

1976 November 20

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

THOMAS SAVVA AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF INTERIOR AND OTHERS,

Respondents.

(Case No. 11/74).

Water (Domestic Purposes) Village Supplies Law, Cap. 349—Imposition of rates thereunder—Applicants living at Ayios Dhometios for most of the year—Owning houses at Platanistassa village where they go every weekend and during the summer—Reasonably open to respondents to treat them as “householders” at the said village in the sense of section 2 of the Law—Sections 6, and 17 (1) and (7) of the Law—Article 28.2 of the Constitution irrelevant. 5

Words and Phrases—“Inhabitant” in the definition of “householder” in section 2 of the Water (Domestic Purposes) Village Supplies Law, Cap. 349. 10

Statutes—Construction—Statutes imposing pecuniary burdens—Approach to the interpretation of—Construction of section 2 (definition of “householder”) of the Water (Domestic Purposes) Village Supplies Law, Cap. 349.

All the applicants lived at Ayios Dhometios, Nicosia, for most of the year. Four of them were owners of houses at Platanistassa village, where they went practically every weekend, and one of them had a house at the said village where she spent the summer; also all of them paid there public health and rural constabulary fees. The respondents in exercise of their powers under the relevant provisions of the Water (Domestic Purposes) Village Supplies Law, Cap. 349, required the applicants to pay rates, as householders at Platanistassa village, in respect of the year 1971. Hence the present recourse: 15 20

The main issue in this recourse was whether the applicants could be considered to be “householders” in the sense of the 25

relevant definition in section 2* of Cap. 349; and in order to resolve this issue the Court had to construe the word "inhabitant" appearing in the said definition. Applicants, also, argued that the rates complained of were imposed in a manner contrary to Article 28.2 of the Constitution, because they were taxed as being persons born in Platanistassa and the said Article prohibits any discrimination on the ground of birth.

Held, (1) that construing the word "inhabitant" in accordance with the correct approach to the interpretation of a statute imposing pecuniary burdens (see Maxwell on Interpretation of Statutes 12 ed. p. 256) and in relation to the object and whole context of Cap. 349, including, in particular, its section 6**, it was reasonably open to treat the five applicants, who do live at Ayios Dhometios, Nicosia, for most of the year, as "householders" at Platanistassa, in the sense of section 2 of Cap. 349, because they could properly be considered to be inhabitants of Platanistassa for the particular purpose; and that this Court does not think that the concept of "inhabitant" entails either the notion of permanent residence or of inhabiting continuously or is incompatible with having two residences, one in a rural area and another in a town area.

(2) That the concept of "birth" as referred to in Article 28.2 is entirely irrelevant to the present case, because the reason for which the applicants were considered as householders at Platanistassa was not their place of birth, but the fact that they were inhabitants of that village in such a manner as to come within the ambit of the definition of "householder" in section 2 of Cap. 349.

Application dismissed.

Cases referred to:

Rex v. Mashiter, 112 E.R. 58 at p. 63;

Queen v. The Mayor of Exeter, Wescomb's Case [1868-69] L.R. 4 Q.B. 110.

Recourse.

Recourse against the decision of the respondents whereby the applicants were required to pay rates, as householders at Platanistassa.

* Section 2 (definition of "householder" reads as follows:

"'Householder' includes every male inhabitant of the village of not less than eighteen years of age whether assessed for taxation or not and every female inhabitant of a like age who is assessed for any form of taxation".

** Quoted at p. 201 *post*.

nistassa village, in respect of the year 1971, under the provisions of the Water (Domestic Purposes) Village Supplies Law, Cap. 349.

A. Efstychiou, for the applicants.

C. Kypridemos, Counsel of the Republic, for the respondents.

Cur. adv. vult. 5

TRIANTAFYLLIDES P. read the following judgment. In this case the applicants complain against the rates which they are required to pay as householders at Platanistassa village, in respect of the year 1971, under the relevant provisions of the Water (Domestic Purposes) Village Supplies Law, Cap. 349. 10

At the conclusion of the hearing of this case it became clear, and beyond dispute, that applicant No. 4, Mina, was entitled to succeed in this recourse, as she was not burdened with any obligation by virtue of the above legislative provisions, and, therefore, in so far as she is concerned the administrative action complained of has been annulled. 15

At the hearing of this case counsel for the applicants stated initially that the applicants were required to pay the rates concerned by virtue of bye-laws made under section 30 (1) (b) of Cap. 349. 20

The correct position, however, in the light of documentary evidence which was eventually produced before the Court, appears to be that the rates in question were levied under the provisions of section 17 of Cap. 349; and on the basis of the said evidence I am quite satisfied that it was lawfully open to the Village Water Commission concerned to adopt such a course, especially under subsections (1) and (7) of section 17, for the purpose of paying off a pecuniary liability incurred by the said Commission in relation to carrying out the tasks with which it has been entrusted by means of section 6 of Cap. 349. 25 30

That Platanistassa is a village to which Cap. 349 is applicable is clear from a relevant Notice which was published in the Third Supplement to the Official Gazette of April 6, 1961 (Not. 106) under section 3 of Cap. 349.

I do not agree with counsel for the applicants that in order to act, as it was done in the present case, under the said section 17, it was necessary to make first bye-laws for that purpose under section 30 (1) (b) of Cap. 349. Section 17 is drafted in such a manner that it is obviously a provision which can be 35

regarded as operative even if no bye-laws are made in relation to any aspect of its application.

The next matter which has had to be examined in this case is whether the applicants could be considered to be "householders",
 5 in the sense of the relevant definition in section 2 of Cap. 349; and, as a matter of fact, this was the main issue in this case. The said definition reads as follows:-

10 " 'householder' includes every male inhabitant of the village of not less than eighteen years of age whether assessed for taxation or not and every female inhabitant of a like age who is assessed for any form of taxation; "

In approaching the issue of whether the applicants are to be regarded as "householders" I have not lost sight of the fact that Cap. 349 is, in so far as a provision such as section 17 is
 15 concerned, a statute imposing pecuniary burdens, and the correct approach to the interpretation of a statute of this nature is to be found in Maxwell on Interpretation of Statutes, 12th ed. (p. 256):-

20 " Statutes which impose pecuniary burdens are subject to the same rule of strict construction. It is a well-settled rule of law that all charges upon the subject must be imposed by clear and unambiguous language, because in some degree they operate as penalties: the subject is not to be taxed unless the language of the statute clearly imposes
 25 the obligation¹, and language must not be strained in order to tax a transaction which, had the legislature thought of it, would have been covered by appropriate words². "

I think that the word "inhabitant", which is to be found in the above definition of "householder", has to be construed in
 30 relation to the object and whole context of Cap. 349, including, in particular, its section 6 which reads as follows:-

35 " 6. Subject to the provisions of this Law, it shall be the duty of a Village Water Commission to provide an adequate supply of pure and wholesome water for the domestic purposes of the village and to maintain such supply and any waterworks connected therewith in clean and good condition and repair. "

1. *Russell v. Scott* [1948] A.C. 422, per Lord Simonds; *D'Avigdor-Goldsmid v. I.R.C.* [1953] A.C. 347.

2. *I.R.C. v. Wolfson* [1949] 1 All E.R. 865, per Lord Simonds.

The expression "domestic purposes" is defined as follows in section 2 of Cap. 349:-

" 'domestic purposes' means any purposes which, according to the ordinary habits of life, are commonly satisfied in a village home but shall not include the use of water for irrigation or for any trade, manufacture or business;" 5

Regarding the meaning of the word "inhabitant" I would like to refer, too, to *Rex v. Mashiter*, 112 E.R. 58, where (at p. 63) Littledale J. said the following:-

" It is difficult to assign a meaning to the word 'inhabitants'. Under the Statute of Bridges it means persons holding lands in the county. In the grant of a way over a field to church it would extend to all persons in the parish. It must be taken according to the subject-matter, and be explained, as circumstances allow, sometimes by usage, sometimes by the context or object of a charter. It cannot be said to have any fixed meaning". 10 15

In *Queen v. The Mayor of Exeter, Wescomb's Case* [1868-69] L.R. 4 Q.B. 110, the relevant part of the headnote reads as follows:- 20

" A., after carrying on business and residing at Exeter for many years, went to live in London. He continued his business, which compelled him often to visit Exeter, and he kept some offices and rooms there. He was in Exeter about twenty times since Michaelmas, 1867, staying each time from four to ten days. On these occasions he always transacted his business, slept and took some of his meals in his own rooms:- 25

Held, that the question whether a person is an inhabitant householder within s. 9 of the Municipal Corporation Act is a question of fact, and depends upon whether there has been such a degree of inhabitation as to be in substance and in common sense a residence, and that A. was an inhabitant householder in Exeter, as there was sufficient evidence to show that he had a residence there as well as in London". 30 35

Also, in that case Blackburn J. said (at p. 113):-

" The real question in this case is whether or not Mr. Wescomb was an inhabitant householder in Exeter. He appears to have had all the other necessary qualifications. 40

If he was, in fact, inhabiting the offices in Gandy Street, that is sufficient. There is no strict or definite rule for ascertaining what is inhabitation or residence. The words have nearly the same meaning. Sleeping once or twice in a place would not constitute inhabitation. There is no precise line to be drawn. It is always, if the inhabiting is *bona fide*, a question of more or less. The question is whether there has been such a degree of inhabitation as to be, in substance and in common sense, a residence. When a person has a country and a town house, it is a mere question of fact whether he has two, or only one residence. When, as in this case, a man leaves one residence to go elsewhere to transact real business, whether he has two residences depends on quantity and amount. It is a pure question of fact".

In Words and Phrases Legally Defined, 2nd ed., vol. 3, p. 54, there is the following quotation from a Canadian case (of which the full report is not available in our library):-

" 'It would appear that, speaking generally, to be an 'inhabitant' one might be a permanent resident or a temporary resident having a permanent dwelling within the area. There appears to be no reason for holding that a person cannot be an inhabitant of two places at the same time, or that a person ceases to be an inhabitant due to temporary absence from the area.' *Ingleby v. Innisfil Township*, (1958) O.W.N. 349, per Gibson, J.A., at p. 352."

It has been submitted by counsel for the applicants that in construing the notion of "inhabitant" in the definition of "householder" in section 2 of Cap. 349 it is useful to look at the definition of "proprietor" in section 2 of the Irrigation Divisions (Villages) Law, Cap. 342, which is as follows:-

" 'proprietor' means an owner of land situated within a village or quarter of a village or group of villages which is benefited or is capable of being benefited by any irrigation works".

I do not think that any real assistance can be derived from this definition, because, obviously, the two enactments, Cap. 349 and Cap. 342, have different objects and are not in *pari materia*.

In the present case certain basic facts, as they are stated in paragraph 2 of the Opposition are not denied: Four of the applicants, Savva, Tenekides, Galazis and Cleopas, are owners of houses at Platanistassa, where they go practically every week-end, and the other remaining applicant, Matheou, has a house at Platanistassa where she spends the summer; also, all of them pay there public health and rural constabulary fees. 5

In the circumstances, and bearing in mind the object of the relevant legislation, I am of the view that it was reasonably open to treat the aforesaid five applicants, who do live at Ayios Dhometios, Nicosia, for most of the year, as "householders" at Platanistassa, in the sense of section 2 of Cap. 349, because they could properly be considered to be inhabitants of Platanistassa for the particular purpose. I do not think that the concept of "inhabitant" entails either the notion of permanent residence or of inhabiting continuously or is incompatible with having two residences, one in a rural area and another in a town area. 10 15

It has, also, been argued that the complained of rates were imposed in a manner contrary to Article 28.2 of the Constitution, because, allegedly, the applicants are being taxed as being all of them persons born in Platanistassa, and the said Article prohibits any discrimination on the ground of birth. In my view the concept of "birth", as referred to in Article 28.2, is entirely irrelevant to the present case, because the reason for which the applicants are being considered as householders at Platanistassa is not their place of birth, but the fact that they are inhabitants of that village in such a manner as to come within the ambit of the definition of "householder" in section 2 of Cap. 349. 20 25

For all the above reasons this recourse fails and it is dismissed accordingly; but, as it has been successful in relation to one of the applicants, I do not propose to make any order as to its costs in favour of the respondents. 30

Application dismissed.

No order as to costs. 35