

1959

Feb. 4, April 17

[ZEKIA, J. and ZANNETIDES, J.]

THE MAYOR,
DEPUTY MAYOR,
COUNCILLORS
AND TOWNSMEN
OF THE MUNICIPAL CORPORATION
OF FAMAGUSTA,
v.
NIKI DORIFOROU
YIAPANI, AND
ANOTHER

THE MAYOR, DEPUTY MAYOR, COUNCILLORS AND
TOWNSMEN OF THE MUNICIPAL CORPORATION OF
FAMAGUSTA, *Appellants (Defendants)*

v.

NIKI DORIFOROU YIAPANI, AND ANOTHER,

Respondents (Plaintiffs)

(Civil Appeal No. 4267)

Local Government—Street improvements—Widening and straightening—Permit to erect a building etc.—New alignment—Hardship—Compensation—Whether recoverable for hardship not caused at the time when permit granted—Streets and Buildings Regulation Law, Cap. 165, s. 13 (1), proviso.

Held : Compensation under the proviso to s. 13 (1) of the Streets and Buildings Regulation Law may only be recovered in respect of hardship caused at the time when the permit referred to in the main part of the sub-section was granted.

Appeal allowed.

Appeal.

The defendants, the Municipal Corporation of Famagusta, appealed from the decision of the full District Court of Famagusta (Vassiliades, P.D.C., and Michaelides, D.J.) dated September 29, 1958, (action No. 2021/55) whereby the respondents were awarded damages on the ground of hardship within the proviso to s.13 (1) of the Streets and Buildings Regulation Law, Cap. 165. The facts appear in the judgment.

S. Marathovouniotis and *A. Pouyouros* for the appellants.
Chr. Mitsides for the respondents.

Cur. adv. vult.

The judgment of the Court was delivered by :

ZEKIA, J: This is an appeal which turns on the interpretation of the proviso to section 13 of the Streets and Buildings Regulation Law and the application of the said proviso to the facts of this case. For convenience we quote section 13(1) as a whole with its proviso underlined:

“Where a permit is granted by an appropriate authority and such permit entails a new alignment for any street, in accordance with any plan which has become binding under section 12 of this Law, any space between such alignment and the old alignment, which is left over when a permit is granted, shall become part of such street without the payment by the appropriate authority of any compensation whatsoever:

Provided that, if it is established that hardship would be caused if no compensation were paid, the appropriate authority shall pay such compensation as may be reasonable having regard to all the circumstances of the case”.

The point for consideration by this Court is whether there is a case of hardship as contemplated under the said proviso which entitled the respondents to compensation for the space of land, between the approved street alignment and the existing street, cut off from their building site and left over to the street to form part of the extended public road.

The facts relevant to the point in issue shortly are:

The Municipal Authority of Famagusta as the appropriate authority of the said town, with the object of widening and straightening the streets of the town exercised their powers under section 12 of the Streets and Buildings Regulation Law and in 1947 prepared a plan for the street alignment applicable to the town, which plan having been gazetted in due course and other formalities having been complied with became binding as an approved plan for the people of the town.

The respondents as building site owners obtained a permit in 1950 for the erection of an open-air cinema on their sites abutting on Edward VIII Street ; later in the same year they obtained a second permit for building two shops at the two corners of the cinema facing the said street. In May, 1951, the construction of both the cinema and the two shops in question was completed. The Municipal Authority as a licensing authority for issuing building permits, though they could properly require the respondents not to build within 10 feet from the boundary of the approved street, apparently as a concession on the ground that Edward VIII Street is 30 feet wide and in addition it has pavements on both sides, and with a view to post the frontage of the proposed buildings in the same line with the front part of the existing neighbouring buildings allowed the respondents to build along the boundary of the new street alignment leaving only a space varying from 3 1/2 to 1 foot in between. As a result, the two shops built at both ends of the cinema were within one or three feet of the new extended street. It appears that for some time the municipal authority did not object to the tenants of the two shops placing chairs on the newly added part of the extended street and this fact, coupled with the fact that the certificate of registration in the name of the respondents contained the said portion or a great part thereof as part of their property, led them to believe that the space immediately in front of the two shops to the extent of 11 feet or so belonged to them and they or their tenants could make use of it along with the shops.

In 1954, however, an application for the amendment of the title of the respondents was made under section 13, sub-

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section 2, by the appellants. Respondents having objected to such an amendment, which would have the effect of leaving out of their title the space in question as part of the new street, brought the present action in 1955. Appellants counter-claimed the space in dispute as part of the municipal road. The court below found in favour of the appellants and ordered the amendment of the title of the respondents as per claim. The court also made a further order for compensation as follows:

“3. The plaintiffs are entitled to the payment of compensation for the hardship resulting to them as proprietors of the said plot 753, from the loss of the pavement outside their shops and cinema, consequent upon the above alteration and amendment of registration 644. Such compensation to be assessed and found as on the date of the said amendment of title”.

The appeal is against the said order for compensation. The trial court in finding that there was a case of hardship in favour of the respondents within the proviso to sec. 13 (1) was influenced mainly by three considerations:

(a) Since the owners of the shops are deprived of the space around their shops the rental value of both shops was materially affected.

(b) It would cause enormous expense to demolish and rebuild in part the two shops with a view to allowing an open space in front of them beyond the street alignment.

(c) The conduct of the appellants in delaying to take the necessary steps to amend the title of the respondents contributed to the hardship and indeed in considering whether there was a hardship the state of affairs prevailing at the time of the application or action for the amendment of the title deed of the owners is to be taken into account.

It seems that the trial court acted on wrong premises. It is clear from the wording of section 13(1) that when a building permit is granted the space left over between the new and the old street alignments becomes automatically part of the new street without the payment by the appropriate authority of any compensation. The proviso immediately following this sub-section contemplates obviously a case of *hardship which is caused at the same time as part of the building site is converted into a public street by virtue of section 13 (1)*. So if there is or there was any hardship which could relevantly be considered for the purpose of the proviso, that should be considered in relation to the time of the issue of the building permit granted by the Municipal Authorities in 1950. The Land Registration Office on the application of any of the interested parties has to effect the necessary amendments in the title-deed and they have no discretion in the

matter and indeed any delay on the part of the appellants to put in an application for such an amendment could not create a new case of hardship. It was and ought to be clear to the property owners from the time they obtained the building permit and acted upon it that the space in question was merged and formed part of the new extended public road and as such any use they made of it whether properly or improperly in relation to any building which came into being after the issue of the said building permit could not give a right to them over such a space. It has not been contended and there is no evidence to support a case of hardship existing at the time of the issue of the building permits in question. The alleged hardship, if there is any, has come into existence after the buildings were completed and were tenanted for particular purposes. As we have already said this is quite irrelevant in considering a case of hardship under the proviso. Such hardship would have been rather in the nature of a self-imposed one brought about by the respondents themselves after the space in question had become part of the new street by operation of the law.

We think, therefore, that the appeal should be allowed and the order for compensation should be set aside with costs here and below.

Appeal allowed.

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