

1987 May 6

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MARIOS PATTIHIS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF FINANCE AND/OR
THE DIRECTOR OF INLAND REVENUE
DEPARTMENT,

Respondents.

(Case No. 542/86).

Taxation — Immovable property — The Taxation of Immovable Property Law 24/80 as amended by Law 25/81 — Section 7(3) — The three prerequisites for the right of relief thereunder

Constitutional Law — Equality — Constitution, Art. 28.1 — Section 7(3)(b) of the Taxation of Immovable Property Law 24/80, as amended by Law 25/81 — Distinction between purchasers, who complied with the Sale of Land (Specific Performance) Law, Cap 232 and other purchasers — Existence of intrinsic difference between the two classes — Such difference can be properly heeded by Legislature

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Sale of Land — Contract for — The Sale of Land (Specific Performance) Law, Cap. 232 — Deposit of contract with Lands Department under said law — Creates an estate in land.

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In the year 1978 the Co-operative Credit Society of Strovolos sold to a third party a flat under the terms of a written contract. The rights of the third party were assigned to the applicant, who was treated thereafter as the effective purchaser. The applicant moved as from that time into possession. The property was transferred in the name of the applicant in 1983. In addition to the purchase price the applicant paid to the vendors £175., representing the amounts paid by the vendors for the years 1980-1986 in virtue of the Taxation of Immovable Property Law 24/80.

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The applicant claimed a refund of that amount in pursuance to s 7(3) of the

Law (introduced by Law 25/81) His application was rejected on the ground that the contract of sale was not deposited with the Lands Department under the provisions of the Sale of Land (Specific Performance) Law, Cap 232

5 Hence the present recourse Applicant submitted that section 7(3)(b) is unconstitutional, as being contrary to Art 28 of the Constitution

10 Held, *dismissing the recourse* (1) The three prerequisites of the relief under section 7(3) are (a) the purchaser satisfies the Director that the tax claimed to be refunded was added to the purchase price, (b) the contract of sale was deposited with the Lands Department under the provisions of the Sale of Land (Specific Performance) Law, Cap 232, and (c) the purchaser proves that as a result of the addition of the tax to the purchase price, tax additional to that warranted by the law was paid

(2) The dismissal of this recourse is inevitable because not only the second, but also the other two prerequisites were not satisfied

15 (3) This Court has not been persuaded of the unconstitutionality of s 7(3)(b) The deposit of a written contract of sale under Cap 232 creates an estate in land, whereas the rights of a purchaser, who has not complied with Cap 232, are contractual in nature It follows that there is a difference
20 between the position of the two classes of purchasers that may be heeded by the legislature

*Recourse dismissed
No order as to costs*

Recourse.

25 Recourse against the refusal of the respondents to refund to applicant tax levied on immovable property paid by his predecessor in title.

D. HadjiNestoras, for the applicant.

Y. Lazarou, for the respondents.

Cur. adv. vult.

30 PIKIS J. read the following judgment. The grievance of the applicant ventilated in this recourse arises from the refusal of the Director, Inland Revenue, to refund to applicant tax levied on immovable property paid by his predecessor in title, the Co-operative Credit Society of Strovolos, hereinafter referred to as
35 «the vendors». The background to the sub judice decision communicated to the applicant on the 18th June, 1986, is the following:

In the year 1978 the vendors sold to a third party a flat at

Strovolos under and in accordance with the terms of a written contract. The purchasers assigned in 1980 their rights under the contract to the applicant who was treated thereafter as the effective purchaser of the property; and as far as may be gathered from the material before me, the applicant moved into possession. Eventually the property was transferred to the applicant by the vendors in 1986. In addition to the sale price the applicant paid to the vendors the amount of £175, the equivalent of the sum paid by the vendors by way of tax for the years 1980-1986. The tax was levied under the provisions of the Taxation of Immovable Property Law, 1980 (Law 24/80). Evidently, the vendors paid the tax in the absence of any change in the ownership of the property and sought its recovery from the purchasers who were the persons enjoying possession of the property at the time tax was levied.

Refund of the amount of £175 was claimed by the applicant pursuant to the provisions of s. 7(3) of the Law, introduced by way of amendment to the main enactment by Law 25/81. Section 7(3) entitles the purchaser of immovable property to claim the return of tax paid in relation to the property by the vendor provided the following three prerequisites are satisfied, that is:

(a) the purchaser satisfies the Director that the tax claimed to be refunded was added to the purchase price:

(b) the contract of sale was deposited with the Lands Department under the provisions of the Sale of Land (Specific Performance) Law; Cap. 232; and

(c) the purchaser proves that as a result of the addition of the tax to the purchase price, tax additional to that warranted by the law was paid.

In refusing the application for a refund of the tax, the Director, specified only one legal ground for his decision, namely failure to comply with the requisite under (b) above. And the challenge is confined to the validity of that decision interwoven with the constitutionality of the provisions of s. 7(3)(b) of the law. Whereas the applicant acknowledges that the decision rests on a proper interpretation of the provisions of s. 7(3)(b), it is contended that the relevant part of the enactment is unconstitutional, mainly for breach or disregard of the principle of equality before the law and the Administration safeguarded by Article 28. Counsel for the Republic likewise confined his submission to support of the constitutionality of the impugned provision of the law and argued

that it goes no further than making a distinction that was perfectly competent for the legislature to make having regard to the width of its classification powers in matters of revenue laws.

Independently of the constitutionality of the provisions of s. 7(3)(b) of the law, the recourse is doomed to failure, for the claim for relief was wholly unfounded. Not only the pre-condition set by s. 7(3)(b) was not satisfied, but the other two prerequisites of that subsection were not satisfied either. Firstly, the tax was not added to the sale price; therefore, the first condition for relief was not met.

10 *The amount of £175 representing tax was not added to the sale price but paid directly to the vendors, seemingly because the parties took the view that the purchaser was liable to refund the money to the vendors. Secondly, there is nothing to suggest that the tax levied was above that envisaged by the law, the prerequisite set forth by s. 7(3)(c) of the law. On the contrary, as far as we may infer, the tax raised was none other than the amount justified under the law. In my judgment the application for refund was from the outset misconceived. The recourse must, necessarily, fail.*

20 *In view of the inevitability of dismissal of the recourse it is strictly unnecessary to debate, and far more so, give a definitive answer to the question of the constitutionality of the provisions of s. 7(3)(b) of the law. However, as this was the only issue canvassed in argument I may venture an opinion on that aspect of the case as well. I incline to the view applicant cannot succeed on that ground either.*

Section 7(3)(b) postulates deposit of the contract of sale with the Lands Department in accordance with the provisions of Cap. 232 as one of the three essential requisites for a refund of tax. The question that must be answered is whether the distinction made between written contracts lodged with the L.R.O. and contracts not so deposited is arbitrary in the sense that it involves a differentiation unrelated to inherent or specific differences between the objects distinguished. Wide discretion resides, as acknowledged, in the legislature to make classifications deemed necessary for the promotion of the objects of the law as well as its efficacious enforcement. The deposit of a written contract of sale with the Lands Department creates an estate in land, whereas the rights of a purchaser who has not complied with the provisions of Cap. 232 are merely contractual. Therefore, there is a difference

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between the position of the two classes of purchasers that could properly be heeded by the legislature in the establishment of the rights and obligations of the two classes of purchasers. The distinction is also seemingly designed to obviate possible disputes about the date of execution of the written agreement and make for the easy application of the law. Whether this is a proper ground for making a distinction I need not presently decide. I remain unpersuaded, as indicated, that s. 7(3)(b) is unconstitutional for breach of the provisions of Article 28.

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In the result, the recourse is dismissed.

Recourse dismissed.