

[JACKSON, C.J., AND MELISSAS, J.]
(December 6 and 18, 1948)

1948
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ANDREAS P.
SERGHIDES
AND
ANOTHER
v.
THE MUNI-
CIPAL COR-
PORATION
OF KYRE-
NIA.

ANDREAS P. SERGHIDES AND ANOTHER, *Applicants*,

v.

THE MUNICIPAL CORPORATION OF KYRENIA,

Respondents.

(Case Stated No. 51.)

Building permit—Streets and Buildings Regulation Law, 1946, sections 2 and 3 (b)—“Alteration”, “repair” (section 2)—“Demolish”, “reconstruct” (section 3 (b)).

The appellants pulled down and reconstructed part of a wall of a building in the town of Kyrenia. This was done in two stages with, apparently, an interval of about two months between each. The old wall was constructed of what is known as “dolma”; it was rebuilt in brick but its dimensions remained unaltered. The appellants were convicted, under section 3 of the Streets and Buildings Regulation Law, 1946, of demolishing and reconstructing a building without a permit from the Municipal Council.

It was contended on behalf of the appellants that what was done by them could not, by reason of its small extent, be regarded as constituting the demolition and reconstruction of a building within the meaning of section 3 (b) of the Law. It was further argued that what they did to the wall of the building should be regarded as an “alteration” or “repair” and that, since the dimensions of the wall were not altered, the work done was excluded by section 2 of the Law, from those alterations or repairs which require a permit under section 3, and that consequently no permit was necessary.

Held: (i) That section 2 defined alterations and repairs which required a permit under section 3 as alterations and repairs by which any dimension of a building was altered, but it clearly could not be argued that because a work did not alter any dimension of a building it must, therefore, be an alteration or repair. If that were so, it would be possible to pull down an entire house and to rebuild it exactly the same size as the one demolished and to claim that all that had been done was an alteration or repair for which no permit was required.

(ii) It would be unreasonable to hold that, though the whole of the wall of a house could not be reconstructed in one operation without a permit, no permit would be required if the work were done bit by bit.

(iii) In the circumstances of this case and having regard to the special purpose of the aforementioned Law, it seemed impossible to say that the trial Judge did not act reasonably in holding that the work done was a demolition and reconstruction requiring a permit and not an alteration or repair for which no permit was required.

Conviction affirmed.

Case stated by the District Judge of Kyrenia on the application of the accused (Case No. 2014/48).

J. Clerides and *Constantinides* for the applicants.

Christoforides for the respondents.

The facts of the case are fully set out in the judgment of the Court which was delivered by :

JACKSON, C.J. : This is a case stated by the District Judge of Kyrenia on the application of two persons who were convicted, under section 3 of the Streets and Buildings Regulation Law, 1946, of demolishing and reconstructing a certain building in the township of Kyrenia without a permit from the Municipal Council.

The first applicant is the owner of a shop, the northern wall of which abuts on Victoria Street in the township of Kyrenia. The second applicant is a mason who, at the material time, was employed by the first.

In October, 1947, the first applicant applied to the Municipal Council of Kyrenia for a permit to demolish the northern wall of his shop, as well as one of the internal walls, and to rebuild them with brick. Both walls were constructed of what is known as "dolma" and were old. The intention was to replace them by more permanent structures.

There is apparently in existence an approved plan for the improvement of the township of Kyrenia, prepared under the Law quoted, and dealing, among other matters, with the alignment of Victoria Street in which the first applicant's shop is. The work proposed by the applicant would have conflicted with that plan and consequently the Municipal Council refused to authorize it. It was open to the applicant, under section 18 of the Law, to appeal to the Governor in Council against the Municipality's decision but he did not do so. Instead of that, he and the second applicant ignored the Municipality's decision and proceeded, in the early part of 1948, to pull down and reconstruct part of the northern wall of the shop which abuts on the street. This was done in two stages with, apparently, an interval of about two months between each. First, a part of the wall, 2' 6" x 3" in extent, below a window, was pulled down and rebuilt in brick. In the second stage, the old window was replaced by a new one and an area above the window and extending to the roof was pulled down and rebuilt in brick. The dimensions of this area are not disclosed. Another area beside the window, 3' x 5', in extent was also pulled down and rebuilt in brick. The dimensions of the wall remained unaltered. There is no charge in respect of the window. The two charges on which the applicants were convicted relate to those three sections of the wall.

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The contention of the applicants is that those three sections cannot, by reason of their small extent, be regarded as constituting the demolition and reconstruction of a building within the meaning of section 3 (b) of the Law, under which the applicants were convicted. They argue that what they did to the wall of the shop should be regarded as an alteration or repair and that, since the dimensions of the wall were not altered, the work done is excluded, by section 2 of the Law, from those alterations or repairs which require a permit under section 3. Consequently, they say, no permit was necessary.

Section 2 defines the kind of alterations and repairs for which a permit is required under section 3 and if the work done was clearly an alteration or repair and if, further, it was equally clearly an alteration or repair which is outside the definition in section 2, the applicants would be entitled to have the work regarded as work for which no permit is required.

To succeed in this argument the applicants would have to establish two distinct points; first, that the work done was by its nature an alteration or repair and not a demolition or reconstruction and, secondly, that it was an alteration or repair which is outside the definition of those terms in section 2.

Section 2 defines alterations and repairs which require a permit under section 3 as alterations and repairs by which any dimension of a building is altered, but it clearly cannot be argued, as the applicants appear to do, that because a work does not alter any dimension of a building it must therefore be an alteration or repair. If that were so, it would be possible to pull down an entire house and to rebuild it exactly the same size as the one demolished and to claim that all that had been done was an alteration or repair for which no permit was required.

Section 2 is not a general definition of alterations and repairs and it would clearly be impossible for any law to give one. It is simply a definition of alterations and repairs for the special purposes of the Law, including the requirement of a permit under section 3. If, by reason of that definition, a particular work is not an alteration or repair requiring a permit, it still remains to be determined whether the work is in fact an alteration or repair, or some other kind of work.

Section 2 cannot therefore help the applicants unless they first establish that the work done was, by its nature, an alteration or repair, rather than a demolition or reconstruction.

The question whether a particular work is an alteration or repair or a reconstruction has often come before the English courts in various connections and the decisions make it clear that it is always a question of fact depending on the circumstances of each case. It is sometimes difficult to draw the line.

In this case the wall affected was undoubtedly part of a building and consequently within the definition of "building" in section 2 of the Law. The superficial area of two of the three sections rebuilt amounts to about 22½ square feet, excluding the window which was replaced by a new one. We do not know the area of the third section. Nor do we know the total superficial area of the wall affected, nor, consequently, the proportion of it which was rebuilt. But it would be unreasonable to hold that, though the whole of the wall of a house could not be reconstructed in one operation without a permit, no permit would be required if the work were done bit by bit. There must be room for common sense in the application of the Law.

By the work done in this instance a substantial area of a wall abutting on a street in the township was changed in character and, from a structure of a particular material in process of decay, became a permanent structure of an entirely different material. In this way the wall became an obstacle to the execution of a plan for the improvement of the township, involving the alignment of this particular street. One of the purposes of the Law under which the applicants were convicted is to facilitate the re-alignment of streets, and for that purpose the Municipality is given, among other powers, control over the reconstruction of walls which abut on streets.

As we have said, it may sometimes be difficult to draw the line between an alteration or repair on the one hand and a reconstruction on the other, but, in the circumstances of this case and having regard to the special purposes of the Law quoted, it seems to us impossible to say that the District Judge did not act reasonably in holding that the work done in this particular instance was a demolition and reconstruction requiring a permit and not an alteration or repair for which no permit is required. Consequently we must confirm the applicants' conviction.

It might have been better if what was done had been regarded as a single process of reconstruction, instead of as two separate offences requiring separate punishment, but that point is not before us.

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