

[ZEKIA, P., VASSILIADES, TRIANTAFYLLIDES, MUNIR,
JOSEPHIDES, JJ.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

IOANNA ANDREA LOUCA, (NOW IOANNA ANDREA
SKALIOTOU),

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF FINANCE,
2. THE DIRECTOR OF INLAND REVENUE,

Respondent.

(Case No. 37/63).

*Administrative Law—Taxes—Immovable Property (towns) Tax
—The Immovable Property (Towns) Tax Law, 1962 (Law
89 of 1962), sections 2, 4 and 10—Recourse against assess-
ment, collection and recovery of tax imposed under the Law—
Tax properly assessed, collected and recovered.*

*Constitutional Law—Constitution of Cyprus, Articles 28, 87
and 88 and the Immovable Property (Towns) Tax Law,
1962 (Law 89 of 1962), sections 2, 4 and 10—Provisions of
the Law not contrary to Articles 28, 87 and 88 of the Consti-
tution.*

Applicant by this recourse, seeks a declaration:

“That the act and/or decision of the Respondents to assess and/or collect and/or recover the immovable property (town) tax mentioned in the statement of facts is contrary to the provisions of the Constitution and/or illegal and/or was made in excess or abuse of power and that it is consequently *null* and *void* and of no effect whatsoever”.

The Immovable Property (Towns) Tax Law, 1962, (No. 89 of 1962) was published in the official Gazette of the 22nd December, 1962. This Law imposes, and authorises the assessment and collection of, within the areas of towns (as defined in section 2 thereof), a tax which is levied on immovable property situated in the said towns.

Pursuant to an order of the Council of Ministers, the

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immovable property (towns) tax was assessed at the rate of 15 per thousand on the value of the immovable property of the Applicant situated in the town of Nicosia; the said tax became payable on the 31st December, 1962, pursuant to an order of the Minister of Finance, and on the 29th January, 1963, the Applicant paid to the Republic of Cyprus the sum of £21.745 mils as immovable property (towns) tax under Law 89/62 and it is against the assessment, collection and recovery of this tax that the applicant has made recourse to this Court.

Counsel for Applicant has submitted that the provisions of Law 89/62 are unconstitutional—

(a) as being contrary to Article 28 of the Constitution, in that section 4 of Law 89/62 purports to authorize the imposition, collection and recovery of the immovable property (Towns) tax only from a certain class of persons, i.e. owners of immovable property in towns, and that by section 10 of Law 89/62 the said tax is disposed of in such a way that all the citizens of the Republic or all the members of the Greek and Turkish Communities, as the case may be, (including those who have not paid the tax) would benefit from such collection and disposition; thus resulting in unequal treatment and discrimination;

(b) as being contrary to Articles 87 and 88 of the Constitution in that the provisions of Law 89/62, and in particular section 10 thereof, provide an indirect way for the imposition and collection of taxes by the Communal Chambers from members of their respective Communities in a manner which is contrary to, and which is not authorised or provided for by, the said Articles 87 and 88.

Held, (1) On submission (a) :

(a) The very nature of the distinction between immovable property in urban areas and in rural areas (e.g. their user, amenities and public services relevant to them, etc.) is such that it would not be unreasonable and it was not unreasonable, for Law 89/62 to make the distinction which it has made, for the purposes of the tax in question, between immovable property situated in towns and immovable property situated in rural areas and that such a distinction being a reasonable one to make in view of the intrinsic nature of things, does not amount to a discrimina-

tion in the sense of Article 28 of the Constitution. Furthermore, having regard to the fact that the new immovable property (towns) tax imposed by Law 89/62 has in fact replaced the education tax imposed by Cap. 166 in towns, whereas such education tax in villages still continues, further justifies the making of such a distinction.

(b) This being so, the provisions of Law 89/62 are not unconstitutional on the ground that they contravene Article 28 of the Constitution.

(2) *On submission (b) :*

(a) With regard to the question of whether the provisions of Law 89/62, and in particular section 10 thereof, contravene Articles 87 and 88 of the Constitution, it is true that the Articles make the Communal Chambers responsible, *inter alia*, for educational matters and that the power of imposing taxes under the said Articles is restricted to the specific purposes specified in the said Articles. The imposition, however, of a tax such as that imposed by Law 89/62 by the House of Representatives does not in any way contravene the provisions of Article 87 or 88 of the Constitution and once the House of Representatives imposes a tax which it can validly do, it is within the legislative competence of the House of Representatives to provide for the manner in which the revenue derived from such tax shall be utilised. Paragraph 2 of Article 88 of the Constitution makes express provision for the making of annual payments by the Republic to the Communal Chambers of the amounts specified in the said paragraph and the proviso to the said paragraph 2 authorises the increase of such annual payments. It follows, therefore, that the making of additional payments, by way of subsidy or otherwise, to the Communal Chambers by the Republic is not only envisaged by the provisions of Article 88(2) but is expressly authorised by it. This being so, and again having regard generally to the history of Law 89/62, and the object for which it was enacted, the provisions of Law 89/62, and in particular the provisions contained in section 10 thereof regarding the making of payments to the Communal Chambers, are not contrary to the provisions of Articles 87 and 88 of the Constitution.

(3) *On the merits :*

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(a) Having come to the conclusion that Law 89/62 is not unconstitutional, it follows that the assessment, collection and recovery of the tax in question on the Applicant, is likewise not unconstitutional.

(b) There appears to be nothing to indicate that the assessment, collection and recovery of the tax in question was made otherwise than in accordance with the statutory provisions of Law 89/62.

The Order: This Application cannot succeed and is, therefore, dismissed accordingly.

Application dismissed. No order as to costs.

Cases referred to:

Argiris Mikrommatis and The Republic, 2 R.S.C.C., 125, at p. 131.

Recourse.

Recourse against the decision of the respondents to assess and/or collect and/or recover the sum of £21.745 mils as immovable property (town) tax.

Chr. Chrysanthou for the applicant.

K.C. Talarides, Counsel of the Republic, for the respondent.

Cur. adv. vult.

ZEKIA, P.: The judgment of the Court will be delivered by Mr. Justice Munir.

MUNIR, J.: By this recourse under Article 146 of the Constitution the Applicant seeks a declaration—

“that the act and/or decision of the Respondents to assess and/or collect and/or recover the immovable property (town) tax mentioned in the statement of facts is contrary to the provisions of the Constitution and/or illegal and/or was made in excess or abuse of power and that it is consequently *null* and *void* and of no effect whatsoever”.

The Immovable Property (Towns) Tax Law, 1962, (No. 89

of 1962) (hereinafter in this judgment referred to as "Law 89/62") which was passed by the House of Representatives, was published in the official Gazette of the 22nd December, 1962. This Law imposes, and authorises the assessment and collection of, within the areas of towns (as defined in section 2 thereof), a tax which is levied on immovable property situated in the said towns (hereinafter in this judgment referred to as "the immovable property (towns) tax").

Pursuant to an order of the Council of Ministers published under Notification No. 666 in Supplement No. 3 to the official Gazette of the 22nd December, 1962, the immovable property (towns) tax was assessed at the rate of 15 per thousand on the value of the immovable property of the Applicant situated in the town of Nicosia and more particularly described in the Appendix to the facts which are relied upon by the Applicant in support of her Application and as appearing on page 2 of her Application. The said tax became payable on the 31st December, 1962, pursuant to an order of the Minister of Finance which was published under Notification No.667 in the aforesaid Supplement No. 3 to the Gazette of the 22nd December, 1962.

On the 29th January, 1963, the Applicant paid to the Republic of Cyprus the sum of £21.745 mils as immovable property (towns) tax under Law 89/62 and it is against the assessment, collection and recovery of this tax that the Applicant has made recourse to this Court.

Counsel for Applicant has submitted that the provisions of Law 89/62 are unconstitutional—

(a) as being contrary to Article 28 of the Constitution, in that section 4 of Law 89/62 purports to authorise the imposition, collection and recovery of the immovable property (towns) tax only from a certain class of persons, i.e. owners of immovable property in towns, and that by section 10 of Law 89/62 the said tax is disposed of in such a way that all the citizens of the Republic or all the members of the Greek and Turkish Communities, as the case may be, (including those who have not paid the tax) would benefit from such collection and disposition; thus resulting in unequal treatment and discrimination;

(b) as being contrary to Articles 87 and 88 of the Consti-

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tution in that the provisions of Law 89/62, and in particular section 10 thereof, provide an indirect way for the imposition and collection of taxes by the Communal Chambers from members of their respective Communities in a manner which is contrary to, and which is not authorised or provided for by, the said Articles 87 and 88.

Counsel for the Respondent submitted, on the other hand, that the provisions of Law 89/62 do not contravene Article 28 of the Constitution because the act or decision in question of Respondent does not amount to unequal treatment or discrimination in the sense of paragraphs 1 and 2 of the said Article; and that, so long as the criterion for the assessment of tax is reasonable and not arbitrary or improper, the fact that it is imposed on a limited class of persons, does not contravene the provisions of Article 28. Counsel for Respondent further submitted that the provisions of Law 89/62, and in particular section 10 thereof, do not contravene Article 87 or 88 of the Constitution. He submitted that the final use of the tax collected under the provisions of Law 89/62 does not make the imposition and collection of such tax unconstitutional as long as the provisions of Law 89/62 are complied with. Furthermore, he submitted, that the Government is not only entitled to make contributions to the Communal Chambers but, on the contrary, under Article 88(2) of the Constitution it is obliged to do so. The amounts collected under Law 89/62 are not paid directly into the general revenue of the Communal Chambers but the payment of such amounts by the Government in effect amounts, in his submission, to an increase in the subsidy paid under Article 88 of the Constitution.

Before dealing with the respective submissions made by counsel, it is useful to observe at the outset that, prior to the enactment of Law 89/62, education tax, both in towns and villages, was imposed and payable under the provisions of the Elementary Education Law, Cap. 166, and in particular sections 87-96 thereof. Section 95 of Cap. 166 made provision for the payment of increased education tax for schools situated in towns and section 90 makes provision for the payment of education tax in villages. Counsel for the Respondent explained to the Court that the object of Law 89/62 was to replace education tax payable in towns by the new immovable property (towns) tax imposed under Law

89/62 but that, with regard to villages, the imposition and collection of education tax under the provisions of Cap. 166, as was the position prior to the enactment of Law 89/62, was to continue.

It will be seen from an examination of the provisions of Law 89/62 that the immovable property (towns) tax imposed thereunder is not imposed on the owners, as such, of immovable property in towns, as a class, but is imposed and levied upon immovable property, as such, situated in the towns in question. In other words, Law 89/62 does not provide that the tax in question shall be imposed on all persons who own immovable property in towns but it provides that such tax shall be imposed and levied upon immovable properties situated in towns and such tax is, of course, payable by the owners of such property. The immovable property (towns) tax being a tax imposed on immovable property as such, and not on persons, as such, is a tax *in rem* and not a tax *in personam*. It will be seen, therefore, that if one is to draw any distinction from the provisions of Law 89/62 between one class and another it is rather a distinction which is made, not between classes of persons, as such (i.e. not between persons who own property in towns and persons who do not own property in towns) but between classes of property, i.e. between immovable property situated in towns and immovable property not so situated.

Inasmuch as the distinction which has thus been made between the two classes of immovable property in question is ultimately reflected on the owners of such property, who are after all the ones who have to pay the taxes imposed on such property, and to the extent to which it may be said that a distinction has, therefore, also been made, albeit indirectly, between the owners of the said two classes of property, the Court considers it advisable to deal also with the question of whether the making of such a distinction between such owners amounts to the making of a discrimination, in the sense of Article 28 of the Constitution, between the owners of the said two classes of immovable property. In deciding this question it is useful to refer again to the test which has been suggested by the Supreme Constitutional Court in its Interim Decision in the case of *Argiris Mikrommatis and The Republic*, 2 R.S.C.C., 125, at p. 131, where the Supreme Constitutional Court stated that "the term 'equal before the law' in paragraph 1 of Article 28 does not convey the notion of

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exact arithmetical equality but it safeguards only against arbitrary differentiations and does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things. Likewise, the term 'discrimination' in paragraph 2 of Article 28 does not exclude reasonable distinctions as aforesaid".

Applying this test to the facts of this particular case the question is, therefore, whether the distinction which is made by Law 89/62, for the purposes of the tax imposed thereunder, between immovable property in towns and immovable property outside towns, is a "reasonable distinction" which has to be made "in view of the intrinsic nature of things"? In the opinion of the Court the very nature of the distinction between immovable property in urban areas and in rural areas (e.g. their user, amenities and public services relevant to them, etc.) is such that it would not, in the Court's view, be unreasonable, and it was not unreasonable, for Law 89/62 to make the distinction which it has made, for the purposes of the tax in question, between immovable property situated in towns and immovable property situated in rural areas and that such a distinction, being a reasonable one to make in view of the intrinsic nature of things, does not, in the Court's opinion, amount to a discrimination in the sense of Article 28 of the Constitution. Furthermore, having regard to the fact that the new immovable property (towns) tax imposed by Law 89/62 has in fact replaced the education tax imposed by Cap. 166 in towns, whereas such education tax in villages still continues, further justifies the making of such a distinction.

This being so, the provisions of Law 89/62 are not, in the opinion of the Court, unconstitutional on the ground that they contravene Article 28 of the Constitution.

With regard to the question of whether the provisions of Law 89/62, and in particular section 10 thereof, contravene Articles 87 and 88 of the Constitution, it is true that the Articles make the Communal Chambers responsible, *inter alia*, for educational matters and that the power of imposing taxes under the said Articles is restricted to the specific purposes specified in the said Articles. The imposition, however, of a tax such as that imposed by Law 89/62 by the House of Representatives does not, in the Court's view, in any way contravene the provisions of Article 87 or 88 of the

Constitution and once the House of Representatives imposes a tax which it can validly do, it is within the legislative competence of the House of Representatives to provide for the manner in which the revenue derived from such tax shall be utilised. As Counsel for Respondent has pointed out, paragraph 2 of Article 88 of the Constitution makes express provision for the making of annual payments by the Republic to the Communal Chambers of the amounts specified in the said paragraph and the proviso to the said paragraph 2 authorises the increase of such annual payments. It follows, therefore, that the making of additional payments, by way of subsidy or otherwise, to the Communal Chambers by the Republic is not only envisaged by the provisions of Article 88(2) but is expressly authorised by it. This being so, and again having regard generally to the history of Law 89/62, and the object for which it was enacted, the Court is of the opinion that the provisions of Law 89/62, and in particular the provisions contained in section 10 thereof regarding the making of payments to the Communal Chambers, are not contrary to the provisions of Articles 87 and 88 of the Constitution.

Having come to the conclusion that Law 89/62 is not unconstitutional, it follows that the assessment, collection and recovery of the tax in question on the Applicant, namely the sum of £21.745 mils is likewise not unconstitutional. The assessment, collection and recovery of the said immovable property (towns) tax has not been attacked at the hearing by counsel for Applicant on the ground of illegality, i.e. he has not suggested that the tax in question has not been collected otherwise than in accordance with the statutory provisions of Law 89/62. Counsel for the Applicant, quite rightly in our opinion, confined his arguments to the question of constitutionality, as there appears to be nothing to indicate that the assessment, collection and recovery of the tax in question was made otherwise than in accordance with the statutory provisions of Law 89/62.

For all the reasons given above, the Court is of the opinion that this Application cannot succeed and is, therefore, dismissed accordingly.

Application dismissed.
No order as to costs.

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