

1969

Feb. 19

[TRIANTAFYLIDIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS
KALOGEROPOULOS

GEORGHIOS KALOGEROPOULOS,

v.

IMPROVEMENT
BOARD OF
MESAYITONIA
AND ANOTHER

and

Applicant,

THE IMPROVEMENT BOARD OF MESAYITONIA
AND ANOTHER,

Respondents.

(Case No. 188/67).

Building sites—Division—The Streets and Buildings Regulation Law, Cap. 96—Permit—Refusal of a permit for the division of land into building sites—On the ground that proposed division would entail interference with property belonging to third persons who did not give their consent to such a course—Proper reason justifying said refusal—Consequently recourse against it fails.

Practice—Costs—No order as to costs against the unsuccessful Applicant in view of the unwarranted delay on the part of the Respondent Authority to reply to Applicant's application for a permit to divide land into building sites (supra).

The facts sufficiently appear in the judgment of the Court dismissing the Applicant's recourse.

Recourse.

Recourse against the decision of Respondent 1 refusing Applicant a permit for the division of land of his, at Mesayitonia, into building sites.

L. Clerides, for the Applicant.

L. Loucaides, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following judgment was delivered by:—

TRIANTAFYLIDIS, J.: In this case the Applicant complains, in effect, against a decision of Respondent 1, by virtue of which

he was refused a permit for the division of land of his—plot 205, Sheet/Plan LIV/50, at Mesayitonia—into building sites.

Respondent 1 is an organ of local administration, functioning under Respondent 2, and it was the appropriate authority to deal with the Applicant's application for the permit in question, under the provisions of the Streets and Buildings Regulation Law (Cap. 96).

The Applicant, after earlier judicial proceedings in the same matter—recourse 109/64, which resulted into Revisional Appeal No. 13—submitted the application, for the division of his aforesaid property, on the 12th September, 1966 (see *exhibit 1A*).

There was quite some delay in deciding on Applicant's application; so, he had to write a reminder on the 24th January, 1967 (see *exhibit 2*) and another reminder on the 4th September, 1967 (see *exhibit 4*).

Eventually, the Applicant was informed, by letter dated the 5th of September, 1967 (see *exhibit 5*), and signed by the District Officer of Limassol, as the Chairman of Respondent 1, that the permit applied for could not be granted because the plan for the division of his property concerned into building sites did not conform to the general development plan for the area and, also, affected property which did not belong to the Applicant, but to other persons; he was informed, further, that he could submit a new plan, on the basis of which, if approved, he would be granted the necessary permit.

Against the decision communicated by this letter of the 5th September, 1967, the Applicant has filed the present recourse on the 4th October, 1967.

The said decision was reached at a meeting of Respondent 1 on the 28th July, 1967, a copy of the minutes of which is *exhibit 6A* in these proceedings; to the Opposition there was attached, when filed, a document which purported to be a copy of such minutes (see *exhibit 6*), but it was discovered subsequently that such document was not an exact copy, in that part of the minutes had not been reproduced therein; on the material before me I am quite satisfied that *exhibit 6A* is the correct copy of the said minutes, and that *exhibit 6* is to be found in an incomplete state due, apparently, to a clerical error in preparing a copy of the relevant minutes for the purpose of instructing counsel for the Respondent.

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A perusal of the aforesaid minutes of Respondent 1 (*exhibit 6A*) shows clearly that the letter of the 5th September, 1967 (*exhibit 5*) was duly based on the contents of such minutes.

Much argument and evidence have been heard regarding the first reason given for the refusal of the permit sought by the Applicant, namely, that the plan submitted by the Applicant, for the purpose, did not conform to the general development plan for the area; in order to afford the Applicant a full opportunity of being heard by this Court I allowed this matter to be gone into thoroughly, and counsel for Respondents has much assisted by placing all relevant material before the Court.

But I need not, and should not, deal with this aspect of the case in this judgment because the case can be determined on a much simpler and obvious ground: It is conceded, and there could be no doubt about it on the material before me, that the proposed division of the property of the Applicant into building sites would entail interference with property belonging to third persons (see in this respect, also, *exhibit 10*); this fact was a sufficient reason entitling, and, indeed, making it necessary for, Respondent 1 to refuse the permit as applied for by the Applicant; and there has been no allegation put forward that the third persons concerned had consented to their property being interfered with for the purposes of the division of the property of the Applicant, as desired to be made by him.

Counsel for the Applicant, while on this point, has submitted that the proper course for Respondent 1 was not to refuse the permit applied for, but to impose a condition that the plan for the division of the land of the Applicant be altered so as not to affect the property of others.

In the first place, I see no substantial difference between imposing such a condition and informing the Applicant—as he was informed by the letter of the 5th September, 1967—that if he submitted a new plan, and it was approved, then a permit would be issued to him; and, secondly, I do not, in any event, think that this was a proper case in which to impose a condition as suggested by counsel for the Applicant; once the plan submitted by him patently interfered with other persons' property—(leaving aside any other objections to it)—his application had to be refused and could not have been dealt with usefully any further.

In all the circumstances, I think Respondent 1 took a course properly open to it in refusing the permit applied for, by means of *exhibit 1A*, by the Applicant, and this recourse, therefore, fails and has to be dismissed.

In view, however, of the delay of Respondent 1 in replying to the Applicant's application—practically for one year—I am not prepared to make any order as to costs against the Applicant; so, there shall be no order as to costs, but subject to all orders in that respect, already made, remaining in force.

Recourse dismissed; order for costs as aforesaid.

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