

1987 November 28

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MICHAEL THEODOSIOU LTD.,

Applicants,

v.

1. THE MUNICIPALITY OF LIMASSOL AND/OR THE MUNICIPAL COMMITTEE OF LIMASSOL,
2. THE REPUBLIC OF CYPRUS, THROUGH THE MINISTER OF INTERIOR,

Respondents.

(Case No. 517/85).

Compulsory Acquisition — The Compulsory Acquisition of Property (Amendment) Law 25/83, section 8 — Whether the effect of noncompliance with its provisions, i.e. failing to negotiate within the time limit prescribed therein or to offer compensation as provided therein, is the nullification of the process of acquisition — Whether in case of such noncompliance the owner of the property has a right to demand the revocation of the Notice and Order of the Acquisition — Both questions answered in the negative.

5

Compulsory Acquisition — The Compulsory Acquisition of Property Law 15/67, section 7(1) — Ambit and effect of.

Construction of Statutes — Canons of construction in the absence of clear and express language — The state of the law when the statute was enacted — The object of the statute — The statute should be interpreted as a whole.

10

The process of compulsory acquisition of applicants' property began in 1972, when the relevant Notice of Acquisition was published in the Official Gazette. There followed the publication in 1973 of the Order of Acquisition.

15

When Law 25/83 came into operation the aforesaid compulsory acquisition proceedings had not been completed and, for this reason, the provisions of section 8* of the said new law became applicable to the case in hand.

The question raised in this recourse is what are the consequences of non compliance with the provisions of section 8 by an acquiring authority.

20

* Quoted at pp. 1754 - 1755 *passim*

5 The applicants, who, by means of this recourse, seek a declaration that the said Notice and Order of Acquisition are null and void and that the respondents' omission to revoke the said Notice and Order of Acquisition is, also, null and void, submitted that the effect of failing to comply with the said section 8, that is the effect of failing to negotiate compensation within the time limit provided therein or of failing to offer the payment of compensation as provided therein, is the nullification of the whole process of acquisition

10 Held, *dismissing the recourse* (1) In the absence of clear and express language, section 8 should be construed by having regard to certain well known and accepted principles which govern the construction of Statutes These are

(a) The state of the law at the time Law 25/83 was enacted, its structure as a whole and the intended changes (*Marangos v Municipality of Famagusta* (1970) 3 C L R 7)

15 (b) The object of the Statute and the purpose for which it was enacted (*Vita Ora Co Ltd v Republic* (1973) 3 C L R 273)

(c) That the Statute should be construed as a whole (*Georghiades v The Republic* (1969) 3 C L R 396)

20 (2) From a mere looking of the amendment introduced by means of Law 25/83, it is clear that its main features are (a) to provide for a process for the prompt payment of compensation (b) The payment of interest at 9% per annum from the time of the Notice of Acquisition until the actual payment of the compensation

25 In effect the amendments aim at safeguarding the financial interests of the owner and no other interest

30 (3) The result suggested by counsel for the applicant is a very drastic one and with many serious repercussions, one such repercussion being the abandonment of the public utility purpose for which the acquisition was effected If the legislature intended that the failure of the acquiring Authority to act as in section 8(1) provided, would have led to such drastic repercussions and consequences it would have said so in express and clear language and not leave it to the Court to construe the Statute Where the legislator wanted to make provision for the abandonment or abatement of the acquisition for any reason, they did so by express words and section 7 of Law 15/62 provides a glaring example

35 Even if in this case there was an omission to act under section 8(1) of Law 25/83, such omission does not lead to the nullification of the acquisition As section 8 of Law 25/83, aims only at safeguarding the financial interests of the owner by the prompt payment of compensation, any omission to act thereunder has only financial consequences on the Acquiring Authority

40

(4) Now prayer (a) makes reference to revocation under section 7 of Law 15/62, and/or section 8 of Law 25/83 For the reasons above appearing the acquiring Authority is under no duty by virtue of section 8 of Law 25/83 to revoke the Notice or Order of Acquisition Regarding section 7 of Law 15/62 no right is given to the owner of the land subject of acquisition to demand the revocation of an acquisition order and the return of the property on the ground that it is not required for the purpose of the acquisition or on the ground that the purpose for which it was acquired has not become attainable 5

Section 7(1) as already mentioned, empowers an acquiring authority to revoke an acquisition order The exercise of such power is a matter of discretion and if such discretion in revoking an order of acquisition is wrongly exercised, then a recourse may lie for wrong exercise of discretion 10

Recourse dismissed

No order as to costs

Cases referred to 15

Michael Theodosiou Co Ltd v The Municipality of Limassol (1975) 3 C L R 195,

Nemitsas Industnes Ltd v Municipal Corporation of Limassol (1967) 3 C L R 134,

Thymomouillos v The Municipality of Nicosia (1967) 3 C L R 588, 20

Chryssafinis v The Republic (1982) 3 C L R 320,

Koupepa v Municipal Committee of Limassol (1968) 3 C L R 496,

Costea v The Republic (1983) 3 C L R 115,

M D M Estate Developments Ltd v The Republic (1980) 3 C L R 54,

Marangos v Municipality of Famagusta (1970) 3 C L R 7, 25

Vita Ora Co Ltd v The Republic (1973) 3 C L R 273,

Georghiades v The Republic (1969) 3 C L R 396,

Cyprus Tannery v Republic (1980) 3 C L R 405,

Cyprus Tannery v Republic (1985) 3 C L R 572

Recourse. 30

Recourse for a declaration that Notice of Acquisition No. 824/1972 and/or the Order of Acquisition No. 65/1973 are null and void and without any legal effect as a result of the non-application of and/or non-compliance by the respondents with the provisions of the Compulsory Acquisition Law, 1962 and/or Article 23 of the Constitution. 35

Chr. Triantafyllides, for the applicants.

J. Patamitis, for respondent 1.

A. Papasavvas, Senior Counsel of the Republic, for respondent
2

5

Cur. adv. vult.

A LOIZOU J. read the following judgment. By the present
recourse the applicant Company seeks

10

«(a) A declaration that the omission of the respondents and
either of them to publish in the official Gazette of the Republic
an order revoking the Notice of Acquisition 824/72 and every
relevant Order published, that is the Order of Acquisition 65/
1973, constitutes an omission contrary to s 7 of the
Compulsory Acquisition of Property Law 1962 and/or s 8 of
the Compulsory Acquisition of Property (Amendment) Law,
15 1983 and/or Article 23 of the Constitution;

15

20

(b) A declaration that the Notice of Acquisition 824/1972
and/or the Order of Acquisition 65/1973 are null and void
and/or without any legal and/or other effect as a result of the
non-application of and/or noncompliance by the
respondents and/or either of them with, the provisions of the
forementioned legislation and/or the Constitution »

25

After the Order of Acquisition in respect of the property of the
applicant Company was published, same was challenged by a
recourse to this Court under Article 146 of the Constitution which
was ultimately dismissed. The judgment of the Court is reported as
Michael Theodosiou Co. Ltd. v. The Municipality of Limassol
(1975) 3 C.L.R. p. 195 and one may find therein all relevant
matters including the description of the subject property and the
contents of the two orders, which naturally contain the purpose of
public benefit for which the property was required to be
compulsorily acquired. The purpose of the said acquisition has
been in effect the furtherance of a municipal plan to rid the
foreshore of Limassol of privately owned buildings, and the
property of the applicant company to which these proceedings
relate, is the only immovable property which remains for the
completion of the said plan the execution of which is absolutely
necessary.

30

35

On the application of respondent 1, the Lands and Surveys
Office assessed the value of the said property which consists of a
40 complex of stores still being used as bonded warehouses at
£100,000.

In the light, as it is stated in their Notice of Opposition, of the provisions of the Compulsory Acquisition of Property (Amendment) Law 1983, (Law No. 25 of 1983), respondents 1, tried to reach an agreement with the applicant Company and they offered to pay them by the 28th February 1985, as compensation, £200,000, an amount which included the compensation assessed by the Lands Office and interest up to 28th February 1985. This amount was not accepted by the applicant Company in spite of the several meetings which were held and during which respondents tried to persuade them to accept same. The applicant Company asked for the sum of £250,000. In the course of contacts which respondents 1 had with the advocate of the applicant Company it transpired that they were prepared to accept £230,000 on condition that they would be paid within two months and the rest bearing interest at 9% until the middle of February, 1985. In May 1984, respondents 1, applied to the Government and asked that this offer be accepted, but in September, 1984, the offer was turned down by the Government. After successive contacts which respondents 1. had with various Government departments, the matter was re-examined in 1985.

It is asserted by respondents 1 that their efforts continue and they were and still are ready to pay reasonable compensation which will be agreed or, in the absence of an agreement, will, be fixed by the appropriate Court.

Section 8 of Law No. 25/1983, which sets out the transitional provisions (and that amending law) reads as follows:-

«8. Where compulsory acquisition proceedings in respect of any immovable property have been taken but have not been completed before the date of the coming into operation of this Law, the following provisions shall apply:

(a) the acquiring authority shall, within ten months of the date of the coming into operation of this Law, enter into negotiations for the acquisition of the property which is subject to compulsory acquisition and, if no agreement has been reached within the aforesaid period of time, the acquiring authority shall promptly offer the compensation assessed thereby.

(b) The owner may, subject to determination of the sum to be paid as compensation by the competent Court, accept the compensation offered, on condition that his

5 acceptance shall be accompanied by his consent in writing that the acquired property be promptly registered in the name of the acquiring authority. In such a case the owner shall, within seventy five days at the latest, apply to the Court for the determination of the sum to be paid as compensation; and when such period has elapsed it shall be deemed that an agreement has been reached between him and the acquiring authority.

10 For the purposes of determination of the compensation as in paragraphs (a) and (b) of this subsection there shall be assessed an interest at the rate of seven per centum per annum from the date of publication of the notice of acquisition to the date of the coming into operation of this Law, or where the immovable property to be acquired is
15 charged with a mortgage or other encumbrance, there shall be assessed for the aforesaid period an interest at the rate of interest of the mortgage or such encumbrance, and an interest at the rate of nine per centum per annum from the date of the coming into operation of this Law to the time of
20 payment of such compensation.

(2) Where compulsory acquisition proceedings have been taken in respect of immovable property the value of which has been affected by the imposition of any restrictions or limitations under the provisions of the Antiquities Law or any
25 other Law, account shall be taken of any compensation which may be deemed payable in accordance with the provisions of article 23 of the Constitution.»

30 Leamed counsel for the applicant has argued that the aforesaid provisions are mandatory and not directory; it is a section of fundamental importance in curing the ills created under the directory provisions of s. 8 of Law No. 15 of 1962 which has now been repealed and substituted by a new section which introduces an obligation on the acquiring Authority to enter into negotiations, whereas the marginal note to the repealed section 8 referred to the
35 powers of the acquiring authority to purchase property by private treaty.

40 It was further contended that section 8(1)(a) is part of the proceeds of acquisition and together with the Notice and Order of Acquisition constitutes part of the same composite administrative act and the invalidity of one part leads to the automatic invalidity of the other. In support of this proposition counsel has referred to the case of *Nemitsas Industries Ltd., v. Municipal Corporation of*

Limassol, (1967) 3 C.L.R. 134; *Thymopoulos v. The Municipality of Nicosia*, (1967) 3 C.L.R. 588, *Chryssafinis v. Republic* (1982) 3 C.L.R. 320.

Learned counsel further argued on the question whether an omission to negotiate or offer compensation can be the subject of a recourse. He referred in that respect to the case of *Koupepa v Municipal Committee of Limassol* (1968) 3 C.L.R. 496 in which it was held that the offer of compensation could not be made the subject of a recourse, and he argued that in view of the obligatory nature of section 8, that case would be decided differently today.

The gist of the case before me today is, however, his last argument as to what are the consequences of noncompliance with the law by an acquiring Authority. It was argued that it is the duty of such an Authority to abide by the mandatory provisions of the law and that any failure can only result in the nullification of the process of acquisition and in that respect, of the Notice and the Order of Acquisition. In support of this proposition I was referred to the case of *Costea v. The Republic* (1983) 3 C.L.R. 115, where it was held that «failure to act (Omission) is only subject to review in the face of a mandatory provision to act». In view of the provisions of section 8(1)(a) being mandatory, the omission, it was argued to act thereunder can be the subject of judicial review.

In *M.D.M. Estate Developments Limited v. The Republic* (1980) 3 C.L.R. 54, it was said «that as a general rule the omission to comply with a prescribed form in administrative law is essential and has as a result the annulment of the administrative act». It was argued that from the moment the acquiring Authority contravenes the owner's constitutional protected right to just and equitable compensation, then of necessity it places in doubt its right to continue with the process. Reference has been made to a passage from the textbook of Costa Haromide, *The Compulsory Acquisition*, at p. 133 where the following is stated:

«In the process of acquisition there have been placed conditions for its realization which comply with the constitutional protection of ownership and its restriction for a purpose of public benefit, a purpose which would not have been achieved if the order of acquisition was left hanging at the expense of the ownership without time limits not pursued by its completion by the full compensation of the owner and the use of the acquired property for the execution of the work of public benefit. The expedition of the execution of the

acquisition and its completion by the realization of the work constitute the ultimate completion of the process of acquisition and if it is not realized the possibility of its reversal is open by revocation.»

- 5 On behalf of the respondent it has been argued that the process of compulsory acquisition was completed before the coming into operation of Law No. 25/1983, as in the case of *Koupepa* (supra) the offer and the payment of compensation were held to constitute part of the execution of the completed acquisition. If the intention
10 of the legislator was to annul the notice and order of acquisition by the omission to make an offer of compensation within the period of ten months, that would have been expressed in so many words. Moreover, the owner of property which is the subject of an order of acquisition could secure the execution of the obligation of the
15 acquiring Authority under section 8 of the Law by judicial process. The Law of Administrative Acts by Stassinopoulos p. 172, does not support the proposition that the non-offer of the compensation within the time specified by law annuls the notice and order of acquisition. On the contrary, as it is stated therein, it
20 is an indication of the law to the administration to expedite its actions.

- Now section 8 of Law 25/83, does not expressly state that any failure of the acquiring Authority to comply with its provisions results in the nullification of the process of acquisition. Once the
25 language of the Statute is not clear and express, we shall endeavour to find out whether the submission of learned counsel about nullification of the process of acquisition is born out by the language of the Statute. And in this endeavour we shall construe the said section 8 by having regard to certain well known and
30 accepted principles which govern the construction of Statutes. These are:

- (a) The state of the law at the time Law 25/83 was enacted, its structure as a whole and the intended changes (*Marangos v. Municipality of Famagusta* (1970) 3 C.L.R. 7).
- 35 (b) The object of the Statute and purpose of which it was enacted (*Vita Ora Co. Ltd. v. Republic* (1973) 3 C.L.R. 273).

(c) That the Statute should be construed as a whole
(*Georgiades v. The Republic* (1969) 3 C.L.R. 396).

Regarding the state of the Law at the time Law 25/83 was enacted, same appears in section 8 of Law 15/62 before its repeal by means of section 4 of Law 25/83. Under section 8 of Law 15/62 the acquiring Authority has power to purchase property by means of a private treaty and also to assess the compensation payable again by means of an agreement and its apportionment amongst those interested. Section 4 of Law 25/83, which repealed the said section 8 of Law 15/62, provides that «the acquiring Authority shall within ten months from the publication of the Notice of Acquisition enter into negotiations for the acquisition of the property, subject matter of the Notice of Acquisition by means of a private treaty and for the determination of the compensation by means of an agreement and its apportionment among those interested. If no agreement is reached within the time above mentioned, the acquiring Authority shall forthwith offer the compensation assessed thereby.»

The differences between the old section 8 and the new section 8 are:

(a) The new section 8 sets a time limit of ten months within which the acquiring Authority shall enter into negotiations, whereas the old section left the time at the discretion of the acquiring Authority.

(b) The new section 8 makes it obligatory for the acquiring Authority to offer forthwith the compensation. No such provision appeared in the old section 8.

It is interesting to refer also to the provisions of section 8(2) of Law 25/83 whereby the owner can accept the compensation subject to its assessment by the appropriate Court, whereupon he has to apply to the Court within 75 days of the payment of the compensation.

Further, section 9 of Law 15/62, as amended by section 5 of Law 25/83, provides that «without prejudice to the provisions of section 8, if by the time of the publication of the Order of Acquisition no agreement is reached as provided in section 8, the Acquiring Authority or any interested person may apply to the Court for the assessment of the Compensation, payable for the acquisition.....»

Therefore the remedies available to the owner in case by the time of the publication of the order of acquisition there is (a) no agreement for the acquisition of the property by private treaty, (b) for the assessment of the compensation by agreement, are to
5 apply to the Court for the assessment of the compensation.

Another important innovation introduced by means of Law 25/83, is the one provided by section 6(b) thereof, whereby «on the compensation payable there is assessed annual interest at the rate of 9% from the date of the publication of the notice of acquisition
10 and until the time of payment of such compensation».

Lastly we have section 8(1) of Law 25/83, which has been quoted above.

From a mere looking of the amendments introduced by means of Law 25/83, it is clear that its main features are (a) to provide for
15 a process for the prompt payment of compensation, (b) The payment of interest at 9% per annum from the time of the Notice of Acquisition until the actual payment of the compensation.

In effect the amendments aim at safeguarding the financial interests of the owner and no other interest.

Coming now to section 8(1) of Law 25/83, and construing it by
20 having regard to the aforesaid principles, I cannot read into such section the result suggested by learned counsel for the applicants, namely that the failure of the acquiring Authority to abide by its provisions can only result in the nullification of the process of
25 acquisition and in that respect, of the notice and order of acquisition. Such result is a very drastic one and with many serious repercussions, one such repercussion being the abandonment of the public utility purpose for which the acquisition was effected. If the legislature intended that the failure of the acquiring Authority
30 to act as in section 8(1) provided, would have led to such drastic repercussions and consequences it would have said so in express and clear language and not leave it to the Court to construe the Statute. Where the legislator wanted to make provision for the abandonment or abatement of the acquisition for any reason, they
35 did so by express words and section 7 of Law 15/62 provides a glaring example.

Regarding the reference of learned counsel for the applicant to the case of *Costea v. Republic* (1983) 3 C.L.R. 115, let me say that it is of no help to the applicant. What was decided in the *Costea*

case was the question of when omissions of the administration are of an executory character and amenable to review. More to the point is the judgment of the Full Bench in *Cyprus Tannery v Republic* (1980) 3 C L R 405

At p 415

5

«The exercise of the said powers is a matter of discretion and it appears to be well settled that an omission in the sense of paragraph 1 of Article 146 of the Constitution means an omission to do something required by law, as distinct from the non-doing of a particular act or the non taking of a particular course as a result of the exercise of discretionary powers (see inter alia *The Police Association and Others v The Republic* (1972) 3 C L R 1 23) In the present instance there has not been either a refusal or an omission to consider the relevant claim of the appellant under section 7 of Law 15/62 as the appellant has hurried to file a recourse while the matter was still under consideration »

10

15

Even if in this case there was an omission to act under section 8(1) of Law 25/83, such omission does not lead to the nullification of the acquisition. As section 8 of Law 25/83, aims only at safeguarding the financial interests of the owner by the prompt payment of compensation any omission to act thereunder has only financial consequences on the Acquiring Authority and does not lead to the nullification of the acquisition. In any event the financial interests of applicant are safeguarded by the provision for payment of interest

20

25

For the above reasons prayer (b) in the motion for relief must fail

Now prayer (a) makes reference to revocation under section 7 of Law 15/62, and/or section 8 of Law 25/83. For the reasons above appearing I hold that the acquiring Authority is under no duty by virtue of section 8 of Law 25/83 to revoke the notice or Order of Acquisition. Regarding section 7 of Law 15/62 same was considered in *Cyprus Tannery v Republic* (1985) 3 C L R 572, where the following were stated at p 589

30

35

«No right is given by section 7(1) to the owner of the land subject of acquisition to demand the revocation of an acquisition order and the return of the property on the ground that it is not required for the purpose of the acquisition or on the ground that the purpose for which it was acquired has not

40

5 become attainable. The remedy of the owner to object to a
notice of acquisition is to be found in section 4 of the Law,
whereby he is entitled to object to the notice of acquisition
and if his objection is rejected, then he may challenge such
10 decision by a recourse. In cases where the purpose of the
acquisition has not become attainable within the period of
three years from the completion of the acquisition by payment
of compensation the owner derives his remedy from Article
23 5 of the Constitution and the provisions of section 15(1) of
15 Law 15/62 which was enacted for the purpose of regulating
the procedure to be followed in case where the object of
acquisition is not attained within the period of three years. To
interpret section 7(1) as giving an additional remedy to the
owner to claim the revocation of an acquisition order would
amount to a defeat of the object of Article 23 5.

20 Section 7(1), as already mentioned, empowers an acquiring
authority to revoke an acquisition order. The exercise of
such power is a matter of discretion and if such discretion in
revoking an order of acquisition is wrongly exercised, then a
recourse may lie for wrong exercise of discretion. (See
Michaelides and Another v The Republic (supra)) »

25 Applying the principles enunciated in the above case, I hold that
no right is given to the owner to demand revocation of an
Acquisition Order for failure of the acquiring Authority to comply
with section 8 of Law 25/83, and also, that the acquiring Authority
is under no duty to revoke the Acquisition Order due to failure to
comply with the Law, section 8. Therefore prayer (b) must fail too.

The recourse is therefore dismissed but in the circumstances
there will be no order as to costs.

30

Recourse dismissed
No order as to costs