

1967
April 11

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MODESTOS
SAVVA
PITSILLOS
v.

REPUBLIC
(MINISTER OF
AGRICULTURE
AND NATURAL
RESOURCES
AND ANOTHER)

[VASSILIADES, P., JOSEPHIDES, STAVRINIDES, LOIZOU,
HADJIANASTASSIOU, JJ.]

MODESTOS SAVVA PITSILLOS,

Appellant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF AGRICULTURE AND
NATURAL RESOURCES,
2. THE MANAGER OF WATER BOARD, NICOSIA,
Respondents.

(*Revisional Jurisdiction Appeal No. 26.*)

Constitutional Law—Article 146 of the Constitution—Jurisdiction of the Court on a recourse under Article 146 of the Constitution—It does not extend to cover administrative acts or activities falling within the domain of the private law—In the present case the Respondents' decision to demand from Appellant payment in relation to water alleged to have been supplied to him, is a matter of private law pertaining to the contractual relationship between the parties regarding the supply of water—The matter, therefore, is not within the jurisdiction of the Court acting under Article 146—And cannot become the subject-matter of a recourse thereunder.

Jurisdiction—Jurisdiction of the Supreme Court under Article 146 of the Constitution—Matters of private law and matters pertaining to contractual relationships—See above.

Recourse under Article 146 of the Constitution—Matters of private law—See above.

Private law—Matters of private law and the recourse under Article 146 of the Constitution—See above.

This is an appeal against a decision of one of the Judges of the Supreme Court, under the proviso to sub-section (2) of section 11 of the Administration of Justice (Miscellaneous Provisions) Law, 1964. This decision (reported in (1966) 3 C.L.R. 884) dismissed the Appellant's recourse made under Article 146 of the Constitution challenging the Respondents'

decision to demand from him payment in relation to water supplied to him.

The Court affirming the decision appealed from dismissed the appeal with costs in favour of Respondent 2.

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Triantafyllides J.) given on the 31.12.66 (Revisional Jurisdiction Case No. 148/64) dismissing a recourse against the Respondents' decision to demand from Appellant payment in relation to water supplied to him.

Appellant in person.

K. Talarides, Counsel of the Republic, for Respondent No. 1.

A. Triantafyllides, for Respondent No. 2.

The Judgment of the Court was delivered by:

ΒΑΣΙΛΕΙΑΔΗΣ ΠΡΟΕΔΡΟΣ: Ἡ παροῦσα ἔφεσις ἡσκήθη ὑπὸ τοῦ ἐφεσείοντος προσωπικῶς, ἐπὶ τῇ βάσει εἰδοποιήσεως κατὰ τύπους, εἰς τὴν ὁποίαν οὗτος ἐκθέτει ἐκτενῶς ὁκτῶ διαφόρους λόγους διὰ τοὺς ὁποίους ἰσχυρίζεται ὅτι ἡ ἀπόφασις* τοῦ πρωτοδίκου Δικαστηρίου δὲν εὐσταθεῖ. Πρόκειται περὶ ἐφέσεως κατὰ τῆς ἀποφάσεως ἐνὸς τῶν Δικαστῶν τοῦ Δικαστηρίου τούτου, δυνάμει τοῦ ἄρθρου 11 (2) τοῦ Περί Ἀπονομῆς τῆς Δικαιοσύνης (Ποικίλαι Διατάξεις) Νόμου τοῦ 1964.

Τὸ Δικαστήριον ἤκουσε τὸν ἐφεσείοντα μὲ ὄλην τὴν δέουσαν ὑπομονήν, καὶ κατέβαλε πᾶσαν δυνατὴν προσπάθειαν νὰ τὸν βοηθήσῃ, εἰς τὸ δύσκολον δι' αὐτὸν ἐγχείρημα, νὰ ὑποστηρίξῃ μίαν ἐφῆσιν τοιαύτης φύσεως. Θεωροῦμεν περιττὸν νὰ εἰσέλθωμεν εἰς λεπτομερείας σχετικῶς μὲ ἕνα ἕκαστον τῶν λόγων οἵτινες ἀναφέρονται εἰς τὸ σχετικὸν ἔγγραφο, ἢ ὡς ἐπεχείρησε νὰ τοὺς ἐκθέσῃ ἐνώπιον τοῦ Δικαστηρίου σήμερον, ὁ ἐφεσείων προσωπικῶς.

Εἶναι ἀρκετὸν νὰ ἀναφέρωμεν ὅτι καὶ εἰς αὐτὸ ἀκόμη τὸ στάδιον, δὲν εἶναι βέβαιον ἐὰν ὁ ἐφεσείων ἔχει καθαρὰν εἰς τὴν σκέψιν

*Σημ. Ἡ ἀπόφασις αὕτη ἐδημοσιεύθη εἰς τὸν τόμον τῶν Ἀποφάσεων τοῦ Ἀνωτάτου Δικαστηρίου (1966) 3 C.L.R., σελ. 884.

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του την διάκρισιν, μεταξύ μιᾶς προσφυγῆς κατὰ τῆς διοικητικῆς ἀποφάσεως τῆς ὁποίας τὴν νομιμότητα ἀμφισβητεῖ, καὶ τῆς οὐσίας τῆς ὑποθέσεώς του, ὡς οὗτος τὴν ἀντιλαμβάνεται, συμφώνως πρὸς τὴν ὁποίαν ἡ ἀρμοδία ἀρχὴ ζητεῖ παρ' αὐτοῦ τὴν πληρωμὴν δικαιωμάτων καταναλώσεως ὕδατος τὸ ὁποῖον ἰσχυρίζεται ὅτι ἐν τῇ πραγματικότητι οὐδέποτε ἐχρειάσθη, ἢ ἐχρησιμοποίηθη εἰς τὴν οἰκίαν του.

Δὲν ἐναπόκειται εἰς ἡμᾶς νὰ κρίνωμεν εἰς τὴν παροῦσαν διαδικασίαν, κατὰ πόσον οἱ ἰσχυρισμοὶ τοῦ ἐφεσίοντος καθ' ὅσον ἀφορᾷ τὴν κατανάλωσιν τοῦ ἐν λόγῳ ὕδατος, ἢ τὴν ἀξίαν του εἶναι βάσιμα. Οὔτε ἐὰν ἡ ἀπαιτήσις τῆς ἀρμοδίας ἀρχῆς εἶναι ὀρθή. Εἰς τὴν ἐνώπιόν μας διαδικασίαν, τὸ Δικαστήριον τοῦτο καλεῖται νὰ ἐξετάσῃ κατὰ πόσον ἡ ἀπόφασις τοῦ Δικαστοῦ ὅστις ἤκουσε τὴν ὑπόθεσιν εὐσταθεῖ ἢ ὄχι.

Εἶναι ἀρκετὸν τὸ ὅτι ἀφοῦ ἠκούσαμεν ἐν ἐκτάσει τὸν ἐφεσίοντα, οὐδένα λόγον εὐρίσκομεν ὅστις νὰ δικαιολογῇ οἰανδήποτε ἐπέμβασιν εἰς τὴν ἀπόφασιν κατὰ τῆς ὁποίας ἠσκήθη ἢ παροῦσα ἔφεσις. Εἶναι φανερὸν ἐκ τοῦ φακέλλου τῆς διαδικασίας ὅτι ἡ προσφυγὴ τοῦ ἐφεσίοντος ἐξητάσθη μὲ ὄλην τὴν ἀπαιτουμένην προσοχὴν ἐνώπιον τοῦ Δικαστοῦ ὅστις ἤκουσε τὴν ὑπόθεσιν. Καὶ ὅτι ἡ ἀπόφασις ἣτις ὁμιλεῖ ἀφ' ἑαυτῆς, ὀρθῶς ἐστηρίχθη ἐπὶ τῆς ἐνώπιον τοῦ Δικαστηρίου τεθείσης μαρτυρίας (προφορικῆς καὶ ἄλλης).

Ἡ ἔφεσις συνεπῶς ἀπορρίπτεται μὲ ἔξοδα καθ' ὅσον ἀφορᾷ τὸν δεύτερον ἐφεσίβλητον. Καθ' ὅσον ἀφορᾷ τὸν πρῶτον ἐφεσίβλητον, διὰ τὸν ὁποῖον παρουσιάσθη δικηγόρος τῆς Δημοκρατίας, νομίζομεν ὅτι, ὑπὸ τὰς συνθήκας, δὲν πρέπει νὰ ἐπιδικάσωμεν ἔξοδα ἐφέσεως.

Ἡ ἔφεσις ἀπορρίπτεται.
Διαταγὴ ὡς πρὸς τὰ ἔξοδα ὡς ἄνω.