

[TRIANTAFYLIDIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

PHOTINI ANTONIOU,

Applicant,

and

THE MUNICIPAL COMMITTEE OF NICOSIA,

Respondent.

(Case No. 80/67).

1968
Aug. 10
—
PHOTINI
ANTONIOU
v.
THE MUNICIPAL
COMMITTEE
OF NICOSIA

Town Planning—Street-widening scheme—Alignment—Recourse against a street-widening scheme published under the provisions of section 12 of the Streets and Buildings Regulation Law, Cap. 96—Grant of a building permit, two months prior to the publication of such scheme, and erection thereunder on a plot next to the plot owned by the Applicant of a building less distant from the new alignment than the 10 feet prescribed by the Streets and Buildings Regulations—Street-widening scheme not so much prejudiced by such building as to be frustrated thereby—Not a case of discriminatory treatment against Applicant—See, also, herebelow.

Street-widening scheme—Alignment—Section 12 of Cap. 96 (supra)—Where a street-widening scheme does not affect a building site to such an extent as to render it unsuitable for use as a building site—Such scheme does not amount to anything more than the imposition of restrictions or limitations in the sense of paragraph 3 of Article 23 of the Constitution—Giving rise in a proper case to a claim for compensation under the provisions of paragraph 3 of Article 23—See, also, above.

Alignment—Street alignment—See above under Town Planning; Street-widening Scheme.

Administrative Law—Discretionary powers of the administration—Since it was reasonably open to the Respondent authority, in the light of all material considerations, to take the decision complained of (in the present case to publish the street-widening scheme complained of), the Court, cannot substitute therefor its own decision.

Discretionary powers—Proper exercise—No abuse or excess of powers—See, also, above under Administrative Law.

Constitutional Law—Restrictions or limitations of the right of ownership—Article 23.2 of the Constitution—See above under Street-widening Scheme.

Limitations or restrictions of the right of ownership—See above under Street-widening Scheme.

Streets—Street-widening scheme—See above.

In this case the Applicant complains against a street-widening scheme published by the Respondent municipality under the provisions of section 12 of the Streets and Buildings Regulation Law, Cap. 96 in the Official Gazette on the 7th February, 1967, in relation to Prodromos street, in Nicosia and affecting, *inter alia*, her plot No. 370.

The main complaints of the Applicant were two: (a) that the new alignment under the said scheme had been frustrated because of a building permit issued by Respondent in respect of plot 367, which is next to Applicant's plot 370 (affected by the scheme), and, therefore, the scheme ought not to have been adopted in its present form; and (b) that, in the circumstances, the Applicant was the victim of a discriminatory treatment, in view of the manner in which the owner of plot 367 was allowed to build thereon by virtue of the afore-said building permit. This permit was applied for by the owner of the said plot 367 on the 1st October, 1966 and granted on the 30th November 1966.

On the facts of this case the Court declined to annul the scheme complained of on either ground, and:

Held, (1). May be the Respondent's attitude could be criticized in the sense that once the building permit in respect of plot 367 (*supra*) was granted there might have been some consequent alteration of the then proposed new alignment, at the particular spot; but this Court cannot annul the *sub judice* scheme on such a ground, because in a technical matter such as this it cannot substitute its own discretion in the place of that of the Respondent, which is the appropriate authority.

(2) Bearing in mind that the new building on the said

plot 367 interferes to a minimal extent—one foot only—with the new alignment, I am of the view that it was reasonably open to the Respondent in the light of all material considerations, to act as it did in the matter.

*Application (recourse) dismissed.
No order as to costs.*

1968
Aug. 10
—
PHOTINI
ANTONIOU
v.
THE MUNICIPAL
COMMITTEE
OF NICOSIA

- Per curiam:* (1) It has been laid down in *Thymopoulos and The Municipal Committee of Nicosia* (1967) 3 C.L.R. 588, that when a street-widening scheme does not affect a building site to such an extent as to render it unsuitable for use as building site, such scheme amounts to no more than the imposition of restrictions or limitations within Article 23.3 of the Constitution; and this is so in the present case in view of the quite limited extent to which the new alignment affects Applicant's plot 370.
- (2) Any prejudice which the Applicant will suffer as a result, *inter alia*, of the protrusion of the building on the other plot 367 into the new alignment, is a matter relevant to the issue of compensation that may, possibly, arise under Article 23.3 of the Constitution; and it is a factor to be borne in mind, also, in case the Applicant applies in future for a relaxation of the relevant provision in the Streets and Buildings Regulations so as to be enabled to build nearer the new alignment than the 10 feet, as the owner of plot 367 has done.

Cases referred to:

Thymopoulos and the Municipal Committee of Nicosia (1967)
3 C.L.R. 588.

Recourse.

Recourse against the validity of a street-widening scheme published by the Respondent under the provisions of section 12 of the Streets and Buildings Regulation Law Cap. 96.

A. Emilianides, for the Applicant.

K. Michaelides, for the Respondent.

Cur. adv. vult.

1968
Aug. 10

PHOTINI
ANTONIOU
v.
THE MUNICIPAL
COMMITTEE
OF NICOSIA

The following Judgment was delivered by:—

TRIANTAFYLIDIS, J.: In this case the Applicant complains, in effect, against a street-widening scheme published, by the Respondent, under the provisions of section 12 of the Streets and Buildings Regulation Law (Cap. 96), in the official Gazette, on the 7th February, 1967, in relation to Prodromos Street, in Nicosia.

Such scheme is shown on a plan which is *exhibit 1* in these proceedings; the parts of properties affected by the scheme are coloured yellow.

The property of the Applicant is plot 370 on *exhibit 1*, and there stands on it, at present, a residence which is about 30 years old. The total area of plot 370 is about 6960 square feet, and the scheme affects about 1050 square feet out of such area.

By the Application in this recourse several grounds have been raised against the validity of the scheme, but at the hearing of the case the Applicant has limited herself to two main submissions: (a) that the new alignment, under the scheme, had been frustrated, because of a building permit issued by Respondent in respect of plot 367, which is next to plot 370, and therefore, the scheme ought not to have been adopted in its present form; and (b) that, in the circumstances, the Applicant is the victim of discriminatory treatment, in view of the manner in which the owner of plot 367 was allowed to build by virtue of the aforesaid building permit.

Such permit was applied for by the owner of plot 367 on the 1st October, 1966.

The *sub judice* street-widening scheme was adopted at a meeting of the Respondent on the 4th November, 1966—see the relevant minutes, *exhibit 4*.

It appears from the said minutes that the Respondent had before it, at the time, a report of the Department of Planning and Housing, dated the 15th September, 1966, regarding the proposed street-widening scheme (see *exhibit 3*).

Respondent had before it, also, a report of the Municipal Engineer, dated the 14th October, 1966, (see *exhibit 2*) in

which it was stated that the building to be erected on plot 367—on the strength of the pending application for a building permit—would be only 4 feet away from the new alignment, under the scheme, and a corner of such building would overlap across the new alignment to the extent of one foot.

It was suggested in *exhibit 2* that the least that could be done was to change the position of the proposed building on plot 367, so as to avoid affecting the new alignment.

Apparently this course was not adopted, and the building permit in respect of plot 367 was granted on the 30th November, 1966, as applied for.

As a result of the grant of the building permit, and the erection, consequently, on plot 367 of a building less distant from the new alignment than the 10 feet prescribed under the relevant provision of the Streets and Buildings Regulations, it follows that any new structure, to be built on plot 370, 10 feet away from the new alignment, will not be in line with the building on plot 367, but it will be further back from the street.

The envisaged width of Prodromos street, at the point concerned, is 42 feet, and there will be a pavement, on the side of plots 370 and 367, about 6 feet wide.

I have considered carefully the submissions of learned counsel for the Applicant, as well as the evidence adduced in support thereof.

In the first place, the Respondent had before it, at all material times, the relevant report of the Municipal Engineer (*exhibit 2*) and it cannot be said that it has acted under any misconception as to material facts.

It cannot be denied that the implementation of the new alignment, in relation to plot 367, will be considerably delayed, for perhaps some decades, in view of the new building which has just been erected thereon, as aforesaid.

But, in the circumstances, and as a street-widening scheme is a very long-term plan for the future, I cannot reach the conclusion that the street-widening scheme in question has been so much prejudiced by the new building on plot 367

1968
Aug. 10
—
PHOTINI
ANTONIOU
v.
THE MUNICIPAL
COMMITTEE
OF NICOSIA

1968
Aug. 10

PHOTINI
ANTONOU
v.

THE MUNICIPAL
COMMITTEE
OF NICOSIA

that it ought to be treated as frustrated thereby, or that the Respondent ought not to have adopted it at all, once it was faced with the application for a building permit in respect of such plot; nor can I accept that, because between its adoption by the Respondent, on the 4th November, 1966, and its publication, on the 7th February, 1967, there has intervened the grant of the building permit, in respect of plot 367, on the 30th November, 1966, the Respondent has, in any way, acted in excess or abuse of powers in publishing such scheme.

May be the Respondent's attitude could be criticized in the sense that once the building permit in respect of plot 367 was granted there might have been made some consequent alteration of the new alignment, at the particular spot; but this Court cannot annul the *sub judice* scheme on such a ground, because in a technical matter such as this it cannot substitute its own discretion in the place of that of the Respondent, which is the appropriate authority. In effect, the Respondent has, in the circumstances, decided to adopt the scheme in its present form, notwithstanding the fact that its full and final implementation may be delayed through the existence of the new building on plot 367. Bearing in mind, especially, that such building interferes to a minimal extent—one foot only—with the new alignment, I am of the view that it was reasonably open to the Respondent, in the light of all material considerations, to act as it did in this matter.

Nor have I been able, in the circumstances, to see how there could arise a case of discriminatory treatment against the Applicant, because of the building permit granted to the owner of plot 367; the Applicant and the owner of plot 367 were not on the same footing at the material time, as the former had not applied, already, like the latter, for a building permit.

It has been laid down, in *Thymopoulos and The Municipal Committee of Nicosia*, (1967) 3 C.L.R. 588, that when a street-widening scheme does not affect a building site to such an extent as to render it unsuitable for use as a building site, it does not amount to anything more than the imposition of restrictions or limitations, in the sense of Article 23.3 of the Constitution; and this is so in the present case, in view of the quite limited extent to which the new alignment affects plot 370.

Any prejudice which the Applicant will suffer as a result of the protrusion of the building on plot 367, is a matter relevant to the issue of compensation that may, possibly, arise under Article 23.3 of the Constitution; and it is a factor to be borne in mind, also, in case the Applicant applies in future for a relaxation of the relevant provision of the Streets and Buildings Regulations so as to be enabled to build nearer the new alignment than 10 feet, as the owner of plot 367 has done.

In the light of the foregoing reasoning this recourse fails and it is dismissed accordingly; but in the circumstances I am not prepared to make any order as to costs.

Application dismissed.

No order as to costs.

1968
Aug. 10
—
PHOTINI
ANTONIOU --
v.
THE MUNICIPAL
COMMITTEE
OF NICOSIA