

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NICOS VASILIADES AND ANOTHER,

Applicants,

and

THE DISTRICT OFFICER OF LARNACA,

Respondent.

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VASILIADES
AND ANOTHER
v.
DISTRICT
OFFICER
LARNACA

(Case No. 120/73).

5 *Streets and Buildings Regulation Law, Cap. 96—Division of land into building sites—District Officer—Although under a duty to examine an application for division of land into building sites he has a discretion to refuse or grant it—And in granting it he is not bound but has a discretion to impose the conditions referred to restrictively in section 9(1)(a) and (c) of the Law—Sections 3, 4 and 8 of the Law.*

10 *Building sites—Division of land into building sites—Respondent District Officer refusing application to divide land into building sites on the ground that proposed building sites could not be supplied with sufficient quantity of water from the Water Supply of the village concerned—Appropriate Authority to grant permit for water supply is the Village Commission—With consent of District Officer—Section 4(1) of the Water (Domestic Purposes) Village Supplies Law, Cap. 349 and paragraph 4(1) and (3) of the Village Domestic Water Supply (Pyla) Bye-laws, 1961—Respondent not submitting file to the said Commission, as was his duty under Article 29 of the Constitution, with a view to deciding the grant or not of a permit for installation of water—In refusing the permit*
15 *applied for respondent District Officer acted prematurely because he disabled himself from exercising his powers under the said paragraph 4(3), once no decision was taken by the Commission—He, therefore, acted contrary to law and has exercised his discretionary powers in a defective manner.*
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25 *Administrative Law—Discretionary powers—Defective exercise of—See, also, under “Building sites”.*

Administrative Law—Act contrary to Law—See, also, under “Building sites”.

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Constitutional Law—Right to address written requests or complaints to competent public authorities—Article 29 of the Constitution—Duty of non-competent public authority to which a request or complaint has been addressed—To transmit such request or complaint to the competent authority, if any, or to inform the writer thereof which is the competent authority. 5

The applicants, who are the co-owners of land situated within Pyla village, applied to the District Officer Larnaca for the division of their land into 132 separate sites. In the application form, used for the purpose, they stated that for the supply of water they would rely on the public water supply of Pyla. After seeking the views of the Director of the Water Development Department regarding the question whether the water supply of Pyla was adequate in order to cover the needs of applicants' sites, and getting a negative reply, the District Officer informed the applicants that he was not able to satisfy their application because the proposed building sites could not be supplied with sufficient quantity of water from the water supply of the village. Hence the present recourse. 10 15

Counsel for the applicant contended that the District Officer had a duty, or he was bound, in exercising his powers under the provisions of section 9* of the Streets and Buildings Regulation Law, Cap. 96, to grant the permit for the division of the land and then to impose conditions to be set out in the permit regarding the installation of adequate water supply. 20 25

Section 4(1) of the Water (Domestic Purposes) Village Supplies Law, Cap. 349 provides as follows:

“ In every village to which this Law is made to apply, the Village Commission with the Mukhtar thereof as chairman shall be constituted as a Village Water Commission for the purposes of this Law.” 30

Paragraph 4 of the Village Domestic Water Supply (Pyla) Bye-laws, 1961, made in exercise of powers under Cap. 349, provides as follow:

“ 4(1) No water from the water supply shall be installed in any dwelling house or premises in the village without the written permission of the Water Commission first obtained; 35

* Quoted at p. 279 *post*.

(2) Such permission shall be subject to such terms and conditions as the Water Commission may deem fit to impose;

(3) No permission shall be granted by the Water Commission under this bye-law without the consent of the District Officer."

Held, (1) that although the District Officer is under a duty to examine an application for division of land into building sites, he has a discretion to refuse or grant a permit and in granting it he is not bound but has a discretion to impose the conditions referred to restrictively in section 9(1)(a) and (c) of Cap. 96 (see, also, sections 3, 4, 8 and 9 of Cap. 96).

(2) That the Competent Authority in granting a permit for the installation of water is the Water Commission of Pyla and not the District Officer (see paragraph 4(1) of the Village Domestic Water Supply (Pyla) Bye-laws, 1961); that the District Officer had a duty under the provisions of Article 29 of the Constitution to make available the file to the said Water Commission with a view to deciding whether they would be prepared to grant a permit to the applicants for the installation of water (see *Kyriacou v. C.B.C.* (1965) 3 C.L.R. 482 at pp. 494-95); that though under paragraph 4(3) of the said bye-laws "no permission shall be granted by the Water Commission under this bye-law without the consent of the District Officer" in the case in hand the District Officer having decided prematurely to reject the application, by relying on the technical advice of the Director of Water Development Department, he disabled himself from exercising his powers under paragraph 4(3) once no decision was taken by the Water Commission; that, therefore, the District Officer in refusing to grant a permit to the applicants at that stage, has acted contrary to law and has exercised his discretionary powers in a defective manner; and that, accordingly, his decision will be annulled.

Sub judice decision annulled.

Per curiam: The administration when re-examining this case should bear in mind the factual and legal position prevailing at the time the application for the parcellation of the land of the applicants was in force.

Cases referred to:

Hadji Yiannis and Others v. The Mayor etc. Famagusta (1968) 3 C.L.R. 240 at p. 247;

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Kyriacou v. C.B.C. (1965) 3 C.L.R. 482 at pp. 494-495;
Solomou v. Loucaides and The Republic, 1 R.S.C.C. 96;
Kalogeropoullou v. The Republic (1966) 3 C.L.R. 33;
Araouzos v. The Republic (1968) 3 C.L.R. 287;
Loiziana Hotels Ltd. v. Municipality of Famagusta (1971) 3 5
C.L.R. 466;
Decisions of the Greek Council of State: Case Nos. 1235/56
and 1477/58.

Recourse.

Recourse against the refusal of the respondent to grant to 10
applicants a permit for the division of their land into separate
building sites.

A. Poetis, for the applicants.

Cl. Antoniadis, Counsel of the Republic, for the respondent.

Cur. adv. vult. 15

The following judgment was delivered by:-

HADJIANASTASSIOU, J.: In these proceedings, under Article
146 of the Constitution, both applicants seek a declaration that
the decision of the District Officer of Larnaca, refusing un- 20
conditionally to grant them a permit for the division of their land
into separate sites, is null and void and of no effect whatsoever.

The facts are these:-

The applicants are the co-owners of 78 donums and 1 evlek of
land situated within Pyla village. On October 30, 1972, they
applied to the District Officer of Larnaca for the division of their 25
land into 132 separate sites. They filled in a form indicating
that they would be relying for the supply of water on the public
water supply of Pyla. The District Officer, having examined
the matter, and because of the great number of building sites
the applicants were seeking, he sought the views of the Director of 30
the Water Development Department (hereinafter referred to as
the Director) regarding the question whether the water supply of
Pyla was adequate in order to cover the needs of those sites also.

On December 19, 1972, the Director, in reply to the District
Officer, said that for the purposes of 132 building sites alone, the 35
needs for the supply of water were estimated to reach the figure
of 26, 400 gallons per day, and because the proposed sites were
situated about 3, 000 feet away from the inhabited part of the

village, the quantity of water would be reduced from 60 gallons per person to 36 gallons, a figure which would not be up to the desired level. In the light of this opinion, the District Officer addressed a letter to the applicants on January 29, 1973, informing them that he was not able to satisfy their application for the grant of a division permit because the proposed building sites could not be supplied with sufficient quantity of water from the water supply of the village.

The applicants, feeling aggrieved because of the refusal to grant them a division permit, filed the present recourse, and the application was based on these three grounds of law:

“(a) that in accordance with the provisions of s. 9(1) of the Streets and Buildings Regulation Law, Cap. 96, the appropriate authority has power in granting a permit under the provisions of s. 3 of the said law, to impose conditions to be set out in the permit, particularly, for the installation of adequate water supply; and that in those circumstances the appropriate authority was not entitled to refuse a permit but simply to grant it and impose conditions after a proper examination of the facts and circumstances of the case;

(b) that the examination of each application must be made not in an arbitrary manner or in excess or abuse of power; and

(c) that although in accordance with Article 28 of the Constitution, the administration is not allowed to discriminate against any person, yet in the case of the applicants, they were treated in a discriminatory manner”.

Counsel on behalf of the respondent gave notice opposing the application and alleged that:

“(a) the decision of the District Officer of Larnaca was rightly and lawfully taken in accordance with the provisions of the Streets and Buildings Regulation Law, Cap. 96, having regard to all the relevant facts and circumstances of the case; and

(b) that no discrimination was made against the applicants”.

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Furthermore, in paras. 2(a) and (b) and para. 3, the respondent alleged the following:-

“ 2. (a) The applicants have alleged that their application was turned down unconditionally. But once it was obvious from the investigations which were carried out that the water supply of the proposed building sites was impossible under conditions; and as the required quantity of water was not available, there was no reason to issue a permit under conditions. 5

(b) It is a fact that during the year 1968, a permit was granted to a certain Hadjiantoni and Others for the division into separate sites of their land in the same area, but at that period no problems of any kind seemed to exist with regard to the water supply of Pyla village. It is worth noting that in any event, subsequent applications made by Mr. Hadjiantoni and others for the parcellation of another piece of land situated in the same area were turned down for the same reasons for which the application of the present applicants was also turned down.... 10 15

It is also a fact that other permits were granted by my office for parcellation of other lands into separate sites which are either situated within the inhabited area of the village or form a natural development of the village; and 20

3. The applicants never secured from the Water Commission of Pyla Village a permit for the water supply of their proposed building sites, and personally I have never given my written consent required under Regulation 4(3) of the Water Supply Regulations of Pyla Village for the issue by the said Commission of any such permit..” 25

On June 27, 1973, after the case was fixed for directions under r. 10(2) of the Supreme Constitutional Court Rules, counsel on behalf of the applicants addressed a letter (*exhibit 3*) to counsel for the respondent seeking information:- (1) as to what was the yield of the spring of the village on the date when the decision was taken; (2) what was the whole amount of the water which the village was consuming and what was the consumption per person; and (3) what was the yield of the said spring when a division permit was granted to the said Hadjiantoni in 1968. 30 35

On August 24, 1973, counsel in reply informed the applicants that the yield of the water supply of the village during that time 40

5 was 60, 000 gallons per day; and that the village was consuming about 23, 000 gallons daily, that is, about 24 gallons per person. Furthermore, it was said that the yield of the water supply of the village was, during the year 1968, when a permit for separation of sites was granted to Mr. Hadjiantoni, estimated at over the figure of 100, 000 gallons daily.

10 There was further correspondence by counsel for the applicants seeking further information (a) as to whether the boring would, if left free, yield more water and whether it was regulated particularly to yield the quantity of water referred to; (b) whether the District Officer at all times was seeking the views of the Director in granting permits for the division of lands into separate sites; and (c) what was the number of meters installed in the village and the number of the inhabitants. (See *exhibit 5*).

15 There was still further correspondence exchanged between the two counsel, and on February 20, 1974, the date of hearing, counsel on behalf of the applicants, in seeking an adjournment with the consent of the other side, made this statement:-

20 " We have discussed at length this case with my learned friend, and we have agreed that it will be necessary for us to go together, today, and visit the place in question to obtain certain information on the spot. Furthermore, it appears that an examination of this case, after our inspection will be necessary, once the District Officer did not proceed to consider or to issue the permit, subject to a condition that we satisfy him that there is a sufficient quantity of water for the division of the land".

30 Then the case was adjourned, and on March 21, 1974, both counsel sought a further adjournment, and counsel for the respondent made this statement:-

35 "... we have visited the locus in question together with my learned friend and in fact I had also a meeting with the District Officer of Larnaca, and we have agreed in order to handle this matter to send them a legal advice which will enable the said District Officer to reach his final decision. In fact he will be re-examining the case in the light of the legal advice. I have already done so by a letter dated 20th of this month, and we are expecting a reply within a few days. My learned friend and I have agreed that this case should be left again for mention until the 19th April, 1974,

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to give sufficient time for a new re-examination of the case and a final reply”.

As there was no re-examination of the case by the District Officer, the case was fixed for hearing on September 11, 1974, but unfortunately, counsel on behalf of the applicants, because as he put it, he did not have the relevant documents with him due to the recent events and because he had to leave in a hurry due to the Turkish invasion of Famagusta, he sought a further adjournment in order to be provided with the relevant documents from the Court file to enable him to present his case in Court. As there was no objection by counsel for the respondent, and for the reasons put forward, the Court granted the adjournment. 5 10

Finally, on the date of the hearing, counsel on behalf of the applicants called the Director of the Water Development Department, Mr. Charalambous, who said that his views are sought by the District Officers and other officials as to whether there is sufficient quantity of water available in a particular district or village to satisfy the needs for the parcellation of land into building sites. He further added that part of his duties were to keep records of all the water supply including that of Pyla village. He agreed that he wrote to the District Officer of Larnaca that the yield of the water supply of Pyla was at that time 60, 000 gallons daily, and added that there was a further check up in August 23, 1973. He went on to add that the consumption of the village of Pyla was 23, 000 gallons per day, that is, 24 gallons per person; and that the correct figure in gallons to satisfy the needs of 132 building sites would reach the figure of 26, 400 gallons per day. 15 20 25

Then he was further questioned in these terms:-

“(Q) I take it that you agree that if one adds the two figures we have the total of 49, 400 gallons daily. That leaves an extra amount out of the yield of the spring, 10, 600 gallons. 30

(A) I do not disagree as to the question of figures. My disagreement is based, as I said earlier, that the figure 23, 000 does not represent the advice given on behalf of our office. 53

(Q) You told us that you advised the authorities to take into consideration the figure of 40 gallons per person.

(A) Yes. 40

- (Q) Do you agree that assuming that the consumption is 40 gallons per person then it means 200 gallons per building site?
- (A) Yes, I agree.
- 5 (Q) When you talk about 200 gallons of water to be used for one building site, what do you mean?
- (A) I take the requirement of a family of 5 persons for each building site and then if you calculate the number of building sites, i. e. 132 x 200, the answer is 26,400 gallons daily.
- 10 (Q) What is the population of the village of Pyla?
- (A) For the purposes of water consumption, we assume it to be 1,000.
- (Q) Then, according to your figures, these 1,000 people should utilize 40,000 gallons daily.
- 15 (A) Yes.
- (Q) Can you tell us then how you are dealing with the applications for building sites including the applicants?
- (A) Before I give an answer regarding the application of the applicant, I must inform the Court that there were other applications for building sites by the co-operative and others, but I am not in a position to give the exact number at this stage.
- 20 (Q) Do you also deal with the needs of Nicosia regarding the water consumption.
- 25 (A) Yes, I do.
- (Q) Do you think that the required standard of water per person in Nicosia lately is the one you have in mind? That is to say 50 gallons per person?
- (A) No, it is less, because we impose limitations, i. e. we cut off the water supply. The maximum consumption in Nicosia since 1968 onwards is round 50-52 gallons, but the desired one is 60.
- 30 (Q) Is that your report to the District Officer?
- 35 (A) Yes, for 1972.
- (Q) Did you mention in your report anything regarding the desired consumption by the existing building sites?
- (A) As I said earlier, I did not know about the existing

applications regarding the building sites, because they are not all sent to me. Of course, I mentioned particularly one which has been referred to.

(Q) Did you write a second letter to the District Officer?

(A) Yes, it is dated 27. 3. 74".

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. Questioned further by counsel for the respondent, he said:-

“ I would have taken into consideration the yield of the spring which at the time was 60, 000 gallons daily. From that I would have deducted the 40, 000 gallons which were required for 1, 000 persons in the village, then the balance I would again divide it by 200 per building site to see whether there was sufficient water to grant to the applicants the water. In the case of the applicant, after deducting from 60, 000 the 26, 400 which is the amount required by the 132 building sites for which the applicant applied for, the balance which is 33, 600 would again be divided by the 950 persons and we would find that it would have fallen to 36 gallons per person. The purpose of my note was to inform the administration of the existing situation for them to decide”.

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Now, in spite of the evidence before me which deals mostly with the desired maximum quantity of water supply, the District Officer, who is the appropriate authority under the law in the present case, as I said earlier, had before him the technical advice of the Director, and in refusing to grant a permit for the parcellation of the lands of the applicants, he relied entirely on the ground that the water of the water supply of Pyla village was not sufficient to satisfy the needs of the 132 building sites. This was the reason put forward, and in order to resolve the question raised by the applicants, it must be remembered that, in order to divide any land into separate sites, the applicants had to get two permits: Firstly, permission under the Streets and Buildings Regulation Law, Cap. 96; secondly the written permission under the Water (Domestic Purposes) Village Supplies Law, Cap. 349, and the regulations made thereunder.

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The District Officer of Larnaca, in exercising his discretionary powers under the law, refused to grant the required permit to the applicant, and in construing the provisions of the law, I have no doubt at all that a duty is imposed on the District Officer to determine the application for a permit, when the application for

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a permit is properly made under the law and the regulations. I propose, therefore, to review some of the provisions of the law, in order to see what are the powers of the District Officer in each case:

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5 Section 8 of Cap. 96 says that

“ Before granting a permit under section 3 of this Law, the appropriate authority may require the production of such plans, drawings and calculations or may require to be given such description of the intended work as to it may seem necessary and desirable and may require the alteration of such plans, drawings and calculations so produced, particularly —

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(c) with the general object of securing proper conditions of health, sanitation, safety, communication, amenity and convenience in the area in which the intended work is to be carried out”.

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Section 9(1)(c)(ii) says:-

“ In granting a permit under the provisions of section 3 of this Law, the appropriate authority shall have power, subject to any Regulations in force for the time being, to impose conditions as hereinafter, to be set out in the permit, that is to say -

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(c) with regard to the laying out or division of any land for building purposes, conditions as to -

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(ii) the installation of adequate water supply”.

The Regulations in force at the material time were the Streets and Buildings Regulations, and they appear in Part I of the Subsidiary Legislation of Cyprus, p. 308, under the heading “Permits to Construct a Street to Divide Land for Building Purposes...”. Regulation 3 lays down that every application for a permit to lay out or construct a street or lay out or divide any land into plots for building purposes... shall be made in duplicate to the appropriate authority; and that it shall be signed by the owner or his duly authorised agent and shall be made in such form as may be prescribed from time to time by the appropriate authority.

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Then under (a), (b) and (c), the above Regulation prescribes

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the documents required in support of the application for a permit. Regulation 4 says that:

“ In considering an application for the division of any land, the appropriate authority may require the alteration of the boundaries of any adjoining plot or plots belonging to the same owner and may also require that plots resulting from the division shall be of such size and shape and with such frontage as the appropriate authority may in each case consider necessary or appropriate. Every such plot shall not be less than 5, 600 square feet nor with a frontage less than seventy feet: ”

Provided that the appropriate authority may, in any case in which it considers that it is equitable so to do, dispense with the above requirements as to the size and frontage of plots”.

It is clear in my view that the Regulations do not require to insert in the said application that the applicant intends to utilize or provide public or private water, but in any event, once provision was made in the form signed by the applicants, it was up to the proper authority to decide the question.

Having considered carefully the submissions of both counsel, I find it convenient to refer first to the case of *Andreas Hadji-Yiannis and Others v. The Mayor etc. Famagusta*, (1968) 3 C.L.R. 240, where Triantafyllides, J. as he then was, dealing with the construction of sections 3, 8 and 9 of Cap. 96, said at p. 247:—

“ In my opinion, section 3(1)(c) of Cap. 96 clearly entitles the owner of an area of land to apply for a permit for the division of, only, part of such area into building sites; this is what the Applicants have done in the present case, and they were entitled to have their relevant application (*exhibit 4 A*) decided on its own merits;... but I have no difficulty in holding that sections 8 and 9 of Cap. 96—which were relied upon by counsel for the Respondent Municipality—did not empower the Municipality, in the circumstances, at any rate, of this particular Case, to refuse the permit applied for (as, in effect, it has done) unless the Applicants were to agree to cede part of their land for the purpose of creating a square in accordance with the development plan, *exhibit 5*.

The provisions of sections 8 and 9 of Cap. 96—in so far

5 as they were pertinent to the matter—could be relied upon by the Respondent Municipality for the purpose of requiring any alteration (under section 8), or of imposing any conditions (under section 9(1)(c)), directly relating to the
10 division of the four building sites described in the application, *exhibit 4 A*; but it could not impose a condition for the ceding, for the purposes of a public square, of a part of the land of the Applicants totally unconnected, from any point of view, with the part to be divided into four building sites”.

15 In spite of the fact that the authority just quoted shows that the District Officer, in deciding whether to grant or refuse a permit has a discretion in each case, nevertheless, the main complaint of counsel for the applicant was that the District Officer
20 had a duty or that he was bound, in exercising his powers under the provisions of section 9 of the law, to grant the permit for the division of the lands, and then to impose conditions to be set out in the permit regarding the installation of adequate supply of water. I have considered this contention very carefully, and in
25 the light of what I said earlier, I find myself unable to agree with counsel because in construing sections 3, 4, 8 and 9 of Cap. 96, and the Regulations made thereunder, I have reached the conclusion that, although the District Officer, is under a duty to examine the application for division of the lands, he has a discretion to refuse or grant a permit, and in granting it he is not bound but has a discretion to impose the conditions referred to restrictively in s. 9(1)(a) and (c) of Cap. 96.

30 The further question remains whether the District Officer, in rejecting the application at that time, had properly exercised his discretionary powers. Regretfully, there is no material in the file to enable this Court to know whether the applicants in applying for a division of their land, had also attached to the application all the plans and other documents required under the law and the regulations. But I do know that the District Officer,
35 once he had before him the form in which it was stated clearly that the applicants were relying on the public water supply of Pyla, and considered it his duty to inquire from the Director whether there was adequate water supply, in my view, in rejecting the application at that time, relying on the technical
40 advice of the Director, he acted prematurely and, therefore, he exercised his discretionary powers in a defective way. In my view, at that stage, he had a duty under the provisions of Article

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29 of the Constitution, to make available the file to the appropriate authority which in the case in hand is the Water Commission of Pyla, with a view to deciding whether the Commission would be prepared to grant a permit to the applicants for the installation of water. If authority is needed, the case of *Kyriakou v. The C.B.C.*, (1965) 3 C.L.R. 482, lays down clearly that it is the duty to transmit such request or complaint to the competent authority or to inform the writer thereof which is the competent authority. Triantafyllides, J., as he then was, dealing with a similar problem, had this to say at pp. 494-495:—

“ It would be a paradox to hold that a competent public authority to which a written request or complaint has been addressed, on a matter outside its competence, is bound to reply as laid down in Article 29. The purpose of Article 29 is not to just promote correspondence between the citizens and public authorities but to ensure that requests or complaints by citizens are dealt with expeditiously by the appropriate authorities and that such authorities make known, giving also due reasons, to those concerned, whatever decisions they reach. It is obvious that a non-competent public authority to which a request or complaint has been addressed, and with which it cannot, therefore, deal, cannot be expected to give a duly reasoned reply in relation thereto as required under Article 29. Its duty is, however, to transmit such request or complaint to the competent authority, if any, or to inform the writer thereof which is the competent authority, if any. (See *Svolos and Vlachos on the Greek Constitution Volume II (1955) p. 173*)”.

There is no doubt that the District Officer was entitled, in order to make up his mind whether he would have imposed conditions regarding the installation of adequate water supply to seek the advice from the Director. But once he had received it, he had a duty to make the file available together with the technical advice of the Director to the Water Commission, which is the appropriate organ to decide whether to grant or refuse a permit. (See *Eleni Solomou v. Georghios Loucaides and The Republic etc.* 1 R.S.C.C. 96).

For the reasons I have endeavoured to explain, I have reached the conclusion that the District Officer, in refusing to grant a permit to the applicants at that stage, has acted contrary to the law and has exercised his discretionary powers in a defective manner.

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Turning now to the question as to which is the competent authority, section 4(1) of the Water (Domestic Purposes) Village Supplies Law, Cap. 349, says that "In every village to which this Law is made to apply, the Village Commission with the Mukhtar thereof as chairman, shall be constituted as a Village Water Commission for the purposes of this Law"; and under subsection (3) "The Mukhtar as chairman shall duly carry out the decisions of the Village Water Commission".

The Water Commission, exercising their powers under the law, made bye-laws which were modelled on the lines of the Village Domestic Water Supply (Elia) bye-laws, 1950, and are cited as the Village Domestic Water Supply (Pyla) bye-laws 1961. These bye-laws were approved by the District Officer. Section 4(1) says that "No water from the water supply shall be installed in any dwelling house or premises in the village without the written permission of the Water Commission first obtained"; and that under sub-paragraph 2 "Such permission shall be subject to such terms and conditions as the Water Commission may deem fit to impose". This bye-law says clearly that the competent authority in granting a permit, is the Water Commission and not the District Officer. It is true that under sub-paragraph 3 "no permission shall be granted by the Water Commission under this bye-law without the consent of the District Officer", but in the case in hand, the District Officer having decided prematurely, he disabled himself from exercising his powers under sub-paragraph 3 of bye-law 4, once no decision was taken by the Water Commission.

It is pertinent to add that although in the further reasons given by the District Officer, belatedly his consent was in fact not given. I am afraid that this is irrelevant once he had a duty to make the file available to the Water Commission in order to decide first before invoking his powers under sub-paragraph (3) of paragraph 4, whether his consent should be given or not. (Cf. *Kalogeropoulos v. The Republic of Cyprus* (1966) 3 C.L.R. p. 33 where it was decided that the decision in that case was properly taken in the exercise of the powers vested in the Board by Cap. 96 and that the letter written by the District Officer was written in his capacity as Chairman of the aforesaid board).

For the reasons I have endeavoured to explain at length, I have come to the conclusion that the District Officer acted contrary to the provisions of the law and in refusing to grant a permit for division, wrongly exercised his discretionary powers,

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and I would, therefore, annul the decision, but in these circumstances, I think I would add that the administration, when re-examining this case should bear in mind the factual and legal position prevailing at the time the application for the parcel-
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ation of the land of the applicants was in force. (See also *Ara-
ouzou v. The Republic*, (1968) 3 C.L.R., p. 287; *Loiziana Hotels
Limited v. The Municipality of Famagusta*, (1971) 3 C.L.R.
466; and *The Decisions of the Greek Council of State* Nos.
1235/56 and 1477/58). Regarding the question of costs, in
view of the various adjournments which were intended to be to
the benefit of the applicants, I am not making an order for costs.

Decision annulled. No order as to costs.

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