

[VASSILIADES, TRIANTAFYLLOIDES, JOSEPHIDES, JJ.]

DISTRICT OFFICER, NICOSIA & KYRENIA,

Appellant,

v.

CYPRUS CINEMA & THEATRE CO., LTD.,

Respondents.

(*Criminal Appeal No. 2764*)

1965
April 16
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DISTRICT
OFFICER
NICOSIA &
KYRENIA
v.
CYPRUS
CINEMA &
THEATRE
Co. LTD.

Streets and Buildings—Streets and Buildings Regulation Law, Cap. 96—Demolition and reconstruction of the upper part of fencing wall of an open-air cinema without permit, contrary to sections 3 (1) (b) and 20 thereof—Appeal by prosecutor against refusal of trial Court to make demolition order—Trial Judge’s discretion properly exercised—Nothing before the Appellate Court to justify interference with such discretion.

This was an appeal by the Prosecutor (District Officer Nicosia) against the inadequacy of the sentence imposed by the trial Court, by refusing to exercise in appellant’s favour its discretionary powers and make a demolition order in respect of a fencing wall, in a prosecution under the Streets and Buildings Regulation Law, Cap. 96, sections 3 (1) (b) and 20, whereby the respondents were convicted on their own plea of (a) for the demolition of part of the fencing wall of their open-air cinema, in Nicosia, without permit ; and (b) for reconstructing the same part of the wall in question, without a permit.

The appeal was mainly argued on the ground that the sentence imposed by the trial Court was manifestly inadequate in that the trial Court in exercising its discretion, having regard to the evidence adduced, ought to make a demolition order in respect of the building reconstructed by the respondents.

The wall, the subject matter of the proceedings, was put up on a wall foundation which at the time of the new structure existed up to a certain height and the trial Court in exercising its discretion not to make a demolition order stated that even if the demolition of the new structure is ordered, the lower part of the wall will remain a physical impediment to the widening scheme, while on the other hand the cinema business of the respondents will be ruined as they will not be able to hold summer performances, and at the same time the owners of the premises will be very much prejudiced though innocent parties to the unlawful act.

1965
April 16
—
DISTRICT
OFFICER
NICOSIA &
KYRENIA
v.
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CINEMA &
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Held, (1) having heard learned counsel for the appellant who has fully and ably presented his client's case before us, we unanimously take the view that the trial Judge's approach to the question before him was correct ; and there is nothing before us to justify interference with the exercise of his discretionary powers in the matter.

(2) This appeal fails and shall stand dismissed. Respondents having made no claim for costs there will be no award of costs in the appeal.

Appeal dismissed. Order as to costs as aforesaid.

Appeal against sentence.

Appeal by the prosecutor against the inadequacy of the sentence imposed on the respondent (the refusal of the trial Court to make a demolition order) who was convicted on the 9th March, 1965, at the District Court of Nicosia on two counts of the offences of (1) suffering the demolition of a building without a permit of the Appropriate Authority ; and (2) demolishing of a building without a permit, contrary to sections 3 (1) (b) and 20 of the Streets and Buildings Regulation Law, Cap. 96, and was sentenced by Georghiou, D.J. to pay a fine of £10 on each count and £20 costs.

K. Michaelides, for the appellant.

E. Tavernaris, for the respondents.

The judgment of the Court was delivered by :

VASSILIADES, J.: This is an appeal by the prosecutor (The District Officer of Nicosia and Kyrenia) from the sentence of the District Court of Nicosia in a case under the Streets and Buildings Regulation Law, Cap. 96, against the respondents where the latter (a limited liability company) were convicted on their own plea, (a) for the demolition of part of the fencing wall of their open-air cinema in Nicosia, without permit, contrary to section 3 (1) (b) and section 20 of the Statute (Cap. 96) ; and (b) for reconstructing the same part of the wall in question, without a permit contrary to the provision contained in the same sections of the statute.

The trial Court sentenced the respondent with a fine of £10 on each of the counts in question, but declined to make a demolition order. The prosecutor appealed from the sentence in question, aggrieved, apparently, by the

Court's refusal to exercise in his favour, its discretionary powers to make a demolition order. The first ground on which this appeal is based, reads—

“ The sentence imposed by the trial Court is manifestly inadequate in that the trial Court in exercising its discretion, having regard to the evidence adduced, ought to make a demolition order in respect of the building reconstructed by accused No. 2, (respondent in this appeal). ”

Dealing with this matter in his judgment the learned trial Judge had this to say—

“ Speaking generally it is indeed the duty of a Court to give effect to schemes of alignment and widening of streets, but within fairness and reason to the other party concerned, the property owner (that is the accused). In the present case, a street widening scheme existed for Evagoras Avenue since 1955. Since then either the Municipal Council itself and/or with the sufferance of the Municipal Council, the wall and wooden screen (the subject matter of the proceeding) were put up in 1958 under settlement in a court case. The wooden screen decayed or was blown away and in its place a structure of bricks and plastering was put up, but the foundation of the wall up to a certain height has not been touched. Even if the Court orders the demolition of the new structure, the lower part of the wall will remain a physical impediment to the widening scheme, while on the other hand the cinema business of accused No. 2 will be ruined as he will not be able to hold summer performances, and at the same time the owners of the premises will be very much prejudiced, though innocent parties to the unlawful act. The Court has inspected the premises and obtained a first hand view of the situation. Exercising its discretion the Court will not make a demolition order but will only impose a fine on accused No. 2 and order them to pay the costs of the prosecution.”

Having heard learned counsel for the appellant who has fully and ably presented his client's case before us, we unanimously take the view that the trial Judge's approach to the question before him was correct ; and there is nothing before us to justify interference with the exercise of his discretionary powers in the matter.

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It may well be that before repairing the upper part of the fencing in question (alleged to have been destroyed) by weather conditions) the respondents should have obtained the permit required under the Streets and Buildings Regulation Law from the "appropriate authority" as defined in section 2 of the statute, but it is at least doubtful whether in the circumstances of this case, the appropriate authority would be justified in refusing the required permit for such a repair. Be that as it may, however, the question does not arise in this case, and we do not find it necessary to say more about it here.

This appeal fails and shall stand dismissed. Respondents having made no claim for costs there will be no award of costs in the appeal.

Appeal dismissed Order as to costs as aforesaid