

1981 April 9

[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHRYSANTHOS G. CONSTANTINOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF INTERIOR ETC.,

Respondents.

(Case No. 157/80).

5 *Building—Building sites—Division permit—Applicant the holder of a division permit satisfying requirements of proviso to Notification* No. 145, made under section 14(1) of the Streets and Buildings Regulation Law, Cap. 96, prescribing zones and imposing plot ratio restrictions—Refusal to grant him a building permit on ground that his plans were not in conformity with said Notification annulled.*

10 The applicant was the registered owner of a piece of land of an area of 2 donums and 2 evleks situated at Ayia Napa. In February, 1972 he applied to the District Officer of Famagusta for the division of this land into four building sites; and on the 28th August, 1972 he was informed that his application had been approved in accordance with the law which was in force. He was then issued with the required permit which has been renewed and is still in force. In January, 1979 he submitted four applications for building permits to the District Officer Famagusta for the purpose of building flats on the four building sites but his application was refused because his plans were not in compliance with a Notification (“the Administrative Act No. 145”)* made under s. 14(1) of the Streets and Buildings (Regulation) Law Cap. 96 whereby zones were prescribed and restrictions were imposed regarding the “plot ratio and the percentage coverage”. Hence this recourse.

* Published in Supplement No. 3 of the Cyprus Gazette No. 954 dated 5.8.1972.

Under a proviso to Administrative Act No. 145 its provisions were relaxed in case of buildings to be erected on sites in respect of which there had already been issued a division permit which was in force on the date of its publication; and according to the District Officer Famagusta* this proviso was extended to cover cases where the application for division had been made 2 months before the publication of Administrative Act No. 145. 5

As the file of the case was left at Famagusta and the District Officer could not have access to it due to the Turkish invasion the District Officer was called to give evidence and stated that the application for division had been filed before the 5th August, 1972, which is the date of the publication of Administrative Act No. 145, and the reason for issuing the division permit after the 5th August, 1972, was due to the great load of work in his office. 10 15

Held, that once the District Officer examined the application for division of land into building sites and granted a permit the new decision would be declared null and void and the earlier decision or act of the administration would be confirmed in whole. 20

Sub judice decision annulled.

Casee referred to:

Vassiliades v. District Officer Larnaca (1976) 3 C.C.R. 269.

Recourse.

Recourse against the refusal of the respondents to grant to applicant a building permit. 25

L. Hadjidemetris and *S. Mamantopoulos*, for the applicant.

M. Kyprianou, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult. 30

HADJIANASTASSIOU J. read the following judgment. In the present recourse the applicant, Chrysanthos G. Constantinou of Larnaca, seeks a declaration that the refusal of the appropriate authority to grant a building permit to him for the purpose of erecting on his land a block of flats is null and void and of no effect whatsoever. 35

The facts are these:—

The applicant is the registered owner of a piece of land No.

* This appears in the relevant correspondence in the file of the case.

29 Sheet/Plan 42, of an area of 2 donums and 2 evleks, and which is situated at Ayia Napa. The applicant, sometime in February, 1972, made an application to the District Officer of Famagusta for the division of the said land into four building sites. The appropriate authority, having gone into that application on 28th August, 1972, informed him that his application for the division of his land had been approved, in accordance with the law which was in force.

Then the administration sometime later on, issued the required permit, which has been renewed and is still in force today.

The applicant, in or about January, 1979, submitted four applications for permits to the District Officer of Famagusta for building flats on the four building sites, but regretfully, the appropriate authority, by a letter dated 7th March, 1980, informed the applicant that the plans presented did not fill the provisions of the administrative act No. 145 of the 5th August, 1972.

The applicant, feeling aggrieved, filed the present recourse claiming that the refusal of the District Officer is contrary to the law and null and void.

On 30th October, 1980, counsel appearing for the respondents opposed the application, because on the 5th August, 1972, there was a publication in the official Gazette of the Republic under No. 145, containing the administrative act by which "poleodomikes zones" have been put into effect within the area of Ayia Napa. Counsel further put forward that because of these zones certain restrictions were imposed with regard to "syndelesti domiseos ke ton pososton kalypseos".

In or about August, 1972, i.e. 2 months after the publication of the administrative act under No. 145, the District Officer of Famagusta issued to the applicant the required licence for division of plot 29 into four building sites. Counsel went further and said that because of the wording of the proviso of the said publication, it appears clearly that that publication covers cases for which a building permit for division has been granted in accordance with the law which was in force on the date of the publication of the said notification.

Indeed, he added, in the present case the permit for division

of land was issued two months after the publication of the administrative Act and in the particular circumstances it cannot be covered by the provisions of the proviso of the said notification. Finally, counsel said that in the light of the advice given to the District Officer, the application of the applicant was correctly dismissed. 5

Counsel appearing for the applicant relied on the following grounds of law:- (a) that the decision of the respondent was taken in abuse and/or in excess of their power, and that the decision was based on the misconception of wrong criteria and/or that it is the result of real misconception of facts and/or law; (b) that it is contrary to the law, Cap. 96 and to the Constitution, and/or the Regulations made. 10

On the contrary, counsel for the respondents relied on these grounds of law:- (a) that the said act and/or decision of the respondent was issued lawfully and in accordance with the relevant provisions of the law; (b) that the administrative act attacked was issued in accordance with the well-known principles of administrative law in the light of all the facts and circumstances of the present case; and (c) that the said act and/or decision was taken in accordance with the provisions of the Constitution and was not in excess and/or in abuse of powers once the said act or decision is duly reasoned. 15 20

On the 10th November, 1980, counsel appearing for the applicant on the filing of the opposition, requested an adjournment for a period of 20 days in order to see whether there was room for settlement of this case. The case was adjourned on the 22nd December, 1980, and on that date both counsel stated that there is a possibility of finding a formula which would have been acceptable to the applicant and they requested a further adjournment. 25 30

On 14th February, 1981, counsel appearing for the applicant made this statement: "We have discussed the case with counsel for the Republic, and we understand from your observations that a meeting with the District Officer of Famagusta and also with Mr. Paralikis would indeed prove that we are not wasting the time of the Court and everybody else. We have now in our hands documents which may throw light to the problem we are facing today". 35

Counsel appearing for the respondents made this statement:—
“In the light of the new material, Your Honour, which my
learned friend will place before me, certainly I accept the
suggestion of my colleague that we must have a meeting and
5 we must see the appropriate authority to verify whether or not
the documents in the hands of my learned friend are relevant
and genuine and justify a re-examination of the case”.

In the light of the two statements, I made this observation:—
“This is a commendable stand particularly as counsel for the
10 applicant today went even further to state that the document
or documents in question appeared according to the statement
made by the District Officer of Famagusta, as one of the
documents which was prepared in their office. I therefore,
propose granting the adjournment and counsel will be at
15 liberty at any stage after they discuss the whole matter with
the appropriate authority, to come before me and I would
give to this case priority for hearing if it need be”.

On the 9th April, 1981, counsel in support of his case, called
Mr. D. Pantelides, the District Officer of Famagusta, and the
20 President of the Council of Improvement of Ayia Napa, who
told the Court that in 1972 he was a District Officer. He
further said that he had in mind the file of the applicant Chry-
santhos G. Constantinou, and that there was another file which
refers also to the facts of the present case. He also agreed that
25 the letter dated 28th August, 1972, was issued from his office
informing the applicant that his application for division of
land into building sites was approved and that he should have
forwarded the appropriate fees for the said permit. (See exhibit
1). Indeed, the witness stated that the contents of the said
30 letter were genuine and it was issued from his office. In addition
he said that he knew that on the 5th August, 1972, a publication
was made in the official Gazette of the Government regarding
the Administrative Act 145/72 regarding certain restrictions
on the “syndelesti domiseos” and the coverage of the building
35 sites.

Finally, Mr. Pandelides agreed that once there was an appli-
cation earlier and there was a delay for granting the building
permit because of a great load of work in his office, the said
application was not filed after the 5th August, 1972, and was
40 approved on the 20th August, 1972.

In cross-examination by counsel for the Republic, Mr. Kyprianou, he said that "We have refused to issue at that time the building permit as we have relied on the legal advice of the Attorney-General and because we do not have trained personnel in our office, we asked the opinion of the Planning Bureau and in fact we have been advised not to issue the said building permit and that was the reason why we sought the opinion of the Attorney-General". This advice can be found in file No. B93/79 Blue 33 (see *exh. 2*). Questioned further he said that the legal advice was based on the then existing conditions. 5 10

Finally, the witness conceded that the permit was given in accordance with the facts and circumstances of that time and it is *exhibit 2* before the Court. See also *exhibit 3*, the files B103/79, D.113/77, B100/79, B102/79 and 347. 15

Counsel for the applicant Mr. Mamantopoulos, in addressing the Court, pointed out that the applicant is a refugee from Famagusta, and as the files were lost because of the Turkish invasion, he was left without anything in his hands to prove that he had obtained a building permit, and as a result he sought the opinion of the Attorney-General. Counsel further argued that in the light of the new facts, it shows that that advice is not a correct one and it was wrong for the administration to dismiss the application of the applicant. 20

On the contrary, counsel for the respondents said that the opposition filed was based on the legal advice of the Attorney-General and was based on the facts and circumstances which were put before him during the period of preparing the opposition, but there is now a very important element, viz., the evidence of the District Officer who made it abundantly clear that the delay in issuing a building permit cannot be attributed to the applicant but to the great burden of work in the office of the District Officer of Famagusta. 25 30

There is no doubt that this is a unique case and had it not been for the labours of both counsel, the applicant would have been in a very difficult situation indeed. On the other hand because the evidence of the District Officer is so convincing the applicant is now in a position to claim his constitutional rights. 35

Time and again it is said by this Court, under Article 146 of the Constitution, that the Supreme Court remains the defender of the rights of the people and has exclusive jurisdiction to adjudicate finally on a recourse made to it on a complaint that a decision, an act or omission of any organ, authority or person, exercising any executive or administrative authority is contrary to any of the provisions of this Constitution or of any law or is made in excess or in abuse of powers vested in such organ or authority or person. The present case, with respect, shows that after that long time, justice is done to the applicant.

For the reasons I have given and once the District Officer examined the application for division of land into building sites and granted a permit, I would declare null and void the new decision and confirm in whole the earlier decision or act of the administration. Cf. *Nicos Vasiliades and Another v. The District Officer of Larnaca* (1976) 3 C.L.R. 269.

In the particular circumstances of this case I am not making an order for costs.

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Sub judice decision annulled. No order as to costs.