

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 RELATIVE AND FRIEND ELENI A. DEMETRIOU,

Applicants,

v.

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

Respondents.

(Case No. 342/78).

Requisition—The Requisition of Property Law 21/62, ss. 3(2) (i), 5, 6, and 8—Power of requisition independent of power of acquisition—“Public benefit” in s. 3(2)(i)—Rights of Requisitioning Authority as to the subject property (s. 6)—Remedies of owner (s. 8). 5

Natural justice—Right to be heard—Not applicable in respect of purely administrative matters, unless otherwise provided by Law.

Delegation—Delegation of Statutory Power—The Statutory Functions (Conferment of Exercise) Law 23/62, s. 3(1). 10

Part of the property of the applicants under Reg. No. 1282 Plot 188 at Zyghi village was requisitioned by an order published in the Official Gazette of the 21.7.1978. Simultaneously a notice of acquisition of the same property was published in the same Gazette.* The purpose 15

* See Demetriou and Others v. The Republic (1986) 3 C.L.R. 634.

of the requisition was stated to be "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".

5 Counsel for the applicants made the following submissions, namely: (a) The objects of the requisition amount to a permanent occupation of the property contrary to Article 23.8 (i) of the Constitution and section 4(3) of Law 21/62 A notice of acquisition does not amount to
10 an order of acquisition in respect of which a requisition order can be made as corolary to and in furtherance of the objects of acquisition, (b) Respondents failed to carry out a survey of the property as per s. 5 of Law 21/62. (c) Respondents acted in violation of the rules of natural
15 justice in that they failed to afford an opportunity to the applicants to be heard, (d) There is discrimination against the applicants in that other plots of land which are more suitable have not been requisitioned. (e) The requisition was not based on a reasonable study concerning the sub-
20 ject property as by the requisition of part of the applicants' property, the property is split up into three pieces, (f) Respondents had no power to uproot trees, (g) The objects do not fall within the objects of public benefit mentioned in section 3(2) (i) of Law 21/62, (h) The res-
25 pondents acted without authority and in violation of the doctrine *delegatus non potest delegare*.

Held, dismissing the recourse: (1) As to ground (a): The power of requisition is independent of the power of
30 acquisition though in most cases the requisition of a property subject to acquisition may be necessary for giving effect to the acquisition (*Aspri v. The Republic*, 4 R.S.C.C. 57 followed).

(2) As to ground (b): The contention is not supported by the material before the Court.

35 (3) As to ground (c): No duty 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.

(4) As to ground (d): Sufficient reasons are given as to the exclusion from the requisition^s of certain plots of land. Regarding plot 160/5 and other properties belonging to Turkish Cypriots such properties were already under requisition. 5

(5) As to ground (e): The argument in support of this ground have been dealt with in *Demetriou and Others v. The Republic* (1986) 3 C.L.R. 634.

(6) As to ground (f): By virtue of section 6(2) of Law 21/62 the requisitioning authority is empowered to do anything in relation to the subject property which any person having an interest in it would be entitled to do by virtue thereof. The remedies of the owner are governed by section 8 of the said law. 10

(7) As to ground (g): The contention is untenable for the reasons stated in this respect in the judgment in *Demetriou and Others v. The Republic*, supra. 15

(8) As to ground (h): The power of the Council of Ministers was lawfully delegated to the Minister of Interior under the provisions of Law 23/62 and in particular section 3(1) thereof. 20

Recourse dismissed.
No order as to costs.

Cases referred to:

Demetriou and Others v. The Republic (1986) 3 C.L.R. 634; 25

Aspri v. The Republic, 4 R.S.C.C. 57;

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

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

Constantinou v. The Republic (1972) 3 C.L.R. 116; 30

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

Hadjiioannou and Another v. The Republic (1983) C.L.R. 536.

Recourse.

Recourse against the decision of the respondents to requisition part of applicants' property situated at Zyghi village.

5 *L. Papaphilippou*, for the applicants.

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

Cur. adv. vult.

10 SAVVIDES J. read the following judgment. Applicants are co-owners of a piece of land of an extent of five donums, under Registration No. 1282, Plot 188 of Sheet Plan LV/37 situated at Zyghi village.

15 By an order of requisition dated 29th June, 1978 published in the official Gazette of the Republic of 21.7.78, part of the said property of the applicants, together with other properties in the same area. was requisitioned for the object, as stated in the order, 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 persons."

20 Simultaneously with the said order of requisition, a notice of acquisition dated 29.6.1978 in respect of the same property and other properties which were requisitioned, was published in the official Gazette of the Republic of Cyprus of 21.7.1978 under a separate Notification for the furtherance of the same object of public benefit, as stated in the requisition order.

30 The subject property was subsequently compulsorily acquired after the objection of the applicants to its acquisition was rejected, and the order of acquisition was published in the official Gazette of the Republic of 23rd February, 1979, Supplement No. 3, Part 2, under Notification 198. The said acquisition was challenged by recourse No. 170/79 which was dismissed by me by a judgment just delivered. The present recourse is directed against the

35 requisition order mentioned earlier.

The grounds of law raised, are briefly as follows:

(1) The objects set out in the requisition order amount to a permanent occupation of the property and the alteration of its character in such a way as applicants will be permanently deprived of their property, contrary to Article 23.8 (c) of the Constitution and section 4(3) of Law 21/62. 5

(2) The respondents failed to carry out a survey of the property, in accordance with the provisions of section 5 of Law 21/62.

(3) The respondents acted in violation of the principles of natural justice in that they failed to afford an opportunity to the applicants to be heard. 10

(4) The respondents acted under a misconception of fact in that by the requisition order there is discrimination against the applicants in that other plots of land which are more suitable have not been requisitioned. 15

(5) The requisition was arbitrary and was not based on a reasonable study concerning the subject property as by the requisition of part of the property of the applicants, the property is split up into three pieces and the whole plot becomes useless. 20

(6) Assuming that the requisition was lawful and valid, the respondents had no power to uproot trees which had not been requisitioned.

(7) The respondents acted in excess and/or abuse of powers as the objects of requisition do not fall within the objects of public benefit mentioned in section 3(2) (i) of Law 21/62. 25

(8) The respondents acted without any authority and/or in excess of any authority and in violation of the doctrine of *Delegatus non potest delegare*. 30

I shall deal briefly with the arguments advanced by counsel for applicants in support of his grounds of law as, to some extent, most of these arguments have been advanced and have been already been answered in Case No. 170/79 in which judgment has just been delivered. 35

The arguments of counsel for applicants are briefly as follows:

1. (a) The notice of acquisition does not amount to an order of acquisition and as such it cannot be treated as a corollary to and for the purposes of the acquisition of the property in which case the whole transaction could be treated as one in substance, notwithstanding that in form it results from two separate orders under two different statutes as explained in the case of *Markantonis and The Republic of Cyprus and another* (1966) 3 C.L.R. 714.

(b) The contention in the opposition that plot 160/5 was not included in the requisition order in question, as it had already been under requisition by virtue of a general requisition order in respect of properties owned by Turkish Cypriots, is not a valid one as, the previous requisition orders of all Turkish properties, were orders of a temporary nature which would have normally expired on 14th November 1978, and the objects for which they were requisitioned are not objects of a permanent character, whereas the creation of a Housing Establishment and the Erection of Structures, as mentioned in the requisition order, are not of a temporary character and they amount to a permanent possession of the property and the alteration of its nature and character with the effect that applicants will be deprived of their property permanently in violation of Article 23.8(c) of the Constitution and section 4(3) of Law 21/1962.

2. The respondents did not act in compliance with section 5 of Law 21/62, in that they failed to carry out a proper inquiry into the matter by surveying the properties in question and making an assessment of their value. They further acted contrary to their decision authorising the Ministers of Interior and Finance to investigate into the cost of the proposed project and decide whether the creation of such housing establishment is recommended.

3. Once the Ministers of Interior and Finance were authorised by the Council of Ministers to investigate into the matter of the proposed expenditure and decide whether or

not the setting up of a housing establishment in the area so selected was recommended, it was their duty to carry out a full inquiry into the matter in the course of which all persons affected, that is, the owners of the properties subject to the requisition, should have been afforded an opportunity to be heard. 5

4. The omission to requisition properties under plots 160/5, 189, 160/4, 159 and 158, the requisition of which is necessary for the objects of the acquisition, amounts to a discrimination against the applicants. The requisition of plot 160/5 which expired on 14.1.1978 could not be renewed as a period of three years has expired since its requisition and any extension of such period is violating the provisions of Article 23.8 (c) of the Constitution and Law 21/62. Furthermore, the requisition of Turkish owned properties does not include the furtherance of a housing project. 10 15

5. By the proposed requisition, plot 188 is split up into three pieces of which the central one is requisitioned with the result that its value is being considerably diminished. 20

6. Assuming that the order of requisition was lawfully made, no power is conferred on the requisitioning authority to uproot trees standing on the requisitioned property of the applicants. In abuse of such power, the applicants have proceeded to the uprooting of such trees. 25

7. The objects set out in the requisition order, are not objects of public benefit under the provisions of section 3(2) of Law 21/62.

8. The appropriate organ vested with the power under section 4 of Law 21/62 to make a requisition order, is the Council of Ministers and such power could not be delegated and exercised by the Minister of Interior by whom the order was issued in the present case. 30

The powers to make a requisition order are governed by the Requisition of Property Law, 1962, (Law 21/62). The powers of possession and use of a property subject to a requisition order, are regulated by sections 6 and 7 of the Law. Sub-section (2) of section 6 provides as follows: 35

“(2) When possession of any property is taken by virtue of this Law, such property may, notwithstanding any restriction imposed on the use thereof (whether by any Law or any public instrument or otherwise) but subject to the provisions of section 7, be used during the period for which such possession is retained, in such manner as the requisitioning authority thinks expedient; and the requisitioning authority or an acquiring authority to which such property has been made available by the requisitioning authority, as the case may be, may during the period hereinbefore mentioned, do in relation to such property, anything which any person having an interest in such property would be entitled to do by virtue of that interest.”

By virtue of such provision the requisitioning authority is empowered to do anything in relation to such property which any person having an interest in it would be entitled to do by virtue thereof. The remedy of the owner for any act done on such property by the requisitioning authority is to be found in section 8 which provides for compensation payable for the requisition of immovable property. In addition to various remedies provided by such section, provision is made under section 8(1)(c) that compensation may include a sum equal to any diminution in the value of such property resulting either from the presence of or in or over such property of any building or other erection structure or fixture erected, constructed or affixed by the requisitioning authority or from any damage occasioned to such property during the period for which possession of the property is retained by virtue of the order of requisition.

It is clear from the above provisions that the respondents in the present case could proceed to give effect to the objects of requisition and in case of discontinuance of the requisition, the remedies provided by the law were available to the owners to compensate them for any damage caused by the erection of any structures or the destruction of any existing structures or trees standing on such property.

The above provision answers the complaint of the applicants that the respondents have proceeded with the up-rooting of trees, thus causing a permanent loss to the applicants and impairing their property.

As to the contention of counsel that a notice of acquisition does not amount to an order of acquisition in respect of which a requisition order can be made as a corollary to and in furtherance of the objects of acquisition, the power of requisition is independent of the power of acquisition though in most of the cases the requisition of a property subject to acquisition may be necessary for giving effect to the acquisition. In the case of *Evrydiki Aspri v. The Republic*, 4 R.S.C.C. 57 at pp. 61, 62, we read the following in this respect:

“The Court finds no substance, either, in the contention that because in the meantime the construction of the proposed road will proceed under the requisition order, the appropriate authority, under Law 15/62, will be prompted to reject any objection to the compulsory acquisition to be made by applicant in due course. Irrespective of the order of requisition and anything done under it, the duty of such authority to consider the said objection remains unaltered and should such objection not be properly dealt with on its merits then the applicant could always be entitled to have a recourse to this Court in the matter. In any event, applicant would not be in a worse position than if Government had requisitioned the property in question, without any intention at the time to acquire it compulsorily, and subsequently, during the period of the requisition, it were to be found necessary, for the same purpose of public benefit, to acquire compulsorily such property. Surely in such a case applicant could not have alleged that the subsequent giving of a notice of acquisition invalidated the previously made order of requisition, though again the appropriate authority considering any objection to such acquisition might be confronted with whatever had been already accomplished under such an order of requisition.

5 It may, of course, not be always lawful to publish an order of requisition simultaneously with a notice of acquisition, in respect of the same property, especially if it is not necessary at the material time to commence putting into effect at once the purpose of public benefit common to both, but such an issue does not have to be decided, because it does not appear to arise in the present Case.

10 In the light of the above and in the circumstances of this Case, the Court is satisfied that the constitutional rights of the applicant are not being invaded nor is the order of requisition contrary to Law 21/62 and, therefore, the justice of the Case does not require the making of a Provisional Order. In any case, 15 no irreparable damage would be caused because, should, for any reason, the compulsory acquisition of applicant's property not materialize eventually, there appears to exist sufficient provision, both in paragraph 8 of Article 23 and also in Law 21/62, for applicant 20 to be compensated in respect of anything to be done under the said order of requisition, including the cost of restoring the original status quo of the property. The risk of having to pay compensation to that extent is clearly involved in the concurrent resort to both 25 media, i.e. of a compulsory acquisition, and of a requisition, for the achievement of one and the same purpose of public benefit."

As to counsel's argument concerning plot 160/5, I shall deal with it when considering ground 4.

30 With reference to ground 2, I find the contentions in support thereof as unfounded. From the material before me it is apparent that a proper inquiry was carried out into the matter satisfying the provisions of section 5 of Law 21/62. Concerning the complaint of the applicants 35 that the respondents acted in violation of the rules of natural justice by having failed to afford them an opportunity to be heard, the answer may be found in my judgment in Case 170/79 in which an exposition of the law in this respect is made and which I fully adopt in the present case.

It suffices if I repeat what I said in conclusion in the said case that no comparable duty 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 (see, inter alia, *Co-operative Store Famagusta Ltd. v. The Republic* (1974) 3 C.L.R. 295, *Georghios HjiLouca v. The Republic* (1969) 3 C.L.R. 570, *Constantinou v. The Republic* (1972) 3 C.L.R. 116, *Karatsi v. The Republic* (1984) 3 C.L.R. 488).

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The issue in the present case is purely of an administrative nature and once there is no express provision in the Law for an oral hearing before an order of requisition is made, there was no duty cast upon the respondents to afford the applicants the opportunity of an oral hearing.

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Concerning ground 4, sufficient reasons are given in the statement of facts prepared by the Department of Town Planning and Housing which is a specialised department on the matter, as to the exclusion of plots 189, 164, 159 and 158 from the requisition order. Regarding plot 160/5 and other properties belonging to Turkish Cypriots an explanation appears in the statement of facts in support of the opposition. Such properties were already under requisition by requisition orders published in the official Gazette of the Republic under Notification 671 of 11th September, 1975 and 820 of 14th November, 1975. Amongst the objects of public benefit mentioned in the requisition order under Notification 820, is housing accommodation for the satisfaction of the needs of the refugee population. Such requisition orders have been extended and were in force at the time when the sub judice requisition order was made. Under the relevant provisions of the Requisition of Property Law, 1962, and in particular section 4(3), as amended by section 2 of Law 50/66, the duration of an order of requisition shall be for such period or periods not exceeding five years as may be specified in such order and under paragraph (b) of sub-section (3) such period may be extended by such further period or periods not exceeding five years from the date of which the requisition first took effect.

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The validity of those requisition orders has not been challenged and in any event the applicants have no legitimate interest to challenge same.

5 In the result applicants' contention of discrimination is unfounded.

10 The arguments advanced in support of ground 5 have already been dealt with in the judgment in Case No. 170/79. The question of any damage likely to be caused by the splitting up of the property into three pieces and the use of the central one by virtue of the requisition order is a matter which can be taken into consideration by the appropriate Court in assessing the amount of compensation payable.

15 The same applies to ground 6. The respondents were entitled by virtue of the provisions of the law to do any act on the said property which an owner could do, and the uprooting of any trees is a matter amenable by the payment of compensation.

20 As to ground 7 that the objects of the requisition are not objects of public benefit under the provisions of section 3(2) of Law 21/62, I find such contention untenable for the reasons stated in this respect in my judgment in Case No. 170/79 which I fully adopt and I need not repeat once again. (See, also, in this respect, the judgment of the
25 Full Bench in *Hadjoannou and another v. The Republic* (1983) 3 C.L.R. 536 at pp. 572 - 576).

30 Coming now to the last ground and the arguments advanced by counsel for applicants that the power under the law is vested in the Council of Ministers and that it could not be delegated to the Minister of Interior, I find such contention unfounded. Under the provisions of the Statutory Functions (Conferment of Exercise) Law, 1962, (Law 23/62) and in particular section 3(1), power is given to
35 the Council of Ministers to transfer the exercise of any of its statutory functions to a Minister who may exercise such powers on behalf of the Council of Ministers. The Council of Ministers by virtue of its Decision No. 4401 of 29th

December, 1964, transferred this power to the Minister of Interior.

For all the above reasons this recourse fails and is hereby dismissed. In the circumstances, I make no order for costs.

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*Recourse dismissed.
No order as to costs.*