Planning and Housing Department, a specialised department of the Government in the matter instead of those expressed by the District Officer.

Sufficient reasons are given in the letter of the Town Planning and Housing Department of the 14th December, 1978 and the statement of facts contained in the letter of 30.8.1978 why the objections of the applicants should be rejected, and why the view of the District Officer of Larnaca was wrong. All matters raised by applicants in their advocates letter dated 2.8.1978 were carefully considered and examined by the Town Planning and Housing Department and due weight has been given to such matters but for the reasons explained in the letters of the said Department those matters were not such as to outweigh the finding of the Department that the property under acquisition was the most suitable for the purposes of the acquisition.

All matters raised, touching the possibilities of the development of applicants' property, its value and qualities had been examined and taken into consideration.

The question of the splitting up of the property of the applicants into three pieces out of which the one is the subject of the acquisition, which, according to their allegation, considerably diminishes the value of the property and leads to financial loss, is a matter in respect of which, if proved, the applicants can be compensated by the appropriate civil Court when dealing with the assessment of compensation payable.

As to the contention of counsel that there had been discrimination against the applicants as a result of the non-inclusion, in the Acquisition order, of certain properties owned by Turkish Cypriots who were forced by their compatriots to move to the areas occupied by the Turkish Forces, I find such contention untenable.

The area of 3 donums, one evlek and 500 sq. ft. which was originally included in the area in question and which belongs to Turkish Cypriots, had already been in the possession of the Government, by virtue of two requisition orders, the one published in the official Gazette of the Republic of the 11th September, 1975 under Notification 671, and the other published in the official Gazette of the Republic of the 14th November, 1975 under Notification 820, by virtue of which the Government was entitled to

use such properties for the purposes of public benefit specified therein, which, as set out in the requisition order under Notification 820, include, inter alia, "housing purposes for the satisfaction of the needs of the refugee population."

The validity of such orders is not a matter to be challenged by the applicants, as it does not affect a legitimate interest concerning properties belonging to them.

In the light of my above findings, grounds 1, 4, 5 and 6, fail.

I am coming now to consider the contention of counsel for applicants that the sub judice decision for the acquisition of their property was taken in violation of the rules of natural justice in that they were not afforded the opportunity of being heard in support of their objection.

In Cyprus the rules of natural justice are deeply embedded in our legal system. In *The Republic of Cyprus* and *Antonios Mozoras* (1966) 3 C.L.R. 356 at p. 400, Josephides, J., in dealing with the applicability of such Rules in Cyprus, had this to say:

> "Throughout the web of our system of administration of justice in Cyprus (if I may borrow the happy phrase of Lord Chancellor Sanky in another context in the Woolmington case) one golden thread is always to be seen, that is to say, that a person is entitled to a fair hearing, which means that he must be informed of the accusation made against him and given an opportunity of being heard before judgment is passed on him. These principles are now enshrined in our Constitution, Articles 12.5 and 30 reproducing the provisions of Article 6 of the Rome Convention on Human Rights of 1950.
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> There is, however, no obligation on the part of a body carrying out an inquiry, unless a statute so provides, that a hearing should be oral (*Local Government Board* v. *Arlidge* (1915) A.C.

120). Even in a Court of Law evidence may in proper circumstances be given by affidavit."

Relevant in this respect are, inter alia, the cases of *Haros* v. *The Republic* 4 R.S.C.C. 39; *Morsis* v. *The Republic* 4 R.S.C.C. 133; *Menelaou* v. *The Republic* (1980) 3 C.L.R. 467; *Papacleovoulou* v. *The Republic* (1982) 3 C.L.R. 187; *Kazamias* v. *The Republic* (1982) 3 C.L.R. 239.

The right to be heard is however safeguarded in cases of proceedings of a penal or disciplinary character as well as in cases where an administrative decision assumes the character of a sanction and has sufficiently adverse effect on the position of an individual. In *Kontemeniotis* v. *C.B.C* (1982) 3 C.L.R. 1027 at pp. 1033 1034, we read the following in the judgment of Pikis, J.:

"A series of Cyprus decisions establish that opportunity to be heard must be given in every case where an accusation of a penal or disciplinary character is preferred against the citizen. (See, *HjiGeorghiou* v. *The Republic* (1981) 3 C.L.R. 587; *Savva* v. *The Republic* (1981) 3 C.L.R. 599). No comparable duty is cast upon administrative bodies with regard to purely administrative matters. "

In *Nicolaos Haros* v. *The Republic* (supra), the Supreme Constitutional Court found that the rules of natural justice find explicit expression in Article 12 of the Constitution of Cyprus and held such rules which under Article 12 are made applicable to offences in general should be adhered to in all cases of disciplinary control, in the domain of public law.

In *Kazamias* v. *The Republic* (supra) I had this to say at pp 298, 299:

"Independently of my finding that the decision of the respondent amounts to a disciplinary sanction and the rules of natural justice had to be complied with, I wish further to add that even in cases where a decision is not of a disciplinary nature but is an admini-

strative measure, as suggested by counsel for the respondent, it is well settled that when an administrative decision assumes the character of a sanction and has sufficiently adverse effect on the position of an individual, as in the circumstances of the present case, the courts require that the person affected should be given the opportunity of questioning the reason for the adverse decision. This principle has been laid down in the decision of the French Council of State in the case of Dame Veuve Trompier-Gravier to whcih reference is made in *The Republic of Cyprus* v. *Mozoras* (supra) and which was adopted by this Court in *Mikis Hadji-Petris* v. *Republic* (1968) 3 C.L.R. 702 at p. 706. See also *Psaltis* v. *Republic* (1971) 3 C.L.R. 372 at p. 373, as to the right of a person interested in a matter pending before the administration for decision involving a sanction to be personally heard by it before the decision is taken."

But even in cases of administrative proceedings of a penal or disciplinary character, the rule to afford a person the opportunity of being heard does not imply an oral hearing unless so provided by law, or any regulation, but the rule is satisfied so long as sufficient opportunity is afforded to such person to make his representations and express his view in writing. Thus in *Petrou* v. *The Republic* (1980) 3 C.L.R. 203, whereby the decision of the Council of Ministers dismissing the appeal of the applicant on a disciplinary sentence of dismissal from the ranks of the Police Force was in issue, Malachtos, J. had this to say at p. 218:

"However, it is not necessary for an applicant to be heard before the Council of Ministers viva voce, as in open Court, but this right should be considered as fully satisfied if he were invited to submit his views in writing. This proposition finds support in the Right of Defence Before the Administrative Authorities by Stasinopoulos, 1974, Edition, pages 173-175".

In *Papacleovoulou* v. *The Republic* (1982) 3 C.L.R. 187, a case of an application for review by the Minister of

a sentence of dismissal imposed upon the applicant by a disciplinary board, we read the following at p. 196:

"And so long as the opportunity is effective in the sense that it affords the applicant an adequate opportunity to place before the Minister the representations he wishes to make, no valid criticism can be levied. Administrative review need not be unnecessarily judicialized in the sense of appeal or other proceedings. (Relevant on this point are observations made in the case of *Bushell* v. *Secretary of State* [1980] 2 All E.R. 608 (H.L.) as to the inherent differences between judicial and administrative proceedings).

In my judgment the Minister did not fail in his duty by not inviting the applicant to make, if he chose, further representations to those contained in his two letters precipitating the review. On the other hand, as a matter of substance the Minister did have before him, in the letters, the representations he wished to make as one may gather on comparison of the complaints set out in the letters and the arguments raised before this Court."

No comparable duty, however, is cast upon administrative bodies to afford a party the opportunity to be heard, with regard to purely administrative matters unless such obligation is imposed by any law or regulation.

In *Co-operative Store Famagusta Ltd.* v. *The Republic* (1974) 3 C.L.R. 295, the Court in considering the question as to whether there was a violation of the rules of natural justice by the Licensing Authority, expressed the opinion that the Licensing Authority is regulating its own procedure and is not bound to hear the applicants since there is no obligation imposed on it by any law or regulation. In support of such view, the Court relied on the following dictum of Triantafyllides, J., as he then was, in *Georghios HjiLouca* v. *The Republic* (1969) 3 C.L.R. 570 at pp. 574, 575:

"In my opinion in a case of this nature, and in the absence of any legislative provision for the purpose, there was no need to invite the applicant to be pre-

sent at the proceedings before the respondent (see Conclusions from the Jurisprudence of the Greek Council of State, 1929 - 1959 p. 112; also, the decision of the Greek Council of State 1262/46 reported in Zacharopoulos Digest of the Decisions of the Greek Council of State, 1935 - 1952, p. 313, paragraph 136); likewise, it was not necessary to afford him an opportunity to question the two witnesses who were heard by the respondent. This was not an instance of a disciplinary or other proceedings of such a nature as would render it necessary to give the applicant the opportunity to contradict averments against him and to question witnesses (useful reference in this connection may be made, also, to Odent on Contentieux Administratif, voume IV (1965 - 1966) p. 1, 165 et seq."

The case of *HjiLouca* was cited with approval in *Constantinou* v. *The Republic* (1972) 3 C.L.R. 116. (See, also, in this respect *Five Bus Tour Ltd.* v. *The Republic* (1983) 3 C.L.R. 793; *Republic* v. *Lefkos Georghiades* (1972) 3 C.L.R. 594; *Karatsi* v. *The Republic* (1984) 3 C.L.R. 488).

In land acquisition cases the right to make an objection is contemplated by section 4 of the Compulsory Acquisition of Property Law, 1962, (Law 15/62), which provides that when a notice of acquisition is published in the official Gazette of the Republic it should expressly invite "all persons interested in the ownership of such property to submit to such Authority within the period specifically provided therein, which should not in any event be less than two weeks from the date of the publication of the notice, any objection concerning such acquisition." There is no other provision in the law imposing upon the Acquiring Authority the duty to afford the opportunity of an oral hearing to the party objecting to the acquisition.

The issue in the present case, is purely one of an administrative nature and once there is no express provision in the law for an oral hearing before the Council of Ministers there was no duty cast upon it to afford the applicants

the opportunity of an oral hearing. The Council of Ministers had before it the written representations of the applicants against the acquisition and all facts relied upon by them and in fact such facts had been fully inquired into by the Town Planning and Housing Department. This ground of law, therefore, fails.

I am coming now to the remaining ground which is ground 3 concerning the exemption from the acquisition order of Plots 43, 44, 45, 46, 154 and 155.

After the publication of the notice of acquisition the owner of such plots made a written objection setting out therein his reasons in support thereof. In his accompanying letter the District Officer, through whom the objections were submitted, recommended the acceptance of the objection of the owner of such plots, for the following reasons, as stated therein:

> "On the said plots there exist 12 warehouses which are being used for the storing of carobs destined for export. They are of immense dimensions and very old. On top of some of them there exist houses which are housing displaced families.
>
> By the intended acquisition it is expected that the accommodation of the carob producers of the area will be substantially affected with unfavourable and unforeseeable consequences to the farmers."

Also, the Town Planning and Housing Department was in favour of the release of such plots and the Director of Town Planning and Housing Department by his letter dated 14th December, 1978, to which reference has already been made, adopted the opinion of the District Officer of Larnaca, concerning these properties laying stress also to the following factors:

(1) Part of the said properties is adjoining the seashore road to Larnaca and its value is considered considerably high (it should be stressed that part of plot 188 also adjoins

the said road but such part has not been included in the area under acquisition).

(2) In some of the said plots there exists a deep cavity with abrupt levelling difference from the rest of the properties and a channel adjoins such cavity.

In a number of such plots there exist warehouses in good condition.

The Council of Ministers after consideration of the above opinions both of the District Officer and the Director of the Town Planning and Housing Department, decided to exempt from the acquisition the said properties.

In the light of the material before me in this respect, I find that it was reasonably open to the Council of Ministers to exclude such properties from the acquisition and by so doing it did not act in discrimination to the applicants. The applicants have not adduced any expert evidence to contradict the facts contained in the letters of the District Officer and the Town Planning and Housing Department in support of their recommendation that the objection of the owner of such plots should be accepted.

I shall finally deal briefly with the contention of counsel for applicants that for the revocation of the notice of acquisition concerning such properties a decision should have been taken which should have been published in the official Gazette of the Republic under the provisions of section 7(1) of Law 15/62. By section 7(1) the Council of Ministers is empowered to revoke not only notices of acquisition, but also orders of acquisition in respect of any property or part thereof before the payment of any compensation.

By sub section 2, it is further provided that in the case of a notice of acquisition if no order for acquisition of such property is published within 12 months from the publication of the notice, the whole procedure is nullified and the intended acquisition concerning such property or part thereof is deemed as abandoned.

In the present case the fact that the revocation order in respect of some properties referred to in the notice of acqui-

sition was published in the order of acquisition does not, in my view, nullify the proceedings. The notice of acquisition would, in any event, have ceased to have any effect, if no acquisition order was made in respect thereof after the expiration of 12 months of the notice of acquisition, irrespective as to whether a decision revoking the notice of acquisition concerning them was taken and published or not.

For all the above reasons I find that this recourse fails and is hereby dismissed.

In the circumstances I make no order for costs.

*Recourse dismissed.*
*No ordes as to costs.*