

[STAVRINIDES, J.]
IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION
COSTAS S. MAVRIDES,

Applicant,

and

THE MUNICIPAL COMMITTEE OF NICOSIA,

Respondent.

(Case No. 107/69).

1973
Dec. 1

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COSTAS
S. MAVRIDES

v.

THE MUNICIPAL
COMMITTEE
OF NICOSIA

Streets and Buildings Regulation Law, Cap. 96—Application for building permit refused by the respondent committee—On the ground that part of the land proposed to be built upon had become part of a public road under the doctrine of dedication and acceptance—Whether this common law doctrine is applicable in Cyprus—On the evidence before the Committee it was open to it to find as a fact that such part as aforesaid had become part of a public road—Common law doctrine of dedication and acceptance applicable in Cyprus—Notwithstanding the provisions of sections 3(1)(a) and 8 of the Law, Cap. 96, supra.

Streets—Dedication and acceptance—The English common law doctrine of—Applicable in Cyprus.

This is a recourse whereby the applicant complains against the refusal of the respondent Committee to grant him a building permit on the ground that part of the area proposed to be built upon was part of a public road and has become so under the English common law doctrine of dedication and acceptance. The main issue in this case is whether this common law doctrine is applicable in Cyprus in view of the provisions of sections 3(1)(a) and 8 of the Streets and Buildings Regulation Law, Cap. 96. Section 3(1)(a) prohibits the "laying out or construction" of streets without a permit from the "appropriate authority" and section 8 empowers that authority to require the production of "plans, drawings and calculations" before granting any permit under section 3.

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It was argued by counsel for the applicant that in view of the aforesaid statutory provisions the common law doctrine of dedication and acceptance is not applicable in Cyprus. The learned Judge of the Supreme Court did not accept this argument and, dismissing this recourse :-

Held, (1) In England too the "laying out or construction" of a new street is regulated by statute; but that has not affected the operation of the common law doctrine in question: See Pratt and McKenzie's Law of Highways, 21st ed., p 734 paragraph 1. and p. 16 et seq.

(2) It follows that the doctrine applies in Cyprus.

(3) On the material before me I hold that the respondent Committee was entitled to find as a fact that the area in question has become part of a public road by dedication and acceptance.

Recourse dismissed.
No order as to costs.

The facts sufficiently appear in the judgment of the learned Judge of the Supreme Court.

Recourse.

Recourse against the refusal of the respondent to grant applicant a building permit.

G. Constantinides, for the applicant.

K. Michaelides, for the respondent.

Cur. adv. vult.

The following judgment * was delivered by :-

STAVRINIDES, J. : The applicant is the registered owner of a building plot, No. 169, situated at Palouriotissa, a village adjoining Nicosia which, since April 1, 1968, has been included in the area of the Municipal Corporation of Nicosia. On September 27, 1968, he applied to that corporation as "the appropriate authority" under s. 3(2)(a) of the Streets and Buildings Regulation Law, Cap.

* For final judgment on appeal see (1976) 3 J.S.C. 453 to be published in due course in (1975) 3 CL.R.

96, for a permit under s. 3(1)(b) thereof to build on that plot, but by a letter dated March 11, 1969 (blue 2 in the Court's record), his application was refused on the ground, substantially, that part of the area proposed to be built upon (which part is hereafter referred to as "the subject area") was part of a public road; and he now seeks a declaration that that refusal is null and void.

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The subject area is a straight strip running roughly between north and south and dividing plot 169 into two sections, of which that to its west is very small. It adjoins, to the north, Ioannina Street, and to the south Ekati Street, which runs roughly between east and west; and it is of the same width as, and in perfect alignment with, the former street. (The subject area and both streets are shown in an official survey map produced at the hearing and marked *exhibit* 1).

There is no dispute as to the facts. In or about 1963 the then Improvement Board of Palouriotissa asphalted the subject area; and ever since there has been a sign-post standing at the southern end of it bearing the words "Odhos Ioanninon" and, near that post, a lamp-post with an electric lamp lighting the area. Further, ever since it was asphalted, the subject area has always been treated by the Palouriotissa Improvement Board, and used by the Public at large, as part of Ioannina Street. And all this undoubtedly to the knowledge, and indeed in sight, of the applicant, who throughout has been living in a house on plot 169 itself and never raised any objection to any of those actions. Again, at the time of the asphaltting the owner of a plot, No. 275, adjoining the part of plot 169 which is to the west of the subject area, with the applicant's consent "enclosed that part as part of his plot"; and ever since he has been occupying it as his.

For the respondent it has been argued that the subject area has become part of the public road under the English common law doctrine of dedication and acceptance. Mr. Constantinides for the applicant submitted that the doctrine is not applicable in this country because it has been excluded by ss. 3(1)(a) and 8 of the Streets and Buildings Regulation Law, Cap. 96. But he did not dispute that the conditions for the application of that

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doctrine, if it has not been so excluded, have been satisfied. Now s. 3(1)(a) prohibits the “laying out or construction” of streets without a permit from “the appropriate authority”, and s. 8 empowers that authority to require the production of “plans, drawings and calculations” before granting a permit under s. 3. Clearly the creation of a public road under the doctrine is neither “laying out” nor “construction”. In England too the “laying out or construction” of a new street is regulated by statute; but that has not affected the operation of the doctrine in question: See Pratt and MacKenzie’s Law of Highways, 21st edition, p. 734, paragraph 1, where it is stated that

“Any person may lay out a new street if he has a *planning permission* (see the Town and Country Planning Act, 1962, ss. 12 and 13....) ... and..... if he complies with byelaws”;

and p. 16 et seq., where the doctrine of dedication and acceptance is discussed.

It follows that the doctrine applies—and that it is completely unaffected by Cap. 96.

For the purposes of these proceedings it is not, strictly speaking, necessary to decide whether the subject area has indeed become part of a public road, because, the question being one of fact (Pratt and Mackenzie, *op. cit.*, p. 33, last paragraph), the issue before me is a narrower one, *viz.* whether, in the circumstances stated above, the respondent was entitled to find as a fact that the subject area had become part of a public road. And to that question I have no difficulty in giving an affirmative answer.

For the above reasons the application must be dismissed.

Michaelides: I claim no costs.

Dismissed without costs.

Recourse dismissed.

No order as to costs.