

1987 June 3

[MALACHTOS, J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MICHAEL N. KOMODROMOS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE DISTRICT OFFICER NICOSIA,

Respondent.

(Case No. 411/78).

Streets and Buildings — Building permit — Prohibition of erection of buildings as pigstys within Orounda village — Regulatory Administrative Acts 145/76 and 312/77 published in the Official Gazette on 16.7.76 and 16.12.77 respectively — Exception to the rule of general prohibition — Additions or alterations to existing buildings carried out after 16.12.76 but before 16.12.77 — They are not within the exceptions of either Act — They are covered by the general prohibition.

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The applicant, who is the owner of a plot of land in Orounda village, constructed thereon a pigsty in accordance with a building permit dated 22.12.72. The relevant certificate of approval is dated 18.4.75

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On 16.7.76 a notification was published in the Official Gazette specifying a zone within the erection of any building as a pigsty within Orounda village was prohibited. The notification specified an exception relating to additions or alterations, provided certain conditions are satisfied. The notification of 16.7.76 was revoked by a new notification published on 16.12.77 in the Official Gazette. This notification contains substantially the same conditions as those of the revoked notification. The only material difference is that the first notification covered additions or alterations existing on the day of its publication (16.7.76), whereas the second covered additions or alterations, which are to be carried out after its publication (16.12.77).

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By means of this recourse the applicant challenges the refusal to grant to him a building permit in respect of an extension of his pigsty carried out after publication of the first notification, but before publication of the second. The reason of the refusal was that the cubic capacity of the extension exceeded that provided by both the aforesaid notifications.

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5 Counsel for the applicant argued that as the extension was constructed between 16 7 76 and 16 12 77 neither the relevant condition in the first nor the corresponding condition in the second notification relating to the cubic capacity was applicable, and that since the other conditions of the second notification were satisfied the respondent was bound to issue the permit applied for

10 Held, *dismissing the recourse* (1) The first notification applies only to additions or alterations to existing buildings carried out before 16 7 76 The second notification applies only to additions or alterations to be carried out after its publication on 16 12 77

(2) It follows that the additions or alterations carried out between 16 7 76 and 16 12 77 are not within the exception provided by either notification and consequently, they are covered by the general prohibition

15 *Recourse dismissed*
No order as to costs

Recourse.

Recourse against the decision of the respondent to reject applicant's application for a building permit and/or completion of a pigsty at Orounda village

20 *Fr Kynakides with M Hasikos, for the applicant*

Cl Antoniadis, Senior Counsel of the Republic for the respondent

Cur adv vult

25 *MALACHTOS J* read the following judgment The applicant in this recourse claims a declaration of the Court that the decision of the District Officer of Nicosia, dated 4 8 78, by which his application dated 28 11 77, for a building permit and/or completion of a pigsty at Orounda village was rejected, is null and void and of no legal effect whatsoever

30 The facts of the case are the following

35 The applicant, who is the owner of a plot of land of an extent of 6 donums situated at Orounda village in the District of Nicosia, comprising plots 125/5/1 and 125/4/2 of S/P XXIX/20, on 4 11 71, applied to the respondent, as the appropriate authority under the Streets and Buildings Regulation Law, Cap 96, for a building permit to erect on his said plot a pigsty of an extent of 9,511 cubic feet. His application was approved and on 22 12 72

building permit No. 069539 was issued to him. For the said buildings which were erected in compliance with the submitted architectural plans, a certificate of approval, No. 041635 dated 18.4.75, was also issued.

On 16.7.76 the respondent District Officer exercising his powers under section 14(1) of the Law, as the appropriate authority and in accordance with section 3(2) paragraph (b) thereof, with the approval of the Council of Ministers, issued a notification specifying a zone within which the erection of any building as a pigsty within Orounda village area, was prohibited. This notification was published in the Third Supplement to the Official Gazette of the Republic No. 1285 dated 16.7.76, as Regulatory Administrative Act 145/76. 5 10

The relevant part of this Notification reads as follows:

«Provided that the appropriate authority may grant a permit for additions or alterations for an existing construction not in compliance with the provisions of the present notification, that is, for a construction which exists on the day of the publication of the present notification in the official gazette of the Republic and which before the said date was used for a purpose not in compliance with the provisions of the present notification and which construction had been approved by virtue of the Law, if such addition or alteration satisfies the following conditions; 15 20

(a) the appropriate authority is satisfied that the intended addition or alteration to the said construction will not prejudicially affect or injure the amenities or the reasonable use of a neighbouring ownership or the area as a whole; and 25

(b) the whole cubic capacity of all the intended additions and alterations to the said construction, will not exceed the 10% of the cubic capacity which the said construction occupies on the date of the publication of the present notification; and 30

(c) no part of the said additions or alterations will be at a distance of less than 10 feet from the boundaries of the building site on which the said construction is situated; and 35

(d) the whole extent, which is covered by the said construction with all such additions or alterations, will be less of the 50% of the extent of the building site on which the construction is situated.» 40

This notification was subsequently revoked by a new one which was published in the official gazette of the Republic under No. 1409 dated 16.12.77 as Regulatory Administrative Act 312/77, which contained substantially the same conditions for the grant of a building permit by the appropriate authority as those contained in the revoked one. The only material difference between the two notifications is that the first one covers additions or alterations existing on the day of its publication that is, 16.7.76, whereas the second one covers additions or alterations which are to be carried out after its publication, that is, the 16th December, 1977.

On 28.11.77, the applicant applied for a building permit as regards the aforesaid plot of land for an additional pigsty of a capacity of 110.763 cubic feet. Upon examination of the case on the spot, it was revealed that part of the proposed new buildings were already erected without first obtaining a building permit and for this reason criminal proceedings in Case No. 15761/78 of the District Court of Nicosia, were instituted against the applicant who was finally on 10.6.78, convicted and sentenced to pay £30.- fine and the relevant demolition order for the unauthorised buildings was issued.

On 21.6.78 the applicant, through his advocate, applied to the respondent authority for a covering permit as regards the said unauthorised buildings.

By letter dated 4.7.78 the District Officer replied to his counsel as follows:

«I would like to refer to your letter dated 21.6.78 in connection with your application submitted on the part of your client Mr. Michael N. Komodromou for the grant of a covering building permit for extension of a pigsty constructed of Plot 125/5/1 S/P XXIX/20, locality «Potamos», Orounda village and to inform you that the permit applied for cannot be approved for the following reasons:

(a) The said pigsty falls within the prohibited zones which were published by virtue of Administrative Acts under No. 145/76 and 312/77 in the official gazette of the Republic of 16.7.76 and 16.12.77, respectively.

(b) The whole cubic capacity of the additions and alterations to the said construction made after the publication of the above mentioned notifications, exceeds the 10% of the cubic capacity which this construction had on the day of the publication of the said notifications.

2. In view of the above, you are requested to advise your client to proceed with the demolition of the illegally constructed buildings otherwise the appropriate steps will be taken against him.»

As a result, the applicant filed the present recourse.

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The recourse, as stated therein, is based on the following two grounds of law:

1. The above decision is illegal as it is contrary to the Regulatory Administrative Act No. 312/77 published in the official gazette of the Republic of 16.12.77, and

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2. The said decision amounts to abuse of power as it offends the principle of equal treatment of the citizens.

Counsel for applicant in support of his case submitted that the material condition as regards the two notifications is condition (b) and that this condition does not apply in the case in hand as the unauthorised constructions were erected between 16.7.76 and 17.12.77. In fact, the application on behalf of the applicant was made on 28.11.77. According always to the submission of counsel for applicant, condition (b) of Notification No. 145/76, does not apply in the present case as this condition covers additions and alterations erected up to the date of its publication, which is the 16th July, 1976. As regards condition (b) of the new Notification No. 312/77, this again cannot be applied in the case in hand as it concerns additions or alterations made after its publication, which is the 16th December, 1977. Therefore, counsel for applicant concluded, that since condition (b) of either the first or the second notification does not apply as the unauthorised buildings were erected, as alleged by applicant, between 16.7.76 and 16.12.77 and since the other three conditions of the second notification are satisfied, the appropriate authority was bound to grant the permit applied for.

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As regards the second ground of law, I consider it as abandoned since counsel for applicant advanced no arguments in support thereof.

Having considered the argument of counsel for applicant I must say straight away that I find no merit in it.

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The two notifications specified the area within the village of Orounda as a zone within which the erection of pigsties is generally

prohibited. Exceptionally, however, the appropriate authority may grant a building permit for additions or alterations to existing buildings if the four conditions prescribed in the said notifications are complied with and the said additions or alterations were
5 carried out at such period of time as specified in the said notifications.

It is clear from the wording of the two notifications that the first one applies only to additions or alterations to existing buildings carried out before its publication on 16.7.76. As regards the
10 second notification it applies only to additions or alterations to existing buildings to be carried out after its publication on 16.12.77. Só, the additions or alterations which were carried out to the existing pigsty of the applicant between 16.7.76 and
15 16.12.77, as alleged by him, are not affected by the exemption prescribed by the two notifications and, consequently, they are covered by the general prohibition in that they were erected without a permit within a prohibited area. Therefore, even if we assume that the additions or alterations to the existing pigsty of the applicant were carried out at any time either before the first
20 notification or after the second notification, or at the time between the first and the second notification, no covering permit could be issued.

For the reasons stated above, this recourse fails and is hereby dismissed with no order as to costs.

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*Recourse dismissed.
No order as to costs.*