

1983 December 16

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MARCOS I. PIRILLIS,

Applicant,

v.

THE IMPROVEMENT BOARD OF PARALIMNI,

Respondents.

(Case No. 256/79)

5 *Streets and Buildings Regulation Law, Cap. 96—Building permit—Appropriate Authority within areas other than Municipal Corporations—The Improvement Board—Section 3(2) of the Law—Decision of Improvement Board rejecting application for building permit not taken in accordance with section 8(5) of the Villages (Administration and Improvement) Law, Cap. 243—And in the absence of any inquiry—Annulled.*

Administrative Law—Administrative act or decision—Taken without any inquiry—Annulled.

10 On 7th February, 1979 the applicant applied to the District Officer of Famagusta for the grant to him of a building permit for the construction of a pigsty at Paralimni. This application was considered by the Improvement Board of Paralimni at its meeting of the 19th April, 1979 in the course of which the
15 local members of the Board and the Board of Health did not recommend the issue of the permit applied for and the applicant was informed of the rejection of his application by a letter of the District Officer which was signed by him not in his capacity as chairman of the Improvement Board. Hence this recourse.

20 *Held*, that the appropriate Authority for the issue of building permits is the respondent Board (see section 3(2) of the Streets and Buildings Regulation Law, Cap. 96); that questions coming before a Board at any meeting “shall be decided by a majority

of the members present, and in case of equality of votes, the Chairman of the meeting shall have a second or casting vote" (see section 8(5) of the Villages (Administration and Improvement) Law, Cap. 243); that the decision of the respondent, which was taken on the 19th April, 1979 has not been taken in accordance with the provisions of section 8(5) of Cap. 243. in that there is no mention therein— 5

- (a) of the number of the members of the Board which were present; and
- (b) whether the decision was unanimous or taken by a majority and if so what was the majority that voted against the removal of the pigsty to the land on which the applicant intended to build; that, in any event, the District Officer does not by the sub judge decision contained in his letter state whether the sub judge decision was reached by him on inquiry that he had himself carried out, nor does it appear from the relevant file that he based his decision on any inquiry at all; and that, therefore, the recourse must succeed and the appropriate authority must re-examine the matter. 10 15 20

Sub judge decision annulled.

Recourse.

Recourse against the refusal of the respondents to grant applicant a permit to build a pigsty within the area of Improvement Board of Paralimni. 25

G. Pittadjis for the applicant.

T. Economou, for the respondents.

Cur. adv. vult.

DEMETRIADES J. read the following judgment. By means of the present recourse the applicant challenges the decision of the respondents, by which, as he alleges, they refused to grant him a permit to build a pigsty within the area of the Improvement Board of Paralimni and he prays that the said decision of the respondents be declared null and void and of no legal effect. 30

The applicant bases his application on the following legal grounds:— 35

- (a) That the act and/or decision of the respondents was taken in excess and/or in abuse of their powers and/or

that it is ultra vires the Streets and Buildings Regulation Law, Cap. 96 and the regulations made thereunder.

- 5 (b) That the act and/or decision of the respondents constitutes discrimination against the applicant, contrary to Article 28 of the Constitution, in that a similar application filed by a certain Constandis Giorgallas was approved on the 1st May, 1976.
- 10 (c) That the act and/or decision of the respondents is contrary to Article 23.1 of the Constitution, in that it prevents the applicant to use and/or enjoy his immovable property.
- 15 (d) That the act and/or decision of the respondents is contrary to Article 25.1 of the Constitution, in that it prevents the applicant from exercising the profession and/or occupation of his will.
- (e) That the act and/or decision of the respondents offends Article 28.1 of the Constitution because on the 1st May, 1976, a similar permit for the same area was granted to Constandis Giorgallas of Paralimni.
- 20 (f) That the act and/or decision of the respondents is unlawful and was taken in excess and/or in abuse of powers, in that under the legislation in force no right or power is vested for the taking of such decision.
- 25 (g) That the act and/or decision of the respondents is unlawful and void in that it is not legally reasoned and/or its reasoning is obscure and vague.

The respondents opposed the application and their submissions on the legal issues raised by the recourse are to be found in their opposition based on facts that are set out therein.

- 30 During the hearing of this recourse the respondents produced two files, which are *exhibits 1 and 2* before the Court, from which there are to be derived the real facts of the case and which are briefly the following: The applicant, in partnership with a certain Mrs. Pinelopi Pittaki, was carrying on the business of raising pigs at a place belonging to Mrs. Pittaki, which was approximately 600 feet from a 'Sinikismos Stegaseos Ekto-
- 35 pisthenton Paralimniou' ("Displaced Persons Housing Estate,

at Paralimni”). As there were complaints from the residents of the said housing estate and the surrounding inhabited areas that they were annoyed by the foul smell emitted from the pigsty, the Government decided to offer to Mrs. Pittaki the sum of £3,000.— in consideration of the removal of the pigsty to another place. This offer was accepted by her on condition that the existing buildings of her pigsty were to be used as a store for the new pigsty and that a building permit would be granted to the applicant so that he could build another pigsty on plot 711 1492/2, Sheet Plan 33/54 at Paralimni.

On the 7th February, 1979, the applicant applied to the District Officer of Famagusta for the grant to him of a building permit for the construction of a pigsty on the aforesaid plot (which apparently was indicated to him as suitable for carrying out his business). However, on the 2nd May, 1979, the District Officer of Famagusta wrote to him the letter which is appended to this application, and the contents of which are the sub judice decision, by which he informed him that a building permit could not be granted to him because the property on which he intended to build was situated near an inhabited area and the elementary school. By his said letter the District Officer informed the applicant further that the local members of the respondent Board, together with the representative of the District Medical Officer, had undertaken to indicate (ipodixoun) the him a new suitable place. This letter is signed by the District Officer not in his capacity as Chairman of the Improvement Board and copy of same was sent to Mrs. P. Pittaki, the District Medical Officer and the Inspector of the Improvement Board of Paralimni.

The above letter was sent to the applicants after the holding by the respondents, on the 19th April, 1979, of an extraordinary meeting (see blue 19 in exhibit No. 2) during which, apparently, a decision was taken on the issue of the removal of the pigsty of the applicant and Mrs. Pittaki, and which reads:—

“ Ἀπόσπασμα πρακτικῶν τῆς ἐκτάκτου συνεδριάσεως τοῦ Συμβουλίου Βελτιώσεως Παραλιμνίου συγκροτηθείσης εἰς Παραλίμνι τὴν 19.4.1979.

Ἐπιτόμη Μάρκου Ἰσαὰκ Πυρίλλη ἀρ. Φακ. Β. 86/79.

Ἐξητάσθη ἡ ἀνωτέρω ὑπόθεσις μετακινήσεως χοιροστασίου

5 τὸ ὁποῖον ἐνοχλεῖ ὁμάδα κατοίκων τοῦ χωρίου καὶ διὰ τὸ ὁποῖον ὁ Πρόεδρος τῆς Δημοκρατίας ὑπεσχέθη ποσὸν £3,000 διὰ τὴν μετακίνησιν τούτου εἰς ἄλλον χώρον ὅστις ἤδη ὑπεδείχθη, καὶ δεδομένου ὅτι ὁ χώρος θεωρεῖται καὶ πάλιν ἀκατάλληλος καθότι εἶναι πλησίον κατωκειμένης περιοχῆς καὶ εἰς τὸ Σχολεῖον τὰ ἐπιτόπια μέλη καὶ τὸ Ὑγειονομεῖον δὲν συνιστοῦν τὴν ἐκδοσὶν σχετικῆς ἀδείας καὶ ἀνέλαβον νὰ ἐξέυρουν καὶ ὑποδείξουν νέον χώρον κρατικῆς γῆς”.

10 (“Extract from the minutes of the extraordinary meeting of the Improvement Board of Paralimni held at Paralimni on 19.4.1979.

Case of Marcos I. Pirillis File No. B.86/79.

15 The above case of the removal of the pigsty which causes annoyance to a group of inhabitants of the village and for which the President of the Republic promised the sum of £3,000.— for its removal to another place which has already been indicated, has been examined, but in view of the fact that the place is again considered unsuitable, as it is near an inhabited area and the school, the local members of the ‘Igeonomion’ (Board of Health) do not recommend the issue of a relevant permit and have undertaken to find and indicate (ipodixoun) a new place of state land”).

25 It is clear from the above extract of the minutes of the extraordinary meeting of the respondent Board that its local members and the health authorities did not approve the issue of the building permit applied for by the applicant.

30 Before proceeding to decide what is the effect and meaning of the aforesaid decision, one must see what the law regulating the issue of building permits is. The law relating to the erection of buildings is the Streets and Buildings Regulation Law, Cap. 96. By section 3 of this Law it is provided that no person can erect a building without a permit in that behalf first obtained from the Appropriate Authority. What is an appropriate authority in a particular area is defined by sub-section (2) of section 3 of Cap. 96 and by sub-section (4) of the same section of this Law provision is made as to who is authorised to sign

documents connected with the issue, or refusal to issue of a building permit.

The relevant provisions of Cap. 96 read:

“(2) The appropriate authority within—

- (a) any area of a municipal corporation, shall be the municipal council of such corporation: 5

Provided that in any rural municipality in lieu of the municipal council thereof the Governor may appoint as an appropriate authority the Commissioner of the district or a board consisting of not more than six persons with the Commissioner as Chairman. 10

- (b) Any area, not being the area of a municipal corporation, shall be the Commissioner of the district:

Provided that in lieu of the Commissioner the Governor may appoint as an appropriate authority for such area a board consisting of not more than six persons with the Commissioner as Chairman: 15

Provided further that in any improvement area the Governor may appoint as an appropriate authority for such area the Board established for that area under the provisions of the Villages (Administration and Improvement) Law. 20

- (4)(a) Where the appropriate authority is the municipal council of a municipal corporation, the mayor or the deputy mayor of such corporation or any other person authorized by such corporation in that behalf shall have, and shall always be deemed to have had, power to issue any permit, notice or any other instrument or document which such appropriate authority has power to issue under the provisions of this Law; 25 30

- (b) where the appropriate authority is a body appointed by the Governor as in subsection (2) provided, the chairman thereof or any other person authorized by the chairman in that behalf shall have, and shall always be deemed to have had, power to issue any permit, notice or any other instrument or document which 35

such appropriate authority has power to issue under the provisions of this Law;"

In the present case it is not in dispute that the appropriate authority for the issue of building permits is the respondent Board. Section 8(5) of the Villages (Administration and Improvement) Law, Cap. 243, under which the respondents were established (see administrative decision No. 246 of 1962 which was published in the 3rd Supplement to the official Gazette of that year, at p. 362), provides that questions coming before a Board at any meeting "shall be decided by a majority of the members present, and in case of equality of votes, the Charman of the meeting shall have a second or casting vote".

Reverting now to the decision of the respondent Board, which was taken on the 19th April, 1979 and to which I have earlier referred, I do not feel that it has been taken in accordance with the provisions of section 8(5) of Cap. 243, in that there is no mention therein—

- (a) of the number of the members of the Board which were present; and
- (b) whether the decision was unanimous or taken by a majority and if so what was the majority that voted against the removal of the pigsty to the land on which the applicant intended to build.

In any event, the District Officer does not, by the sub judice decision contained in the letter appended to the application, state whether the sub judice decision was reached by him on inquiry that he had himself carried out, nor does it appear from the relevant file that he based his decision on any inquiry at all.

In the circumstances, therefore, the recourse must succeed and the appropriate authority must re-examine the matter.

In the light of my above finding, I consider it unnecessary to deal with the other legal issues raised by the recourse.

In the circumstances of the case, there will be no order as to costs.

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