1988 January 28

[A. LOIZOU, MALACHTOS, LORIS, PIKIS, KOURRIS JJ.]

LAVRENTIOS A. DEMETRIOU AND OTHERS,

Appellants- Applicants,

v.

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

Respondents.
(Revisional Jurisdiction Appeals Nos. 593 and 594).

Compulsory acquisition—Hardship—Alternative way to achieve the same end, entailing less hardship to the owner—Principles applicable.

Compulsory acquisition—Requisition published simultaneously with notice of acquisition—Whether such course permissible.

Compulsory acquisition—Sanctioning of, before disposal of objections filed after notice of acquisition, or failure to answer such objections—Effect.

Time within which to file a recourse—Compulsory acquisition—Sanctioning of, before determination of objections filed after the notice of acquisition—Time does not begin to run.

Constitutional Law—Right to address the Authorities—Constitution, Art. 29—Compulsory acquisition—Objections filed after the notice of acquisition—Effect of failure to reply thereto.

Compulsory acquisition—Objections filed after the notice of acquisition—Dismissal by Council of Ministers, which adopted reasoning contained in

the submission to it and in a report by the Town and Planning Department—Decision cannot be faulted on that account.

Reasoning of an administrative act—Can emerge from the administrative file.

Compulsory acquisition—The Compulsory Acquisition Law 15/62, sections 5 (1) and 18.

Bias—Must be established by evidence.

Two separate recourses of the appellants challenging on various grounds the validity of the acquisition and requisition of their properties at Zyghi were dismissed by a Judge of this Court. These are the appeals from such Judgments.

The main points of the appellants are: (a) Failure on the part of the acquiring authority to achieve the same ends by an alternative course entailing less hardship than that which the course that was followed entailed in fact to the appellants, (b) Discriminatory conduct in favour of the firm K.N.K. Pattichis Ltd. by the acceptance in part of the latter's objections against the acquisition, (c) The fact that the properties in question were requisitioned simultaneously with the notice of acquisition created a fait accompli, which prevented fair examinations of the objections against the acquisition, (d) The decision of the Council of Ministers to dismiss the objections and sanction the acquisition was not specially reasoned, (e) The sanctioning of the acquisition was defective because it was accompanied by a revocation of the notice to acquire properties of the firm of Pattichis, (f) The Town Planning Department did not qualify as an agent for the purpose of undertaking preparatory work under the provisions of s.5(1) of Law 15/62, a participation that could not be validated under the provisions of s.18 envisaging the appointment of an authorized agent.

Held, dismissing the appeals: (1) In contemplating and effecting the acquisition of land, the expropriating authority is under a duty to consider the hardship likely to befall individual owners and balance it by the exploration of alternative means of achieving the acquisition, if available, within the framework of the plan. The measure of acquisition and the extent of the land required are matters primarily falling within the discretion of the acquiring authority.

Ponderation of the element of hardship is, like every other measure, incidental to an administrative act, a matter of discretion for the acquiring authority. The task of the Court is confined to a review of the exercise of administrative discretion.

(2) Like the trial Court this Court had not been persuaded that the Administration acted peremptorily or they were motivated by a desire to show favour to the firm of K.N.K. Pattichis Ltd. because of the identity of one of its shareholders or directors, namely Nicos Pattichis.

Bias cannot be presumed (*Kontemeniotis v. C.B.C.* (1982) 3 C.L.R. 1027); it must be established by evidence. That Mr. Pattichis served at some time as a Minister or as a Mayor of Limassol, could not of itself give rise to an inference of bias on the part of the Administration.

(3) There is a positive duty on the part of the acquiring authority to deal with objections and give a specific answer thereto before sanctioning the acquisition. Any omission on the part of the expropriating authority to observe the duties cast by Art. 29 will be struck down as unconstitutional.

And if the rights of the subject are circumvented by the publication of the sanctioning of the acquisition without prior disposal of objections, the time envisaged by Article 146.3 will not be activated. The general principle is that the reasoning supporting an administrative act may be extracted from the file of the case, provided it emerges incontrovertibly and can be pegged to the decision. In this case we are not confronted with a case of lack of reasoning but with the incorporation by reference of the reasoning of subordinate bodies.

(4) Section 5(1) empowers any officer or servant of the acquiring authority to undertake any of the preliminary work contemplated therein. The Town Planning Dept. is a department of the Ministry of the Interior. Its officers qualified as officers or servants of the acquiring authority and could, in that capacity, take action under s.5(1). That being the case, s.18 becomes irrelevant.

(5) The non sanctioning of the acquisition of the property specified in the notification or any part thereof within the 12 - month period results automatically in the exclusion of the property from the acquired area. Whether revocation was at all necessary or the soundness of the course followed need not be debated in this case.

Appeals dismissed. No order as to costs.

Cases referred to:

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

Kontemeniotis v. C.B.C. (1982) 3 C.L.R. 1027;

Papacleovoulou v. Republic (1982) 3 C.L.R. 187;

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

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

Chrysochou Bros. v. Republic (1966) 3 C.L.R. 480;

Tikkiris and Others v. E.A.C. (1970) 3 C.L.R. 291;

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

Republic v. Myrtiotis (1975) 3 C.L.R. 484;

Christodoulides and Others v. Republic (1984) 3 C.L.R. 1294;

Theodoridou v. Republic (1984) 3 C.L.R. 146.

Appeals.

Appeals against the judgments of a Judge of the Supreme Court of Cyprus (Savvides, J) given on the 23rd April, 1986 (Revisional Jurisdiction Cases Nos. 170/79* and 342/7**) whereby appellant's recourses against the requisition and acquisition of their property at Zyghi village were dismissed.

L. Papaphilippou, for the appellants.

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

Cur. adv. vult.

A. LOIZOU J.: The judgment of the Court will be delivered by Pikis, J.

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* *Reported in (1986) 3 C.L.R. 634.*

** *Reported in (1986) 3 C.L.R. 664.*

PIKIS J.: The appeals are taken against decisions of the Supreme Court in the exercise of its original jurisdiction whereby two separate recourses of the appellant directed against the requisition and acquisition of their property at Zyghi were dismissed.

The principal grounds upon which the acquisition of the property was challenged were: Firstly, the failure of the expropriating authority to take account of the hardship to the appellants inherent in the decision and avoid it by adopting alternative courses, equally propitious to the achievement of their end, but entailing less hardship to the owners. Secondly, the vulnerability of the decision on account of the discriminatory conduct of the acquiring authority evidenced by the acceptance of the objections of another affected owner, namely, the firm of K.N.K. Pattichis Ltd., who had no better case for exemption than the appellants.

Thirdly, the validity of the acquisition was contested for failure to observe the formalities envisaged by the law. The requisition of the property constituted, in the contention of appellants, peremptive action that made difficult or impossible fair examination of the objections of owners affected by the acquisition.

In well considered judgments the trial Court found unsustainable the complaints of the appellants and dismissed their applications. Similar arguments to those raised before the trial Court were by enlarge advanced before us as well. To appreciate them in a proper perspective, brief reference must necessarily be made to the background of the acquisitions, the steps associated therewith and the facts allegedly giving rise to the occasion of hardship to the appellants; as well as the facts allegedly founding discrimination.

In the aftermath of the Turkish invasion, plans were devised for the establishment of settlements to house the thousands of displaced persons. In 1977 a plan was approved for the establishment of settlements in several parts of the Republic involving about 2,500 housing units. The project included the establishment

of a habital at Zyghi consisting of 100 houses. After a survey of the location, it was decided to acquire about 32 donums at Zyghi for the implementation of the project. The area to be acquired included a portion of the land of the appellants of an extent of approximately five donums. On 29th June, 1978, notification of the intention of the acquiring authority to expropriate the land was given in the gazette. On the same day an order of requisition of the property was published; intended, no doubt, to facilitate the preparation of the ground for the implementation of the project. The appellants opposed the acquisition citing numerous grounds in support of their objection. The principal grounds were the inevitable partition of their property that would result from the severance of the part acquired, the tourist potential of the land in conjunction with its value and the cost necessary for its acquisition and undefined plans of the appellants for its development. The firm of Pattichis too objected to the acquisition of their property. The acquisition would entail the demolition of large warehouses used for the storage of carobs, the eviction of displaced families from houses standing on top of the warehouses and the frustration of plans for the development of the property.

The objections of both parties were examined by the District Officer and in far greater detail by the Town Planning Department, a department of the Ministry of the Interior responsible for promotion of the acquisition. In a thorough report, the Town Planning Dept. debated every aspect of the objections of the appellants and the firm of Pattichis. No individual factor should, in their appreciation be decisive. The ultimate consideration and the one that overshadowed every other was the maximization of the social benefit from the project, an exercise entailing review of every factor relevant to the identification of social benefit, including hardship to those immediately affected by the acquisition. After due ponderation of the objections of the appellants, they dismissed them and recommended the acquisition of their land. In particular, they rejected the suggestion that the partition of their land would prejudice the prospects of development of the remaining property, pointing out that the implementation of the acquisition project would provide a second access from the property to a

road. On the other hand they found the objections of the firm of Pattichis to justify the exclusion of part of their property. They attached importance to the needs of carob producers of the area and plans for its development by the owners. The submission of the Ministry of the Interior to the Council of Ministers was in essence founded on the recommendations of the Town Planning Dept. The Council of Ministers after due consideration of the material placed before it, including the objections of appellants and those of the firm of Pattichis, adopted the recommendations of the Ministry and dismissed the plea of appellants for exclusion of their property while it sanctioned the acceptance in part of the objection of the firm of Pattichis.

The foremost ground upon which the judgment of the trial Court relevant to the requisition was contested, was the failure on the part of the Court to appreciate that requisition created a fait accompli that made difficult the appreciation of objections to the acquisition in their proper perspective. A similar argument raised before the trial Court was dismissed on the authority of *Aspri v. Republic** where it was decided that the requisition of property does not of itself prejudice the fair examination of objections to the acquisition. The implications of the above decision are that requisition may be resorted to incidentally to plans for the acquisition of property; provided always that the temporary occupation of the property will in no way, be allowed to affect the decision to acquire the property.

This being the case, we are unable to uphold the submission that the requisition of the property neutralized appellants' right to have their objections properly examined according to law.

The thrust of appellants' arguments was directed towards questioning the validity of the acquisition of the property.The appellants did not dispute the finding of the trial Court that an adequate opportunity had been granted to the appellants to voice their objections and that no duty was cast on the Administration to af-

* *4 R.S.C.C. 57, 61, 62.*

ford them an oral hearing. The learned trial judge had rightly observed that in purely administrative matters no such right vests in the subject and drew attention to dicta suggesting that it is undesirable to judicialize the process of administrative action*.

The first ground pressed on appeal revolved round the findings of the Court that the inquiry held to ascertain hardship to the appellants and the exploration of alternative ways of implementing the acquisition was inadequate. Counsel laid stress on the decisions of the Supreme Court in *Chrysochou Bros. v. Republic*** and *Tikkiris and Others v. Electricity Authority of Cyprus**** establishing that in contemplating and effecting the acquisition of land, the exploration of alternative means of achieving the acquisition, if available, within the framework of the plan. In the end it must appear that hardship was an unavoidable consequence of the implementation of the project.

We endorse the principles adopted in the above cases, as well as the reality acknowledged in the case of *Tikkiris* (supra) that the neccessity of the measure of acquisition and the extent of the land required are matters primarily falling within the discretion of the acquiring authority.

We must add that ponderation of the element of hardship is, like every other measure incidental to an administrative act, a matter of discretion for the acquiring authority. The task of the Court is confined to a review of the exercise of administrative discretion within the framework of the powers of this Court under Art. 146.1 of the Constitution.

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* *Kontemeniotis v. C.B.C. (1982) 3 C.L.R., 1027, 1033; Papacleovoulou v. Republic (1982) 3 C.L.R. 187; Co-operative Stores of Famagusta v. Republic (1974) 3 C.L.R. 295; HadjiLouca v. The Republic (1969) 3 C.L.R. 570.*

** *(1966) 3 C.L.R. 488.*

*** *(1970) 3 C.L.R. 291.*

Counsel argued that the acquiring authority abused their discretion by making an unwarranted distinction between the hardship that befell them and that associated with the acquisition of the property of the firm of Pattichis. A faint suggestion was also made that the needs of the acquiring authority might be satisfied by the use of abandoned Turkish properties.

The trial Court went thoroughly into this aspect of the case and found that the objections of the appellant were properly considered and that the action of the authority to differentiate between them and the firm of Pattichis was not arbitrary. Like the trial Court we remain unpersuaded that the Administration acted peremptorily or they were motivated by a desire to show favour to the firm of K.N.K. Pattichis Ltd. because of the identity of one of its shareholders or directors, namely, Nicos Pattichis. This association and the inferences that may be drawn therefrom, were also made a separate ground of appeal founded on the proposition that the sub judice act was invalidated by breach of the fundamental duty of the Administration to treat equally all those who are similarly circumstanced (Art. 28.1).

Bias cannot be presumed;* it must be established by evidence. That Mr. Pattichis served at some time as a Minister or as a Mayor of Limassol, could not of itself give rise to an inference of bias on the part of the Administration. Not an iota of evidence was adduced suggesting that the Council of Ministers or any of the subordinate organs who dealt with the objections of the parties was inclined to show favour to the firm in which Mr. Pattichis had an interest. In the face of this reality the conclusion of the trial Court that allegations of bias remained unsubstantiated was perfectly warranted and nothing further need be said on the subject.

The appellants also contested the adequacy of the reasoning of the Council of Ministers sanctioning the acquisition. Reying on

* *Kontemeniotis v. C.B.C. (1982) 3 C.L.R. 1027.*

the authority of *Bakkaliaou v. Municipality of Famagusta** counsel argued that the decision to sanction the acquisition and reject the objections ought to have been specially reasoned. The above case does not support the proposition propounded by counsel. Its importance lay in the acknowledgment of a positive duty on the part of the acquiring authority to deal with objections and give a specific answer thereto before sanctioning the acquisition. Any omission on the part of the expropriating authority to observe the duties cast by Art. 29 will be struck down as unconstitutional. And if the rights of the subject are circumvented by the publication of the sanctioning of the acquisition without prior disposal of objections, the time interval envisaged by Art. 146.3 will not be activated. The general principle is that the reasoning supporting an administrative act may be extracted from the file of the case, provided it emerges incontrovertibly and can be pegged to the decision**. In this case we are not confronted with a case of lack of reasoning but with the incorporation by reference of the reasoning of subordinate bodies. The Council of Ministers adopted the submission of the Minister for the reasons indicated in the proposal of the Ministry which were in turn essentially founded on the assessment of the situation by the Town Planning Dept. The decision to acquire and the judgment of the trial Court that upheld its validity cannot be faulted on this ground either.

Lastly, the process of acquisition was questioned as faulty and its sanctioning defective; because the finalization of the acquisition was accompanied by an act of revocation of the notice to acquire in so far as it affected the property of the firm of Pattichis excluded from the project. The arguments for the appellants are to the following effect: The Town Planning Dept. did not qualify as an agent for the purpose of undertaking preparatory work under the provisions of s.5 (1) of Law 15/62, a participation that could

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* *(1969) 3 C.L.R.19.*

** *Republic v. Myrtiotis (1975) 3 C.L.R. 484. Christodoulides and Others v. Republic (1984) 3 C.L.R. 1294. Theodoridou v. Republic (1984) 3 C.L.R. 146.*

not be validated either under the provisions of s. 18 envisaging the appointment of an authorized agent. The objection cannot be sustained. Section 5(1) empowers any officer or servant of the acquiring authority to undertake any of the preliminary work contemplated therein. The Town Planning Dept. is a department of the Ministry of the Interior. Its officers qualified as officers or servants of the acquiring authority and could, in that capacity, take action under s.5(1). That being the case, s.18 becomes irrelevant. An appreciation that coincides with the view taken of the matter by the learned trial judge. Section 7(2) of the Compulsory Acquisition Law (15/62) makes it clear that the sanctioning of an acquisition within the time limit envisaged therein (12 months) is a condition precedent to the finalization of the act. It is specifically provided that the acquisition contemplated by the relevant notification lapses in relation to the whole or part thereof unless sanctioned within the 12 - months period. The law does not require the revocation of the notice so far as it affects property eventually excluded from the acquisition. Notification is but a preparatory act. The non sanctioning of the acquisition of the property specified in the notification or any part thereof within the 12-month period results automatically in the exclusion of the property from the acquired area. Hence the non inclusion in the notice of acquisition of the properties not intended to be acquired was sufficient to exclude them. That being the case, we are in agreement with the learned trial judge that the sanctioning of the acquisition was validly made. Whether revocation was at all necessary or the soundness of the course followed need not be debated in this case. It suffices to confirm that the notice to sanction was not invalidated on that account.

Having carefully considered every aspect of the appeal, we conclude that there is no room for interference with the judgment of the trial Court.

In the result, the appeals are dismissed. No order as to costs.

Appeals dismissed.
No order as costs.