

1965  
June, 18, 24, 25  
Aug. 31  
—  
EPCO (CYPRUS)  
LTD.,  
and  
THE MUNICIPAL  
COMMITTEE  
OF NICOSIA

[TRIANTAFYLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

EPCO (CYPRUS) LTD.,

*Applicants,*

*and*

THE MUNICIPAL COMMITTEE OF NICOSIA

*Respondent.*

(Case No. 164/62).

*Building permits—Omission of respondent to grant building permit to applicants—Subsequent belated issue of permit—Issue a cure of the omission of respondent in the matter—Recourse abated.*

Applicants applied on the 2nd November, 1961, for a building permit in relation to land of theirs at Nicosia.

A reminder was sent by Applicants on the 30th January, 1962, through their counsel, and another reminder on the 10th May, 1962, followed.

On the 17th May, 1962, Applicants were informed, through their counsel, by the Town Clerk of Nicosia that the matter was under consideration.

On the 26th June, 1962, counsel for Applicants wrote again pressing for the matter to be determined and on the 6th July, 1962, he received a reply that the matter would be considered at the meeting of the Municipal Committee on the 12th July, 1962.

On the 19th July, 1962, counsel for Applicants wrote again asking for the decision taken to be announced and subsequently he received a letter dated the 17th July, 1962, by which he was informed that the application of Applicants could not be examined because the plot of land concerned was affected by a street-widening scheme adopted by the Municipal Committee and submitted to Government for publication.

He then filed this recourse on the 26th July, 1962, complaining against the refusal, or omission, of the Municipal authorities in Nicosia town to grant them a building permit.

On the 20th November, 1962, an Opposition was filed by counsel for Respondent, in which it was disclosed that on the 27th August, 1962, the building permit in question had later been issued and that it had been collected by Applicants on the 17th September, 1962.

*Held, I. As regards the alleged refusal or omission :*

(a) The conduct of Respondent at the material time amounted to an omission to duly consider the application of Applicants for a permit, though I am not pronouncing whether or not this omission was wrongful as this is not necessary for the purposes of this Judgment.

*II. On whether or not the issuing of the building permit applied for, belatedly, has cured omission.*

(a) The admittedly belated issue, in September, 1962, of the building permit to Applicants should be taken as amounting to a cure of the previous omission of Respondent in the matter and that, therefore, this recourse has been rendered without a subject-matter and has consequently been abated. It is dismissed accordingly for this reason.

*III. As regards costs :*

Applicants are entitled to costs down to the filing of this recourse, because of the delay of Respondent to deal in time with their application for a permit. I assess these costs at £10.—and I award them in favour of Applicants and against Respondent, in addition to £17.- costs for the 18th June and 24th June, 1965 already awarded in favour of Applicants and against Respondent.

*Recourse dismissed.*

*Observations :* (1) The present Municipal Committee has been appearing as the Respondent in these proceedings since the 5th January, 1965, and quite rightly so, in my view, because of section 36 of Law 64/64 under which such Committee came into existence. But instead of defending these proceedings through counsel the Committee has been appearing only through the Town Clerk, who notwithstanding his obvious devotion to the interests of the municipality and his best effort to assist the Court is not the person normally expected to handle litigation of this nature before this Court on behalf of a public autho-

city, such as the Municipal Committee. He is also a person who is burdened with many other pressing duties. As a result the proceedings were unduly protracted, on at least one occasion the Respondent did not put in an appearance at all at the hearing of this Case and at the ensuing hearing an appearance was put in at the last minute by counsel just instructed for the purpose. This has resulted in extra costs being awarded against Respondent, in delays and inconvenience for the Court and everybody concerned.

(2) Let, therefore, the Municipal Committee of Nicosia and any other public authority bear in mind that in handling public matters of this nature such as the present one it is most advisable, in the interests of justice and in its own interests too, to instruct counsel in due time.

(3) It would, indeed, be an omission, on the other hand if I did not express my appreciation—and I do so now—for the valuable assistance rendered by counsel for Applicants in these proceedings as well as by counsel for Respondent when belatedly instructed.

Cases referred to:

*Malliotis and the Municipality of Nicosia* (reported in this Part at p. 75 *ante*).

### Recourse.

Recourse against the refusal and/or omission of the Respondent dated the 17th July, 1962, to grant a building permit to the applicants.

*Ch. Ioannides* for the applicants.

*K. Michaelides* for the respondent.

*Cur. adv. vult.*

The facts of the case sufficiently appear in the following judgment delivered by:—

TRIANTAFYLLOIDES, J.: In this Case the Applicants complain against the refusal, or omission, of the Municipal authorities in Nicosia town to grant them a building permit.

The history of this Case is as follows:—

1965  
June, 18, 24, 25  
Aug. 31

—  
EPCO (CYPRUS)  
LTD.,  
and  
THE MUNICIPAL  
COMMITTEE  
OF NICOSIA

Applicants applied on the 2nd November, 1961, for a building permit in relation to land of theirs at Passiades street Nicosia. The building to be erected was to consist of shops and flats.

A reminder was sent by Applicants on the 30th January, 1962, through their counsel, and another reminder on the 10th May, 1962, followed.

On the 17th May, 1962, Applicants were informed, through their counsel, by the Town Clerk of Nicosia that the matter was under consideration.

On the 26th June, 1962, counsel for Applicants wrote again pressing for the matter to be determined and on the 6th July, 1962, he received a reply that the matter would be considered at the meeting of the Municipal Committee on the 12th July, 1962.

On the 19th July, 1962, counsel for Applicants wrote again asking for the decision taken to be announced and subsequently he received a letter dated the 17th July, 1962, by which he was informed that the application of Applicants could not be examined because the plot of land concerned was affected by a street-widening scheme adopted by the Municipal Committee and submitted to Government for publication.

On the 23rd July, 1962, counsel for Applicants asked to be informed when the said street-widening scheme had been adopted and had been submitted for publication.

He then filed this recourse on the 26th July, 1962.

On the 30th July, 1962, the Town Clerk informed him that the street-widening scheme in question had been adopted at the meeting of the Committee of the 9th March, 1961, had been published in the official Gazette on the 12th May, 1961, and that for certain reasons it had become necessary to publish it once again and that it was published on the 26th July, 1962, in the official Gazette.

On the 20th November, 1962, an Opposition was filed in this case by counsel, at the time, for Respondent, in which it was disclosed that on the 27th August, 1962, the building permit in question had later been issued and that it had been collected by Applicants on the 17th September, 1962.

1965  
June, 18, 24, 25  
Aug. 31  
—  
EPCO (CYPRUS)  
LTD.,  
and  
THE MUNICIPAL  
COMMITTEE  
OF NICOSIA

According to counsel for Applicants the permit was issued on the 10th September, 1962. For the purposes of this recourse I think it is sufficient to take it that such permit was issued to Applicants in September, 1962.

On the 13th November, 1963, such permit was renewed and it expired on the 12th November, 1964.

During all this time, no building works were undertaken at all by Applicants under such permit.

On the 5th January, 1965, when the Case came up for Directions before the Court counsel for Respondent did not appear but the Town Clerk who was present said that if Applicants would apply again for a renewal of their permit the matter would be duly considered.

On the very same day Applicants applied for a renewal of their permit and they sent a reminder for the purpose on the 1st February, 1965. They received a reply on the 25th February, 1965, asking them to submit new plans for a new permit, as the old one could not be renewed, and they did so on the 1st March, 1965.

On the 9th March, 1965, this Case came up before the Court again and it was stated by the Town Clerk that the matter was still under consideration and that if there was no conflict of the plans with the relevant Regulations the permit would be granted.

On the 12th April, 1965, the parties appeared again before the Court and the Town Clerk filed an extract of the minutes of the Municipal Committee, dated the 9th April, 1965, marked 'A', where it was stated that the permit was being refused because it would interfere with the street-widening scheme for Passiades street "which is being shortly submitted for publication" and that it was also decided to requisition and acquire compulsorily the property in question of Applicants.

The Case came up for hearing before the Court on the 18th June, 1965. On that day counsel for Applicants informed the Court that on the 10th June, 1965, the notice of acquisition had been duly published in the official Gazette. As no appearance was put in by the Nicosia Municipal Committee on that day the Case was adjourned for hearing on the 24th June, 1965, and it was directed that the Town Clerk

be summoned as a witness to give evidence and produce relevant records.

On that day, at the commencement of the hearing, no appearance was put in at all by the Municipal Committee but at the end of the proceedings counsel appeared for it—a new one and not the one who had originally defended the proceedings—and asked for an adjournment to study the matter as he had just been instructed.

The Case was adjourned to the next day when both counsel addressed the Court. At the end of the proceedings no evidence appeared to be necessary by way of production of relevant records by Respondent as all relevant documents were already before the Court.

Having considered the reserved judgment in this Case I have come to the conclusion that whatever has taken place with regard to the Applicants' application for a permit in 1965 is a new matter which may be the subject of different proceedings and it cannot be determined in this recourse. So I do not propose to deal further with this aspect of the Case.

Concerning the alleged refusal or omission to issue the permit applied for in November, 1961, I think there is no doubt that there has been a very long delay in examining Applicants' application for the purpose; such delay was followed by the letter of Respondent dated the 17th July, 1962, which informed Applicants that their application *could not be examined in view of the pending street-widening scheme*. Thus stood matters when their recourse was filed on the 26th July, 1962.

In my opinion, the conduct of Respondent at the material time amounted to an omission to duly consider the application of Applicants for a permit, though I am not pronouncing whether or not this omission was wrongful as this is not necessary for the purposes of this judgment.

The said permit was subsequently issued to Applicants in September, 1962. So any omission that existed until then ceased in September, 1962.

What remains to be examined is whether or not the issuing of such permit nearly a year after the application had been made for it has cured whatever omission had existed in the

1965  
June, 18, 24, 25  
Aug. 31

—  
EPCO (CYPRUS)  
LTD.,  
and  
THE MUNICIPAL  
COMMITTEE  
OF NICOSIA

1965  
June, 18, 24, 25  
Aug. 31

—  
EPCO (CYPRUS)  
LTD.,  
and  
THE MUNICIPAL  
COMMITTEE  
OF NICOSIA

matter, thus depriving this recourse of its subject-matter, with the consequence that the proceedings are abated. No, doubt a recourse cannot continue when its subject-matter has ceased to exist (*Malliotis and The Municipality of Nicosia*, reported in this Part at p. 75 ante).

When an omission is being complained of in a recourse and what has been omitted is performed later, the recourse becomes abated, as being deprived of its subject-matter, unless it is shown that what has been done belatedly is not so useful to the party making the recourse as it would have been had it been done at the appropriate time earlier. (Vide Kyriakopoulos on Greek Administrative Law, 4th edition vol. III p. 146 and Tsatsos on Recourse for Annulment, 2nd edition at p. 241).

In this Case it has been alleged by counsel for Applicants that Applicants were prejudiced by the delay to grant the permit but no concrete proof of such prejudice has been adduced; on the contrary it is not disputed that the permit, even when granted, was allowed to lapse, by the passage of a year from the issue thereof, and then when renewed it was again allowed to lapse, without any building being undertaken during all this time. Thereafter no application for its renewal was made again until the matter came up before the Court in January, 1965.

In all the circumstances of this Case I have come to the conclusion that the admittedly belated issue, in September, 1962, of the building permit to Applicants should be taken as amounting to a cure of the previous omission of Respondent in the matter and that, therefore, this recourse has been rendered without a subject-matter and has consequently been abated. It is dismissed accordingly for this reason.

Applicants' conduct in accepting the building permit in question and in renewing it for another year later shows that after November, 1961 no changed circumstances did intervene rendering such permit of no use to Applicants; further, had it been a case where Applicants were suffering real loss, as time went by, due to the delay to build on their land in question because, and only because, of the delay of Respondent to issue the necessary building permit, surely they would have commenced building operations the soonest possible after its issue in September, 1962. On the contrary they let the permit lapse and then they let the renewed permit

to lapse also without building at all this time.

As indicated already earlier, the refusal in April, 1965, of Respondent to issue a new building permit to Applicants or to renew the old one are not matters with which I can deal in this Case and, indeed, they do not provide sufficient reason for this present recourse not to be treated as abated. This recourse cannot proceed any further due to the disappearance of its subject-matter but the Applicants are on the other hand not estopped from vindicating any rights that may have, in the matter of the recent, in 1965, conduct of Respondent, by means of new proceedings.

Concerning the question of costs I think that the Applicants are entitled to costs down to the filing of this recourse, because of the delay of Respondent to deal in time with their application for a permit. I assess these costs at £10.- and I award them in favour of Applicants and against Respondent in addition to £17.- costs for the 18th June and 24th June, 1965 already awarded in favour of Applicants and against Respondent.

I would like to conclude this judgment with some necessary observations on the conduct of the parties in this Case.

The present Municipal Committee has been appearing as the Respondent in these proceedings since the 5th January, 1965, and quite rightly so, in my view, because of section 36 of Law 64/64 under which such Committee came into existence. But instead of defending these proceedings through counsel the Committee has been appearing only through the Town Clerk, who notwithstanding his obvious devotion to the interests of the municipality and his best effort to assist the Court is not the person normally expected to handle litigation of this nature before this Court on behalf of a public authority, such as the Municipal Committee. He is also a person who is burdened with many other pressing duties. As a result the proceedings were unduly protracted, on at least one occasion the Respondent did not put in an appearance at all at the hearing of this Case and at the ensuing hearing an appearance was put in at the last minute by counsel just instructed for the purpose. This has resulted in extra costs being awarded against Respondent, in delays and inconvenience for the Court and everybody concerned. Let, therefore, the Municipal Committee of Nicosia and any other public authority bear in mind that in handling public

1965  
June, 18, 24, 25  
Aug. 31  
—  
EPCO (CYPRUS)  
LTD.,  
and  
THE MUNICIPAL  
COMMITTEE  
OF NICOSIA



1965  
June, 18, 24, 25  
Aug. 31

—  
EPCO (CYPRUS)  
LTD.,  
and  
THE MUNICIPAL  
COMMITTEE  
OF NICOSIA

matters of this nature such as the present one it is most advisable, in the interests of justice and in its own interests too, to instruct counsel in due time.

It would, indeed, be an omission, on the other hand, if I did not express my appreciation—and I do so now—for the valuable assistance rendered by counsel for Applicants in these proceedings as well as by counsel for Respondent when belatedly instructed.

*Recourse dismissed. Order  
as to costs as stated in the  
judgment.*