

MEMORANDUM FOR THE CABINET
BY THE HON. MINISTER OF JUSTICE

(Mortmain Law - Restoration of property to the
Monastery of the Holy Annunciation of the Domini-
can Nuns, Victoria, Gozo)

1. In terms of the Mortmain Law any church or other pious or religious institution acquiring lands or tenements situate in these Islands is obliged to sell or to dispose of such property, definitely and absolutely, within one year of the acquisition. Failure of compliance with such obligation involves "ipso facto" forfeiture of the property to the Government.

2. There has been a long standing practice, for some time in the past, for the Governor, on the advice of the Ministers to extend the said period of one year by further periods, generally of one year, whenever it appeared that for some good reason the church or institution concerned had not been able to sell the acquired property within one year or, even, within an extended period. Such practice was discontinued during the past administration in view of the fact that it was not backed by the Mortmain Law which, as explained in the next following paragraph, provides a different remedy to meet the situation.

3. Section 9 of the said law, in fact, mitigates the strict terms referred to under paragraph 1 hereof by providing that, where non-compliance with the obligation to sell or dispose within one year of acquisition was unintentional and no undue delay occurs in making an application for the restoration of the property forfeited by reason of such non-compliance, it shall be lawful for the Prime Minister, on the recommendation by resolution of the Legislative Assembly to order the restoration of the property to the Church or Institution, in which case the obligation to sell shall run from the date of the restoration unless such restoration has been made with a concurrent exemption from the provisions of the Mortmain Law.

4. The Monastery of the Holy Annunciation of the Dominican Nuns, Victoria, Gozo, acquired by title of succession on the death of the late Ersilia Mirabelli who died in Gozo on the 22nd December, 1951, the following property:-

(i) The yearly perpetual burden of £5 imposed on the Mezzanino, in Valletta, Sappers Street No. 7, formerly No. 24.

(ii) One-half undivided part of a room, in Valletta, Sappers Lane No. 5, formerly Strada Genio No. 22.

(iii) One third undivided part of a mezzanino in Vittoriosa, No. 1, Prison Street.

(iv) One third undivided part of the directum dominium in perpetuity of the field "tal-Ghejjun", situate in Xaghra, Gozo, of the approximate capacity of 4 tumoli and 6 misure, bounded on the North by property of the Government of Malta, of Anthony Attard, of Michelangelo Sciberras and of George Camilleri, on the East by property of Anthony Attard and on the West by property of Angelo Galea.

(v) One third undivided part of the directum dominium in perpetuity of the field "ta' Bir is-Suiki", situate in Xewkija, Gozo, of the approximate capacity of 5 tumoli, 1 mondello and 5 misure, bounded on the North by property of Joseph Spiteri, Carmelo Spiteri and others, on the West by Government property and on the South by property of Joseph Cauchi.

(vi) One third undivided part of the temporary directum dominium of the field "Ta' Sajtar", in the district known as "ta' Hal-Dghief" within the limits of Naxxaro, of the approximate capacity of 3 tumoli and 6 misure, bounded on the North by property of Giuseppe Grima, on the East by property of a family Mallia and on the West by Government property.

(vii) One sixth undivided part of the field "Ta'Sahhari", in the district known as "ta' l-Gnallis ta' Gewwa" within the limits of Naxxaro, of the approximate capacity of 4 Tumoli, 2 Mondelli and 1 Misura, bounded on the North and on the West by property of the Reverend Augustinian Fathers, on the South and on the East by property in the possession of Edoardo Gauci.

(viii) One third undivided part of the field "ta' Cialpas", in the district known as "Tas-Swatar" within the limits of Birkirkara, of the approximate capacity of 3 Tumoli and 2 Mondelli, bounded on the East and on the South by property

of Salvatore Camilleri, and on the West by "Sqaq Paris".

(ix) Two-ninth undivided parts of the field "Ta' Misrah Juna" sive "ta' Juna", in the district known as "Tas-Suiki" within the limits of St Julian's, of the approximate capacity of 10 Tumoli, 5 Mondelli and 6 Misure, bounded on the North and East by Government property and on the West by property of the late Michele Bonello.

(x) One third undivided part of the field "Il-Gnien taz-Zebbug", in the district known as "Ta' Hal Man" within the limits of Casal Lia, of the approximate capacity of 2 Tumoli, 5 Mondelli and 4 Misure, bounded on the East by property of the heirs of Marquis Testaferrata Bonnici, on the South in part by property of the late Monsignor Isidoro Formosa and in part by property of Paola wife of Carmelo Farrugia and on the North by property of the Parish Church of Casal Lia.

(xi) One half undivided part of the directum dominium in perpetuity of the field "Ta' Ganonu" sive "Ta' Ciankun", in the district known as "Ta Wied il-Ghasel" within the limits of Mosta, of the approximate capacity of 1 Tumolo, 2 Mondelli and 2 Misure, bounded on the North by a road and on the West by "Wied il-Ghasel".

5. A first restoration of the property described above to the said Monastery was ordered by His Excellency the Governor as from the 4th October, 1960, under the above-quoted section 9 of the Mortmain Law. This clearly implied that the property in question had to be sold or disposed of, definitely and absolutely, within one year of the restoration, that is to say, ~~by~~ not later than the 3rd October, 1961. However, this was not done and on the 30th September, 1961, a further extension for the purpose of such sale or disposal was applied for by the said Monastery, the reason given being that the Monastery was unable to sell the said immovables before authorisation was obtained from the Curias of Malta and Gozo. It also appears that considerable difficulty was encountered by the Architect

entrusted with the valuation of the immovables in tracing some of them.

6. As already stated in paragraph 2, the procedure of granting extensions cannot be applied and the application for extension is to be dealt with under the provisions of the law regarding restoration.

7. From the facts related above, it emerges that failure on the part of the Monastery of the Holy Annunciation of the Dominican Nuns, of Victoria, Gozo, to dispose of the property in question within one year of restoration as prescribed by law was unintentional and, also, that no undue delay occurred in the making of the requisite application for restoration. It has been stated, on behalf of the Monastery, that there already exists a promise of sale in regard to the said property and that such promise will be executed as soon as restoration has been granted.

8. Hon. Ministers are, therefore, requested to state whether they agree that the attached Resolution be moved before the Legislative Assembly for the purpose of the restoration of the immovables described under paragraph 4 to the Monastery of the Holy Annunciation of the Dominican Nuns of Victoria, Gozo.

22nd May, 1964.

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DRAFT RESOLUTION FOR SUBMISSION TO THE LEGISLATIVE ASSEMBLY

Whereas in virtue of a will made by the late Ersilia Mirabelli on the 9th June, 1946, in the records of Notary G. Chetcuti, the Monastery of the Holy Annunciation of the Dominican Nuns, of Victoria, Gozo, acquired by title of succession to the said Ersilia Mirabelli, who died in Gozo on the 22nd December, 1951, the property in the Schedule hereto;

Whereas the said Monastery unintentionally failed to comply in respect of the said property with the provisions of the Mortmain Law (Chapter 2), but application was made without undue delay for restoration of the said property forfeited by reason of such failure to comply with the aforesaid provisions;

Whereas the following Resolution is requisite to give effect to the provisions of section 9 of the said Mortmain Law, the other conditions precedent whereof have been fulfilled;

Now therefore this Legislative Assembly in terms and for the purposes of section 9 of the Mortmain Law (Chapter 2) resolves to recommend and hereby recommends to the Honourable the Prime Minister to make an order of restoration of the property described in the Schedule hereto to the Monastery of the Holy Annunciation of the Dominican Nuns, of Victoria, Gozo.

SCHEDULE

(i) The yearly perpetual burden of £5 imposed on the Mezzanino, in Valletta, Sappers Street No. 7, formerly No. 24.

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