

1980 September 15

[TRIANTAFYLLIDES, P., L. LOIZOU, HADJIANASTASSIOU, JJ.]

MUNICIPALITY OF LIMASSOL,

Appellants-Defendants,

v.

ZOE MICHAELIDES,

Respondent-Plaintiff.

(Civil Appeal No. 6037).

Street-widening scheme—Validity not challenged by recourse, under Article 146 of the Constitution, by person affected within the time-limit prescribed by section 12(2) of the Streets and Buildings Regulation Law, Cap. 96—At expiration of such time-limit scheme becomes binding on the appropriate authority and on the person affected—Possibility that scheme may be revised after the determination of recourses filed by others against it not a factor preventing it from being treated as binding—Section 12(3) of Cap. 96. 5

On May 4, 1973, the appellants-defendants, after complying with the procedure prescribed by section 12* of the Streets and Buildings Regulation Law, Cap. 96, published a street-widening scheme (“the scheme”) concerning the town of Limassol affecting, amongst others, property of the respondent-plaintiff. The respondent did not challenge the validity of the scheme by means of a recourse and a building permit was granted to him by the appellants on September 27, 1976. The validity of the scheme was attacked by other property owners and the relevant recourses were pending at the time of institution of these proceedings. 10 15 20

In an action by the respondent for compensation in respect of deprivation of property entailed by the operation of the scheme the parties invited the Court to pronounce on the question “whether the Scheme in question was binding on the parties at the time of the institution of the present action in view of the pendency of other independent recourses attacking its validity”. 25

* Section 12 is quoted at pp. 571–72 *post*.

The trial Court ruled in the affirmative and hence this appeal.

Held, that on a proper construction of section 12(3)* of Cap. 96 on the expiration of the period of seventy-five days after the publication of the notice in relation to a street-widening scheme the scheme becomes binding on the appropriate authority and on any person affected who has not filed a recourse to this Court against it; that the respondent has not filed such a recourse and, on the contrary, she treated the scheme as binding and proceeded to apply for a building permit, and obtained such a permit, in accordance with the scheme; that, also, the appellants, rightly treating the scheme as binding, issued the permit in accordance with it; that, therefore, the trial Court has correctly disposed of the preliminary legal issue; and that, accordingly, the appeal must be dismissed.

Held, further, that the possibility that, after the determination of the recourses which have been made by others, and are still pending, against the scheme, it may become necessary for the appellants to revise it in whole or in part, is not a factor which prevents it from being treated as binding, under section 12(3), in the meantime.

Appeal dismissed.

Cases referred to:

Pelides v. The Republic, 3 R.S.C.C. 13 at p. 19.

Appeal.

Appeal by defendant against the ruling of the District Court of Limassol (Loris, P.D.C. and Hadjitsangaris S.D.J.) dated the 21st November, 1979, (Action No. 3023/76) whereby it was found that a street-widening scheme in Limassol was binding on the parties at the time of the institution of the present action.

Y. Potamitis, for the appellants.

R. Michaelides with *P. Anastasiades*, for the respondent.

TRIANTAFYLLIDES P. gave the following judgment of the Court. This is a case in which the appellants have been sued, as defendants, by the respondent, as plaintiff, for compensation in respect

* Section 12(3) reads as follows:

"(3) At the expiration of the period set out in sub-section (2), the plans shall, subject to any decision by the Supreme Constitutional Court on a recourse as in section 18 of this Law provided, become binding on the appropriate authority and on all persons affected thereby and no permit shall be issued by the appropriate authority save in accordance with such plans".

of deprivation of property of the respondent entailed by the operation of a street-widening scheme in Limassol.

The agreed facts, as they appear from the decision of the trial Court which is challenged by means of this appeal, are as follows:

- “(a) Notification No. 816 was published in the Official Gazette No. 1009, dated 4/5/73 of the Scheme as referred to therein, and the procedure prescribed by Section 12 of Cap. 96 has been followed and complied with. 5 10
- (b) The Plaintiff did not file any recourse before the ‘Supreme Constitutional Court’—which is now the Supreme Court—against the validity of the Street Widening Scheme contained in Notification 816 as aforesaid. 15
- (c) Building permit was granted by the Municipality of Limassol on 27/9/76 to the Plaintiff.
- (d) The Supreme Constitutional Court in all the recourses filed against the Scheme, set out in Notification 816, has already decided on 25/6/76 that Section 12 of Cap. 96 was not unconstitutional. 20
- (e) After the Ruling of the Supreme Court, as set out in (d) above, the Supreme Court in its original jurisdiction has commenced the hearing of each individual recourse filed against the Scheme and the decision on these pending cases, as to whether the Street Widening Scheme in question should be declared null and void or not, has not yet been given. The Plaintiff, as already stated, is not a party to any recourse in respect of the Scheme in question.’” 25 30

The parties have agreed, on the basis of those facts, that the trial Court should pronounce on the following question of law as a preliminary issue:

“Whether the Scheme in question was binding on the parties at the time of the institution of the present action in view of the pendency of other independent recourses attacking its validity.” 35

The trial Court found that the answer to the above question was that at the time of the institution of the action the scheme was binding on the parties; and against this decision the appellants have appealed.

5 In our opinion the outcome of this appeal turns on the interpretation of the provisions of sections 12 and 13 of the Streets and Buildings Regulation Law, Cap. 96, which, modified by virtue of Article 188 of the Constitution (see *Pelides v. The Republic*, 3 R.S.C.C. 13, 19), read as follows:

10 “12. (1) Notwithstanding anything contained in this Law, an appropriate authority may, with the object of widening or straightening any street, prepare or cause to be prepared plans showing the width of such street and the direction that it shall take.

15 (2) When any plans have been prepared under subsection (1), the appropriate authority shall deposit such plans in its office and shall also cause a notice to be published in the Gazette and in one or more local newspapers to the effect that such plans have been prepared and deposited
20 in its office and are open to inspection by the public and such plans shall be open to the public for inspection, at all reasonable times, for a period of seventy-five days from the date of the publication of the notice in the Gazette.

25 (3) At the expiration of the period set out in sub-section (2), the plans shall, subject to any decision by the Supreme Constitutional Court on a recourse as in section 18 of this Law provided, become binding on the appropriate authority and on all persons affected thereby and no permit shall be issued by the appropriate authority save in accordance with such plans.
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35 13. (1) Where a permit is granted by an appropriate authority and such permit entails a new alignment for any street, in accordance with any plan which has become binding under section 12 of this Law, any space between such alignment and the old alignment, which is left over when a permit is granted, shall become part of such street without the payment by the appropriate authority of any compensation whatsoever:

Provided that, if it is established that hardship would

be caused if no compensation were paid, the appropriate authority shall pay such compensation as may be reasonable having regard to all the circumstances of the case.

(2) When a permit is granted under subsection (1), the District Lands Office shall, upon application by any interested party, cause the necessary amendments to the relative registrations to be effected and the amended registration shall be held final notwithstanding that any certificate relating thereto remains unaltered.” 5

On a proper construction of section 12(3) of Cap. 96 we take the view that at the expiration of the period of seventy-five days after the publication of the notice in relation to a street-widening scheme the scheme becomes binding on the appropriate authority and on any person affected who has not filed a recourse to this Court against it. The respondent has not filed such a recourse and, on the contrary, she treated the scheme as binding and proceeded to apply for a building permit, and obtained such a permit, in accordance with the scheme; also, the appellants, rightly treating the scheme as binding, issued the permit in accordance with it. 10 15 20

In the circumstances we, therefore, find that the trial Court has correctly disposed of the preliminary legal issue by holding that the scheme in question has become binding on the parties to this case.

The possibility that, after the determination of the recourses which have been made by others, and are still pending, against the scheme, it may become necessary for the appellants to revise it in whole or in part, is not a factor which prevents it from being treated as binding, under section 12(3), in the meantime. 25 30

In the result, this appeal is dismissed with costs.

Appeal dismissed with costs.