1984 February 20

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

MUNICIPALITY OF NICOSIA,

Appellant,

v.

ANTONAKIS SOLOMONIDES AND ANOTHER

Respondents.

(*Criminal Appeal No.* 3999).

Streets and Buildings Regulation Law, Cap. 96—"*Building*" *as defined in section* 2 *of the Law—Meaning—Erection of a six by ten metres "concrete base" of a height of twenty centimetres—No evidence whether it was to be used in relation to the erection thereon of any building in the future—Trial Judge not calling upon the respondents to make their defence on the charge of erecting a building without permit, because said concrete base not a "building" in the sense of the above definition—Prosecution, on which the burden lay to do so, has not satisfied Court of Appeal that trial Judge applied the relevant legislation wrongly to facts of this case.*

The respondents were charged on counts charging them with the offences of starting to erect a building without a permit, of erecting such building without a permit and of suffering the erection of such building, contrary to divers provisions of section 3(1) of the Streets and Buildings Regulation Law, Cap. 96, as amended, in particular, by the Streets and Buildings Regulation (Amendment) Law, 1978 (Law 24/78).

According to the evidence before the trial Court on a site, in the possession of the respondents, an area of six by ten metres was covered up to a height of twelve centimetres with concrete. There was no evidence whether this "concrete base" was to be used in relation to the erection on it, in future, of any building. The trial Court found that what had been constructed was not a "building" in the sense of the relevant definition* in section

*. The relevant definition is quoted at pp. 453–454 post.

2 of Cap. 96 and did not call upon the respondents to make their defence because no prima facie case had been made out against them.

Upon appeal by the prosecutor what the Court of Appeal had to determine was whether the said concrete base constituted by itself, in the light especially of the evidence, sufficient material warranting the course of calling upon the respondents to make their defence.

Held, after dealing with the meaning of the word "building", as defined in section 2 of Cap. 96—vide pp. 453–457 post, that this Court has not been satisfied by the appellant Municipality, on which the burden lay to do so, that the trial Judge in deciding not to call upon the respondents to make their defence applied the relevant legislation wrongly to the facts of this particular case and, therefore, that he was not entitled to adopt the course which he has taken by not calling upon the respondents to make their defence and, consequently, acquitting them at that stage of their trial; accordingly the appeal must be dismissed.

Appeal dismissed.

Cases referred to.

Mayor etc. of Nicosia v. *Keravnos*, 20 C.L.R. (II) 51 at p. 52;

Paddington Corporation v. *Attorney-General* [1906] A.C. 1 at pp. 3, 4;

Morrison v. *Commissioner of Inland Revenue* [1915] 1 K.B. 716;

Boyce v. *Paddington Borough Council* [1903] 1 Ch. 109 at pp. 116, 117;

Re St. Luke's Chelsea [1976] 1 All E.R. 587 at p. 592;

London County Council v. *Tann* [1954] 1 All E.R. 389 at p. 391.

Appeal against acquittal.

Appeal by the Municipality of Nicosia with the sanction of the Attorney-General of the Republic, against the judgment of the District Court of Nicosia (Stavrinides, Ag. D.J.) given on the 4th January, 1979 (Criminal Case No. 26448/78) whereby the respondents were acquitted of the offences of starting to

erect a building and of suffering the erection of such a building contrary to sections 3(1)(b)(c) and 20 of the Streets and Buildings Regulation Law, Cap. 96 (as amended by Law No. 24/78).

K. Michaelides, for the appellant.

E. Efstathiou with *D. Koutras*, for the respondents.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment of the Court. The appellant Municipality has appealed, with the sanction of the Attorney-General, against the acquittal of the respondents on counts charging them with the offences of starting to erect a building without a permit, of erecting such building without a permit and of suffering the erection of such building, contrary to divers provisions of section 3(1) of the Streets and Buildings Regulation Law, Cap. 96, as amended, in particular, by the Streets and Buildings Regulation (Amendment) Law, 1978 (Law 24/78).

The respondents were not called upon by the trial Court to make their defence because it was found by it that no prima facie case had been made out against them.

The only evidence which was adduced in this respect was that of witness Andreas Tsiolis, who was a Technical Assistant employed by the appellant Municipality and who testified that he had visited a site which was, at the material time, in the possession of the respondents and found out that an area of six by ten metres had been covered up to a height of twenty centimetres with concrete. He added that he could not say whether or not this "concrete base" was to be used in relation to the erection on it, in future, of any building.

In the light of this evidence the trial Court found that what had been constructed as aforesaid was not a "building" in the sense of the relevant definition in section 2 of Cap. 96, which reads as follows:

> " 'building' means any construction, whether of stone, concrete, mud, iron, wood or other material, and includes any pit and any foundation, wall, roof, chimney, verandah, balcony, cornice or projection or part of a building, or anything affixed thereto, or any wall, earthbank, fence,

paling or other construction enclosing or delimiting or intended to enclose or delimit any land or space;"

In relation to the above definition, which was to be found earlier in section 2 of Cap. 165—which was the Streets and Buildings Regulation Law in the 1949 Edition of the Laws of Cyprus—the following were stated in *The Mayor etc. of Nicosia Town* v. *Keravnos*, 20 C.L.R. (II) 51, 52:

"The word 'building' which is being defined is obviously a concrete noun; it does not mean the operation of building such as it bears in a phrase like 'the building of Rome took many years'. It follows as a matter of logic and grammar that the word 'construction' must also be a concrete noun and not refer to the act or method of construction. The word 'construction' used here must have the same meaning as the word structure and the meaning of that word was fully discussed in the *London County Council* v. *Tann*, 1 A.E.R., p. 389. However, a structure to be a 'building' within the meaning of Chapter 165 must be some erection which it is the object of this Law to control. In general, a structure must be one which is used for a purpose for which a building is ordinarily used and for a purpose for which the erection of a building is usually required or at least is desirable. For example, it is common for a building to be erected in order to provide accommodation for an office or for the giving of lectures. Whether or not a show case is a building would depend on its dimensions. If a show case is so big that the space it encloses and the purpose it serves would normally be provided for by a room, then it is a building. On the other hand a show case that might be accommodated on the bench of this Court would obviously not be a building within the meaning of this Law of Chapter 165".

From the judgment of the Earl of Halsbury L.C. in the House of Lords in England in *Paddington Corporation* v. *Attorney-General* [1906] A.C. 1, 3, 4, it is clear that an erection of a certain nature might be considered as a "building" in one context while it might not be considered as "building" in another context and that it has to be considered in each case what the word "building" means in relation to a particular subject-matter.

Also, from case-law such as *Morrison* v. *Commissioners of Inland Revenue*, [1915] 1 K.B. 716, it is to be derived that the notion of "building" has to be construed in relation to the object and provisions as a whole of the legislation in which it is to be found. This proposition is borne out, also, by the judgment of Buckley J. in *Boyce* v. *Paddington Borough Council*, [1903] 1 Ch. 109, which was upheld by the House of Lords in the *Paddington* case, supra; Buckley J. stated the following (at pp. 116, 117):

> "From these cases I can derive no principle other than this—that of hoarding may or may not, according to the context, be a building. If the building spoken of be one which it is contemplated shall have a stuccoed front and a slate roof—*Foster* v. *Fraser* (1)—or a building to be erected under a building lease—*Wilson* v. *Queen's Club* (2)— a hoarding will not be a building. If the question arises under a lessee's covenant not to put up a building, and he does put up a hoarding which affects the adjoining occupier—*Pocock* v. *Gilham* (3) and *Wood* v. *Cooper*(4)—it may be a building. What I have to consider is whether such a hoarding as the defendants would put up to prevent the plaintiff from acquiring prescriptive rights would be a building within the Acts with which I have to deal. In my opinion it would not. It would be an erection, put up not for any purpose of building, but as an erection necessary to prevent the acquisition of a prescriptive right. The word in s. 5 of the Act of 1881 occurs in the connection that the land is to be enjoyed 'in an open condition free from buildings'. I think this means such buildings as would preclude or diminish its enjoyment in an open condition for exercise and recreation (Act of 1877, s.1). In s. 3 of the Act of 1884 the erection of any buildings upon a disused burial ground is forbidden except for the purpose of enlarging a church. I think the word 'buildings' there means erections which would cover some part of the ground, as the enlargement of a church would do. It does not refer to something in the nature of a fence or barrier to prevent the acquisition of prescriptive rights to light".

(1) [1893] 3 Ch. 158.
(2) [1891] 3 Ch. 522.
(3) 1 Cab. & E. 104.
(4) [1894] 3 Ch. 671.

It is to be noted that the above remarks of Buckley J. in the *Boyce* case, supra and the approach adopted in the *Paddington* case, supra, were referred to later on with approval in, inter alia, *Re St. Luke's, Chelsea*, [1976] 1 All E.R. 609.

In *South Wales Aluminium Co. Ltd.* v. *Assessment Committee for the Neath Assessment Area*, [1943] 2 All E.R. 587, Atkinson J. stated the following in relation to the words "building or structure" (at p. 592):

> "The question is whether these big receptacles, as I have described them, are in the nature of 'a building or structure'. I do not think it is denied that the word 'structure' must be construed as in the nature of a building. There has been an argument as to whether this is a question of fact or a question of law. I think it is obvious it is mixed, but it is only a question of law, I imagine, to this extent. It is a question of law to determine what is meant by the word 'structure'. Then, in the main, it must be a question of fact whether any particular plant or erection, to use a neutral expression, is within it or not. That must be, in the main, a question of fact, although in certain cases it may be mixed law and fact. There is nothing to suggest here that the word 'structure' is not to be used in its ordinary sense. As used in its ordinary sense I suppose it means something which is constructed in the way of being built up as is a building; it is in the nature of a building. It seems to me it is not in the nature of a building, or a structure analogous to a building, unless it is something which you can say quite fairly has been built up. I do not think that is the only guide or the only test, but, roughly, I think that must be the main guide; how has it got there? Is it something which you can fairly say has been built up? I do not think it depends at all on whether it is fixed to the ground. That may be a relevant consideration".

In *London County Council* v. *Tann*, [1954] 1 All E.R. 389, which is referred to in the judgment in the *Keravnos* case, supra, Parker J. stated the following (at p. 391):

> "It seems to me that, in deciding whether a structure is something constructed in the nature of a building, it is perfectly proper to look at the intention of the structure,

as, in the passage my Lord has referred to in *London County Council* v. *Pearce* (1), VAUGHAN WILLIAMS, J., expressly so states. Looking at the matter in that light and adopting the test laid down by LINDLEY, L.J., in *Lavy* v. *London County Council* (2), the question posed is this: As men of the world can we say that this thing, to use a neutral expression, is a structure constructed in the nature of a building? It is quite clear that this erection was intended to be a garage, and, looked at in that way, and asking oneself the question: Is this a structure in the nature of a garage? The answer is clearly, Yes".

In the light of the foregoing dicta it is clear that we have to determine whether the concrete base which was constructed in the present instance constituted by itself, in the light especially of the evidence to which we have already referred, sufficient material warranting the course of calling upon the respondents, as the accused, to make their defence.

We have not been satisfied by the appellant Municipality, on which the burden law to do so, that the trial Judge in deciding not to call upon the respondents to make their defence applied the relevant legislation wrongly to the facts of this particular case and, therefore, that he was not entitled to adopt the course which he has taken by not calling upon the respondents to make their defence and, consequently, acquitting them at that stage of their trial.

For the foregoing reasons this appeal has to be dismissed.

Appeal dismissed.

(1) [1895] 2 Q.B. 577.
(2) [1892] 2 Q.B. 109.