

[HUTCHINSON, C.J. AND TYSER, J.]

KING'S ADVOCATE,

Plaintiff,

v.

PIERI PETRIDES' HEIRS,

Defendants.

HUTCHIN-
SON, C.J.
&
TYSER, J.
1904

Dec. 22

LAND CODE, ART. 31—BINA—EBNIE—MUTASARRIF OF ARAZI-MIRIE, RIGHTS OF.

HELD: that the Mutasarrif of Arazi-mirié is prohibited by Art. 31 of the Land Code from erecting dwelling houses on Arazi-mirié although the same may not be attached to the soil, and although they are capable of being removed whole.

APPEAL of one of the Defendants from an order of the District Court of Limassol.

The order appealed against was to the following effect:—

“ This Court doth order and adjudge that the Defendant Kleanthi do demolish the two buildings erected by him, without the permission of the proper officer of the Government, on Arazi-mirié land situate near Limassol, etc., etc., and belonging to the Defendants by inheritance from Pieri Petrides, deceased.”

The facts were as follows:—

The Defendant Kleanthi had erected on the Arazi-mirié in question.

1. A hut which formerly stood on a building site in the town, similar to huts which had been built in Limassol since the earthquake. Qochans are not issued for such huts nor is Malie charged in respect of them.

The hut was taken to pieces and removed in a cart from its old site to the Defendants' field in 7 pieces.

It was placed on the top of some beams on the ground and nailed to them. It had no foundations in the ground. The floor and walls were of wood. The roof was of tiles. It was 20 feet long by 11 feet wide and had two doors to it. A man could live in it or use it as a store. It was in fact occupied by the gardener. It could be moved about whole.

2. A shed formerly a building at the market. It was taken to pieces and carried in a cart to the Defendants' land. It was 20 feet to 30 feet long by 15 or 16 feet wide. It had a tiled roof and upright posts which were fixed in the ground with gypsum and small stones. It could be taken to pieces and removed. It could be used as a stable if boarded and floored, and could be and was in fact used in its existing condition as a temporary shelter for animals.

Artemis for the Appellant.

The King's Advocate for the Respondent.

THE CHIEF JUSTICE: The claim in this action is for an order on the Defendants to remove two buildings erected by them without permission of the Government on Arazi-mirié near Limassol.

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The claim is founded on Art. 31 of the Land Code, which enacts that "without the permission of the official new buildings cannot be erected on Arazi-mirié." The Appellant contends that neither the hut nor the shed is a "building" within the meaning of Art. 31.

The word which is rendered "building" in Mr. Ongley's translation of Art. 31 is said in Redhouse's Dictionary to mean, "building, erection, structure." We have not been referred to any Authority as to whether it has any restricted meaning in Art. 31. But examples are given in the next article of buildings which may be put up with the consent of the Government, viz.: "chiftlik houses, mills, sheepfolds, sheds, stores, stables, straw-rooms and farmyards."

By Arts. 9 and 68 the occupier of Arazi-mirié is bound to cultivate it, and if he lets it lie fallow for three years (now ten years) without valid excuse it "becomes the right of Tapu."

These provisions of Arts. 9 and 31 and 68 are conditions on which the Government allows a man to occupy Arazi-mirié: he is bound to cultivate it, and he is not to put on it anything of the nature of the erections mentioned in Arts. 31 and 32 without the consent of the Government.

If he were to be at liberty to cover it with wooden huts and sheds like those which the Appellant has placed on this land he could not fulfil the obligation to cultivate it; and if we were to decide that this hut and shed are not "buildings" there would be nothing to prevent him covering the land with similar erections.

In my opinion therefore this hut and this shed are "buildings" of the kind contemplated in Art. 31, and this appeal should be dismissed.

TYSER, J.: It was contended for the Appellant that the Turkish word "ebnie" used in Art. 31 of the Land Code, of which the singular is "bina" and which has been translated "buildings" in Ongley's translation of the Land Code, means some form of permanent building attached to the soil.

Whether or no the buildings are permanent or not is to some extent dependent on the intention of the person who makes them and may be gathered from, amongst other things, the nature of the buildings, the use to which the owner puts them and the conduct of the owner.

In this case it appears that the hut is occupied by the gardener and the shed is used as a stable. The Appellant contended that he has a right to keep them permanently on his land, and there is no suggestion that he contemplates their removal within any limited time. The inference I should draw is that the Appellant intends the buildings to be permanent. There is nothing in the nature of the buildings which

would make it impossible to keep them for a period of indefinite length, therefore they must be considered as permanent buildings. It is unnecessary therefore to consider what would be the consequence if the buildings were not permanent.

As for the argument that the Turkish word "bina" means a building which is attached to the soil. From the Dictionary of Sh. Sami it appears that "bina" means a building whether of stone or wood and may be used to denote the hull of a ship.

There is nothing therefore in the argument for the Appellant to induce the Court to say that the buildings in question are not such as would be considered *ebnie* (buildings) within Art. 31 of the Land Code and I am of opinion that they are "*ebnie*."

The rights of the Appellant are limited to those rights which are conferred upon the *Mutasarrifs* of *Arazi-mirié* by the Land Code.

The principle is expressed by *Khalis Eshref* in his commentary on the Land Code (Art. 521 of the Commentary) in the following way:—

"New buildings cannot be erected on *Arazi-mirié* without permission because *Arazi-mirié* in the hands of the *Mutasarrif* is looked upon as land let, and by Art. 426 of the *Mejellé*, a person who is entitled to a fixed benefit under a contract of hire, cannot take a benefit from the thing hired which is in excess of the benefit for which the agreement was made."

The rights of the *Mutasarrif* are stated in Chapter I., Arts. 8–35 of the Land Code.

By Art. 31 there is an express provision that buildings shall not be erected anew without leave.

The Appellant has newly erected buildings without leave, and thereby exceeded the rights given to him by the law.

If the Appellant were right in his contention that any *Mutasarrif* of *Arazi-mirié* could turn his land into sites for dwelling houses whenever he chose, it would be contrary to the whole intention of the Land Code. For these reasons the order of the District Court that they should be demolished or pulled down is correct.

Appeal dismissed with costs.

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The case of *Gianko Georgiades and another v. Ghalib Mehmed and others* reported in pages 97–99 of the original edition is no longer of any importance.