1987 October 21

[SAVVIDES, J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

1 MARIOS ELIA PANAYIDES,
2 CHRISTOS ELIA PANAYIDES, BOTH MINIORS, THROUGH THEIR FATHER ELIAS PANAYIDES, AS THEIR NATURAL GUARDIAN, THE NEAREST RELATIVE AND FRIEND,
3 ANASTASSIS SPYROU KOZAKOU,
4 GEORGHIOS SPYROU KOZAKOU,

Applicants,

v

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF COMMUNICATIONS AND WORKS,

Respondents

(Case No 609/84)

Time within which to file a recourse — Constitution, Art 146 3 — Compulsory acquisition — Publication of in Official Gazette — Contents of — Such as to identify property by reference to the Lands Office records, but not mentioning name of owner — Insufficient to cause the period of 75 days to start running — In such a case the Court should inquire whether applicants came actually to know of the acquisition and when such knowledge was acquired

On 26 9 78 a notice of acquisition of applicants' immovable property Reg No 22481 was published in the Official Gazette On 10 10 78 the applicants, who were minors, submitted through their parents written objections The Council of Ministers rejected the objections On 28 9 79 an Order for the acquisition of the aforesaid property was published in the Official Gazette

On 9 12 83 and 9 1 84 written offers of compensation were sent to applicants' fathers and natural guardians

The applicants did not accept such offers and on 10 11 84 filed this recourse

It must be noted that the acquisition was made for the improvement, straightening and asphalting of the road of Paphos Akamas-Polis The relevant works started being carried out prior to the notice of acquisition and as a result the applicants, through their fathers as natural guardians, filed on

28th September, 1978, Action 730/78 against the Republic of Cyprus for trespass to their property. This action was later withdrawn subsequent to the publication of the order of acquisition.

It must, also, be noted that both in the notice of acquisition and in the order of acquisition, in which reference is made to the description of the properties as appearing in the notice of acquisition, the properties acquired are described by their plot numbers and by means of reference to the Lands Office records for identification of same but there is no reference to the names of the owners of the properties affected by the acquisition.

The issue that arose for determination was whether this recourse is out of time.

Held, *dismissing the recourse*: (1) The notices in this case are similar to those referred to in *Pissas (No. 1) v. E.A.C.* (1966) 3 C.L.R. 634 and in *Bakkaliaou v. Municipality of Famagusta* (1969) 3 C.L.R. 19 in both of which the Court found that they were not sufficient notices to bring to the notice of the persons affected of the rejection of their objections and of the fact that an order of acquisition concerning their properties was made

(2) In view of the insufficiency of the notices, the question is whether the applicants came actually to know of the compulsory acquisition and when such knowledge was acquired.

The withdrawal of the action of trespass is a clear indication that the guardians of the applicants came to know about the order of acquisition soon after its publication and, therefore, the period of 75 days provided under Article 146.3 began to run from such date

In any event, the applicants acquired knowledge of the sub judice acquisition also through the notices offering compensation, dated 9.12.1983 and 9.1 1984. It follows that the recourse, which was filed in November, 1984, is again outside the time limits provided by the Constitution.

Recourse dismissed.
No order as to costs.

Cases referred to

Pissas (No.1) v. The Electricity Authority of Cyprus (1966) 3 C.L.R. 634;

Bakkaliaou v. The Municipality of Famagusta (1969) 3 C.L.R. 19;

HjiCostas v. The Republic (1974) 3 C.L.R. 1;

Spyros Colocassides Estate Ltd. and Another v. The Republic (1977) 3 C.L.R. 205.

Recourse.

Recourse against the validity of the acquisition order affecting applicants' property under Registration No. 22481 at Paphos.

E. Panayides, for the applicants.

5 *M. Tsiappa (Mrs.)*, for the respondents.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The applicants in this recourse are co-owners by one-fourth undivided share, of a field under Plot 288, 287/1/2, Sheet Plan 51/2 of an extent of two 10 donums, two evleks and 500 sq. ft. under Registration 22481, which is subject to a compulsory acquisition order. Applicants 1 and 2 are infants and filed the present recourse through their father as natural guardian and next friend. Applicants 3 and 4 are of full age but at the material time of the acquisition they were minors 15 and were represented by their father as natural guardian and next friend. Applicant No. 3 was born on the 26th May, 1964 and applicant No. 4 on the 23rd May 1966.

The aforesaid property of the applicants was the subject of a notice of acquisition dated 26th September, 1978, published in 20 Supplement No. 3 of the official Gazette of the Republic dated 6.10.1978 under Notification 1048, for the improvement, straightening and asphalting of the road Paphos-Akamas-Polis. For the purpose of giving effect to the objects of the acquisition a requisition order was also published in the same issue of the 25 official Gazette of the Republic.

From what appears from the material before me, works started being carried out prior to the publication in the Gazette of the said orders and as a result the applicants, through their fathers as natural guardians, filed on 28th September, 1978, Action 730/78 30 against the Republic of Cyprus for trespass to their property, which action was later withdrawn subsequent to the publication of the order of acquisition.

The applicants submitted, through their parents, on 10.10.78, written objections against the requisition and acquisition of their 35 property. The Council of Ministers considered the above objections and after taking into account all relevant factors placed before it, including the views of the Paphos District Engineer of the

Department of Pubic Works, decided, on 20.9.1979, to dismiss the objections and proceeded with the acquisition of the said property by issuing an order of compulsory acquisition which was published in the official Gazette of the Republic of 28.9.1979, under Notification 10551 dated 20.9.1979. 5

On 6.12.1978, the father of applicants 1 and 2 who is a practicing lawyer, wrote a letter to the District Engineer of the Public Works Department indicating that there was a difference between the plans showing the acquired property and the road as actually constructed, at the point where the road passed through 10 Plot 288 and requesting a new survey for the purpose of correcting any mistake.

The District Engineer of the Public Works Department in reply to such letter informed the applicant on the 16th March, 1979, that after an inquiry it was found that there was indeed a mistake and 15 the correct position of the new road was shown on the plan attached to the letter.

The Director of Lands and Surveys sent to the fathers and natural guardians of the applicants written offers of compensation in respect of the property acquired dated 9.12.1983, and 20 9.1.1984, attached to which there were declarations of acceptance which had to be signed by them, in case of acceptance, and be attested by the Village Commission.

The applicants did not accept such compensation and on the 10th November, 1984 filed the present recourse whereby they 25 pray as follows:-

(a) A declaration of the Court that the acquisition order which was published under Notification 1048 in Supplement No. 3 of the official Gazette of the Republic dated 6.10.1978, is null and void and of no effect concerning Plots 288, 287/1/2, Sheet/Plan 51/ 30 2, Paphos, for the widening and straightening of Paphos-Akamas road and which belong to the applicants in undivided shares.

(b) That the time limits for filing a recourse under Article 146.3 of the Constitution does not apply in the present case due to the invalidity of the act and/or wrong and insufficient notification and 35 procedure concerning infant co-owners.

(c) For omission to reply to the objections of the applicants dated 10.10.78.

(d) Unconstitutional and arbitrary exercise of discretionary power which materially renders useless the property of the applicants.

The legal grounds on which the recourse is based are the 5 following:-

(1) The adjoining property under Plot 53 which belongs to a mosque and is Vakf property through which the road was constructed contrary to the provisions of the Constitution, has not been acquired.

10 (2) No sufficient inquiry was made for possible alternative solutions.

(3) A new road was constructed instead of widening and/or straightening an existing road, part of which is asphalted, with the result that the property of the applicants was cut through and 15 converted into two useless pieces.

(4) The Ministry of Communications and Works admitted the existence of a mistake in the survey of the new road concerning applicants' property and the exact line of the property under acquisition without proceeding to a new acquisition order, in 20 abuse and/or excess of powers.

(5) Lack of sufficient notification to the infant co-owners.

Counsel for the respondents by her opposition raised the preliminary objection that the recourse was not made within the time limit specified by Article 146 of the Constitution and therefore 25 it has to be dismissed.

In the alternative, she contended that the order, subject matter of this recourse was issued by the respondents in the proper exercise of the authority vested in them and is duly reasoned and was made in accordance with the Compulsory Acquisition Laws, 30 1962-1983 and the principles of administrative law.

In expounding on his grounds of law, counsel for applicants, by his written address, after making reference to the facts of the case, repeated his legal grounds set out in the recourse and concluded that the respondents did not act in accordance with the rules of 35 proper administration and that they acted in abuse and/or excess of powers in that instead of constructing a straight road in compliance with the reasons given in the notice of acquisition,

they constructed a road with a number of curves and caused great hardship to the applicants. Also, that the respondents failed to give any reply to the applicants regarding the outcome of their objection and proceeded to make the acquisition order operating under a misconception of fact and failed to pay heed to the fact that the owners of Plot 288 were infants and as a result they should have complied with the relevant provisions in the Constitution and the Law.

Lastly, counsel argued that the notice of acquisition does not contain proper particulars because the existing road does not touch the new road which has been constructed through the property of the applicants.

Counsel for the respondents adduced evidence by two witnesses, that of Michalis Violaris, a Lands Officer, 1st Grade and Demetrios Papadopoullos who, at the material time, was a District Engineer of the Public Works Department at Paphos, in support of her contention as to the reasons justifying the acquisition and that the road which was constructed was the result of a proper inquiry and the most suitable in the circumstances.

Before embarking on the substance of the case, I find it necessary to deal with the preliminary objection raised by counsel for the respondents as to whether the present recourse was filed outside the time limits prescribed by Article 146 of the Constitution.

The question as to whether publication in the official Gazette is sufficient publication for the purposes of Article 146.3 has been considered by the Supreme Court in a number of cases.

In *Charalambos Pissas (No. 1) and The Electricity Authority of Cyprus* (1966) 3 C.L.R. 634, Triantafyllides J. (as he then was), had this to say at pp. 638, 639:-

«Publication for the purpose of setting in motion the time within which a recourse may be filed has to be such publication as would state in full and clearly the contents of the act or decision concerned. This principle has been adopted in Greece (see Conclusions from the Jurisprudence of the Greek Council of State, 1929-1959, p. 251) and is, in my opinion, equally applicable in Cyprus because the relevant Greek and Cyprus provisions are, in this respect, in pari materia, and such principle is a widely accepted

principle of Administrative Law in relation to computing the time within which a recourse, such as the present one, may be made, after publication.

We have, therefore, to see whether in the present Case the publication in the official Gazette of the Order of acquisition was such as to amount to sufficient publication for the purpose of the time prescribed under Article 146(3) commencing to run.

....

Though a Notice of acquisition is because of its nature a notice in rem (see *Venglis and The Electricity Authority of Cyprus,* (1965) 3 C.L.R. p. 252), it cannot be lost sight of that an Order of acquisition is, indeed, an individual act directly affecting the owner concerned. In the particular circumstances of this Case, I cannot accept that the publication, out of the blue, of the relevant Order of acquisition, without stating therein - either directly or, at least, by reference to the Notice of acquisition - the name of the Applicant, of the owner of the property acquired, amounts to such clear and full publication of the fact that it was Applicant's land which was being compulsorily acquired, as to be deemed to be sufficient publication for the purposes of Article 146(3). Thus, in my view, time did not begin to run under Article 146(3) until the 12th November, 1965, when Applicant came actually to know of the compulsory acquisition in question, for the first time, in the circumstances stated earlier in this Decision. It follows, thus, that this recourse is not out of time.

In reaching the above conclusion, I must make it clear that I cannot accept the view that once there has been publication of an Order in the official Gazette, in conformity with the provisions of a particular enactment, then, necessarily, that amounts also to sufficient publication for the purposes of Article 146(3); there may be such publication as would comply with all that is laid down in a particular enactment for the purposes of the inherent validity of an Order and, yet, it may not amount to publication which gives to the person affected by the act or decision concerned a full and clear picture of the contents of such Order, as envisaged by a provision in the nature of Article 146(3).»

The decision in the above case was adopted in the case of *Bakkaliaou v. The Municipality of Famagusta* (1969) 3 C.L.R. 19 in which the Full Bench allowed the appeal and set aside the order of the trial Judge dismissing the recourse (reported in (1968) 3 C.L.R. 203). Vassiliades P., in his judgment added the following (at pp. 25, 26 and 27):-

> « .... The provision setting down a period of time within which an administrative decision can be challenged by a recourse under Article 146, is obviously intended to give on the one hand the opportunity to the citizen affected by the decision to exercise his right of challenging its validity, and on the other hand to give finality, in the public interest, to the position created by administrative decisions. This matter was considered by the Supreme Constitutional Court in February, 1961, in *John Moran and the Republic* (1 R.S.C.C. p. 10)
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> In the circumstances of this case, we are of the opinion that the expropriated owner was entitled under Article 29 of the Constitution to expect, in the course of the original administrative action adopted by the public authority, a reply to her proposal; she had no reason to anticipate that the public authority would circumvent her rights by the publishing of an acquisition order, before giving her a reply. We have no reason to think that the Respondents acted in this manner with a sinister motive. In fact, it was considerable time after the filing of the recourse and their opposition thereto, that it dawned on their lawyer that his client could defeat the recourse by relying on the Constitutional provisions which were intended to protect it.
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> ....
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> In the present case, the publication is not attacked as defective in itself. It is challenged as lacking 'sufficiency' (for the purpose of Article 146.3) in the circumstances in which it was made; it is attacked as a step taken in the course of an expropriation, in respect of which the authority concerned chose to take the proper administrative action (contemplated by practice in such cases) of approaching personally and directly the owner of the property before taking other steps in furtherance of the decision to acquire the property. Having taken that course, and having led the owner into it, - counsel

argued - the public authority could not abandon the owner there and take a different course (that of compulsory acquisition by official publication) without informing her of the change; and without replying to the owner's letter that her proposal was not acceptable and that it was, therefore, intended to take statutory action for compulsory acquisition.

Such change of course having in fact resulted, or having at least contributed to the expropriated owner's actual ignorance of the true position and the consequential loss of her rights, leads us without hesitation, to the conclusion that, in the circumstances, the publication of the acquisition order was not sufficient for the purpose of setting into motion the provisions of Article 146.3; and that the period of 75 days provided therein, did not begin to run until the true position came to the knowledge of the Appellant by the service upon her on June 8, 1966, of the notice of the proceedings for determination of the compensation, as in the *Pissas* case (supra).»

In the case of *HjiCostas v. The Republic* (1974) 3 C.L.R. 1, A. Loizou, J., on the facts of the case, drew a distinction between that case and *Pissas (No. 1)* and held that in the circumstances of the case a publication in the official Gazette under section 17 of the Streets and Buildings Regulation Law, Cap. 96, in the form it was published, amounted to sufficient publication of the decision challenged for the purpose of Article 146.3 of the Constitution.

Unlike the case of *Pissas (No. 1)* where in the Notice of Acquisition the property was identified by means of a description sufficient to identify such property in relation to Lands Office records and without mention of the name of the owner of the property in the Notification published in the official Gazette in *HjiCostas* case the identification of the property affected by the decision of the Municipality of Nicosia was made by reference not only to a description sufficient to identify such property in relation to Lands Office records, but also by reference to the name of the street as well as the applicant himself.

A similar view as in *Hji Costas* case was expressed by L. Loizou, J., in *Spyros Colocassides Estate Ltd. and Another v. The Republic* (1977) 3 C.L.R. 205, in which the decision of the respondents to impose and collect sewage dues was published by notices in the official Gazette which contained all necessary ingredients. The learned trial Judge held the following at p 212:-

«It is not, therefore, in my view, correct to say that the said publications did not reveal their contents clearly or that the applicants could not have known that their properties were included in the area served by the system or that they could not, with reasonable diligence, find out the phase to which their properties belonged and, therefore, the rates applicable. And in this respect the present cases are clearly distinguishable from the *Pissas* case referred to earlier on. See also *Hji Panayi v. The Municipality of Nicosia* (1973) 3 C L.R. 329 and *Hji Costas v. The Republic* (1974) 3 C.L.R. 1.

Having come to this conclusion I must hold that the time of 75 days prescribed by Article 146.3 of the Constitution began to run from the date of the publication of the relative notices imposing the rates and that, therefore, both recourses are clearly out of time and cannot be entertained by the Court.»

Bearing in mind the legal position as above concerning the publication of notices and orders of acquisition, I come now to examine whether in the circumstances of the present case the publication, for the purpose of setting in motion the time within which a recourse may be filed, came actually to the knowledge of the applicants.

Both in the notice of acquisition and in the order of acquisition in which reference is made to the description of the properties as appearing in the notice of acquisition, the properties acquired are described by their plot numbers and by means of reference to the Lands Office records for identification of same but there is no reference to the names of the owners of the properties affected by the acquisition. The notices are similar to those referred to in the case of *Pissas (No.1)* and *Bakkaliaou* (supra), in both of which the Court found that they were not sufficient notices to bring to the notice of the persons affected of the rejection of their objections and of the fact that an order of acquisition concerning their properties was made. Therefore, I have to examine whether in the circumstances of the present case it may be found that the applicants came actually to know of the compulsory acquisition in question and when such knowledge was acquired.

As mentioned earlier, counsel for applicants by his written address has admitted that upon the publication of the order of acquisition an action which was brought by the guardians of the infant applicants and was pending at the time before the District

Court of Paphos, for trespass, was withdrawn. Counsel for the respondents by her written address contended that this fact is a clear indication that the guardians came to know about the order of acquisition soon after its publication and, therefore, the period 5 of 75 days provided under Article 146.3 began to run from such date. Neither in his written address in reply, nor in his final address in clarification counsel for applicants contested this fact.

From the material before me I find that in the circumstances of this case the guardians of the applicants who were acting for them 10 all along came to know about the publication of the order of acquisition soon after its publication. This is clearly indicated by their conduct of withdrawing the action brought by them on behalf of the infants in the Dirstrict Court of Paphos, a fact which is admitted in the written address of counsel for applicants. A period 15 of eight years lapsed ever since without the applicants having taken any steps to challenge the said order of acquisition. Furthermore, it is also evident that the applicants acquired knowledge of the sub judice acquisition also through the notices sent to them in accordance with section 17 of Law 15/62, offering 20 compensation, which, as stated earlier, were not accepted by them. These notices were dated 9.12.1983 and 9.1.1984, and the recourse, which was filed in November, 1984, is again outside the time limits provided by the Constitution. I, therefore, find that the objection raised by counsel for the respondents that the present 25 case was filed out of time is a sound one.

In the result this recourse fails as filed out of time and is hereby dismissed but in the circumstances I make no order for costs.

Recourse dismissed.
No order as to costs.