FIRST SECTION

DECISION

Application no. 11760/05
Carmela SALAMONE
against Italy

The European Court of Human Rights (First Section), sitting on 6 June 2023 as a Committee composed of:

 Péter Paczolay*, President*,
 Gilberto Felici,
 Raffaele Sabato*, judges*,
and Attila Teplán, *Acting Deputy* *Section Registrar,*

Having regard to:

the application (no. 11760/05) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 25 March 2005 by an Italian national, Ms Carmela Salamone, who was born in 1924 and lives in Palermo (“the applicant”) who was represented by Mr T. Raimondo, a lawyer practising in Palermo;

the decision to give notice of the complaint raised under Article 1 of Protocol No. 1 to the Convention to the Italian Government (“the Government”), represented by their former co-Agents, Mr N. Lettieri and Mrs P. Accardo, and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1.  The case concerns the deprivation of the applicant’s land through the application by the domestic courts of the constructive-expropriation rule (*accessione invertita* or *occupazione acquisitiva*).

2.  The applicant was the owner of a plot of land of 40,500 square metres, located in the municipality of Agrigento and recorded in the land register as folio no. 113, parcel no. 4, folio no. 119, parcel no. 63 and folio no. 120, parcels nos. 1 and 20. The land was used for agricultural purposes; furthermore, according to the 1978 general land-use plan (*piano regolatore generale*), the applicant’s land was designated as a road buffer zone (*fascia di rispetto stradale*), which entailed a prohibition on building.

3.  On 18 October 1980 the national authorities issued a public interest declaration and approved a plan for the construction of a road, which had to begin within twelve months. As the works had not begun within that deadline, on 5 February 1982 the authorities issued a new public interest declaration. On 29 March 1982 they authorised the immediate occupation of the applicant’s land, for a duration of five years, with a view to its subsequent expropriation; and on 26 April 1982 the company entrusted with the construction works took physical possession of the land. The authorisation was subsequently extended until 25 April 1990. By the expiry of the authorisation, part of the land had been irreversibly altered by the construction works but the administration had not issued a formal expropriation order.

4.  The applicant brought an action for damages, seeking compensation for the deprivation of land as well as compensation for the period of lawful occupation (*indennità di occupazione*).

5.  By a decision of 6 July 1994, the Palermo District Court partially upheld the applicant’s complaints and found that the occupation of the land, which had been initially authorised, had subsequently become unlawful, but that part of the land, measuring 23,780 square metres, had been irreversibly altered following completion of the public works. As a consequence, pursuant to the constructive-expropriation rule, ownership of that part of the land had been transferred to the municipality.

6.  The Palermo District Court further accepted that the applicant was entitled to damages for the loss of her property and ordered an independent expert valuation of the land. The expert considered that, due to its position and characteristics, the land had a *de facto* building potential (*vocazione edificatoria*) and that some private parties had already expressed an interest in constructing on the land. Therefore, regardless of the 1978 designation, the expert valuated the land as constructible.

7.  In light of the expert’s findings, the Palermo District Court awarded the applicant compensation, based on the building potential of the land, in the amount of 726,580,000 Italian lire (ITL), corresponding to 375,247 euros (EUR), plus inflation adjustment and statutory interest.

8.  Both the applicant and the municipality appealed against this decision.

9.  By decision dated 18 January 2001, the Palermo Court of Appeal stated that the determination of the market value should be based on the designation of the land at the time of the public interest declaration, regardless of a *de facto* building potential. The Court of Appeal further considered that, according to the 1978 general land-use plan, the land was designated as road buffer zone and was thus subject to a prohibition on building (*vincolo conformativo*).

10.  The Court of Appeal thus ordered an additional expert valuation in order to determine the market value of the land in light of its agricultural use and, on the basis of the expert’s findings, awarded ITL 42,804,000 (EUR 22,106), plus inflation adjustment and statutory interest. It further awarded ITL 14,065,125 (EUR 7,264), plus statutory interest, as compensation for the period of lawful occupation.

11.  The applicant appealed to the Court of Cassation which, on 30 September 2004, confirmed the appeal judgment.

12.  The applicant complained of the inadequacy of the compensation for the deprivation of her land, in breach of her rights under Article 1 of Protocol No. 1 to the Convention.

1. THE COURT’S ASSESSMENT

13.  The relevant domestic law and practice concerning constructive expropriation is to be found in *Guiso-Gallisay v. Italy*((just satisfaction) [GC], no. 58858/00, §§ 18-48, 22 December 2009).

14.  The Court notes that the applicant was deprived of her property by means of indirect or “constructive” expropriation, an interference with the right to the peaceful enjoyment of possessions which the Court has previously considered, in a large number of cases, to be incompatible with the principle of lawfulness, leading to findings of a violation of Article 1 of Protocol No. 1 (see, among many other authorities, *Carbonara and Ventura v. Italy*, no. 24638/94, §§ 63-73, ECHR 2000‑VI, and, as a more recent authority, *Messana v. Italy*, no. 26128/04, §§ 38-43, 9 February 2017).

15.  The Court further observes that the national courts acknowledged that the deprivation of property had been unlawful and held that the applicant was entitled to compensation.

16.  Following that determination, the Palermo Court of Appeal awarded a sum that it considered equal to the market value of the property (see paragraph 10 above).

17.  As to the adequacy of such compensation, the applicant argued that the determination of the market value carried out by the Palermo Court of Appeal was incorrect, as it was based on the legal designation of the land rather than on its *de facto* building potential, as a consequence of the retrospective application of section 5 *bis* of Law no. 359/1992.

18.  In this respect, the Court is prepared to accept that the estimation of the market value takes into account the legal designation of the land before the expropriation. In fact, it recalls that compensation must be calculated based on the property’s value on the date on which ownership thereof was lost, which is intrinsically linked to the designation of the land at that time. Furthermore, the Court has already found that, in the absence of any concrete expectation of development prior to the expropriation, it is not appropriate to rely solely on the applicant’s view that the land had potential for development (see *Maria Azzopardi v. Malta*, no. 22008/20, §§ 62-63, 9 June 2022).

19.  In the present case, before the expropriation procedure was initiated, the land was used for agricultural purposes. Furthermore, pursuant to the 1978 land-use plan, it was designated as non-constructible (see paragraph 2 above) and that designation was qualified as a building restraint (*vincolo conformativo*) rather than an expropriation-aimed restraint (*vincolo espropriativo*; in this regard, see *Campanile and Others v. Italy* (dec.), no. 32635/05, § 29, 15 January 2013).

20.  Insofar as the applicant claims that the land had a *de facto* building potential, the Court notes that there is no evidence that before 1978 the applicant had manifested an intention to build, for example by applying for a building permit (see, in this respect, *Scagliarini and others* (dec.), no. 56449/07, 3 March 2015 and *Galtieri v. Italy* (dec.), no. 72864/01, 24 January 2006) and she did not contest the 1978 building restraint. In these circumstances, the Court considers that the applicant had no legitimate expectation to obtain compensation on the basis of the land being valued as developable. Thus, in the Court’s view, the estimation of the land as non-constructible was not without a reasonable foundation.

21.  In these circumstances, the Court accepts that the Palermo Court of Appeal awarded a sum reflecting the property’s market value.

22.  In a case similar to the one under scrutiny, the Court found that an award comparable to the one issued by the Palermo Court of Appeal had constituted appropriate and sufficient redress for the breach of Article 1 of Protocol No. 1 suffered by the applicant, who had been unlawfully dispossessed of his property, and concluded that the applicant could no longer be considered a victim of the violation complained of (see *Armando Iannelli v. Italy*, no. 24818/03, §§ 35-37, 12 February 2013).

23.  In the light of the foregoing considerations, the Court is not persuaded by the applicant’s arguments to the effect that the compensation awarded to her did not constitute appropriate and sufficient redress. The Court is therefore satisfied that the applicant can no longer be considered a victim of the violation complained of.

24.  It follows that the application is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

*Declares* the application inadmissible.

Done in English and notified in writing on 29 June 2023.

 Attila Teplán Péter Paczolay
 Acting Deputy Registrar President