

[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

LOUIS ARAOUZOS AND OTHERS,

*Applicants,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH THE  
DISTRICT OFFICER OF LIMASSOL AS THE  
APPROPRIATE AUTHORITY FOR THE VILLAGE  
AREA OF AYIOS TYCHONAS UNDER THE  
STREETS AND BUILDINGS REGULATION LAW  
CAP. 96,

*Respondent.*

(Case No. 198/67).

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*Streets and Buildings—Building permits outside municipal areas—Discretion of the appropriate authority (in this case the District Officer of Limassol) and general policy directed by a higher authority viz. the Council of Ministers—In deciding in this case not to grant a building permit to the Applicants, the District Officer has in fact done so to obey the directive given to him by his superior (the Minister)—Therefore, he failed to exercise himself the discretion entrusted to him under the law—The Streets and Buildings Regulation Law, Cap. 96, section 19(1)(a)(b)(c)(d)(k)(i)—The Streets and Buildings Regulations, regulation 6(1) (3) as amended by para. 3 of the Streets and Buildings (Amendment) Regulations, 1965 (of the 11th February, 1965)—Regulation 64 of the Streets and Buildings Regulations—Article 23.2 and 4 of the Constitution—See, also, herebelow.*

*Administrative Law—Discretionary powers—Principle of administrative law with regard to the due exercise of discretionary powers—Where a discretionary power is vested by legislation in an administrative organ, the exercise of such discretion cannot be assumed or regulated—Except with regard to legality—by any hierarchically superior organ—Unless there exists express provision to that effect.*

*Constitutional Law—Right of property—Deprivation of—Article 23.2 and 4 of the Constitution—The decision of the Dis-*

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*strict Officer to refuse to grant to the Applicants a permit to build on their site, the width of which is only 40 feet, on the ground that under regulation 6(3) (as amended, supra) no building can be erected less than 50 feet from the boundaries of the road—Amounts to a deprivation of the Applicants' right of property within paragraph 2 of Article 23—Which can only be achieved under the provisions and with the safeguards set out in paragraph 4 of the same Article—Inter alia, on payment in cash and in advance of a just and equitable compensation.*

*Building permits—Refusal—Annulled—See above.*

*Local authorities—Streets and Buildings—See above.*

*Discretionary Powers—Exercise—Discretion vested by law in an administrative organ cannot be assumed or regulated by any hierarchically superior organ, in the absence of express provision to that effect—See above.*

*Hierarchy—Administrative hierarchy—Powers of a hierarchically superior organ with regard to discretionary powers entrusted by law to its subordinate organ—See above.*

*Hierarchical control—See above.*

*Property—Right of—Deprivation of—The enforcement in the present case of regulation 6(3) of the Streets and Buildings Regulations (as amended, supra), which is so drastic in effect, amounts to a deprivation of the right of property under paragraph 2 of Article 23—Which cannot be achieved otherwise than in accordance with the provisions and with the safeguards set out in paragraph 4 of the same Article—See, also, above.*

*Deprivation of the right of property—Article 23.2 and 4 of the Constitution—See above.*

By this recourse the Applicants, who are the co-owners of a building site at Ayios Tychonas village, challenge the validity of the decision dated the 29th August, 1967, taken by the District Officer of Limassol, acting in the matter as the appropriate Authority under the Streets and Buildings Regulation Law, Cap. 96, and whereby he turned down their application for a permit to build on their aforesaid site. The reasons for the refusal of the Respondent to grant the building permit were that the Applicants' site has a width of only 40 feet, whereas under regulation

6(3) of the Streets and Buildings Regulations, as recently amended on the 11th February, 1965, no building could be erected in the circumstances of this case at a distance less than 50 feet from the boundary of the road on which the site in question abuts. It should be noted on the other hand, that under regulation 64 of the aforesaid Regulations a discretion is given to the Appropriate Authority to "dispense" "with all or any of the requirements of these regulations or apply them with such modifications, not being more onerous as to such authority may seem fit having regard to the particular circumstances of any case or the general conditions obtaining in the area".

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As it appeared from the files produced at the hearing of the case, the decision of the Respondent District Officer of Limassol not to grant the building permit applied for was taken on the instructions of a higher authority i.e. in the way of a general directive given to him in writing by the Minister to the effect that he (the District Officer) should not relax the distance of 50 feet provided by regulation 6(3) (*supra*), thus negating the exercise of the Respondent's discretion under regulation 64 (*supra*).

All material statutory provisions, as well as all material regulations and other provisions are quoted *post* in the Judgment of the Court.

In annulling the decision complained of, the Court:-

*Held*, (1). As I understand the principle of Administrative Law, with regard to the exercise of discretionary powers, is that an authority to which such powers have been entrusted by law cannot delegate the exercise thereof to another unless on the true construction of the relevant law it is clear that responsibility remains with the delegating authority acting through a subordinate in exercising the discretion. Nor may a discretion be surrendered whether the surrender takes the form of contracting in advance to exercise it in a particular way or of prejudging the way in which it shall be exercised. Nor can a statutory discretion be taken away by orders from a superior. *Yianakis Georgiades and The Republic (District Officer of Limassol)* (1966) 3 C.L.R. 153 at p. 171 per Triantafyllides J., *applied*; Vide also *A. Malais and The Republic*, (1966) 3 C.L.R. 444 at p. 459; *Sharp v. Wakefield and Others* [1891]

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A.C. 173, at pp. 179 and 181, per Lord Halsbury L.C.,  
*considered.*

(2) In the case in hand I have no difficulty at all to accept the submission of counsel for the Applicants; because there is no doubt in my mind that the District Officer has failed to exercise his discretion; and applied instead a general directive given to him in writing by his Minister to the effect that he should not relax the distance of 50 feet (*supra*), thus negating his discretion. Cf. *Simms Motor Units, Ltd. v. Minister of Labour and National Service* [1946] 2 All E.R. 201.

(3) In the particular circumstances of this case, and having regard to the fact that the width of the property of the Applicants is about 40 feet only, the decision of the District Officer to refuse to grant them a building permit amounts in my view, to a deprivation of the right of property within the ambit of para. 2 of Article 23 of the Constitution; and it can only be achieved under para. 4 of the same Article. The District Officer by enforcing the operation of regulation 6(3) as amended (*supra*), which is so drastic in effect, he virtually deprives the owner of his land and without the payment in cash and in advance of a just and equitable compensation. (See *Holy See of Kitiium and The Municipal Council of Limassol*, 1 R.S.C.C. 15).

*Sub judice decision annulled,  
with costs of £15 in favour  
of the Applicants.*

Cases referred to:

*Sharp v. Wakefield and Others* [1891] A.C. 173, at pp. 179,  
181 per Lord Halsbury L.C.;

*Simms Motor Units, Ltd. v. Minister of Labour and National  
Service* [1946] 2 All E.R. 201;

*Yiannakis Georghiades and The Republic (District Officer of  
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*A. Malais and The Republic* (1966) 3 C.L.R. 444 at p. 459;

*Holy See of Kitiium and The Municipal Council of Limassol*,  
1 R.S.C.C. 15.

## Recourse.

Recourse against the validity of a decision of the Respondent refusing the grant of a building permit to Applicants.

*G. Cacoyiannis*, for the Applicants.

*K. Talarides*, Counsel of the Republic, for the Respondent.

*Cur. adv. vult.*

The following Judgment was delivered by:-

HADJIANASTASSIOU, J.: In this recourse, under Article 146 of the Constitution, the Applicants who are the co-owners in equal undivided shares of a building site situated at "Lakkos tou Stokkou" locality of Ayios Tychonas village, challenge the validity of the decision made on the 29th August, 1967, by the Respondent.

The facts in brief are as follows:

On June 30, 1966, the Applicants applied to the Respondent for a building permit, to erect a building, on their plot No. 73 sheet-plan 54/45, of an extent of one evlek and 900 sq. ft., under registration No. 8131 dated 28th June, 1966, in accordance with the plans prepared by the third Applicant, who is a qualified architect. This plot which was purchased by the Applicants for building purposes has a frontage of about 120 feet and lies between the main Nicosia/Limassol road and the sea; its depth is 40 feet; it is situated about four miles east of Limassol town, and its value has greatly increased owing to building development in that area.

On July 29, 1966, the District Officer of Limassol town, replied that their application was under consideration. As there was a long delay the Applicants wrote again to the Respondent on December 10, 1966, and the District Officer replied informing them that their application was still receiving consideration.

On February 21, 1967, the Applicants' advocates wrote to the District Officer, and in their letter made it clear that in case of a refusal to grant them permit, their clients would consider the refusal as unconstitutional and illegal and would have no alternative but to seek a relief in the Supreme Court, and to demand damages.

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On April 4, 1967, the Applicants' advocates wrote again and on April 13, 1967, the District Officer replied that their clients' application was still receiving due consideration. On May 11, 1967, the Applicants' advocates wrote again a letter and on May 24, 1967, the District Officer replied that the case was receiving consideration by the Government, and that he would communicate with them as soon as he would receive their reply.

It appears that the District Officer, had received the directive of the Government, and on August 29, 1967, addressed a letter to the Applicants in which he says:-

«Έχω τήν τιμήν ν' αναφερθῶ εἰς τήν αἴτησίν σας τῆς 30ῆς Ἰουνίου, 1966, δι' ἧς αἰτεῖσθε τήν ἔκδοσιν ἀδείας οἰκοδομῆς δι' ἀνέγερσιν οἰκίας ἐπὶ τοῦ κτήματός σας ὑπ' ἀριθμὸν τεμαχίου 73 τοῦ Φύλλου/Σχεδίου 54/45 τοῦ χωρίου Ἁγίου Τύχωνα, καὶ νὰ σᾶς πληροφορήσω ὅτι δὲν εἶναι δυνατὴ ἡ ἔκδοσις τῆς αἰτουμένης ἀδείας καθ' ὅτι τὸ ἐν λόγῳ κτῆμα σας ἐφάπτεται τῆς ὁδοῦ Λεμεσοῦ-Λευκωσίας ἣτις ἐκηρύχθη ὡς ὑπεραστικὴ ὁδὸς δυνάμει τῆς Διοικητικῆς Πράξεως 122/66, ὁ Κανονισμὸς δὲ 6(3) τοῦ Περί Ὁδῶν καὶ Οἰκοδομῶν Νόμου ὡς οὗτος ἐτροποποιήθη διὰ τῆς Διοικητικῆς Πράξεως 74/65 προνοεῖ ἀνέγερσιν τῶν κτιρίων εἰς ἀπόστασιν 50 ποδῶν ἐκ τοῦ συνόρου ὑπεραστικῶν ὁδῶν. Εἰς τὴν περίπτωσίν σας τὸ πλάτος τοῦ κτήματός σας δὲν εἶναι ἀρκετὸν διὰ νὰ τηρηθοῦν αἱ πρόνοιαι τοῦ ὡς ἄνω Κανονισμοῦ».

The Applicants feeling aggrieved because of the decision of the District Officer not to grant them a building permit, brought the present recourse in the Supreme Court on October 25, 1967, claiming the following relief:

“A declaration that the decision of the Respondent refusing the permit applied for by the Applicants for the erection of a building on their plot No. 73 sheet-plan 54/45 at Ayios Tychonas village, communicated to the Applicants by his letter to them dated 29th August, 1967, is *null* and *void* and of no effect whatsoever”.

On February 3, 1968, the Respondent filed their Opposition claiming that the decision of the District Officer was lawful and was made after considering all material before him; and in view of the fact that the Applicants have failed to consider the effect of regulation 6(3) of the Streets and Buildings Re-

gulations, as well as the decision of the Council of Ministers declaring the road as "main thoroughfare".

It would be observed from the concluding words of the letter of the District Officer to the Applicants, that his decision to turn down the application for a building permit was due to the fact that the width of the plot was not sufficient in order to bring it within the provisions of regulation 6(3) as amended by the Streets and Buildings (Amendment) Regulations 1965.

The main question, therefore, which arises in view of the particular circumstances of the case of the Applicants, is whether the District Officer has in fact exercised his discretionary powers entrusted to him by the relevant law; and how far can the Courts control the exercise of discretionary power of the administration especially in the field when the private rights of the individual appear to be in conflict with the public interest. Be that as it may, since most powers given to the administration are discretionary, that is to say, exercisable at the discretion of the authority the Court cannot be asked to substitute its own discretion with that of the authority, for the simple reason that this would defeat the intention of the law which has entrusted the discretion to a particular organ of the administration.

With this in mind, and in order to solve the problem with which I am now confronted, I would like to express the appreciation of the court to counsel for the Respondent, because had it not been for his help in making the whole of the file of this case available, I confess that I would have felt some difficulty in deciding this case as, it would have made control by the Court of the improper exercise of powers very difficult or meaningless.

I think, it is now convenient, to deal with the relevant legislation. There is no doubt that the Streets and Buildings Regulation Law, Cap. 96, remains even to-day, the substantial law for purposes of planning; and upon such adequate planning the future well-being of the citizens of this land would depend and would accomplish social ends for the community as a whole. It is, therefore, understandable that the planning of to-day must provide long range plans for the community as a whole, but without however ignoring the economic aspect of planning; and in order to create a better physical

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environment not to jeopardize land interests of some of the citizens only.

The relevant provisions of section 19(1) are as follows:

“19(1) The Governor-in-Council may make Regulations to be published in the Gazette for all or any of the following purposes, that is to say—

- (a) the manner in which application for permits may be made and the terms under which such permits may be issued and for enabling appropriate authorities to prescribe forms for the purpose;
- (b) the attachment of special conditions to any permit;
- (c) providing for the means of supervision and control over streets or buildings for which permits have been granted either generally or in respect of streets or buildings in a particular area;
- (d) the minimum dimensions and shape of building plots in respect of which permits may be issued, the proportionate area of any building plot which may be built on and the distance of any building from the boundaries of the building plot;  
.....
- (k) any matters necessary for, or incidental to, securing the observance of the Regulations made under the provisions of this Law;
- (i) generally for the better carrying out of the provisions of this Law.  
.....”

It is to be observed that this section, has conferred all such power on the Governor-in-Council, in order to make regulations generally for the better carrying out of the provisions of this law.

Since Independence Day, however, the provisions of this law have to be read subject to the provisions of the Constitution and Article 188 thereof:-

Paragraph 3(b) provides:

“In any such law which continues in force under paragraph 1 of this Article unless the context otherwise requires-



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“(a) .....

(b) any reference to the Governor or the Governor-in-Council shall, in relation to such period, be construed as a reference to the President and the Vice-President of the Republic separately or jointly, according to the express provisions in this Constitution.....and to the Council of Ministers in matters relating to exercise of executive power;”.

So it is evident, that the new authority, is now the Council of Ministers and, is empowered to make regulations for the better carrying out of the provisions of the aforesaid law.

Under the provisions of Article 54 of the Constitution the Council of Ministers is the competent organ to exercise executive power in all matters, including the general direction and control of the Government of the Republic, and the direction of general policy, and for the coordination and supervision of all public services.

Regulations 6(1) of the Streets and Buildings Regulations regulates the heights, coverage of buildings and use of land.

Regulation 6(3) provides as follows:

“No part of the main building or alteration or addition to any existing building and no open verandah higher than four feet from the ground level shall be less than ten feet from any boundary of the plot on which it stands, except that in the case of industrial buildings the appropriate authority may secure such lesser or greater distance as it may in each case consider necessary or appropriate”.

In pursuance of the powers vested in them the Council of Ministers, made an order declaring part of Nicosia/Limassol road as “main thoroughfare” published in the Official Gazette of the Republic No. 482 dated 10th March, 1966, Not. 122 in Supplement No. 3.

The aforesaid order, is purported to have been made by the Council of Ministers, by the amendment to regulation 6(3), by paragraph 3 of the Streets and Buildings (Amendment) Regulations, 1965, published in Not. 74, Supplement No. 3 to the Official Gazette No. 387 dated 11th February,

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1965. The amending provisions of paragraph 3, read as follows:

«3. Η παράγραφος (3) του Κανονισμού 6 των βασικών Κανονισμών τροποποιείται ὡδε διὰ τῆς διαγραφῆς λέξεων αἰτίνες ἔπονται τῆς ἐν τῇ τετάρτῃ γραμμῇ κειμένης λέξεως 'ἴσταται' ('stands') καὶ τῆς ἀντικαταστάσεως αὐτῶν διὰ τῶν ἀκολουθῶν :

ἢ ὀλιγώτερον τῶν πενήτηντα ποδῶν ἀπὸ τῶν ὁρίων ὁδοῦ καθοριζομένης παρὰ τοῦ Ὑπουργικοῦ Συμβουλίου ὡς Ὑπεραστικῆς Ὀδοῦ διὰ γνωστοποιήσεως αὐτοῦ δημοσιευομένης ἐν τῇ ἐπισήμῳ ἐφημερίδι τῆς Δημοκρατίας ἢ ἀπὸ τῶν ὁρίων τμήματος τοιαύτης ὁδοῦ καθοριζομένης ἐν τῇ γνωστοποιήσει .....».

Then comes Regulation 64, which raises the point of discretion for decision. It provides as follows:

“Notwithstanding anything in these regulations contained, whether the appropriate authority is the Commissioner of the District or a Board of which the Commissioner is the Chairman, such authority may dispense with all or any of the requirements of these regulations or apply them with such modifications, not being more onerous, as to such authority may seem fit having regard to the particular circumstances of any case or the general conditions obtaining in the area”.

It would be observed that under this regulation the granting of a building permit to the Applicants is left to be done according to the discretion of the District Officer on whom the power of doing it is conferred, and his discretion must be exercised honestly and in the spirit of the law, otherwise the act done would not fall within that law.

Counsel for the Applicants has contended

(1) that the amending regulations are contrary to the provisions of the law and are in excess of the powers of the Council of Ministers and *ultra vires*, in that section 19 of the Streets and Buildings Regulation Law, Cap. 96, does not include a power to make regulations specifying the distance of a building proposed to be erected, from any boundaries, other than the boundaries of the plot on which the building is proposed to be erected.

(2) The declaration of the said road into a “main tho-

roughfare", and the said amending regulations of 1965, are so drastic and far reaching, as to amount to a deprivation of the Applicants' right to possess and enjoy their said plot and as such is contrary to Article 23 of the Constitution, and in particular to paragraphs 1 and 2 thereof; and that the Respondent ought to have accompanied his decision not to grant the said permit applied for by the Applicants with an offer to pay promptly just compensation. His failure to do so nullifies his said decision.

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(3) The decision of the Respondent was taken in excess and/or abuse of his powers because he failed to exercise his discretion under regulation 64 of the Streets and Buildings Regulations; furthermore counsel submitted that it becomes evident after perusing the file produced in evidence, that the decision not to grant the Applicants the building permit, was taken by a higher authority.

Counsel for the Respondent, on the other hand, submitted that it is not for the Court to decide whether the decision of the Council of Ministers was expedient; and that the Court retained the right of controlling the legality of such actions only. He further contended, that the District Officer in making his decision to turn down the application of the Applicants, it was not forced on him by the directive of the Council of Ministers, but he properly exercised his discretion taking into consideration all the material before him.

I propose dealing first, with the question whether or not, the District Officer in making his decision not to grant to the Applicants the building permit, he has failed to exercise his discretion, under the provisions of regulation 64, of the Streets and Buildings Regulations.

I think, it cannot be doubted upon the language and the whole purport of regulation 64, that outside the municipal areas, the proper authority is the District Officer, vested with absolute discretion entrusted to him, whether he will dispense with all or any of the requirements of these regulations having regard to the particular circumstances of each case.

It appears from the evidence before the Court, that the District Officer of Limassol, before making a decision in the present case, has consulted a lot of other departments of the Government; and has also received an advice from the Office of the Attorney-General. Finally on the 30th June, 1967,

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the Director-General of the Ministry of the Interior, under whose domain the District Officer comes, presented a submission to the Council of Ministers seeking their views with regard to the application of the Applicants, as well as for another 10 or 15 pieces of land abutting on the Limassol/Nicosia "main thoroughfare" road. See submission No. 581/67 (*exhibit 11A*).

On July 7, 1967, the Council of Ministers at their meeting reached a decision No. 6831, *exhibit 11*, of a general policy, with regard to the powers of the District Officers under the provisions of regulation 64, of the Streets and Buildings Regulation Law. It reads:

«Τὸ Συμβούλιον ἀπεφάσισεν ὅπως εἰς περιπτώσεις αἰτήσεων δι' ἔκδοσιν ἀδείας οἰκοδομῆς κτιρίων ἀπεχόμενων ὀλιγώτερον τῶν 50 ποδῶν ἀπὸ τῶν ὁρίων ὁδοῦ καθορισθείσης ὑπὸ τοῦ Ὑπουργικοῦ Συμβουλίου ὡς ὑπεραστικῆς ὁδοῦ δυνάμει τῆς παραγράφου (3) τοῦ Κανονισμοῦ 6 τῶν περὶ Ρυθμίσεως Ὁδῶν καὶ Οἰκοδομῶν Κανονισμῶν, ὁ οἰκείος Ἐπαρχος, ὡς ἀρμοδία ἀρχή, μὴ προβαίνει κατ' ἀρχήν, δυνάμει τοῦ Κανονισμοῦ 64 τῶν ἐν λόγῳ Κανονισμῶν, εἰς τὴν χαλάρωσιν τῆς προνοίας ὅσον ἀφορᾷ τὴν ἀπόστασιν τῶν 50 ποδῶν. Ἐὰν ὑπάρχουν περιπτώσεις διὰ τὰς ὁποίας κατὰ τὴν κρίσιν τοῦ Ἐπαρχοῦ δεόν νὰ παραχωρῶνται χαλαρώσεις, αὗται δεόν ὅπως ἀναφέρωνται εἰς τὸν Ὑπουργὸν Ἐσωτερικῶν δι' ὑποβολὴν εἰς τὸ Ὑπουργικὸν Συμβούλιον ὁμοῦ μετὰ τῶν εἰσηγήσεών του».

On the same date the Council of Ministers, after considering the application of the Applicants have reached a decision No. 683, *exhibit 11A*, which reads:

«..... Ἀπεφασίσθη ὅπως συσταθῆ εἰς τὸν Ἐπαρχον Λεμεσοῦ, ὡς ἀρμοδίαν ἀρχήν, ὅπως μὴ παραχωρήσῃ χαλάρωσιν τῆς ἀποστάσεως τῶν 50 ποδῶν ἐν σχέσει μὲ τὴν ἐν λόγῳ αἴτησιν».

It would be observed, and I lay stress on this, that whilst the first decision of the Council of Ministers was dealing with a general policy, in the case of the Applicants, the Council of Ministers had decided to direct the District Officer of Limassol, as the competent authority, not to relax the provisions of the amending regulation with regard to the distance of 50 feet.

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Following the decision of the Council of Ministers, the Director-General of the Ministry of Interior, addressed a letter dated 15th July, 1967, under the provisions of para. 2 of Article 58, to the District Officer of Limassol, informing him of the decision of the Council of Ministers reached on the 7th July, 1967. See Blue 35. As a result of this letter, the District Officer, wrote to the Applicants rejecting their application for a building permit.

Dealing with the question of "discretionary powers" I consider it constructive to quote the words of Lord Halsbury, L.C. in *Sharp v. Wakefield and Others* [1891] A.C. 173. Lord Halsbury L.C., delivering his speech in the House of Lords, had this to say at p. 179:

"An extensive power is confided to the Justices in their capacity as Justices to be exercised judicially; and 'discretion' means when it is said that something is to be done within the discretion of the authorities that that something is to be done according to the rules of reason and justice, not according to private opinion: *Rooke's* case 5 Rep. 100, A.; according to law and not humour. It is to be, not arbitrary, vague and fancible, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself; *Wilson v. Rastall*, 4 T.R. at p. 757.

Later on he says at p. 180:

"So a discretion which empowers justices to grant licence to inn-keepers as in the exercise of their discretion they deemed proper would not be exercised by coming to a general resolution to refuse a licence to everybody who would not consent to take out an excise licence for the sale of spirits: *Reg. v. Sylvester* 31 L.J.M.C. 93".

As I understand the principle of Administrative Law, with regard to the exercise of discretionary powers, is that an authority to which the exercise of discretion has been entrusted by law cannot delegate that exercise to another unless upon the construction of the relevant law it is clear that responsibility remains with the delegating authority acting through a subordinate in exercising the discretion. Nor may a discretion be surrendered, whether the surrender takes the form of contracting in advance to exercise it in a

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particular way or of prejudging the way in which it shall be exercised. Nor can a discretion be taken away by orders from a superior.

Mr. Justice Triantafyllides, dealing with the discretion of the District Officer of Limassol, under section 67 of the Municipal Corporations Law, Cap. 240, in *Yiannakis Georgiades and The Republic (District Officer of Limassol)*, (1966) 3 C.L.R. 153, and after quoting with approval a passage from Kyriakopoulos on Greek Administrative Law, 4th edition vol. II, had this to say at p. 171.

“Where a discretionary power is vested by legislation in an administrative organ the exercise of such discretion cannot be assumed by or regulated — except with regard to legality — by any hierarchically superior organ, unless there exists express provision to that effect”.

*Vide also A. Malais and The Republic*, (1966) 3 C.L.R. 444 at p. 459.

As I have said earlier, the District Officer, has full discretion under regulation 64, of the Streets and Buildings Regulations in licensing matters, but in my view, it was his duty to consider the application of the Applicants, and apply his mind in the case presented to him irrespective of whatever general policy the Council of Ministers have decided upon. I must further add, that each Applicant must be given within the four corners of regulation 64, the opportunity of urging that the general policy should not be applied in the particular circumstances of his case.

In the present circumstances of the case in hand I have no difficulty at all to accept the submission of counsel for the Applicants; because there is no doubt in my mind, that the District Officer has failed to exercise his discretion; and applied instead a general directive given to him in writing by his Minister to the effect that he should not relax the distance of 50 feet in the case of the Applicants, thus negating the exercise of his discretion. Cf. *Simms Motor Units, Ltd. v. Minister of Labour and National Service*, [1946] 2 All E.R. 201.

That this is so, and that the directive of the Minister of the Interior was thought by the District Officer as binding on him, it is made amply clear by the frank admission of the District Officer, that he has surrendered his discretion, in a

letter written to the Attorney-General dated 10th November, 1967 (blue 44). It reads:

“The decision for refusing to grant the permit was made after the instructions from the Government in accordance with the letter dated 15th July No. 195/61/2 of the Ministry of the Interior”.

For the reasons I have advanced, and in the light of the particular facts of this case, I have reached the conclusion that the District Officer of Limassol has not exercised his discretion entrusted to him by the law, and in my view, he has acted contrary to law and in abuse of his powers.

The *sub judice* decision, therefore, should be annulled, and declared *void* and of no effect whatsoever. In the light of this Judgment, I take it, that the Respondent will reconsider the application of the Applicants for a building permit.

With regard to the second contention of counsel for the Applicants, I would like to make this observation: It appears to me, that when the Applicants applied to the District Officer for a building permit under section 3 of Cap. 96, were aware that this requirement was connected with the right of property safeguarded by para. 1 of Article 23, which includes the right to possess and enjoy property. Para. 2 of Article 23 provides that no deprivation or restriction or limitation of any such right would be made except as provided for in this Article.

In the particular circumstances of the case in hand, and having regard to the fact that the width of the property of the Applicants is about 40 feet only, the decision of the District Officer to refuse to grant them a building permit, amounts in my view, to a deprivation of the right of property within the ambit of para. 2 of Article 23; and it can only be achieved under para. 4 of the same Article. The District Officer by enforcing the operation of para. 3 of the Amending Regulations of 1965, which is so drastic in effect, he virtually deprives the owner of his land and without the payment in cash and in advance of a just and equitable compensation. See *Holy See of Kitium and The Municipal Council of Limassol*, 1 R.S.C.C. 15.

I would like to leave the question open whether para. 3 of the Streets and Buildings (Amendment) Regulations, 1965,

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are contrary to the provisions of the law and are in excess of the powers of the Council of Ministers and *ultra vires*.

With regard to costs, I have decided to award an amount of £15.- only in favour of the Applicants.

*Sub judice decision annulled.  
Order for costs as aforesaid.*