

1988 July 20

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS ANDREA EVANGELOU AND OTHERS;

Applicants,

v.

THE MUNICIPALITY OF LIMASSOL,

Respondents.

(Case No. 620/85).

Administrative act—Validity of—Should be determined on the basis of the legal and factual status applicable at the time of its issue—Exception to the rule in case of unreasonable delay on the part of the administration to issue a decision concerning the application before it.

In this case, the applicants applied for a division permit to divide their land into building sites. Before communication of any decision to the applicants, there was issued a decision for the construction of a main road through the applicants' lands. The Court held that in view of the unreasonable delay on the part of the respondents to take a decision concerning the division permit, the respondent could not rely on the plan for the new road and turn down the application or demand readjustment of applicants' plan.

*Sub judice decision annulled.
£150 costs in favour of applicant.*

Cases referred to:

Lordou and Others v. The Republic (1968) 3 C.L.R. 427;

Loisiana Hotels Ltd. v. The Municipality of Famagusta (1971) 3 C.L.R. 466;

Pierides and Others v. The Municipality of Paphos (1986) 3 C.L.R. 1769.

Recourse.

Recourse against the refusal of the respondents to grant applicants a division permit of their property into building sites.

5 *D. Michaelides (Mrs.)*, for the applicants.

Y. Potamitis, for the respondents.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The applicants in this recourse pray for the following relief:

10 (a) A declaration of the Court that the refusal and/or omission of the respondents to issue a division permit of their property into building sites is null and void.

15 (b) A declaration of the Court that the decision and/or omission of the respondents not to issue a division permit of their property into building sites was taken in excess and/or abuse of power and/or contrary to the Streets and Buildings Regulation Law, Cap. 96 and/or the respondents acted in violation of the principles of good administration.

The facts of the case are as follows:

20 The applicants are co-owners in 1/3rd undivided share each, of plot No. 404, sheet/plan LIV/41, located at the locality of Kokkinoyia, of Ayia Phylaxis, Limassol, covered by Registration No. 19547.

25 On the 16th August, 1978, the applicants submitted an application for the division of the said property into building sites. At the material time applicants' property was outside the water supply area and there was a problem as to the division of the property

into building sites. In 1980 the Water Board decided to include applicants' property within the water supply area. The respondents brought this fact to the notice of the applicants and asked them to readjust their plans in accordance with the new street planning.

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The applicants in 1983 submitted new plans, as requested, for the division of their property into 33 building sites which the respondents submitted to the Water Development Department, the Electricity Authority of Cyprus and the Cyprus Telecommunications Authority for their observations and advice. As no reply was sent to the applicants concerning their application, applicants, through their counsel, wrote to the respondents on the 27th June, 1984, complaining against the delay of the respondents to inform them about the fate of their application stressing the fact that division permits had already been granted in the same area to persons who had applied later than the applicants for the division of their property. Counsel for applicants concluded his letter by asking for an early reply on the matter with reservation of applicants' rights for any damage which they might have suffered due to the unreasonable delay of the respondents in replying and as a result, of the delay in developing their property.

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The respondents at their meeting of 4th June, 1984, approved a plan for the construction of two main roads one of which was, as planned, passing through the aforesaid property of the applicants. Negotiations in this respect had commenced earlier in the same year between the respondents and the Town Planning Authorities.

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According to the facts set out in the opposition the applicants were informed about the approval of such road and were asked to submit new plans taking into consideration the proposed construction of the new main road. The applicants deny that they ever received any such letter or that it was ever communicated to them that their application could not be granted unless their plans were to be modified.

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It is also stated in the facts set out in the opposition that other plots were divided into building sites in that area and that they were divided by virtue of permits which were granted before the decision of the 4th June, 1984 was taken.

5 From what emanates both from the relief prayed and the written address of counsel for applicants and the arguments advanced is that the applicants have treated the omission of the respondents to reply and/or act on their application within a reasonable time as a refusal to grant to them a permit and they have challenged such
10 omission as a refusal to grant their application and issue the permit applied for.

By her written address counsel for applicants submitted that bearing in mind the date when the application of the applicants for division of their property was made, a decision should have been
15 taken at least as early as March, 1983 when the various authorities involved had already given their consent for the division. Though counsel for the respondents alleges that the division of the property into building sites was approved on 4th November, 1983, nevertheless such decision was never communicated to the
20 applicants. On the contrary whereas the respondents have so decided, as alleged, they delayed sending their reply so that in the meantime they were afforded the opportunity of deciding upon a street planning scheme including the construction of a new main road passing through the property of the applicants, a decision
25 which was taken as alleged on the 4th June, 1984, i.e. six years after the original application of the applicants was submitted and by which decision a new state of affairs was created changing the legal and factual status existing till such date.

The question of a change in the legal and factual status between the date when an application is made and the date when a
30 decision is taken on such application came up for consideration before this Court in a number of cases. The principle emanating from such cases is that the validity of an administrative act of this nature is determined on the basis of the legal status at the time of
35 its issue and is subject to the exemption that the pre-existing legis-

lation is applicable when there has been an omission on the part of the administration to perform, within a reasonable time, what it was duty bound to do before the change of the law. See, in this respect, *Andriani Lordou and Others v. The Republic* (1968) 3 C.L.R. 427, *Loisiana Hotels Ltd. v. The Municipality of Famagusta* (1971) 3 C.L.R. 466, *Marina George Pierides and Others v. The Municipality of Paphos* ((1986) 3 C.L.R. 1769). 5

As already explained the applicants submitted their application in 1978 but such application could not be considered until the property of the applicants was included in the Water supply area. 10

In 1983 the applicants submitted new plans in compliance with the directions given by the respondents taking into consideration the existing street planning. It is alleged by the respondents that applicants' application was approved on 4th November, 1983 and that their decision was communicated to applicants. The applicants deny that they ever received any notice from the respondents that their application was approved. In fact having gone through the material in the file of the Municipality I could not trace any letter addressed to the applicants or any record of any notice informing them that their application was approved. On the contrary what appears in the file is that early in 1984 the respondents were considering the question of the creation of a new main road passing through the property of the applicants and that there were communications in this respect between the respondents and the Town Planning Authorities. 15
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It is submitted by counsel for applicants that till 4th November, 1983 there was no obstacle in granting the permit applied for and had the respondents communicated their decision of having approved the permit subject to the condition set out therein the applicants would have proceeded to divide their property accordingly. As already mentioned applicants deny that they ever received such letter and the respondents failed to prove that any letter or notice communicating their decision was sent to the applicants. 30

In the circumstances of the present case and bearing in mind

the principle emanating from the cases mentioned hereinabove I find that in view of such unreasonable delay on the part of the respondents to determine the application and/or communicate their decision which is alleged to have been taken on the 4th November, 1983, to the applicants, the fact that in June, 1984 the respondents decided to change the legal and factual status by the creation of a new main road passing through the property of the applicants is not a justification for refusing the permit or demand from the applicants to submit new plans taking into consideration the existence of an intended new main road passing through their property.

In the present case the respondents failed to exercise their discretion properly and thus they have acted in violation of the law.

For the above reasons the refusal and/or omission of the respondents to issue the permit applied for has to be annulled and is hereby declared null and void with £150.- against costs in favour of the applicants.

Sub judice decision, annulled with £150.- costs in favour of applicants.