

1966
April 18,
May 14

[TRIANTAFYLIDIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION,

CYPRUS INDUSTRIAL AND MINING CO. LTD., (No. 2),

Applicants,

CYPRUS

INDUSTRIAL AND
MINING CO.
LTD., (No.2)

and

THE REPUBLIC OF
CYPRUS,
THROUGH

1. THE MINISTRY
OF INTERIOR

2. THE PRINCIPAL
LAND REGISTRY

and

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTRY OF INTERIOR,

2. THE PRINCIPAL LAND REGISTRY,

Respondent.

(Case No. 223/65).

Immovable Property—Sale of mortgaged property by public auction—Grant of a provisional order postponing the sale of applicants' property until the final determination of recourse against part of a decision fixing a reserve price for such property made under sections 4 and 6 of the Immovable Property, (Restriction of Sales) Law, Cap. 223.

Administrative Law—Provisional Order—Principles applicable in granting or refusing a provisional order—Principles expounded in Georghiades (No. 1) and the Republic (1965) 3 C.L.R. 392 applied.

The applicants in the instant recourse, whereby they complain against the decision of the respondent fixing the sum of £6,000.— as a reserve price for their property, under sections 4 and 6 of the Immovable Property (Restriction of Sales) Law, Cap. 223 due to be sold on the 5th June, 1966, pursuant to a mortgage by applicants in favour of the Co-operative Central Bank applied for a provisional order, postponing the sale until the final determination of the recourse. The sale of the property was originally fixed to take place on the 12th December, 1965, but after various adjournments, it was eventually agreed between the parties to be postponed until the 5th June, 1966.

The Court approached the question of the granting or refusing of the provisional order applied for on the assumption that the final adjudication of the case will not have been effected by the 5th June, 1966.

Held : Taking into account all the relevant circumstances and bearing in mind the submissions of the parties and the

principles which should govern this Court in granting or refusing a provisional order, as expounded in *Georghiades* (No. 1) and *The Republic* (1965) 3 C.L.R., p. 392; having, also, given due regard to what counsel for the Co-operative Central Bank has had to say on the point ; bearing in mind that on the face of the recourse there appears to exist a serious question to be tried taking into account that should the sale be allowed to go through with an inadequate reserve price—assuming for the purposes of this Decision that it were to be found eventually to be inadequate—then this might result in irreparable harm to the applicants, and also to the public interest, which the provisions of Cap. 223 themselves are designed to safeguard, I have decided to make a provisional order suspending, pending the final determination of this Case, the effect of the decision fixing a reserve price for the sale in question to the extent to which it concerns the exact amount of such reserve price. I do so on condition that by the 31st May, 1966, applicants shall pay to the Co-operative Central Bank all interest due by them and that they shall continue to pay such interest, as accruing as per the terms of the mortgage debt ; should they fail to pay any interest, as above, then the respondent or the mortgagee shall be at liberty to apply to this Court for a review of the provisional order which I am now making.

Every possible effort will be made to dispose of this Case as easily as possible.

Regarding costs I direct that there should be costs in cause.

*Provisional order granted on
the above terms. Costs in cause.*

Cases referred to :

Georghiades (No. 1) and *The Republic* (1965) 3 C.L.R. 392.

Application for a provisional order.

Application for a provisional order postponing the sale of Applicants' property. Registration No. 23932 at Kato Polemidhia, pending the hearing of a recourse against the decision of the Respondent fixing the sum of £6,000.— as a reserve price for Applicants' said property.

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J. Potamitis with A. Triantafyllides, for the Applicants.

S. Georghiades, Counsel of the Republic, for the Respondent.

X. Clerides, for the Co-operative Central Bank.

Cur. adv. vult.

The following Decision was delivered by:-

TRIANAFYLLIDES, J.: On the 18th April, 1966, I reserved until today my Decision on an application by Applicants for a provisional order postponing, until the final determination of this Case, the sale of Applicants' property, under registration No. 23932 at Kato Polemidhia, which is due to take place on the 5th June, 1966, pursuant to a mortgage by Applicants in favour of the Co-operative Central Bank.

I postponed giving my Decision on the application for a provisional order because I thought it proper to decide first the preliminary legal issue as to whether or not this recourse is within the competence of this Court under Article 146. Having held today* that this Court has competence under Article 146 to entertain this recourse, I am now to give my aforesaid Decision.

An application for such a provisional order was made for the first time in this Case on the 22nd November, 1965; at the time the sale of the property of Applicants was fixed to take place on the 12th December, 1965.

On the 3rd December, 1965, an agreement was reached between the parties and the Co-operative Central Bank, which was invited to take part in the relevant proceedings as an Interested Party; it was thus agreed to postpone the said sale until the 27th March, 1966, provided Applicants paid to the Bank all interest due. As a result the application for a provisional order was withdrawn.

The hearing on this Case commenced on the 10th March, 1966, when the aforementioned preliminary legal issue was gone into.

In the meantime, as the sale of the property was fixed to take place on the 27th March, 1966, a new application

**Vide ante, at p. 467.*

for a provisional order was made, on the 22nd March, 1966, with a view to postponing such sale, and on the 23rd March, 1966, it was agreed between the parties, with the consent of the Co-operative Central Bank, that the sale be postponed until the 5th June, 1966, unless postponed by further order beyond such date, as a result of a new application to be made by Applicants for the purpose.

On the 4th April, 1966, this present application for a provisional order, postponing the sale until the final determination of this recourse, was made and it is on this last application that I am giving my Decision now.

Having already decided today, as stated earlier on, that this recourse is within the competence of this Court under Article 146 of the Constitution and it is to proceed to hearing on its merits, it is not reasonable to expect that it will be determined within even less than a month from today i.e. before the 5th June, 1966, bearing especially in mind the nature of the Case and the otherwise burdened lists of the Court.

So, I must approach the question of the granting or refusing of the provisional order applied for on the assumption that the final adjudication of this Case will not have been effected by the 5th June, 1966.

What is being sought by this application for a provisional order is, in effect, a postponement of the sale of the property of Applicants as per the mortgage of such property in favour of the Co-operative Central Bank.

The matter of the sale itself is not before this Court by way of this recourse. What is challenged by this recourse is only the decision taken under the Immovable Property (Restriction of Sales) Law, Cap. 223, about the reserve price fixed in relation to such sale; and not the whole of the decision to fix a reserve price, but only the amount of the reserve price so fixed i.e. part of the said decision.

Such reserve price had been originally fixed under section 4 of Cap. 223, and has been later, reviewed under section 6 thereof.

The fixing of a reserve price, at any amount, was a discretionary matter under section 4, and had it not been so fixed

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there would be nothing to prevent the sale in question from going ahead.

Once a decision to fix a reserve price has been taken, for the sale in question to take place such decision must be in force in every respect, including the part thereof relating to the amount of the reserve price.

So, I have to decide now whether to allow such decision to remain in force in every respect, and enable the sale to take place on the 5th June, 1966 as fixed, or to suspend the operation of such decision in part viz. to the extent to which it lays down the exact amount of the reserve price; it goes without saying that in the latter case the said sale cannot take place, because though it is a sale in respect of which a reserve price has been fixed, yet the amount of the reserve price would be in suspense.

Taking into account all the relevant circumstances, and bearing in mind the submissions of the parties and the principles which should govern this Court in granting or refusing a provisional order, as expounded in *Georghiades (No. 1) and The Republic* (1965) 3 C.L.R. p.392; having, also, given due regard to what counsel for the Co-operative Central Bank has had to say on the point; bearing in mind that on the face of the recourse there appears to exist a serious question to be tried; taking into account that should the sale be allowed to go through with an inadequate reserve price—assuming for the purposes of this Decision that it were to be found eventually to be inadequate—then this might result in irreparable harm to the Applicants, and also to the public interest, which the provisions of Cap. 223 themselves are designed to safeguard, I have decided to make a provisional order suspending, pending the final determination of this Case, the effect of the decision fixing a reserve price for the sale in question to the extent to which it concerns the exact amount of such reserve price. I do so on condition that by the 31st May, 1966, Applicants shall pay to the Co-operative Central Bank all interest due by them and that they shall continue to pay such interest, as accruing as per the terms of the mortgaged debt; should they fail to pay any interest, as above, then the Respondent or the mortgagee shall be at liberty to apply to this Court for a review of the provisional order which I am now making.

Every possible effort will be made to dispose of this Case as easily as possible.

Regarding costs I direct that these should be costs in cause.

*Provisional order granted on the above terms.
Costs in cause.*

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