

1988 October 18

[SAVVIDES,]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

- 1. NICOS ROUSOS,
- 2. ATHINOULLA NICOU ROUSOU,
- 3. MARIA NICOU ROUSOU,

Applicants,

and

(AS AMENDED BY ORDER OF THE COURT DATED 13.12.1987)

- 1. THE IMPROVEMENT BOARD OF STROVOLOS,
- 2. THE MUNICIPALITY OF STROVOLOS,

Respondents.

(Case No. 263/80).

Legitimate interest—The Court has power to deal with a recourse only if the applicant possesses a direct present concrete legitimate interest—Kritiotis v. Municipality of Paphos (1986) 3 C.L.R. 322 cited with approval—Division permit of land adjoining to applicants' land—Complaint that future development of applicants' land will be affected—The applicants did not establish an existing interest. 5

The applicants challenged the grant of a division permit in respect of land, registered in the names of the interested parties, adjoining applicants' land.

The complaint advanced by applicants was that their own property would be affected in the future in that if the applicants wished to develop their property they will be asked by the appropriate authority to give part of their property for the widening and construction of Nafplion street which is one of the roads contemplated by the plans approved and the division permits granted. 10
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Held, *dismissing the recourse*: (1) It is a well settled principle that a recourse is admissible by an administrative Court only if the applicant possesses a direct present concrete legitimate interest (*Kritiotis v. The Municipality of Paphos*).

Municipality of Paphos and Others (1986) 3 C.L.R. 322 cited with approval).

(2) In this case applicants' complaint refers to a situation which may arise in the future and which is not existing for the time being.

5: *Recourse dismissed.*
Costs in favour of respondents.

Cases referred to:

Kritiotis v. The Municipality of Paphos and Others (1986) 3 C.L.R. 322;

10: *Aygaloupi v. The Republic* (1985) 3 C.L.R. 1525.

Recourse.

10: **Recourse against the decision of the respondents to grant division permits to the interested parties in respect of their properties at Strovolos.**

A. Markides, for the applicants.

K. Papaloizou, for the respondents.

15: *Cur. adv. vult.*

25: **SAVVIDES J. read the following judgment. Applicants by this recourse challenge the decision of the respondent to grant division permits to the interested parties in respect of their properties under plots 599 and 536, sheet/plan XXI/53, W.2, at Strovolos.**

20: **The facts of the case are briefly as follows:**

“ **The applicants are co-owners of a plot of land of an extent of 18,000 square feet, under registration E.3, plot 3, sheet/plan XXI/53, W.2 at Strovolos on which they constructed three houses, two on the ground floor and one on the first floor.**

25: **Interested Party Loukis G. Leonidou was the owner of the ad-**

joining plot 599 and interested party Nazaret Davidian owner of plot 536, both of which were large pieces of property.

On 2nd August, 1978, both interested parties applied to the appropriate authority for the division of their respective properties into building sites. The said applications were submitted for examination to the Water Development Department and to the Town Planning and Housing Department for their views and subsequently to various other departments concerned.

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On the 3rd May, 1979, the applicants addressed a letter to the District Officer of Nicosia as Chairman of the Improvement Board of Strovolos, which was then the appropriate authority, complaining about the proposed division by the interested parties of their properties into building sites on the ground that approval of such division would in future affect their property in that one of the proposed roads to be constructed would in future affect part of their own property and requested the reconsideration of the matter before any permit was granted to the applicants. Their complaint was submitted by the District Officer to the Town Planning and Housing Department for his opinion.

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The respondent authority considered the objection of the applicants at several meetings and finally decided that the applications of the interested parties should be granted and on 2nd April, 1980 approved the issue of permits E. 002882/2/4/80 to interested party Loukis G. Leonidou and No. E. 0022883/2/4/80 to Nazaret Davidian. The terms endorsed on the said permits did not include any provision for the construction of a road through the property of the applicants as this was a matter which might be considered in future in case they applied for any building or division permit.

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As a result applicants filed the present recourse challenging the grant of such permits.

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The present recourse though filed on 30th July, 1980, has a long history. It was originally directed against the Republic of Cyprus through the District Officer of Nicosia. Service on one of

the interested parties could not be effected due to absence abroad during April, 1984. Then there were repeated changes of counsel and finally the recourse was dismissed on 10th December, 1984 as abandoned due to non-compliance by counsel for applicants with the directions to file a written address. It was subsequently reinstated. A number of applications then followed for the amendment in May, 1987, by striking out the Republic as a party and substitution in the place thereof "The District Officer of Nicosia as Chairman of the Improvement Board of Strovolos". Subsequently on the 23rd December, 1987, the title of the action was amended for the last time to read concerning the respondents as follows:

1. The Improvement Board of Strovolos
2. The Municipality of Strovolos.

The reason being that the Improvement Board of Strovolos had in the meantime changed into a municipality.

Counsel for applicants by his written address submitted that the applicants had a legitimate interest to challenge the sub judice decision in that though in the terms of the permits nothing is contained imposing any obligation on the applicants to construct a road on their property it is apparent that in the future if the applicants wished to develop their property they will be asked by the appropriate authority to give part of their property for the widening and construction of Nafplion street which is one of the roads contemplated by the plans approved and the division permits granted. Therefore, the appropriate authority without having before it an application for the division or development of plot 3 of the applicants predecided and bound itself as to what it will do if such an application is made by the applicants as owners of plot 3.

Counsel for the respondents, on the other hand, submitted that the applicants had no existing legitimate interest to challenge the sub judice decision in view of the fact that no legitimate interest of theirs is affected at this stage. He refuted the allegation of the applicants that the appropriate authority committed itself for any fu-

ture action concerning the development of the property of the applicants and submitted that any application by the applicants for development or division of their property in future will be considered on the factual situation which will prevail at the material time.

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It is a well settled principle that a recourse is admissible by an administrative Court only if the applicant possesses a direct present concrete legitimate interest. Useful reference in this respect may be made to *Kritiotis v. The Municipality of Paphos and Others* (1986) 3 C.L.R. 322. Stylianides, J. reviewed several authorities on the matter and said the following at p. 338:

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"... Though traditionally a recourse for annulment of an administrative decision is very widely open, it is not an *actio popularis* open to every citizen of the country. A citizen cannot contest the validity of every administrative act unless he possesses the quality of legitimate interest. Had it been otherwise, the influx of the recourses would paralyse administrative justice and the judicial control would have become illusory; furthermore for practical reasons the administration would also be handicapped in the due performance of its function. The criterion is the existence of a direct relationship and affectation of an interest, material or moral, of the applicant, otherwise the recourse is deprived of its admissibility.

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No express provision is to be found in Article 146 itself, under which a recourse is made, yet, paragraph 2 of this Article, may be usefully referred to. It provides that... 'a recourse may be made by a person whose any existing legitimate interest... is adversely and directly affected...'. Thus expression is given to the basic condition precedent of the annulment jurisdiction of an administrative Court, viz. the existence of an interest of an applicant. A recourse for annulment requires in respect of the applicant a legitimation *ad causam* - (see Fleiner, *Administrative Law*, 8th Edition, pp. 212 and 243; Odent *Contentieux Administratif-Fascicule IV* pp. 1280-81; Tsatsos - *The Recourse for Annulment Before the Council of State*, 3rd Edi-

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tion, p.30)".

5 The existence of a legitimate interest is a prerequisite under Article 146.2 of the Constitution and lack of a legitimate interest existing at the time of the filing of the recourse deprives the Court of the power to deal with a recourse (*Avgoloupi v. The Republic* (1985) 3 C.L.R. 1525).

10 In the circumstances of the present case and on the basis of the material before me I have come to the conclusion that no present direct legitimate interest of the applicants is affected and their complaint refers to a situation which may arise in the future and which is not existing for the time being. For these reasons I have come to the conclusion that this recourse should fail.

In the result the recourse is dismissed with costs in favour of the respondents.

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Recourse dismissed

with costs.