FIRST SECTION

DECISION

Application no. 51572/07
CASA NEL VERDE PRIMA S.R.L. against Italy
and 2 other applications
(see list appended)

The European Court of Human Rights (First Section), sitting on 8 November 2022 as a Committee composed of:

 Alena Poláčková*, President*,
 Gilberto Felici,
 Raffaele Sabato*, judges*,
and Liv Tigerstedt, *Deputy* *Section Registrar,*

Having regard to:

the applications 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”) by the applicants listed in the appended table (“the applicants”),on the various dates indicated therein;

the decision to give notice of the applications to the Italian Government (“the Government”) represented by their Agent, Mr Lorenzo D’Ascia;

the parties’ observations;

the decision to reject the Government’s objection to the examination of the applications by a Committee;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

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

2.  The applicant companies were the joint owners of a plot of land located in Monterotondo. Each company owned 30% of the land, while the remaining 10% was owned by a third party.

3.  On different dates between 1977 and 1980, the Monterotondo municipal council approved a project to build a social-housing complex on approximately 5,100 square metres of the applicant companies’ land. A cooperative company was entrusted with the execution of the construction works.

4.  On 5 January 1980 the municipality was authorised to occupy the land for a period of five years, with a view to its subsequent expropriation. On 30 April 1980 the municipality took possession of the land. The authorisation was subsequently extended twice for further periods of one year, until 30 April 1987. By that date, the land had been irreversibly altered by the construction works but the administration had not issued a formal expropriation order.

5.  The applicant companies brought an action for damages against the Monterotondo municipality and the cooperative company before the Rome District Court. They alleged that the occupation of the land was unlawful, in that the period of lawful occupation had expired and the construction of the building had been completed without a formal expropriation with payment of compensation.

6.  On 17 February 1989, the Rome District Court issued a partial judgment declaring that the occupation of the land had become unlawful since 1 May 1987 and the proceedings continued for the determination of damages.

7.  On 3 December 1992, the Rome District Court issued a judgment concerning damages. Although the court-appointed expert had established that the market value of the land in May 1987 amounted to 365,000,000 Italian lire (ITL), the District Court noted that the expertise did not take into account the market value of neighbouring land with similar characteristics, which it considered to be an important factor for the calculation of the property’s value. With this in mind, and ruling on an equitable basis, the Rome District Court redetermined the market value to 220,770,000 ITL and awarded each company 30% of that sum, to be increased by a sum reflecting inflation adjustment and interest. Additionally, the municipality and the cooperative company were jointly ordered to pay compensation for the period of lawful occupation amounting to 23,180,850 ITL for each company.

8.  The cooperative company appealed against the District Court’s judgment before the Rome Court of Appeal. The applicant companies filed a cross-appeal contesting the determination of the market value of the land. The municipality took part in the proceedings but did not contest the first instance judgment.

9.  By a partial judgment of 24 November 1997, the Rome Court of Appeal excluded the liability of the cooperative company and the proceedings continued for the assessment of damages. A new court-ordered expert valuation was carried out, and the market value of the land was redetermined at 869,070,000 ITL.

10.  On 16 December 2002, the Rome Court of Appeal made an award amounting to 55% of the property’s market value, based on the criteria contained in Article 5 *bis* of Legislative Decree no. 333 of 11 July 1992, as amended by Law no. 662 of 1996. Both the municipality and the applicant companies appealed before the Court of Cassation.

11.  On 25 May 2007, the Court of Cassation quashed the Court of Appeal’s judgment without remitting it. It established that the applicant companies’ cross-appeal had been lodged out of time and, as a consequence, confirmed the first instance judgment with regard to the liability of the municipality and the award of damages.

12.  The applicant complanies complained that they had been unlawfully deprived of their land contrary to Article 1 of Protocol No. 1 to the Convention. They argued that the deprivation of property, in the absence of a formal expropriation order, was unlawful. They further complained that they could not obtain either the restitution of the land or adequate redress for the dispossession of their land, and that compensation had been awarded more than twenty-four years after the expropriation.

1. THE COURT’S ASSESSMENT

13.  Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

14.  The Court notes at the outset that it does not have to decide on the Government’s preliminary objections concerning non-compliance with the six-month time-limit and non-exhaustion of domestic remedies, since the application is inadmissible in any event on the following grounds.

15.  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).

16.  The Court notes that the applicants were deprived of their 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).

17.  The Court further observes that the District Court of Rome acknowledged that the deprivation of property had been unlawful and held that the applicant companies were entitled to compensation. The Court is satisfied that this amounts to an acknowledgement by the domestic courts of the infringement complained of.

18.  Following that determination, the Rome District Court awarded a sum that it considered equal to the market value of the property (see paragraph 7 above). As to the adequacy of such compensation, the applicant companies argued that the determination of the market value carried out by the Rome District Court was incorrect. The Court notes, as pointed out by the Government, that the applicants did not appeal against the first instance judgment in accordance with the forms prescribed by national law, thus depriving the domestic courts of the possibility of addressing the issue (see paragraph 11 above). Furthermore, the Court observes that the Rome District Court did not simply reduce the market value as estimated by the court-appointed expert without explanation but provided specific reasoning, which does not appear to be manifestly arbitrary, on why it chose not to rely on the expert’s valuation (see, in contrast, and *mutatis mutandis*, *Kutlu and Others v. Turkey*, no. 51861/11, §§ 72-74, 13 December 2016). Indeed, the District Court criticised the expertise for disregarding the value of neighbouring land with similar characteristics, which is a line of reasoning consistent with the case-law of the Court (see, *mutatis mutandis*, *Preite v. Italy*, no. 28976/05, § 70, 17 November 2015). In these circumstances, and having regard to the margin of appreciation afforded to national authorities in such matters, the Court is prepared to accept that the Rome District Court awarded a sum reflecting the property’s market value.

19.  The Court points out that, in a similar case to the one under scrutiny, it found that a similar award to the one issued by the Rome District Court had constituted appropriate and sufficient redress for the breach of Article 1 of Protocol No. 1 suffered by the applicant, who – like the applicant companies – 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).

20.  Nevertheless, in the present case the applicant companies also argued that they could not obtain the restitution of the land and complained about the excessive delay in issuing an award of damages.

21.  Insofar as they claimed the restitution of the land, the Court notes that the applicant companies themselves have acknowledged that the land had been irreversibly altered (see paragraph 4 above) and, as a consequence, no *restitutio in integrum* was possible. In these circumstances, the Court considers that the granting of compensation corresponding to the value of the land may constitute an adequate form of redress (see *Guiso-Gallisay* (just satisfaction) [GC], cited above, § 96).

22.  Finally, with regard to the complaint about the delay in obtaining compensation, the Court reiterates that the sum awarded to the applicants was adjusted for inflation and statutory interest was applied, thus ensuring that the compensation was awarded with reference to circumstances liable to reduce its value, such as the passage of time (see *Guiso-Gallisay* (just satisfaction) [GC], cited above, § 105).

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

24.  It follows that the applications are 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,

*Decides* to join the applications;

*Declares* the applications inadmissible.

Done in English and notified in writing on 1 December 2022.

 Liv Tigerstedt Alena Poláčková
 Deputy Registrar President

Appendix

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| No. | Application no. | Case name | Lodged on | ApplicantPlace and Country of Registration | Represented by |
| 1. | 51572/07 | Casa nel Verde Prima S.r.l. v. Italy | 20/11/2007 | **CASA NEL VERDE PRIMA S.R.L.**MonterotondoItaly | Maurizio DE STEFANO |
| 2. | 51575/07 | Casa nel Verde Seconda S.r.l. v. Italy | 21/11/2007 | **CASA NEL VERDE SECONDA S.R.L.**MentanaItaly | Maurizio DE STEFANO |
| 3. | 52071/07 | Ma.L.BO. Edile A.r.l. v.  Italy | 22/11/2007 | **MA.L.BO. EDILE A.R.L.**MonterotondoItaly | Maurizio DE STEFANO |