

APPLICATION/REQUÊTE N° 10825/84

R. and W. HOWARD v/the UNITED KINGDOM

R. et W. HOWARD c/ROYAUME-UNI

DECISION of 18 October 1985 on the admissibility of the application

DÉCISION du 18 octobre 1985 sur la recevabilité de la requête

Article 8, paragraph 1 of the Convention : *Compulsory purchase of the house in which one lives is an interference with the exercise of the right guaranteed by this Article.*

Article 8, paragraph 2 of the Convention : *Compulsory purchase of a house with a view to redevelopment of a residential area for the provision of improved housing, considered to be an interference necessary for the protection of the rights and freedoms of others.*

Article 1, paragraph 1 of the First Protocol : *Compulsory purchase of a house complies with the requirements of this provision when it is in the public interest, and furthermore is considered necessary for one of the aims listed in Article 8 para. 2, and the person concerned has obtained full compensation.*

Article 8, paragraphe 1, de la Convention : *L'expropriation de la maison où l'on a son domicile est une ingérence dans l'exercice du droit garanti par cet article.*

Article 8, paragraphe 2, de la Convention : *Expropriation d'une maison en vue d'améliorer les possibilités de logement dans une zone d'habitation, considérée comme une ingérence nécessaire à la protection des droits et libertés d'autrui.*

Article 1, paragraphe 1, du Protocole additionnel : *L'expropriation d'une maison est conforme aux exigences de cette disposition lorsqu'elle est d'utilité publique, étant par ailleurs considérée comme nécessaire à l'un des buts énumérés à l'article 8 par. 2, et que l'intéressé a obtenu une indemnisation complète.*

THE FACTS

(français : voir p. 207)

The facts, as they have been submitted on behalf of the applicants, British citizens and brothers born in 1910 and 1919 respectively, by their solicitors, I.G. Wood & Co. of Sheffield, may be summarised as follows.

The applicants are the owners and occupiers of a house (Rose Cottage, also known as Garden Cottage) and surrounding land with a total area of approximately 6,000 square yards at Cope Street, Barnsley, South Yorkshire. The house was built in 1830 and has been the home of the applicants for over 50 years.

In 1982 the Barnsley Metropolitan District Council, the local authority, issued a compulsory purchase order in respect of the applicants' property under Section 112 (1) of the Town and Country Planning Act 1971 as amended by Section 91 (1) of the Local Government Planning and Land Act 1980 (1).

The applicants' property is surrounded by existing urban development. The local authority decided to improve the area by making public money available for this purpose to improve existing dwellings and by permitting and encouraging new development.

The compulsory purchase of the applicants' property, together with some adjacent land, has been implemented with a view to demolishing the applicants' house so as to make the land available for the construction of new dwellings. The applicants objected to the compulsory purchase order, and a public enquiry was held by an inspector on 18 and 19 January 1983.

Although the applicants had originally objected to the compulsory purchase order on various areas, they finally agreed, at the enquiry, to drop their objections to the compulsory purchase of all their land, except area 11, which included their home and its immediately adjacent land, provided that they could retain adequate access from the adjacent public highway.

(1) Section 112 (1) Town and Country Planning Act 1971 as amended provides :

(1) "A Local Authority to whom this section applies shall on being authorised to do so by the Secretary of State, have power to acquire compulsorily — (a) any land which is required in order to secure the carrying out of one or more of the following activities, namely development, redevelopment and improvement :

(1A) A Local Authority and the Secretary of State in considering for the purposes of subsection (1)(a) above whether land is suitable for development, redevelopment or improvement shall have regard—

(a) to the provisions of the development plan, so far as material ;

(b) to whether planning permission for any development on the land is in force ; and

(c) to any other consideration which, on an application for planning permission for development on the land would be material for the purpose of determining that application."

In the inspector's report to the Secretary of State for the Environment, dated 28 February 1983, this area is described as follows:

"57. Area 11 is centrally placed in the proposed development area (Plans A and E), and comprises almost half of the order land. Although some sort of development could be carried out on the remainder of the site, without using area 11 it would undoubtedly not be comprehensive, and it would leave in the centre of the area of the redeveloped area a considerable element, which is undoubtedly most unsightly, with its high corrugated iron fence and heaps of scrap. Area 11 is also required as relatively low lying and level land for the sheltered housing.

58. Although the applicants were adamant still at the end of the inquiry that they would not part with any portion of area 11, their counsel reasonably advanced the view that they might have a stronger case for retaining only that part of area 11 lying to the north of the southern edge of the Rose Cottage. I will therefore consider also that possibility.

59. Even if only the northern part of area 11 were removed and excluded from the CPO, that would leave the General Improvement Area incomplete, the redevelopment would be more difficult, and less satisfactory, and probably nearly all the sheltered accommodation would have to be eliminated from the scheme because no other low lying land is available. The applicants would still also be unhappy with the result. I cannot accept the small scale scrap cardboard business conducted by the 64 year old Mr. H. (one of the applicants) as a business argument of any considerable weight, as he will very soon become entitled to an old age pension, as his elder brother already is. While I have very considerable sympathy with two elderly men who very naturally wish to continue living for the remainder of their days in the house where they were born and bred and have always lived, I cannot accept this consideration as outweighing the requirement for the land to carry out redevelopment and improvement.

60. I accept that the Council have made adequate attempts over a period to negotiate a voluntary purchase from the (applicants) but have met with most adamant refusal, except during the week preceding the inquiry when there appears at one time to have been some possibility of a compromise, but that is no longer so.

61. I have therefore decided that there is no justification for recommending the Secretary of State to omit from the compulsory purchase order area 11 or even that part of the area 11 more immediately surrounding Rose Cottage."

In his report, following the enquiry, the inspector recommended that the compulsory purchase order be confirmed. His reasons were, *inter alia*, as follows:

"The development area, a majority of which consists of the order land, is generally untidy and messy, and stands out like a sore thumb in sorry contrast to

the much larger remainder of the General Improvement Area, of which it forms a part, and where the public money spent on improvement has shown a marked change for the better, and where the improvements are virtually complete. This alone indicates to me that there is not only a need, but an urgent need for the order land to be redeveloped."

The Secretary of State followed the recommendation of the inspector, and confirmed the compulsory purchase order on 27 June 1983.

The applicants contend that any further appeal against this decision is restricted by Section 25 of the Acquisition of Land Act 1981 (1). This provision prevents any challenge to the order, except under Section 23 (1) and (2) of the Acquisition of Land Act 1981, which provide for an appeal if the order was not authorised by a statute, or where any relevant requirement has not been complied with in relation to the order. The applicants have been advised, and accept, that it cannot be contended that the order was not authorised by statute, nor that any relevant requirement was not complied with on this narrow, formal, legal basis provided by Section 23 (1) and (2). In addition, the validity or legality of the Town and Country Planning Act or the Acquisition of Land Act 1981 themselves cannot be challenged in the United Kingdom.

On 24 October 1984 the applicants' representative informed the Commission by telex that the Council intended to proceed with the declaration vesting the applicants' property in the Council. In view of the advanced age of the applicants their representative requested the application of Rule 41, and the consideration of Rule 36, of the Rules of Procedure.

The request for an indication under Rule 36 of the Rules of Procedure was declined by the President, but, with the latter's approval the application was brought to the notice of the respondent Government pursuant to Rule 41 of the Rules of Procedure and the Rapporteur requested information from the respondent Government as to the proposed date for the applicants' eviction from their home and the alternative measures available to the Council for the enforcement of the improvement of the unsightliness of the applicants' land.

The respondent Government informed the Commission on 21 November 1984 that the Council had made a vesting declaration under the Compulsory Purchase (Vesting Declarations) Act 1981 which would have the effect that the applicants' home and land would become the property of the Council on 30 November 1984.

The Council did not envisage taking possession of the property before January 1985 and if the applicants did not agree to give up the land it would be necessary to apply to the County Court for a possession order.

(1) Section 25 of the Acquisition of Land Act 1981 provides:

"Subject to the preceding provisions of this Part of the Act, a compulsory purchase order ... shall ... not ... after it has been confirmed ... be questioned in any legal proceedings whatsoever."

The applicants will be entitled to compensation under the Land Compensation Act 1961 for the market value of their land and related losses, such as removal expenses, and would be entitled to be rehoused by the Council. Three offers of alternative accommodation have been made, but refused by the applicants.

The respondent Government also confirmed that the Council possess other powers which could have been used, had the condition of the applicants' land warranted intervention by the authority, but that it was not suggested that the applicants' land had been in a condition to justify such measures. They contended that the object of proceeding with the order relating to the applicants' land, was to complete the improvement of the Improvement Area in which the land lies.

COMPLAINTS

The applicants complain that their property has been compulsorily purchased from them on the basis of the local authority's assessment that the land is messy and could be improved. The applicants stress that the reason for the compulsory purchase order relating to the applicants' home and land was not that their property was required for housing development. Furthermore, the compulsory purchase order was not made on public health grounds, and in this respect the application is to be distinguished from Application No. 9261/81, *X. v. the United Kingdom*. Furthermore, the land in question is not in or near a town centre, nor is it in an area of architectural, scenic or historic significance.

In these circumstances, although the applicants accept that compulsory purchase is often necessary in the public interest, they contend that the balance of the public interest has not been adequately struck in this case, since their home and the surrounding land are being expropriated solely in order that the land can be "improved" and so that its appearance and use can, in the judgment of the local authority, be made better than previously. This expropriation is being sought even though there is no justification alleged, or in fact, on the ground of land scarcity, public health, or a coherent development of an area of architectural, scenic or historic importance.

The applicants therefore contend that the compulsory purchase order and the provisions under which it was made constitute an undue and unnecessary intrusion into their liberty, and in particular contravene Article 8 para. 1 of the Convention and Article 1 of Protocol No. 1.

They also submit that Section 25 (1) Acquisition of Land Act 1981 prevents them challenging in the national jurisdiction the decisions affecting them in so far as those decisions may be challenged either on their merits or on the grounds that they infringe the rights guaranteed by the Convention. Had their property been compulsorily purchased under other statutory provisions, they would have been better able to challenge the necessity for the interference with their rights.

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THE LAW

1. The applicants complain that there has been an unjustified interference with their right to respect for their home by virtue of the compulsory purchase of the house in which they have lived all their lives. They invoke Article 8.

Article 8 provides:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The applicants contend in particular that the compulsory purchase order made under Section 112 (1) of the Town and Country Planning Act 1971 ("the Act") constituted an interference with their right to respect for their home, and that it was not made on any of the grounds of "public interest" set out in Article 8 para. 2 of the Convention. They refer in this respect to the inspector's report, in which it is recognised that, although there is some discussion about the availability of land in the area for housing development, the present is not a case where the local authority sought a compulsory purchase order on the ground that the applicants' home and land was needed for this purpose. Such a measure could have been taken under other statutory powers. Equally, the present compulsory purchase order was in their contention not made on public health grounds, and the present application is therefore distinguishable from Application No. 9261/81 (D.R. 28 p. 177), where this was the reason for the compulsory purchase.

In addition the land in question is not in or near a town centre, nor is it in an area of architectural, scenic or historic significance.

The applicants accept that compulsory purchase is often necessary in the public interest; however, in this case their home and its surrounding land are being expropriated solely in order that the land can be "improved" in that its appearance and use could in the judgment of the local authority be better than it has previously been.

The respondent Government have contended that the applicants have failed to exhaust their domestic remedies and thus to comply with the requirements of Article 25 of the Convention in that they have not challenged the validity of the compulsory purchase order under Section 23 of the Acquisition of Land Act 1981, nor have they sought judicial review of the local authority's exercise of their compulsory purchase powers or of the Secretary of State's decision to confirm the compulsory purchase order.

The applicants contend that these proceedings would not have been effective for their complaints since their scope is too limited and does not correspond with the requirements of the Convention.

However, the Commission need not decide whether the scope of the remedies in question is sufficient to require the applicants to have attempted them, and whether, therefore, they have failed to comply with the requirements of Article 26 of the Convention, since this aspect of the application is in any event inadmissible on other grounds.

The respondent Government accept that the compulsory purchase of the applicants' home under the compulsory purchase order constitutes an interference with their rights guaranteed by Article 8 para. 1 of the Convention, but contend that this interference may be justified under Article 8 para. 2 of the Convention. They submit that the interference was in accordance with the law, since the compulsory purchase order was made under statutory provisions which are readily accessible and foreseeable, and which expressly require that notice of a compulsory purchase order is to be given to all persons affected at all material stages.

In addition, the respondent Government submit that the interference was necessary in a democratic society. Section 112 of the Act, as amended by the Local Government Planning and Land Act 1980, makes it clear that the power of compulsory purchase is exercisable in relation to land which is required to secure development, redevelopment or improvement. The planning authority exercising the power granted by Section 112 of the Act must have regard to the provisions of the development plan for the area as a whole. In the present case, the development plan covering the area in question, which is a run-down, inner-city area, zoned the area surrounding the applicants' property for redevelopment, primarily for residential purposes. Much of the area has already been redeveloped and improved to the general benefit of the community. The applicants' land is one of the last remaining areas where the plan has not yet been carried out. In his report, the inspector found that there was an urgent need for the land to be redeveloped and also stated that such development would make a "most suitable contribution to providing much needed housing in Barnsley, and in particular accommodation within easy reach of the town centre, and also in particular in providing valuable sheltered accommodation for an ageing population". In these circumstances the respondent Government contend that there is a pressing social need for the compulsory purchase order, which is necessary to protect the rights of others.

The Commission finds that there was an interference with the applicants' right to respect for their home by virtue of the compulsory purchase order. This interference was nevertheless in accordance with the law, since it was implemented in pursuance of a clear statutory enactment. The applicants have contended that the compulsory purchase order did not correspond to a pressing social need for any of the purposes of Article 8 para. 2 in view of their close involvement with the property as their home for a long period of time.

Nevertheless, the Commission notes that the inspector's report expressly addressed the question as to whether or not the applicants' property should be included within the compulsory purchase order, or whether part of it should be excluded.

The inspector balanced the advantage to the applicants of the exclusion of their property, against the disadvantage to the community as a whole which would result therefrom, namely that certain sheltered housing for the aged would be made impracticable, or very substantially more expensive, in view of the lie of the land and the central position of the applicants' home in the proposed development.

The Commission also notes that the applicants have been offered alternative residential accommodation suitable for their requirements in the immediate vicinity of their existing home, a factor of great significance in view of their age, and long connection with this part of the town in which they live. Furthermore, they are entitled to full compensation for disturbance and for removal expenses arising from the compulsory purchase of their property, together with compensation for the full value of their house and land.

In these circumstances the Commission finds that the competent authorities have struck a balance between the applicants' interests and the interests of the community as a whole, which establishes that the interference with the applicants' right to respect for their home is justified in accordance with the terms of Article 8 para. 2 of the Convention as necessary in a democratic society for the protection of the rights and freedoms of others who would benefit from the proposed redevelopment. It follows that this aspect of the applicants' complaint is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

2. The applicants further invoke Article 1 of Protocol No. 1 in relation to their complaints. They contend that the compulsory purchase order is unjustified under the terms of this provision, and that no sufficient public interest is served by the expropriation of their property, which could justify the degree of interference with their private rights.

Article 1 of Protocol No. 1 provides :

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Commission recalls the terms of its decision on the admissibility of Application No. 9261/81 (D.R. 28 pp. 177, 185) where it considered the interaction of Article 8 of the Convention with Article 1 of Protocol No. 1 in cases of compulsory purchase of property, including an applicant's home. The Commission recognised that where, as here, administrative actions impinge on two separate but partially overlapping provisions of the Convention, the application of the relevant provisions must be reconciled.

In accordance with the Commission's case-law relating to the interpretation of Article 1 of Protocol No. 1 when it applies to the expropriation of private property, the measure of necessity referred to in the second sentence of Article 1 of Protocol No. 1 closely resembles that which applies to the justification for an interference with the rights guaranteed by Article 8 para. 1 of the Convention (Application No. 9261/81, *loc. cit.*, and *Gillow v. the United Kingdom*, Comm. Report 3.10.84, para. 154, Eur. Court H.R., Series A no. 109, p. 44).

In particular, the Commission has held that it must be shown that the competent authorities struck a fair balance between the rights of the individual property owner, and the rights of the community, in any expropriation of private property. A significant factor in any such balance will be the availability of compensation, reflecting the value of the property expropriated.

In the present case the Commission has already held that the interference which arose with the applicants' rights protected by Article 8 para. 1 of the Convention was justified under the terms of Article 8 para. 2. In view of the carefully balanced appraisal of the applicants' rights against the advantages to the community of proceeding with the development which are set out in the inspector's report, and the availability of compensation for the value of the property expropriated from the applicants, the Commission finds that the compulsory purchase of their property, which was clearly in the public interest for the purposes of the development plan, was in accordance with the requirements of Article 1 of Protocol No. 1. It follows that this aspect of the applicants' complaints is manifestly ill-founded.

3. With regard to the applicants' complaint that, owing to the fact that the expropriation of their property and home was implemented under Section 112 (1) of the Act, they had no opportunity to challenge the decision of the Secretary of State controlling the compulsory purchase order on the basis of its necessity either in respect of Article 8 or Article 1 of Protocol No. 1, the applicants must be considered to complain of the inadequacy of the available remedies. However, the Commission decides to adjourn this aspect of the applicants' complaint and to invite the parties to submit further observations on its admissibility and merits pursuant to Article 42 para. 3 (a) of the Rules of Procedure.

For these reasons, the Commission

DECIDES TO ADJOURN the examination of the applicants' complaint concerning the inadequacy of the available remedies (para. 3 of the Law),

DECLARES INADMISSIBLE the remainder of the application.