

1987 January 31

[STYLIANIDES J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS CHR ECONOMIDES,

*Applicant,*

v

- 1 THE PUBLIC HEALTH COMMITTEE OF KATO AKOURDALIA,
- 2 THE MINISTER OF INTERIOR,
- 3 THE COUNCIL OF MINISTER,

*Respondents*

*(Case No 755/85)*

*Legitimate interest—Principles applicable—Summing up of—Revocation of orders of compulsory acquisition and requisition—Purpose of orders revoked was to widen a path leading to a public road—Applicant not the owner or possessor of the lands affected by the orders revoked but owner of land in the vicinity—Between applicant's land and the lands affected by the orders revoked lies plot 107, not belonging to the applicant—Applicant has no legitimate interest to challenge the said revocations*

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The applicant owns a piece of land in Kato Akourdalia in the District of Paphos, which abuts to plot 107. From the end of plot 107 there exists a public pathway about 4 ft wide, leading to a public road. On 22 6 84 a notice of acquisition was published for the purpose of acquisition of a strip of land from a number of other plots for the widening of the said path. The strip of land to be compulsorily acquired as aforesaid was also requisitioned.

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On 11 6 85 the notice and the relevant order of acquisition as well as the order of requisition of the said strip of land were revoked. The revocations were published in the Official Gazette of 21 6 85.

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By means of this recourse the applicant challenges the validity of the said revocations. The applicant submitted that he has a legitimate interest to challenge the said revocations in that by reason thereof there are adverse consequences in the development of his land and he was deprived of the benefit which he would have by the purchase of a private right of way over plot 107.

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*Held, dismissing the recourse* (1) The existence of legitimate interest creates the jurisdiction of this Court. The Court in its task of applying in the

**Economides v. Health C/tee K. Akourdalia (1987)**

light of the authorities paragraph 2 of Article 146 of the Constitution has to consider the facts of each case.

(2) The applicant is neither the owner nor the possessor of the properties in question. Plot 107 lies between his plot and the properties affected by the orders revoked. His position is not different from that of an owner of land situated near the line of an intended road adjoining two villages or two towns. If the appropriate authority decides not to proceed with the project, has such an owner an existing personal legitimate interest directly and adversely affected? 5

(3) Any adverse effect on the applicant by reason of the sub judice decisions is indirect and, therefore, outside the ambit of Article 146.2 of the Constitution. 10

*Recourse dismissed.*

*No order as to costs.*

*Cases referred to:*

*Demetriou and Another v. The Republic*, 1 R.S.C.C. 99;

*Rouhi v. The Republic*, 2 R.S.C.C. 84;

*Ierodiakonou v. The Republic*, 3 R.S.C.C. 55;

*Kritiotis v. Municipality of Paphos and Others* (1986) 3 C.L.R. 322;

*Papasavvas v. The Republic* (1967) 3 C.L.R. 111;

*Markides v. The Republic* (1967) 3 C.L.R. 167;

*Constantinou v. The Republic* (1974) 3 C.L.R. 416.

**Recourse.**

Recourse against the decision of the respondents to revoke a compulsory acquisition order and a compulsory requisition order. 25

*K. Talarides*, for the applicants.

*A. Sophocleous*, for respondent 1.

*Chr. Ioannides*, for respondents 2 and 3.

*Cur. adv. vult.*

STYLIANIDES J. read the following judgment. By this recourse the applicant seeks the annulment of the orders of revocation of a compulsory acquisition and of a compulsory requisition published 30

in the Official Gazette of the Republic of 21.6.85 under Notifications No.929 and 941.

5 The applicant owns a piece of land shown on D.L.O. maps as Plot 108, Sheet/Plan XXV/36, in the vicinity of Kato Akourdalia village in the Paphos District, 18 donums in extent. This is an agricultural land. It abuts Plot 107.

10 From the end of Plot 107 there exists a public path-way about 4 ft. wide, leading to a public road. After long pestering by the applicant, respondents No.1, the Public Health Committee of Kato Akourdalia village, decided to compulsorily acquire a strip of land from a number of plots, i.e. Plots No. 87/1, 87/2, 95 and 94, for the widening of the said path upto 20 ft. and the straightening of it. The necessary procedure envisaged by the Compulsory Acquisition Law, 1962 (No. 15 of 1962), as amended, was followed and notice of acquisition was published in the Official Gazette of 22.7.83, administrative act 835.

15 Two owners of the land affected objected thereto. Their objection was rejected. Later, as it was found out that probably the provisions of the Compulsory Acquisition (Amendment) Law, 20 1983 (No. 25 of 1983) for the publication of the order of acquisition and requisition within 10 months was not complied with, a new notice was published in the Official Gazette of 22.6.84 under Notification No. 970. No objections in time were received and a new order of acquisition was published in the Official Gazette of 2.11.84 under Notification No. 1706. Order of 25 compulsory requisition was published on the same day - 2.11.84 - under Notification No. 1710.

30 An «out of time objection» was submitted whereby it was alleged that the acquisition was made not for a public utility purpose but for the service of one person only, that is to say, the applicant. The previous objectors had aimed at the same target, that is to say, the object of the acquisition was to serve a single person, the applicant, owner of Plot 108, and not the public interest or a public utility purpose. The matter was referred to the Attorney-General for legal advice. 35

The object of the acquisition and requisition, as set out in the relevant orders, is public utility, that is to say, the creation and development of public roads, in the Republic and the acquisition is necessary for the construction, improvement and straightening

of agricultural road in the village of Kato Akourdalia.

The Minister of the Interior, exercising his powers under Section 7 of the Compulsory Acquisition Law - a power which was delegated to him by the Council of Ministers - revoked the notice of acquisition No. 970/84 and the order of acquisition No. 1706/84 on the ground that the subject-matter immovable property was not necessary for purposes of public utility which are set out in the said notification. 5

On the same day he revoked under Section 4, paragraph 3, of the Compulsory Requisition Law the order of requisition. These two revocations done on 11.6.85 were published in the Official Gazette of 21.6.85 under Nos. 929 and 941, respectively. These are the decisions of revocation, the validity of which is contested by this recourse. 10

Objection was taken by the respondents that this Court cannot entertain this recourse as the applicant lacks legitimate interest in the sense of Article 146.2 of the Constitution. 15

Counsel for the applicant, on the other hand, submitted that his client, the applicant, is possessed of legitimate interest as he is the owner of land, Plot 108; he would be benefited if the object of the acquisition and requisition was finally effected and further that in view of the sub-judice decisions he purchased a right of way over the neighbouring Plot 107, 10 ft. wide. The revocation of the acts of acquisition and requisition brings on the applicant adverse consequences in the development of his land and deprives him of the benefit which he would have by the purchase of the private right of way over Plot 107. 20 25

For a claim under Article 146 to be entertainable by this Court the prerequisites required by paragraph 2 of such Article have to exist. Such paragraph 2 reads as follows:- 30

«2. Such a recourse may be made by a person whose any existing legitimate interest, which he has either as a person or by virtue of being a member of a community, is adversely and directly affected by such decision or act or omission».

This provision is similar to constitutional provisions in other countries and analogous to the corresponding provision in Greece, which is s.48 of Law No. 3713/1928. 35

The existence of legitimate interest creates the jurisdiction of the Court. Lack of legitimate interest deprives the Court of the power to deal with a recourse - (See, inter alia, *Menelaos Demetriou and Another v The Republic*, 1 R S C C 99, 104  
5 *Mehmet Ali Rouhi v The Republic*, 2 R S C C 84, *Efthymios Ierodiakonou v The Republic*, 3 R S C C 55, *Kritiotis v Municipality of Paphos and Others*, (1986) 3 C L R 322)

It is correct that the requirements of Article 146 2 must be satisfied at the time of the filing and hearing of a recourse, that such  
10 requirements are satisfied if at the said material times it is clear that the existing interest of an applicant, though not yet actually adversely and directly affected, is unavoidably bound to be so affected eventually - (*Conclusions of the Jurisprudence of the Greek Council of State 1929-1959*, p 260, *Papasavvas v The Republic*, (1967) 3 C L R 111)  
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The initial burden lies on the applicant to satisfy the Court that he has a legitimate interest for interference with the sub-judice decision when an objection on this ground is raised - (*Markides v The Republic*, (1967) 3 C L R 167) - though the Court has to  
20 inquire into the presence of an existing legitimate interest *ex proprio motu* - (*Constantinou v The Republic*, (1974) 3 C L R 416)

The Court in its task of applying in the light of the authorities paragraph 2 of Article 146 has to consider the facts of each  
25 particular case

The sub-judice acts are acts of revocation of a compulsory acquisition and requisition. The applicant is neither the owner nor the possessor of the properties to be acquired. Plot 107 lies  
30 between his plot and the property affected by the orders revoked. His position is not different from that of an owner of land situated near the line of an intended road adjoining two villages or two towns. If the State or the appropriate authority decides not to proceed with the project or change the route or even abandon the project, has that owner an existing personal legitimate interest in  
35 the sense of Article 146 2 which was directly adversely affected?

The acts of revocation do not directly relate to the applicant and no adverse results are affecting any legitimate interest of the applicant in the sense of Article 146 2. Any adverse effect is

indirect and does not affect any legitimate interest within the ambit of «legitimate interest», as envisaged in paragraph 2 of Article 146.

For this reason the recourse cannot be entertained by this Court and it fails.

The recourse is hereby dismissed.

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Let there be no order as to costs.

*Recourse dismissed  
No order as to costs.*