

FILE CLOSED - FEBRUARY 1944



PARTITO FASCISTA REPUBBLICANO
FEDERAZIONE DELL'URNO
IL COMMISSARIO FEDERALE

4015

(4)

(SALERNO DETACHMENT)
LOCAL SUB-COMMISSION

RM

124

GU/jpl

6 February 44

SUBJECT : Disposition of Cardinal's Property.

To : RWLO (Through RCAD) Region III.

1. Reference to letter of 1st Lt. Gaxiano dated 29 January 1944.

2. The only question involved is that of the title to certain real estate, *id.* whether the owner is the Cardinal or the Comune of Naples.

3. No Allied interest is involved. Therefore, it appears to us that the Allied Control Commission, while appreciating the importance of the question from the standpoint of the interested parties, could not with propriety lend support to either party.

4. The file is returned herewith.

GERALD SPENCER

Colonel
Chief Legal Officer.

ALLIED MILITARY GOVERNMENT
REGION III.

29 January 1944.

SUBJECT : Disposition of Cardinal's Property.

TO : Chief Legal Officer, A. C. I.

1. In compliance with instructions from Lt. Col. SHIELDS, the case of the property Via Giacinto Gigante No. 2, is forwarded for your decision.

2. By instrument dated 2 December 1852 Donna Emma Luella Teresa Iuriti made an irrevocable gift to His Eminence the Most Reverend Cardinal Sisto Riario SPORZA, Archbishop of Naples, of the premises and appurtenances of Via Giacinto Gigante No. 2, Naples, for the foundation of a cloistered monastery of the Visitation, Holy Mary, Institute of St. Francis of Sales. His Eminence accepted this gift with its conditions. The Monastery of the Visitation was founded and granted juridical existence by Royal Decree 17 September 1855 and Pontifical Bull 30 January 1857. This instrument was transcribed on the public records, Naples, 12 June 1857 as property of His Eminence.

3. After the unification of Italy the central Italian government passed law dated 7 July 1865 whereby religious bodies were suppressed and deprived of juridical personality. The properties of these religious bodies devolved upon the "DEMANIO," who is public administrator of lands within the public domain.

On 24 December 1865 the Demanio took over the property of Cardinal Sisto Riario SPORZA and this property in which the suppressed Order continued to live was placed on the Demanio's list as expropriated church property. At the time of this taking, as shown by the petition of the Cardinal to the Minister of the Interior, February 1842, Cardinal Riario SPORZA was in exile from Naples, and therefore did not have knowledge of the taking of possession.

4. The Demanio permitted the Salesian sisters to remain and use the property. On 13 January 1910 the Administration of FONDO PER IL CULTO, which had acquired the rights of the Demanio in the expropriated church properties by law, transferred legal title to the Comune of Naples. This transfer of property was confirmed by deed instrument by Notar TAVASSI; this instrument, 12 May 1915, from the Administration of Fondo per il Culto purported to make the Comune of Naples the lawful title holder of the property in question. The original group

of sisters having passed away the Comune of Naples on 3 January 1941 notified the Salesian sisters of the Visitation that it wanted the property. However, the Comune of Naples made an offer to the sisters that if they paid 150,000 Lire for the property, the Comune of Naples would give the Sisters legal title. It is to be noted, that following the Lateran Treaty and Concordat, 11 February 1929 whereby religious corporations could have a legal existence, the Monastery of the Visitation della Salute was given a juridical personality by Royal Decree dated 16 July 1936. The Sisters accepted this offer, but the Cardinal, who claims ownership in his own right, has appealed to the Minister of the Interior by his petitions of February 1942 and 7 June 1943. No decision has been as yet rendered by the Minister of the Interior, Rome. Now the Cardinal is turning towards the Allied Military Government for a vindication of his legal rights to the property.

5. There is much merit and logic in the Cardinal's appeal. In Francesco Scudato, *Diritto Ecclesiastico Vigente in Italia*, volume I, p. 110, it is stated, "In our laws of the suppression of secular ecclesiastical entities there is no mention of Cardinalates to number them in the class of suppressed entities or of those preserved because they do not constitute a special kind of benefice." By the Civil Code, 25 June 1865, Article 2 it is provided, "The Communes, the provinces, the public institutes civil or ecclesiastical, and in general all moral bodies lawfully recognized are to be treated as persons, and they enjoy civil rights according to the laws and the observed usages as a public right." The law 7 July 1866 N° 2036 for the suppression of religious corporations did not suppress the juridical personality of the Archbishop and bishop. Article I of that law specifies what suppression has taken place; article II states that the property belonging to suppressed corporations devolve upon the Demanio; article 25 states the constitution of the Fondo per il Culto; and article 31 specifically lists Archbishops and Bishops, as not being among the suppressed corporations.

6. The Comune of Naples claims that it has legal title to the property and as evidence of such ownership it has the transfer from the Administration of Fondo per il Culto. The Cardinal claims ownership on the basis of an instrument of gift in 1852 and the illegal dispossession by the Demanio in 1866. This is a legal dispute over title to property. According to the Rules of Land War Force, R.E.Art. 46, par. 1, "Private property ~~must~~ must be respected." R.E.Art. 56 provides, "The property of municipalities, that of institutions dedicated to religion, charity, and education, the arts and sciences, even when State property, shall be treated as private property."

ALCOF General Administrative Instructions N° 10 states, "Municipal property is regarded as private property under international law, ~~xxxxxxx~~ and municipal property will be treated as private property whose owner is present."

7. Historically the problem of church and state for the Italian Government was a very acute one. The unification of Italy resulted largely from the efforts of Count Cavour of Piedmont. By the law of 1865 Piedmont, following the advice of its Prime Minister Cavour, suppressed various religious orders of their juridical personality, deprived the episcopal sees of certain revenues, and imposed tax upon ecclesiastical properties. This law brought about serious quarrels in Italy between the church and the state. The extension of the suppression of the religious corporations by law to the lands becoming a part of the Kingdom of Italy accentuated the quarrel. The law 7 July 1866 suppressing so many religious corporations of juridical personality embittered the dispute. And as a matter of public policy, the new Italian state did liquidate the property of the religious Congregations. Added to this suppression is the fact of the occupation of Rome on 20 September 1870 by the Italian Government. The Pope was not satisfied with the Law of the Guarantees 13 May 1871; from the date of occupation of Rome he had declared himself a prisoner in the Vatican. The Roman question plagued the Italian state until 1929 when the famous Lateran Treaty and Concordat solved their mutual problems.

8. In Italian law the remedy open to the Cardinal, Archbishop of Naples, is to appeal to the principles of justice and the conscience of the state; he has done this in his two petitions to the Minister of the Interior.

9. It is recommended that the Allied Military Forces do not take jurisdiction over this property on the ground that it is a dispute between parties over private property. It is further recommended that the plight of the Sisters of the Visitation be considered by the Welfare Department.

Rosario A. Taziano

Rosario A. Taziano,
1st Lieut, Infantry.

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