

1983 April 14

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DESPINA GEORGHIOU ALLAYIOTI,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE ATTORNEY-GENERAL AND OTHERS,

Respondents.

(Case No. 290/80).

Antiquities Law, Cap. 31—Ancient monument—Declaration of site as ancient monument—Non-compliance with section 6(1) and (2) of the Law through describing wrongly the site—Effect.

5 By means of an order of the Council of Ministers, which was made pursuant to the provisions of section 6(1) and (2)* of the Antiquities Law, Cap. 31 a piece of land belonging to the applicant was declared as ancient monument and added to the second Schedule to the above Law. When applicant's application for a permit to build on the above land was refused because of the above declaration, the applicant challenged the refusal by means of the above recourse on the ground that her plot has not been duly declared under section 6(1) of the above Law because it was mistakenly described in the relevant official gazette notification.

15 *Held*, that the legal effect of the mistaken description is that the property of the applicant has never been declared to be an ancient monument as there has been no compliance with section 6(1) and (2) of Cap. 31 by the non-inclusion in the necessary notice of the proposed declaration and the subsequent order made declaring same as an Ancient monument; that,

* Section 6(1) and (2) is quoted at p. 253 post.

therefore, the sub judice refusal is null and void as being erroneous in law and as based on a misconception of fact.

Sub judice decision annulled.

Recourse.

Recourse against the refusal of Paphos Municipality to issue a building permit to applicant on the ground that her property has been declared an ancient monument. 5

C. Emilianides, for the applicant.

A. Vassiliades, for respondents 1-5 and 7.

S. Kokkinos, for *K. Chrysostomides*, for respondent 6. 10

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By the present recourse the applicant seeks a declaration of the Court that the refusal of respondents No. 6, the Municipality of Paphos as the Appropriate Authority under the Streets and Buildings Regulation Law, Cap. 96, to issue a permit to her on the ground that Sheet/Plan L.1/10 and 18 Village, Plot 78/1, has been declared as ancient monument and added to the Second Schedule to the Antiquities Law, Cap. 31, (hereinafter to be referred to as the Law) is null and void and of no effect whatsoever. 15

The main ground upon which this recourse can be effectively determined is that the said plot has not been duly declared under section 6(1) of the Law to be an Ancient Monument inasmuch as it has not been included in the order of the Council of Ministers published under Notification No. 658 in Supplement No. 3 to the Official Gazette No. 525 of the 22nd September 1966, in which it was purported to have been included. 20 25

In all fairness the respondents have called Christakis Theodorou a Lands Officer attached to the Headquarters of the Lands and Surveys Department, who has given evidence and pointed out that in the said notification, though plot 78 is included the survey reference given is wrong, that is the Sheet reference L1 is correct but the Sheet number should be 10 and 18, Village Sheet 2, whereas in the said Notification it is given as 19 Village Sheet 2. 30

Section 6(1) of the Law in so far as relevant reads as follows: 35

“6(1) The Council of Ministers may, on the recommendation of the Director, from time to time by Order in the Gazette—

5 (a) declare any object, building or site which he considers to be of public interest by reason of the historic architectural, traditional, artistic or archaeological interest attaching thereto to be an ancient monument and shall at the same time declare whether such monument shall be added to the First or to the Second Schedule to this Law, as the case may be;

10 (b) -----

(2) No object, building or site shall be declared an ancient monument unless the Director gives notice in the Gazette of the proposed declaration not less than one month before the making of the Order, and any person whose interests may be prejudicially affected by the proposed declaration may, within the period of one month aforesaid, lodge an objection for consideration by the Governor in Council whose decision thereon shall be final and conclusive”.

20 The required notice under the aforesaid subsection 2 of the Law was published under Notification No. 60 in supplement No. 3 to the Official Gazette of the Republic No. 474 of the 3rd February 1966 and at p. 58, again the same wrong description is to be found.

25 I have referred to the description as mistaken but the legal effect of such a mistake is to my mind that the property of the applicant has never been declared to be an Ancient Monument inasmuch as there has been no compliance with section 6 subsections 1 and 2 of the Law by its non inclusion in the necessary notice of the proposed declaration and the subsequent order
30 made declaring same as an Ancient Monument. It is unfortunate that apparently by an oversight what was really intended by the Antiquities Department to be done for the purpose of protecting an Ancient Monument forming part of the Cultural Heritage of our Country has not been achieved. It
35 may not be too late for them to realise their objectives by other appropriate procedures under the Law but that is for them to consider.

As far as this case is concerned I am left with no alternative

but to declare the refusal of the appropriate Authority to issue the building permit applied for as null and void, as being erroneous in Law and as based on a misconception of fact.

For all the above reasons this recourse succeeds but in the circumstances I make no order as to costs.

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Sub judice decision annulled. No order as to costs.