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SOFIA CHRISTOU ARISTIDOU
and
THE IMPROVEMENT BOARD OF AY. PHYLA

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

SOFIA CHRISTOU ARISTIDOU,
Appellant-Applicant,

and

THE IMPROVEMENT BOARD OF AY. PHYLA,
Respondent.

(Revisional Jurisdiction Appeal No.3)

Administrative Law—Fees and Rates—Villages (Administration and Improvement) Ayia Phyla Bye-laws, 1962, *made under section* 24 *of the Villages (Administration and Improvement) Law, Cap.* 243—*Appeal from dismissal of recourse against Respondent for the imposition on Appellant of a rate under bye- law* 180 *thereof—Taxing a part of the persons liable to pay the rate in question under the said bye-law and refraining from taxing a class of such persons, amounts to contravention of the law by the Respondent and to abuse or excess of its powers—Appellant ought to have succeeded in her recourse on such ground.*

Villages (Administration and Improvement) Law, Cap. 243—*Villages (Administration and Improvement) Ayia Phyla Bye-laws* 1962, *bye-law* 180—*Improvement Board acting contrary to law—Abuse or excess of powers by Improvement Board.*

Administrative Law—Villages (Administration and Improvement) Law, Cap. 243, *section* 24—*Villages (Administration and Improvement) Ayia Phyla Bye-laws* 1962, *bye-law* 180 — *Improvement Board failing to assess all owners of premises—Act contrary to law—Abuse or excess of powers.*

This is an appeal against the dismissal of a recourse filed by the appellant (Applicant) an inhabitant of the village of Ayia Phyla, Limassol, District, against the Improvement Board of Ayia Phyla, a statutory body under the provisions of the Villages (Administration and Improvement) Law, Cap. 243, for a declaration that the decision of the Board to impose on her the payment of a fee of £7.200 mils under bye-law 180 of the Villages (Administration and Improvement) Bye-laws of Ayia Phyla, in respect of the year 1962, is *null* and *void.*

The grounds upon which the recourse was based, were two: *(a)* that the imposition of such a fee was made with retrospective effect and was, therefore, "contrary to the provisions of Article 24.2 and 24.3 of the Constitution;" and *(b)* that "the imposition of such a fee only to a portion of those who, under the aforesaid bye-law, were required to pay such a fee, is contrary to the provisions of Article 24.1, and 28.1 and 28.2 of the Constitution, being discriminatory; and/or otherwise".

In the course of the appeal, it was made clear that it turns on the point whether the Respondent Improvement Board acted within their Statutory powers or contrary to law.

Held, I. By adopting the policy of taxing a part of the persons liable to pay the rate under bye-law 180 (even if it be by far the larger part) and refraining from taxing a class of such persons (which, in this particular case, formed an appreciable part of the total number of tax payers) amounts to contravention of bye-law 180 on the part of the Board and also to abuse or excess of their powers, sufficient to entitle the appellant rate-payer to succeed in her recourse; there can be little doubt that had all been taxed then necessarily the amount imposed on appellant would have been reduced proportionately.

We, therefore, allow the appeal; and hold that the appellant—(applicant in the recourse under consideration) is entitled to a declaration that the decision of the Respondent Board to impose upon the applicant, in the circumstances of this case, the payment of a rate of £7.200 mils under bye-law 180 of the Villages (Administration and Improvement) Bye-Laws of Ayia Phylaxis in respect of the year 1962, is *null* and *void.*

II. It is, perhaps, superfluous to add that this decision determines the rights and liabilities of the parties, in the subject-matter of the recourse; and does not affect the liability of other tax-payers to pay the rates imposed upon them by the Board under the same list, in respect of the year in question and who have not made a recourse to this Court.

III. As regards costs, we think that the appellant is entitled to her costs in the appeal and to £20.—against her

costs in the trial Court. And we make order accordingly.

Per JOSEPHIDES, J.:-

(a) Considering the wording of bye-law 180 (which was made under the provisions of Cap. 243) to the effect that "*there shall be paid* in each year by the owner of any premises within the improvement area, which are actually *let* or *are in the occupation of such owner*....." and considering that about one- third of the owners of premises in the Ayia Phyla area (250 persons) and a few in the "Kapsalos" area, who were liable to pay this fee were not assessed, the only irresistible conclusion is that the Board acted contrary to the provisions of the law and the appeal should therefore, be allowed, and a declaration made that the Board's decision is *null* and *void.*

Appeal allowed.
Decision complained of declared null and void.

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Munir, J.) given on the 9th day of March, 1965, (Revisional Jurisdiction Case No. 123/63) whereby a recourse for a declaration concerning a decision of the Respondent Board to impose on the appellant the payment of a fee of £7.200 mils under Bye-law 180 of the Villages (Administration and Improvement) Bye-laws of Ayia Phyla, was dismissed.

Chr. Demetriades for the appellant-applicant.

G. Cacoyannis for the respondent.

Cur. adv. vult.

The following judgments were read.

ZEKIA, P.: The judgment of this Court will be delivered by Mr. Justice Vassiliades and Mr. Justice Josephides with which Mr. Justice Triantafyllides and I agree.

VASSILIADES, J.: This is an appeal to the Court under section 11(2) of the Administration of Justice (Miscellaneous Provisions) Law, 1964, from the decision* of one of the

*The decision appealed against is reported at p. 694 *post.*

Judges of the Supreme Court, exercising the Court's revisional jurisdiction, in a recourse under Article 146 of the Constitution.

The appellant (hereinafter referred to also as the rate-payer) an inhabitant of the village of Ayia Phyla, now almost a suburb of the town of Limassol, filed a recourse on July 8, 1963, against the Improvement Board of Ayia Phyla a statutory body under the provisions of the Villages (Administration and Improvement) Law, Cap. 243, (hereinafter referred to as the Board) for a declaration that the decision of the Board to impose on the rate-payer the payment of a fee of £7.200 mils under bye-law 180 of the Villages (Administration and Improvement) Bye-Laws of Ayia Phyla, in respect of the year 1962, is *null* and *void.*

The grounds upon which the recourse was based, were two: (a) that the imposition of such a fee was made with retrospective effect, and was, therefore, "contrary to the provisions of Article 24.2 and 24.3 of the Constitution;" and (b) that "the imposition of such a fee, only to a portion of those who, under the aforesaid bye-law, were required to pay such a fee, is contrary to the provisions of Article 24.1, and 28.1 and 28.2 of the Constitution, being discriminatory; and/or otherwise".

The recourse was opposed by the Board on several grounds, to which we need not specifically refer for the purposes of this judgment, excepting for ground 4 in schedule "A" of the Opposition, which states that "the imposition of the fee complained of is not discriminatory against the applicant". "The fact that certain persons"—the statement proceeds—"may, for some reason or other, have escaped the imposition of such a fee, does not mean that the applicant was discriminated against".

We have referred to this particular ground of the Opposition, because it raises the only issue upon which, in our opinion, this appeal falls to be decided, at this stage: namely whether the rate or fee complained of, was imposed by the Board upon the appellant rate-payer, in the proper exercise of their statutory powers under the bye-law in question. All other issues raised in the proceedings, were thoroughly considered, and duly disposed of, by the learned trial Judge in his careful and lucid judgment, in a manner which makes it unnecessary for the Court to deal further with them.

The material facts of the case, as pointed out by the trial Judge in the first part of his judgment, "are quite simple, and are not in dispute". We find it unnecessary to re-state them here. We have already made it clear in the course of the argument before us, and particularly in the last stages of the appeal, that, in the opinion of this Court, the only question which requires further consideration in the present recourse is the legality and proper exercise of their powers by the Board, as far as the appellant rate-payer is concerned.

Dealing with the submission made on behalf of the rate-payer, the learned trial Judge classified them under four heads:—(P. 28 of the record).

(*i*) Retrospectivity;

(*ii*) Double taxation;

(*iii*) Discrimination; and

(*iv*) Excess or abuse of power.

He dealt separately with each of them in his well considered judgment; and decided them all in favour of the Board. As already intimated, after hearing learned counsel on both sides in this appeal, we are unanimously of the opinion that the trial Judge's decision on the first three headings, has not been successfully challenged. There remains the question of "excess or abuse of power".

> "On this issue"—the trial Judge says, at the end of p. 9 of his judgment, p. 32 of the record—"in which I think there is more substance than the other issues raised by counsel for Applicant, I agree with counsel for Applicant that the strict wording of bye-law 180 requires that the fee in question *shall be paid* by all persons who come within the scope of the bye-law. The Board's understandable wish to confine the operation of bye-law 180 only to the Kapsalos area of the Improvement Area, could best have been achieved by invoking the proviso to sub-section (1) of section 24 of Cap. 243 which has apparently been designed for this very purpose and which provides that 'the Board may, by notice signed by its Chairman and posted in a conspicuous place within the improvement area limit the application of such bye-laws to such part of the improvement area as may be specified in the notices'. Such action has not however been taken by the Board, and I, therefore, have to con-

sider whether the failure of the Board to require the payment of the fee in question from owners of premises in the village of Ayia Phyla (in the absence of an appropriate notice under the proviso to section 24(1) of Cap. 243) invalidates the imposition and collection of the fee in question from the Applicant".

This, we think, is a very well balanced statement of the position, and a clear picture of the Judge's mind on the issue in question. Earlier in his judgment (at p. 31 of the record) the learned Judge, when dealing with the number of premises in the village which had been let by their owners, refers to a list (exhibit 6) and says that "there were only a very few and negligible number of such premises in the village".

Upon this footing he proceeds to make his decision, which, on the issue of excess or abuse of power, is expressed in the terms:—(at. p.33)

. . . . . .

"(*d*) having regard to the fact that the legislature, by the proviso to section 24(1) of Cap.243 had intended to enable the Board to apply its bye-laws, at its discretion, to certain parts only of the Improvement Area (by complying, of course, with the procedure laid down in the said proviso), the omission or failure of the Board to collect the fee from the few owners of rented premises in the village of Ayia Phyla, cannot, and should not, be allowed to invalidate the imposition of the fee in question on the Applicant".

. . . . . .

At the hearing of the appeal before us, however, it was contended that, roughly speaking, about one third of the persons liable to pay this rate, had not been taxed. It appears that some 250 owners-occupiers living at Ayia Phyla, and owners-occupiers living at Kapsalos, were not taxed.

With commendable frankness, learned counsel for the respondents, did not dispute that an appreciable number of persons liable to pay this rate, had thus been excluded from taxation by the Board.

It appears, from the text of the judgment that this was not the factual basis upon which the trial Judge founded his decision on the point. And that, if this were the picture before him, his decision on the issue in question would have

been different. We take the view that by adopting the policy of taxing a part of the persons liable to pay the rate in question under this bye-law (even if it be by far the larger part) and refraining from taxing a class of such persons (which, in this particular case, formed an appreciable part of the total number of tax payers) amounts to contravention of bye-law 180 on the part of the Board, and also to abuse or excess of their powers, sufficient to entitle the appellant rate-payer in the circumstances of this case, to succeed in her recourse; there can be little doubt that had all been taxed then necessarily the amount imposed on applicant would have been reduced proportionately.

We, therefore, allow the appeal; and hold that the appellant—(applicant in the recourse under consideration)—is entitled to a declaration that the decision of the Respondent Board to impose upon the applicant, in the circumstances of this case, the payment of a rate of £7.200 mils under bye-law 180 of the Villages (Administration and Improvement) Bye-laws of Ayia Phylaxis in respect of the year 1962, is *null* and *void.*

It is, perhaps, superfluous to add that this decision determines the rights and liabilities of the parties, in the subject-matter of the recourse; and does not affect the liability of other tax-payers to pay the rates imposed upon them by the Board under the same list, in respect of the year in question and who have not made a recourse to this Court.

As regards costs, we think that the appellant is entitled to her costs in the appeal and to £20.- against her costs in the trial Court. And we make order accordingly.

JOSEPHIDES, J.: I think that this appeal really turns on a very short point, that is, whether the Respondent Improvement Board acted within their statutory powers or contrary to law.

The material statutory provision with which we are concerned is bye-law 180(1) of the Villages (Administration and Improvement) Ayia Phyla Bye-laws, 1962, made under section 24 of the Villages (Administration and Improvement) Law, Cap.243 (see Official Gazette of 6th December, 1962, Supplement No. 3, Notification 619, page 860). The agreed English translation reads as follows:

"180.—(1) There shall be paid in each year by the owner of any premises within the improvement area, which are actually let or are in the occupation of such owner or some other person with the owner's consent or permission (with or without the payment of rent or other consideration) during such year or any part thereof, a fee at a rate to be fixed in that year by the Board not exceeding five per centum of the annual value of such premises as estimated by the Board in respect of that particular year".

The boundaries of the Improvement Area over which the Respondent Improvement Board (to which in this judgment I shall refer as "the Board") exercises jurisdiction under Cap. 243, is a large area comprising not only the actual village proper of Ayia Phyla (from which the Board derives its name) but also a large developing area known as the "Kapsalos" area which has now virtually become a suburb of the town of Limassol. The Board acting under bye-law 180 prepared and exhibited on the 20th December, 1962, a list of persons who own premises within the Improvement Area of Ayia Phyla and who had let them out for rent, showing on such list the amount of fee with which each person was liable to pay under the provisions of the said bye-law in respect of the year 1962. The Board pursuant to the provisions of the said bye-law fixed the fee for the year 1962 at the rate of 3 per centum on the annual value of the premises.

All the premises appearing on the list were in fact situated in the "Kapsalos" area, and the fee in question was only imposed in respect of those premises which had actually been let by their owners during the year 1962, that is, it was imposed on 522 owners of premises in the "Kapsalos" area, but it was not imposed on 250 owners of premises who occupied their own premises in the Ayia Phyla area, on a few rented premises at Ayia Phyla (the Board admitted 7 such cases) and on a few owner-occupied premises in the "Kapsalos" area.

The appellant is the owner of a house in the "Kapsalos" area within the Improvement Area and during the year 1962 her house was let at a rent of £20 per month. She was duly assessed as being liable to pay in respect of the year 1962 3 per centum of the annual value of £240, that is, a fee of £7.200 mils.

The learned Judge based his judgment on the fact that the failure to collect the fee was only in respect of a few owners of rented premises in the village of Ayia Phyla (admitted by the Board to be 7 persons), and on this basis he was of the view that such failure did not invalidate the imposition of the fee in question made on the appellant under the provisions of section 24 of Cap. 243 and bye-law 180, and that the Board had not acted "in excess or abuse" of its powers in imposing such fee on the appellant.

It would seem that the learned Judge failed to take into consideration (a) that 250 owners-occupiers in the Ayia Phyla area, that is, about one-third of the assessable owners were not assessed, and (*b*) that the owners-occupiers of premises in the "Kapsalos" area were not assessed.

Considering the wording of bye-law 180 (which was made under the provisions of Cap. 243) to the effect that "*there shall be paid* in each year by the owner of any premises within the improvement area, which are actually *let* or *are in the occupation of such owner*.....", and considering that about one-third of the owners of premises in the Ayia Phyla area (250 persons) and a few in the "Kapsalos" area, who were liable to pay this fee were not assessed, the only irresistible conclusion is that the Board acted contrary to the provisions of the law and the appeal should therefore, be allowed, and a declaration made that the Board's decision is *null* and *void.*

Appeal allowed.
Decision complained of declared null and void. Appellant awarded her costs in the appeal and £20.- *against her costs in the trial Court.*

The decision appealed from runs as follows:—

MUNIR, J.: By this recourse under Article 146 of the Constitution the Applicant seeks a declaration that "the decision of the Respondents to impose, amongst others, to Applicant the payment of a fee, under Bye-law 180 of the Villages (Administration and Improvement) Bye-laws of Ay. Phylaxis, in respect of the year 1962, is *null* and *void* and of no effect whatsoever".

The material facts of this case are quite simple and are not in dispute. The Improvement Board of Ayia Phyla (hereinafter referred to as "the Board"), in exercise of the powers vested in it by section 24 of the Villages (Administration and Improvement) Law, Cap. 243, and particularly by subsection (1) (*d*) of the said section, made certain bye-laws which were published under Notification No. 619 in Supplement No. 3 to the Cyprus Gazette No. 204 of the 6th December, 1962, whereby the Villages (Administration and Improvement) Ayia Phyla Bye-Laws, 1952, were amended by the insertion in the principal bye-laws of certain new bye-laws, the material ones of which for the purposes of this case are bye-laws 180 and 184 (hereinafter referred to as "bye-law 180" and "bye-law 184", respectively).

The relevant part of bye-law 180, which is paragraph (1) thereof, reads as follows:—

> "180.—(1) There shall be paid in each year by the owner of any premises within the improvement area, which are actually let or are in the occupation of such owner or some other person with the owner's consent or permission (with or without the payment of rent or other consideration) during such year or any part thereof, a fee at a rate to be fixed in that year by the Board not exceeding five per centum of the annual value of such premises as estimated by the Board in respect of that particular year".

The term "annual value" appearing in bye-law 180(1) is defined in bye-law 184 as follows:—

> "The term 'annual value' in relation to any premises means, irrespective of the rent at which such premises may have been actually let at any time during the year for which the estimation is made, the annual rent at which such premises might reasonably be expected to be let in that year".

The Board, acting under the new bye-law 180, prepared and exhibited on the 20th December, 1962, a list of persons who owned premises within the Improvement Area of Ayia Phyla (hereinafter referred to as "the Improvement Area") and who had let them out for rent, showing on such list the amount of fee which each such person was liable to pay under the provisions of the said bye-law 180 in respect of the year

1962. The Board, in accordance with the discretion given to it by bye-law 180, fixed the fee in respect of the year 1962 at the rate of three per centum (and not the maximum of five per centum) of the annual value of the premises. The annual value of each of the premises in question, as estimated by the Board in accordance with bye-law 184, was also shown on the said list. This list (hereinafter referred to as "the list"), has been put in as *Exhibit* 1. A certificate signed by the Inspector of the Board dated the 21st December, 1962, appearing at the foot of the list (*Exhibit* 1) certifies that the list in question was displayed in various prominent places in the Improvement Area.

The Applicant, is the owner of a house in the Kapsalos area which is part of the Improvement Area. During the year 1962, the Applicant's said house was actually let at a rent of £20.- per month. In accordance with the definition of "annual value" in bye-law 184 the "annual value" of the Applicant's house, for the purposes of the fee payable under bye-law 180, was calculated as being £240.- in respect of the year 1962. The Applicant was duly assessed as being liable to pay, in respect of the year 1962, 3% of the said "annual value" of £240.-, which was a fee of £7.200. The Applicant's name and particulars appear under No. 445 on the aforementioned list (*Exhibit* 1).

This was the first occasion on which the Board had imposed a fee under section 24(1) (*d*) of Cap. 243 and bye-law 180 in respect of premises which had been let by their owners.

After the imposition of this new fee a number of individual persons lodged objections against such imposition with the Chairman of the Board, who is the District Officer of Limassol. In addition to individual objections a group of some 200 owners of such premises, including the Applicant, submitted on the 31st January, 1963, a joint petition (*Exhibit* 2), to the District Officer objecting to the imposition of the fee. This same group also made representations to the District Officer through their legal adviser Mr. John Potamitis advocate of Limassol.

On the 23rd April, 1963, the Chairman of the Board, after considering all the representations replied to the individual objectors in the terms of the specimen which has been put in as *Exhibit* 3, and to the group of the 200 joint objectors in the terms of his letter of the same date (*Exhibit* 4); he also

replied on the same date to the representations which had been made by Mr. John Potamitis (*Exhibit* 5).

The boundaries of the Improvement Area over which the Board exercises jurisdiction under Cap. 243 is a large area comprising not only the actual village proper of Ayia Phyla (from which the Board derives its name) but also a large developing area known as the Kapsalos area which has now virtually become a suburb of the town of Limassol. It was readily admitted by counsel for Respondent that all the premises listed on the list (*Exhibit* 1) were in fact situated in the Kapsalos area of the Improvement Area. It was also frankly and readily admitted by counsel for Respondent that the fee in question under bye-law 180 had only been imposed in respe ct of those premises which had actually been let by their owners during the year 1962.

At the hearing of this re course a preliminary issue was raised as to whether the recourse, which was filed on the 8th July, 1963, was filed within the period of 75 days prescribed by paragraph 3 of Article 146 of the Constitution. Counsel for Respondent submitted that as the list *Exhibit* 1 had been displayed in prominent places in the Improvement Area on the 20th December, 1962, and had, therefore, thus come to the knowledge of the persons concerned (including the Applicant) on that day, the period of 75 days under paragraph 3 of Article 146 should be calculated as from the 20th December 1962. Counsel for Respondent also submitted that even if the said period was to be calculated from the 23rd April, 1963, the date on which the replies of the Chairman of the Board were sent to the various objectors (including the Applicant), then the recourse was still out of time, because it was filed on the 76th day after the 23rd April, 1963.

It is, of course, true that the list (*Exhibit* 1) was displayed on the 20th December, 1962, but as the Applicant had made representations to the Respondent and had asked for a reconsideration of the original decision (i.e. that he should pay a fee of £7.200) and as such new decision was not conveyed to the Applicant until the 23rd April, 1963, then, in my opinion, the period of 75 days should be calculated not from the date on which the original decision was presumed to have come to the knowledge of the Applicant, i.e. not from the 20th December, 1962, but from the date on which the result of the consideration of his objection (i.e. the taking of

a new decision) was communicated to the Applicant, namely, from the 23rd April, 1963.

It should be noted in this connection that, pending reconsideration of the matter as a result of the objections which had been made, the Respondent deferred proceeding with the collection of the fee in question until such objections had been determined. It is stated in paragraph 4 of the letter of the Chairman of the Board to Mr. Potamitis of the 23rd April, 1963 (*Exhibit* 5) that collection would proceed 15 days after the receipt of that letter.

Calculating the period of 75 days from the 23rd April, 1963, it is correct, as submitted by counsel for Respondent, that the 8th July, 1963, the date on which this recourse was filed, is the 76th day after the 23rd April, 1963. I accept the submission of counsel for Applicant, however, that, as the 75th day in question, namely, the 7th July, 1963, was a Sunday, then the provisions of paragraph (*b*) of section 31 of the Interpretation Law, Cap. 1, must be invoked; this paragraph provides that in computing time "if the last day of the period is Sunday or a public holiday.....the period shall include the next following day, not being an excluded day".

For the above reasons I am, therefore, of the opinion, that this recourse has been filed within the time prescribed by paragraph 3 of Article 146 and is not, therefore, out of time.

The submissions of counsel for Applicant in support of his motion that the decision of Respondent to impose the fee in question on the Applicant should be declared *null* and *void* may be classified under the following four heads:—

(*i*) Retrospectivity

(*ii*) Double taxation

(*iii*) Discrimination

(*iv*) Excess or abuse of power

(*i*) Dealing first with the question of retrospectivity, it is true that the fee in question was introduced and imposed for the first time during December, 1962. It was, therefore, submitted by counsel for Applicant that, as the fee which was in respect of the year 1962 was only imposed shortly before

the end of that year, such imposition amounted to the imposition of retrospective taxation inasmuch as being imposed in December, 1962, it related to the whole of the period commencing with the 1st January, 1962, and ending with the 31st December, 1962. This being so, counsel for Applicant contended that such imposition was unconstitutional as being contrary to paragraph 3 of Article 24 of the Constitution, which provides that "No tax, duty or rate of any kind whatsoever shall be imposed with retrospective effect". Counsel for Respondent, relying on the Judgment of the Supreme Constitutional Court in the Case of *In Re-Tax Collection Law No.* 31 *of* 1962 *and Hji Kyriacos & Sons Ltd.*, 5 R.S.C.C., p. 22, at p. 30, submitted that as the legislation in question had been introduced before the expiration of the year in respect of which the fee had been imposed and, likewise, as the fee in question itself had been imposed before the expiration of that year, then such imposition was not retrospective in the sense of paragraph 3 of Article 24.

In its judgment in the above-cited case of *Hji Kyriacos & Sons Ltd.*, the Supreme Constitutional Court (at p.30) stated as follows:—

> "It is not retrospective taxation to tax in any year a person on the basis of his income in that particular year, by means of legislation enacted during that same year, because tax on income is imposed on an annual basis, and, therefore, the relevant legislation may be enacted at any time during the currency of the year concerned".

Although in this case the subject-matter is not tax imposed on the basis of a person's income but is a fee imposed under bye-law 180 in respect of premises which had been let, in my opinion the above-quoted principle laid down in the case of *Hji Kyriacos & Sons Ltd.*, applies equally to the facts of this case as it did to the facts of that case. The fee, which is the subject-matter of this case is also imposed on an annual basis, as is clear from the definition of "annual value" in bye-law 184. I am, therefore, of the opinion that in view of the fact that the relevant bye-laws have actually been made, and the fee in question has actually been imposed, during the currency of the year concerned, namely, during the year 1962, the imposition of the fee in question is not retrospective in the sense of paragraph 3 of Article 24 and is not, therefore, contrary to the provisions of that Article.

(*ii*) With regard to the issue of double taxation it may well be that the Applicant is liable to pay other forms of taxation, duties or rates (including the "annual rate" or "occupier's rate" imposed by the Board under paragraph (*h*) of sub-section (1) of section 24 of Cap. 243) as well as the particular fee which is the subject-matter of this recourse but I do not consider this to be a valid reason for declaring the imposition of the fee in question invalid on this ground. It has not been shown to the satisfaction of the Court that the fee in question is, having regard to the other taxes, duties or rates payable by the Applicant, "of a destructive or prohibitive nature", in the sense of paragraph 4 of Article 24 of the Constitution.

(*iii*) Coming now to the question of discrimination, counsel for Applicant has submitted that an unjust and unfair discrimination has been made, in the first place, between the owners of premises in the Kapsalos area, on the one hand, and the owners of premises in the village of Ayia Phyla, on the other. He submitted that, as all the persons on the list (*Exhibit* 1), being the only persons upon whom the fee under bye-law 180 had been imposed, are all persons who own premises in the Kapsalos area, and as none of the owners of premises in the village of Ayia Phyla has been made liable to pay such fees, the persons who owned premises in the Kapsalos area had been discriminated against. In this connection, counsel for Applicant at the resumed hearing of this case on the 20th February, 1965, tendered a list of persons who owned premises in the village of Ayia Phyla and who had actually let such premises and in respect of which premises the fee under bye-law 180 had, nevertheless, not been imposed by the Board. Counsel for Respondent agreed that seven out of the twelve names on this list (which names have been marked with a "x" and which list as so marked was put in as *Exhibit* 6) did in fact let their premises or, in some cases, some rooms in them while the owners themselves occupied the rest of the premises.

Counsel for Applicant also submitted that in addition to a discrimination being made between the owners of premises in the Kapsalos area and owners of premises in Ayia Phyla village, a discrimination had also been made between those persons who owned and occupied their premises themselves, on the one hand, and those owners who let their premises, on the other. He submitted that it was unfair and unjust

to impose an additional fee on a person who borrowed money with interest and mortgaged his property in order to build a house with which to earn a living by renting it and those persons who were fortunate enough to have the means to live in luxury in their own houses and who do not have the need to rent them.

Counsel for Applicant further submitted that there was also an element of discrimination as between, on the one hand, those persons who paid income tax (or personal tax) on the income derived from the leasing of their premises and who again had to pay the fee under bye-law 180 in respect of the same letting and, on the other hand, those persons who by living in the premises which they owned neither had to pay income tax (or personal tax) or the fee under bye-law 180.

In reply to the above submissions, counsel for Respondent had no hesitation in admitting, in my view very frankly and forthrightly, that, notwithstanding the more general and wider wording of bye-law 180, the implementation of the provisions of the said bye-law by the Board resulted, in practice, in the fee imposed thereunder being levied and collected only in respect of—

(*a*) premises which had actually been let by their owners and not in respect of premises actually occupied by their owners;

(*b*) premises situated only in the Kapsalos area of the Improvement Area and not in respect of premises situated in the actual village of Ayia Phyla.

With regard to (*a*) above, counsel for Respondent explained that an "annual rate" or "occupier's rate" was already payable under paragraph (*h*) of section 24(1) of Cap. 243 and bye-laws 186-190 of the principal bye-laws made by the Board. It was not the Board's intention to impose again a second "occupier's rate" under bye-law 180 on all occupied premises and that was why the fee under bye-law 180 was limited to premises which had been let by their owners.

As regards (*b*) above, counsel for Respondent again frankly explained the main purpose for which the fee under bye-law 180 had been imposed. The object of imposing this fee, he stated, was in order to meet the Board's expenditure in constructing, repairing and maintaining streets in the Improvement Area. This was the Board's responsibility under

the Streets and Buildings Regulation Law, Cap. 96, and the funds raised under that Law proved inadequate. Nearly all the streets for which the Board was thus responsible are situated in the suburban Kapsalos area which was developing and expanding and not in the village of Ayia Phyla. The persons who would benefit from the proceeds of the fees under bye-law 180 would thus be the owners of premises in the Kapsalos area, the value of which would be enhanced by improved streets, and not the owners of premises in the village. Furthermore counsel for Respondent pointed out that, as it was clearly evident from the list of premises in the village of Ayia Phyla which had been let by their owners (*Exhibit* 6), there were only a very few and negligible number of such premises in the village.

I have given careful consideration to this question of whether or not there has been any discrimination against the Applicant, in the sense of Article 28 of the Constitution, in any of the three respects submitted by counsel for Applicant and I have come to the conclusion that no such discrimination has taken place. Paragraph 2 of Article 28 of the Constitution prohibits "any direct or indirect discrimination against any person" on the various grounds specified in the said paragraph. In the case of *Mikrommatis and the Republic*, 2 R.S.C.C. p. 125 at p. 131, the Supreme Constitutional Court in its judgment pointed out that Article 28 "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 the above principle to the facts of this case, it was, in my opinion, reasonable for the Board to make a distinction in this respect between premises which were let and premises which were not. Likewise, it was reasonable, in my opinion, to make a distinction between rented premises which were situated in a developing urban or suburban area and such premises which were situated in a village and in which the owner himself lived. These are reasonable distinctions which, in my view, have to be made having regard to the intrinsic differences, by their very nature, between premises which are let and those which are not, and between premises in a village and those in an urban or suburban area. I am satisfied that there was no intention on the part of the

Board to discriminate against the Applicant, as such, either as an individual or by virtue of his being the owner of rented premises. I am, therefore, satisfied that the imposition of the fee under bye-law 180 on the Applicant does not contravene the provisions of Article 28 on any of the grounds submitted by counsel for Applicant.

(*iv*) With regard to the question of the Board having acted "in excess or in abuse of powers" vested in it, in the sense of paragraph 1 of Article 146, counsel for Applicant has submitted that although paragraph (*d*) of sub-section (1) of section 24 of Cap. 243 enables the Board to make bye-laws "to provide for the payment of rates or fees by the owner of any premises *whether let or in the occupation of the owner*", the Board, in exercise of the enabling power vested in it by the said section 24(1) (*d*), made bye-law 180 and in so doing thought fit to make the bye-laws in question applicable to the *whole* of the Improvement Area. He submitted that the relevant provision of bye-law 180 was imperative and mandatory because the bye-law used the words "There shall be paid.....". Counsel for Applicant submitted that once the Board had thought fit to exercise this discretion and to introduce mandatory bye-laws making it obligatory on *all* persons who rented their premises any where in the Improvement Area to pay the fee in question, then it was no longer in the discretion of the Board to levy and collect the fee in some cases only or in respect only of some persons or group of persons or in respect of some particular area of the Improvement Area. Once such bye-law of general application was made by the Board it was, he submitted, imperative for the Board to apply it universally in respect of everybody. Counsel for Applicant submitted, therefore, that the Board was acting in excess or in abuse of the powers vested in it by section 24 of Cap. 243, and by bye-law 180 made thereunder, in not levying and collecting the fee from *everybody* who let the premises which he owned situated anywhere in the Improvement Area, including the village of Ayia Phyla.

On this issue, in which I think there is more substance than the other issues raised by counsel for Applicant, I agree with counsel for Applicant that the strict wording of bye-law 180 requires that the fee in question *shall be paid* by all persons who come within the scope of that bye-law. The Board's understandable wish to confine the operation of

bye-law 180 only to the Kapsalos area of the Improvement Area could best have been achieved by invoking the proviso to sub-section (1) of section 24 of Cap. 243 which has apparently been designed for this very purpose and which provides that "the Board may, by notice signed by its Chairman and posted in a conspicuous place within the improvement area, limit the application of such bye-laws to such part of the improvement area as may be specified in the notices". Such action has not, however, been taken by the Board and I, therefore, have to consider whether the failure of the Board to require the payment of the fee in question from owners of premises in the village of Ayia Phyla (in the absence of an appropriate notice under the proviso to section 24(1) of Cap. 243) invalidates the imposition and collection of the fee in question from the Applicant.

Not losing sight of the statement made by counsel for Applicant that the list of 12 names submitted by him (*Exhibit* 6) (seven out of which counsel for Applicant agreed were persons who had let premises, or part thereof, situated in the village of Ayia Phyla) should only be regarded as an indication of the position in Ayia Phyla and that *Exhibit* 6 was not necessarily exhaustive, I am of the opinion, that—

(a) having regard to the very small number of premises in the village of Ayia Phyla which have been let, in whole or in part, by comparison with the total number of premises in the village (which counsel for both parties agreed were in the region of 250);

(*b*) having regard to the nature and type of the premises in the said village which were let and to the very low rent at which they appear to have been so let;

(*c*) having regard to the fact that the number of premises concerned in the village of Ayia Phyla and the total amount of fees involved is so insignificant compared with the 522 premises concerned in the Kapsalos area and the total amount of fees involved in the Kapsalos area;

(*d*) having regard to the fact that the legislature, by the proviso to section 24(1) of Cap.243 had intended to enable the Board to apply its bye-laws, at its discretion, to certain parts only of the Improvement Area (by complying, of course, with the procedure

laid down in the said proviso), the omission or failure of the Board to collect the fee from the few owners of rented premises in the village of Ayia Phyla cannot, and should not, be allowed to invalidate the imposition of the fee in question on the Applicant. In view of (*c*) above, I cannot accept the argument of counsel for Applicant that the collection of the comparatively small amount of fees in respect of rented premises in the village of Ayia Phyla would have made such an appreciable difference to the total sum involved as to necessitate the lowering of the rate of 3% fixed by the Board for the year 1962 (which already was less than the maximum) to an even lower rate.

This being so I am of the opinion that the failure to collect the fee from those few persons in the village of Ayia Phyla who might, on the strict interpretation of bye-law 180, have been liable to pay such fee, does not invalidate the imposition of the fee in question made on the Applicant in accordance with section 24 of Cap. 243 and bye-law 180, and that the Board has not acted "in excess or abuse" of its powers in imposing such a fee on the Applicant.

For all the reasons given above this application cannot succeed and it is dismissed accordingly.

Application dismissed.
No order as to costs.