

1988 March 12

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION.

ANDREAS D. LAMPIDONITIS AND OTHERS,

*Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTRY OF INTERIOR,
2. THE PUBLIC HEALTH COMMISSION OF ASKAS VIL-  
LAGE, AND
3. THE DISTRICT OFFICER, NICOSIA,

*Respondents.*

(Case No. 808/85).

5 *Revisional Jurisdiction—Practice—Recourse for annulment—Parties—  
Composite administrative act—Compulsory acquisition of immovable  
property by a Village Health Commission with the sanction of the Council  
of Ministers—Council of Ministers should have been joined as a party, but  
in the circumstances the Court refrained from acting ex proprio motu, order-  
ing that the Council be added as a party—The Minister of Interior and the  
District Officer were wrongly joined as parties—Recourse struck out as  
against them.*

*Legitimate interest—The issue may be raised by the Court ex proprio motu.*

*Legitimate interest—Acceptance of an administrative act—Compulsory acquisition—Initiation of proceedings for assessing compensation, whilst recourse for annulment impugning the validity of the relevant decision still pending—Unconditional appearance by applicants to the recourse in such compensation proceedings—In the circumstances does not amount to an unreserved acceptance of the sub judice act.* 5

*Legitimate interest—It should exist at the time of the filing of the recourse and should continue to exist up to the determination of the case.*

*Compulsory acquisition—Competence—Whether a Village Health Commission can compulsorily acquire with the sanction of the Council of Ministers immovable property for creating a stadium—In the light of sections 7 (κδ) and 7 (κστ) of Cap. 259, as amended by Laws 81/63 and 5/83 the question is determined in the affirmative.* 10

The facts of this case appear sufficiently in the Judgment of the Court.

*Recourse dismissed.* 15  
*No order as to costs.*

*Cases referred to:*

*Cyprus Transport Co. Ltd. and Another (No. 1) v. The Republic and Others* (1969) 3 C.L.R. 501;

*Chrysochou Bros. v. CYTA* (1966) 3 C.L.R. 482; 20

*Christodoulou v. The Republic*, 1 R.S.C.C. 1;

*Constantinidou and Others v. The Republic* (1974) 3 C.L.R. 416;

*Republic v. K.M.C. Motors Ltd.* (1986) 3 C.L.R.1899;

*Meletis And Others v. Cyprus Ports Authority* (1986) 3 C.L.R. 418;

*Kritiotis v. Municipality of Paphos and Others* (1986) 3 C.L.R. 322. 25

**Recourse.**

Recourse against the decision of the respondents whereby applicants' property situated at Askas villaged was compulsorily acquired.

5 *E. Efstathiou*, for applicants.

*Cl. Theodoulou (Mrs)*, Senior Counsel of the Republic with  
M. Eliades, for the respondents.

*Cur. adv. vult.*

LORIS J. read the following judgment. The applicants impugn  
10 by means of the present recourse, the Order of acquisition  
published in the Official Gazette of the Republic on 5.7.83,  
whereby the immovable property covered by plots 242 (whole)  
244 (part of) 252 (part of) and 256 (part of) of sheet/plan  
XXXVIII/52 situated at Askas village, Nicosia District, belong-  
15 ing to all 3 applicants in undivided shares by virtue of inheritance,  
was compulsorily acquired by the Village Health Commission of  
Askas village, for the purpose of creating a communal stadium at  
Askas village.

The facts of the present case may be thus summarised:

20 The Village Health Commission of Askas village, Nicosia Dis-  
trict, published in the Official Gazette of the Republic under No.  
1913 dated 16.12.83 (vide Appendix A attached to the written ad-  
dress of Respondents 1 & 3) a notice of acquisition of certain  
properties situated at Askas village, amongst which were the fol-  
25 lowing properties, which were at the time registered in the name  
of the deceased Savvas M. Lambidonitis and belonged to all 3 ap-  
plicants in undivided shares by virtue of inheritance, from the  
aforesaid deceased registered owner:

Plot 242 (whole) and plots 244, 252 and 256 partly, of Sheet/ Plan XXXVIII/52.

The said acquisition was to be effected for the purpose of creating a communal stadium at Askas village.

On 5.7.85 an acquisition Order was published in the Official Gazette of the Republic under No. 2060 (vide Appendix B). 5

Such Order of acquisition, referred to the earlier Notice of acquisition, for the description of the properties concerned and they have to be read together so that one may understand the contents of the said Order. 10

In the Notice of acquisition the properties of the applicants are described by means of reference to survey plans only; and the names of the owners thereof are not mentioned at all in either the Notice of Acquisition or the Order of Acquisition.

It may as well, be added here, that the relevant Order of Acquisition was made by the Village Health Commission of Askas village, after obtaining the sanction of the Council of Ministers on 14.6.85, (vide Appendix "D") pursuant to the provisions of s. 6 (3) (b) of Law 15/62. (The Compulsory Acquisition of Property Law, 1962.) 20

The present recourse is directed against the Republic through:

1. Ministry of Interior
2. The Village Health Commission of Askas village
3. The District Officer Nicosia.

Learned counsel for the Republic raised two preliminary objections on behalf of Respondents 1 and 3. 25

The first objection is to the effect that Respondents 1 and 3 should not be made parties to these proceedings.

5 The second objection as I was able to comprehend it, is to the effect that although the applicants had an existing legitimate interest at the time of the filing of the present recourse, ceased to have such an interest before the completion of the hearing of the present recourse by impliedly accepting unreservedly the administrative act in question under alleged circumstances, which will be explained later on in the present judgment when dealing with this preliminary objection.

10

I shall proceed forthwith to examine the above mentioned preliminary objections before going into the merits of this case.

15 With regard to the First objection the decision of Triantafyllides J. as he then was, in *Cyprus Transport Co. Ltd. & Another (No. 1) v. Republic of Cyprus through: 1. The Minister of Communications and Works 2. The Permits Authority* (1969) 3 C.L.R. 501 amply covers the issue in the instant case. The learned President stated inter alia the following at p. 502 of the report.

20 "Counsel for Respondent 1 has submitted that Respondent 1 should not have been made a party to these proceedings.

25 As correctly pointed out by him, and as stated, also, in *Administrative Law* by Berthelemy (3rd ed. of 1993, translated by Stassinopoulos p. 395) a recourse such as the present one is in effect, made against the act or decision which is its subject-matter; and the organ responsible therefor is heard only in relation to the validity of such act or decision....."

In the instant case the recourse is directed substantially against the publication of the Order for acquisition which emanates from

the Village Health Commission of Askas village; in other words Respondent No. 2 is responsible therefor. Respondent No. 1 and Respondent No. 3 have nothing to do with the sub judice act.

It is true that pursuant to the provisions of s.6(3) (b) of Law 15/62 Respondent No. 2 has to obtain the sanction of the Council of Ministers before publishing the Order of Acquisition; in any event Respondent No. 1 is a different organ from the "Council of Ministers" who were not joined in the present proceedings. 5

(In this connection I feel that it should be stated at this stage, by way of parenthesis, that the sub-judice order complained of is a composite administrative act in that it has been made by respondent No. 2, the acquiring authority, but it has been sanctioned by the Council of Ministers under section 6(3) (b) of Law 15/62. (*Chrysochou Bros. v. CYTA and the Republic through the Council of Ministers* (1966) 3 C.L.R. 482). 10 15

In the instant case, the Council of Ministers was not joined, as it ought to. This issue was never raised before me by any side in these proceedings. I have carefully considered this issue in the light of the decision in *Christodoulou and the Republic*, 1 R.S.C.C.1 and I have come to the conclusion that I should refrain from acting ex proprio motu by adding the Council of Ministers in the title of the present proceedings at this late stage, as such a course might prejudice respondent No. 2). 20

As regards Respondent No. 3, the District Officer, has no locus standi at all in the present proceedings. The mere mentioning in the notice of acquisition, that any objections directed against the intended acquisition should be addressed through the District Officer of Nicosia, does not in my view render the latter responsible for the eventual Order of acquisition. 25

I really cannot see how, the Ministry of Interior (Respondent No. 1) and the District Officer Nicosia (Respondent No. 3), are involved in this matter; I hold the view that Respondent No. 1 and Respondent No. 3 were unnecessarily joined in the present 30

recourse. I order, therefore, that the Ministry of Interior and the District Officer of Nicosia should be struck out from the description of the Respondent in the title of the present proceedings.

5 I hold the view that inspite of the fact that Respondents 1 and 3 were successful in their preliminary objection I should not and I do not make any order as to costs, as in my view their joining by applicants, was due to a bona fide effort to bring all necessary parties, according to their view, before the Court.

Coming now to the second objection:

10 It is a fact that the 2nd preliminary objection was raised by learned counsel appearing for ex-respondents 1 and 3 who elaborated on this issue in her written address; in this connection it must be stated that counsel for respondent No.2 adopted the stand taken by counsel for ex-respondents. Independently of the above  
15 it is well settled that an Administrative Court can inquire into the existence of an existing legitimate interest acting ex proprio motu as litigation under Article 146 is a matter of public Law (*Constantinidou & Others v. The Republic* (1974) 3 C.L.R. 416 at p. 418 - *Republic v. K.M.C. Motors Ltd* (1986) 3 C.L.R. 1899.)

20 The present recourse impugning the acquisition Order was filed on 18.9.1985. It is common ground that the applicants had an existing legitimate interest at the time of the filing of the recourse. The submission based on the principle that "the legitimate interest must exist at the time of the filing of the recourse and up  
25 to the determination of the case" (*Meletis and Others v. Cyprus Ports Authorities* (1986) 3 C.L.R. 418 at p. 433 - *Kritiotis v. Municipality of Paphos and Others* (1986) 3 C.L.R. 322), relies on the following facts:

1. On 4.2.86 the Acquiring Authority filed with the District  
30 Court of Nicosia Reference under No. 13/86 for the fixing of the compensation payable for the properties compulsorily acquired.

2. The applicants in the present recourse filed an unconditional appearance in the aforesaid reference on 20.2.1986.

3. Thus, it is maintained, the procedure for the fixing of the compensation in respect of the acquisition commenced without any reservation by the applicants.

4. It is submitted that the said conduct of the applicants tantamounts to an implied voluntary and unreserved acceptance of the administrative act in question, prior to the determination of the present case, and as a consequence thereof - it is alleged - the applicants were deprived of their legitimate interest entitling them to pursue their present recourse any further.

Having given to the matter my best consideration, I hold the view that the conduct of the applicants cannot be considered as implying that they have accepted unreservedly the sub judice administrative act. On the contrary it is abundantly clear that even before filing the present recourse they have lodged objections against the notice of acquisition; they filed within the time limit envisaged by Article 146 the present recourse (it was filed on 18.9.85; they have filed an appearance in Reference 13/86, (which was filed by the Acquiring Authority) on 20.2.86 and they continued pursuing the present recourse filing their written address on 17.10.86, that is after the filing of their appearance in Reference 13/86.

In the circumstances the 2nd preliminary objection fails and is accordingly dismissed.

I shall now proceed to examine the merits of the recourse against Respondent No. 2 only, notably the Village Health Commission of Askas village.

The complaints of the applicants are summed up by their learned Counsel in his written address under three heads as follows:

(A) The Village Health Commission of Askas, it was submitted, could not act as an Acquiring Authority in view of the provisions of s. 2 of Law 15/62 which defines exclusively and restric-



tively the organs and authorities which can act in that capacity; a Village Health Commission - it was maintained - does not fall within the organs or authorities envisaged by s. 2 of Law 15/62.

(B) In the alternative, even if we were to accept that a Village Health Commission could act as acquiring authority, it was submitted that it had no competence in the matter as the property subject - matter of the acquisition was destined for the creation of a communal stadium, a matter completely outside the ambit of the competence of a Village Health Commission.

(C) Learned counsel for applicants further submitted, that by the sub-judice decision the principles of fair administration have been violated in that respondent No. 2 failed to examine the alternative possibility of achieving the object of its intended acquisition, either by purchasing other suitable property from willing vendors, or by acquiring compulsorily other suitable immovable property, the acquisition of which would have entailed a deprivation less onerous than the deprivation entailed by the acquisition of the properties of the applicants:

I shall deal with complaints under (A) and (B) together, in order to avoid repetitions:

The "Acquiring authority" as defined in the interpretation section of the Compulsory Acquisition of Property Law, 1962 s. 2 of Law 15/62 includes inter alia:

s.2(1)(d): "A public corporation on which a right to acquire property compulsorily is conferred by Law;"

The powers and duties of a Village Health Commission set out in section 7(1) of Cap. 259 were extended by the addition of new paragraphs by virtue of the provisions of s. 3 of Law 81/63.

One of the new paragraphs so added, notably para (Κδ) reads: "να προβαίνει εις την αναγκαστικήν απαλλοτριώσιν ιδιοκτησίας δι' οιονδήποτε των σκοπών αυτής, συμφώνως προς τας διατάξεις του περί Αναγκαστικής Απαλλοτριώσεως Νόμου του 1962."

(English Translation:

"to proceed with the compulsory acquisition of property for anyone of its objects, in accordance with the provisions of the Compulsory Acquisition Law of 1962").

Section 7(1) of Cap. 259 was further amended by the addition 5  
of three new paragraphs by virtue of the provisions of s. 2 of  
Law 5/83. One of the new paragraphs so added under "κστ"  
reads;

"(κστ) να ιδρύη και ελέγχει κολυμβητήρια, χώρους κατα- 10  
σηκνώσεως και χώρους αθλοπαιδιών."

(English Translation:

"To establish and control swimming pools, camping places  
and places for sports").

It is abundantly clear from the above that the Village Health  
Commission of Askas was authorised by the relevant law, as 15  
amended, to act as an Acquiring Authority and had competence to  
acquire compulsorily immovable property for the purpose of the  
creation of a communal stadium, which is obviously a place des-  
tined for sports as envisaged by section 2 of Law 5/83, para.  
"κστ". 20

With regard to complaint under (C) above, it is clear from the  
material before me and in particular from paragraphs 1 to 7 inclu-  
sive, of the affidavit sworn by the Chairman of the Village Health  
Commission of Askas village dated 24.6.87, as well as from Ex- 25  
hibits 1, 2 and 3 appended thereto, that Respondent No. 2 has  
before resorting to the compulsory acquisition of the immovable  
property of the applicants, which is uncultivated stony land, ex-  
hausted, albeit unsuccessfully, every alternative possibility with a  
view to achieving its object.

Having carefully gone through the material before me I hold the view that the discretion of the Acquiring Authority was properly exercised in the light of all relevant matters taken into consideration and after a due inquiry into the matter. Further I am of the  
5 view that the relevant sanction of the Council of Ministers was validly given. In the circumstances this Court cannot interfere and substitute its own discretion to that of the Respondent.

In the result present recourse fails in its entirety and it is accordingly dismissed.

10 Let there be no order as to costs.

*Recourse dismissed.*

*No order as to costs.*