

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

1. EMILIOS DRACOUDES,
2. GEORGE NICOLAIDES,

Applicants,

and

THE MUNICIPAL CORPORATION OF FAMAGUSTA,

Respondent.

EMILIOS
DRAKOUDES
AND ANOTHER
v.
MUNICIPAL
CORPORATION
OF FAMAGUSTA

(Case No. 147/67).

Building—Building Permits—The Streets and Buildings Regulations, regulation 6 as amended on the 25th May, 1967 (see The Official Gazette of the 25th May, 1967, Supplement No. 3, Notification 403)—Notice given by the Council of Ministers, under the said regulation 6 as amended, by publication in the Official Gazette of the 25th May, 1967, Supplement No. 3, under Notification 404—Such notice regulating, inter alia, the height and storeys of buildings in certain areas of the Famagusta town—Refusal of an application for a building permit in relation to a tenth storey to be added to a nine-storeyed block of flats in respect of which Applicants had already been granted a building permit—Such refusal based on the said regulation 6 as amended and the aforesaid Notice given thereunder (supra) before their publication in the Gazette—Refusal annulled as founded on a wrong legal basis.

The facts sufficiently appear in the judgment of the Court annulling the *sub judice* decision.

Recourse.

Recourse against the decision of the Respondent to refuse Applicants' application for a building permit, in relation to a tenth storey to be added to a nine-storeyed block of flats in respect of which they had already been granted a building permit.

For Applicant No. 1, and in person as Applicant No. 2,
Mr. George Nicolaidis.

S. Marathovouniotis, for Respondent

Cur. adv. vult.

1967
Nov. 11

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EMILIOS
DRAKOUDES
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The following Judgment was delivered by:

TRIANTAFYLIDIS, J.: In this Case the Applicants complain against the decision of the Respondent Municipality to refuse their application for a building permit, in relation to a tenth storey to be added to a nine-storeyed block of flats in respect of which they had already been granted a building permit.

The said decision was communicated to the Applicants by a letter dated the 17th May, 1967 (marked *exhibit* 1). It is stated therein that the permit sought could not be granted in view of an 'Order' made by the Council of Ministers regulating the height and storeys of buildings in Famagusta town.

It is common ground that until the 17th May, 1967, no such "Order" had been published.

As a matter of fact a Notice, regulating, *inter alia*, the height and storeys of Buildings in certain areas of Famagusta town, was given by the Council of Ministers, under regulation 6 of the Streets and Buildings Regulations (see Subsidiary Legislation, vol. I, p. 307 and subsequent amendments from 1954 to 1967), by publication in the official Gazette on the 25th May, 1967 (in Supplement No. 3, Notification 404).

Regulation 6, above, was amended so as to enable the Council of Ministers to give such a Notice, and the relevant amending Regulations were published in the official Gazette on the 25th May, 1967, too (see Supplement No. 3, Notification 403).

It appears from the said publications in the Gazette that both the amending Regulations and the giving of the Notice under regulation 6—as amended—were decided upon on the 11th May, 1967; and, as stated in the Opposition, this was then communicated officially to the Respondent with the result that the Applicant's application was turned down accordingly.

As, however, neither the amending Regulations nor the aforesaid Notice could have taken effect before their publication in the official Gazette, on the 25th May, 1967, and, thus, they did not form part of the law applicable, and in force, when the application for a building permit of the Applicants was considered and turned down by the Respondent on or before the 17th May, 1967, it is quite clear that the *sub judice* decision was founded on a wrong legal basis and it must, therefore, be declared to be null and void and of no effect whatsoever; the matter will have to be reconsidered by the Respondent in its proper legal context.

I have decided to make no order as to costs in this recourse edcause I am quite satisfied that Respondent has acted, as it bid, in all good faith and in a genuine, but mistaken, effort to do the right thing in the circumstances.

*Sub judice decision annulled.
No order as to costs.*

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