

1986 November 10

[KOURRIS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

1 STELIOS MESHITIS,  
2 IOANNIS HADJIDEMETRIOU,

*Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE MUNICIPAL COMMISSION OF LIMASSOL.

*Respondent*

(Case No 882/85)

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*Streets and Buildings—Division of land into building sites—  
Appropriate Authority has no power to demand payment  
of money for the construction of works by it in the area  
—Section 9(1)(c) of The Streets and Buildings Regula-  
tion Law, Cap. 96*

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The Limassol Municipality granted the applicants' appli-  
cation for the division of the land in the locality of "Ayios  
Georghios" into building sites, but on condition that  
the applicants pay £3,000, being part of the costs for  
the construction of a channel system for the rain water in  
the area.

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The applicants paid the said sum under protest and  
filed the present recourse challenging the validity of the  
said condition.

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*Held, annulling the sub judice decision* (1) The power  
of the appropriate Authority to impose conditions with  
regard to the division of land for building purposes is  
regulated by s 8(1)(c)\* of the Streets and Buildings Re-  
gulation Law, Cap. 96

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\* Quoted at pp 2152-2153 post

(2) There is nothing in the aforesaid section empowering the appropriate Authority to demand the payment of a sum of money for the construction by such Authority of any works in the area. There is no doubt that in this case the respondent Authority assumed powers not given to it by the law. 5

*Sub judice decision annulled.  
Costs in favour of applicants.*

**Recourse.**

Recourse against the decision of the respondent to impose on applicants the condition to pay the sum of £3,000.- as additional fees in order to grant to them a permit for the division of their land into building sites. 10

*A. Neocleous, for the applicants.*

*D. Vracha (Mrs.) for Y. Potamitis, for the respondent.* 15

*Cur. adv. vult.*

KOURRIS J. read the following judgment. By the present recourse the applicants seek a declaration that the decision of the respondent Authority to impose on the applicants the condition to pay the sum of £3,000.- as additional fees in order to grant them a permit for the division of their land into building plots is unlawful and in excess and/or abuse of power and devoid of any legal effect. 20

The applicants are the registered owners of a piece of land consisting of six donums, two evleks and 2800 sq. ft. at locality "Ayios Georghios" under Registration No. 73, Sheet Plan LIV/49.5.II within the municipal limits of Limassol and on 4.10.1984 they applied to the Limassol Municipality as the "Appropriate Authority" within the meaning of the Streets and Buildings Regulation Law, Cap. 96, for a permit for the division of their land into building plots. 25 30

The respondent Authority by a letter dated 31.7.1985 communicated to the applicants their decision to grant them a permit for the division of their land into building plots 35

provided that they paid the appropriate fees amounting to £415.- and provided they further paid an additional sum of £3,000.- being costs for the construction of a channel system for the rain water in the area (Exh. 1  
5 attached to the application).

The applicants refused to pay the sum of £3,000.- and consequently the respondent Authority refused to issue the said permit insisting on the payment of the said sum whereupon the applicants who wished to proceed with the  
10 division of their land into building plots paid the sum of £3,000.- under protest (Exhibit 2 attached to the application) and they filed the present recourse.

Counsel for the applicants argued that the power of an appropriate Authority to grant permits is derived from  
15 section 3(1)(c) of the Streets and Buildings Regulation Law. Cap. 96 and under section 9(1)(c) of the Law they are authorised to impose conditions which are set out in the said section; he said that neither section 3(1)(c) nor  
20 section 9(1)(c) authorises the appropriate Authority to require from an applicant the payment of a sum of money for the construction by the appropriate Authority of a channel system for rain water.

Counsel for the respondents by his written address contended that the appropriate Authority is authorised by  
25 the said law to impose upon a person who applies for a permit for the division of land into building plots, the payment of a sum of money for the construction of works to be executed by the appropriate Authority.

He went on to say that the construction of this work  
30 has been estimated at £300,000.- and that the Limassol Municipality will bear the two thirds of the costs and the various owners of the land one third of the costs and that this undoubtedly is beneficial to the owners of the land who do not have to bear the whole amount of the construction. However attractive this argument may be, it  
35 is, of course, no answer for the legal point raised by the applicants.

I think it is pertinent, at this stage, to set out sections

(1)(c) and 9(1)(c) of the Streets and Buldings Regulation,  
aw, Cap. 96:-

Section 3(1)(c):-

“No person shall -

(a) 5

(b)

(c) Lay out or divide any land (irrespective of whether  
any buildings, other than buildings used solely for  
agriculture or forestry, exist thereon or not) into sepa-  
rate sites - 10

without a permit in that behalf first obtained from the  
appropriate Authority as in sub-section (2) provided

”

Section 9(1):- 15

“In granting a permit under the provisions of s. 3,  
the appropriate Authority shall have power, subject to  
any Regulations in force for the time being to impose  
conditions as hereinafter, to set out in the permit  
that is to say - 20

(a)

(b)

(c) with regard to the laying out or division of any  
land for building purposes conditions as to -

(i) the demarcation and size of boundary marks; 25

(ii) the conveyance, installation and constant supply  
of suitable water which shall be sufficient, as

well as the operation of the installation of water supply hereinabove mentioned:- Provided that, in determining in any particular case, the sufficiency of water as above provided, regard shall be had to the needs of the area as a whole from which the supply is provided;

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(iii) the diversion of natural and artificial water sources:

(iv) the levelling of the site;

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(v) the construction of streets, ditches, bridges and culverts.

(vi) the widening of any street upon which the land, to which the application relates, abuts;

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(vii) the securing of spaces for sub-stations in suitable circumstances;

(viii) the securing of public green spaces:

(ix) the planting of trees and bushes in suitable circumstances;

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(x) the construction of underground channels and the laying of electric wire in suitable circumstances;

(xi) the installation of street-lighting in suitable circumstances."

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The power of the appropriate Authority to impose conditions are set out in the said section 9 and nowhere it appears that an appropriate Authority is empowered to demand the payment of a sum of money for the construction by them (the appropriate Authority) of any works

to be carried out in the area. I have no doubt that the respondent Authority assumed powers not given to it by the law.

In view of the above, I am satisfied that the decision of the respondent Authority is contrary to the said law and was taken in abuse of power. Consequently, the said condition is set aside. 5

Respondents to pay costs, to be assessed by the Registrar.

*Sub judice decision annulled. 10*  
*Respondents to pay costs.*

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