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[HADJIANASTASSIOU, J.]

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v.
REPUBLIC
(MINISTER OF
INTERIOR
AND ANOTHER)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHRISTAKIS CHRISTODOULOU,

Applicant,

and

THE REPUBLIC OF CYPRUS THROUGH,
THE MINISTER OF INTERIOR,
2. THE DIRECTOR OF LANDS AND SURVEYS,

Respondents.

(Case No. 144/67).

Immovable Property—Certificate of registration—Error, omission in such certificate—Correction of such error etc. etc.—A matter within the domain of private law—Decision of the Director of the Lands Office either to make or decline such correction—Primary object of such decision not the promotion of a public purpose but merely the regulation of private civil rights—Consequently such decision is a matter governed by private law and not a matter in the realm of public law—Therefore, the Court has no competence to entertain a recourse under Article 146 of the Constitution aimed at such matter—The Immovable Property (Tenure Registration and Valuation) Law Cap. 224 section 61—Cf. section 45 of said Law—Cf. infra.

Recourse under Article 146 of the Constitution—Not entertainable in matters within the domain of private law—Such as the refusal of the Director of Lands Office to correct error or omission in a certificate of registration under section 61 of Cap. 224 (supra)—Such decision is not in the realm of public law—Consequently the Court has no competence to entertain the present recourse challenging the refusal of the Director to make corrections as aforesaid—See further supra.

By this recourse under Article 146 of the Constitution the Applicant seeks to challenge the decision of the District Lands Officer dated July 3, 1967, whereby, rejecting Applicant's request dated June 11, 1963, he refused to amend the boundaries of a plot of land registered in the name of the Applicant. It would appear that by his said request based on section 61 of

the Immovable Property (Tenure Registration and Valuation) Law, Cap. 224 the Applicant was inviting the District Lands Officer to correct an alleged omission or mistake or error in the relevant title-deed of his aforementioned plot of land.

Counsel for the Respondents took the preliminary point that the matter is outside the jurisdiction of the Court on a recourse under Article 146 of the Constitution, because the decision complained of amounts to a determination of civil rights and is, therefore, a matter clearly outside the ambit of public law, falling within the domain of private law. In support of his submission counsel for the Respondents relied mainly on the authority of *Valana and The Republic*, 3 R.S.C.C. 91.

The Court after reviewing the facts of the case and the relevant authorities, upheld the submission made by counsel for the Respondents (*supra*) and:

Held, (1). It is clear to me that by his request of 1963 (*supra*) the Applicant was merely asking the Director of the Lands Office (through the District Lands officer of Nicosia, *supra*) to exercise his powers under section 61 of Cap. 224 (*supra*) and to correct an error or omission or mistake in the relevant certificate of registration, regarding the boundaries of his aforesaid plot of land.

(2) But in the light of the authorities, the correction of errors or omissions or mistakes in any certificate of registration with regard to immovable property is a matter falling within the domain of private law; and the primary object of the Director's powers in relation to the correction of such errors etc. etc. is not the promotion of a public purpose, but merely the regulation of civil rights.

(3) Having reviewed the authorities, I have decided to follow and adopt the principle laid down in the *Valana's* case (*supra*) and I have reached the conclusion that the *sub judice* decision of the Director is a matter within the domain of private law and not in the realm of public law; consequently, it is not a matter within the provisions of Article 146 of the Constitution. I would, therefore, dismiss this recourse because this Court has no competence to entertain it.

Recourse dismissed.

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Cases referred to:

HadjiKyriacou and HadjiApostolou and Others, 3 R.S.C.C. 89,
at pp. 90—91;

Valana and The Republic, 3 R.S.C.C. 91 at pp. 93—94;

Charalambides and The Republic, 4 R.S.C.C. 24 at p. 25.

Recourse.

Recourse against the decision of the Respondents refusing, *inter alia*, to amend the boundaries of Applicant's property.

A. Triantafyllides with *G. Constantinides*, for the Applicant.

M. Kyprianou, Counsel of the Republic, for the Respondents.

Cur. adv. vult.

The following judgment* was delivered by:—

HADJIANASTASSIOU, J.: In these proceedings, under Article 146 of the Constitution, the Applicant seeks to challenge the decision of the District Lands Officer dated July 3rd, 1967:—

(a) Not to amend the boundaries of his property by substituting the boundary "plot 135 Government of Cyprus" with "road" is *null* and *void* and of no effect whatsoever;

(b) That the decision of the Respondents to appropriate or take away part of Applicant's property is *null* and *void* and of no effect whatsoever, and or their omission to restitute such part to Applicant's property ought not to have been made and whatever has been omitted should have been performed.

The facts so far as relevant to this issue, are as follows:—

The Applicant is the registered owner of a piece of land which is situated on the Nicosia – Morphou road, opposite the Arkadi night club. The extent of this property is just over 3½ donums in extent. This property was purchased some time in 1958, and together with Applicant's other adjacent land, is now about 7 donums in extent. The title-deed was issued to the Applicant some time in 1959, stating therein that one of the boundaries was a road.

* For final judgment on appeal see p. 377 in this Part *post*.

It appears that the Director in 1960 has ordered a general registration to be made of all the immovable property of Yerolakkos village, in accordance with section 45 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224. In the plans and particulars posted up in accordance with the aforesaid section of the law, Applicant's property was given plot 134 of block K with the following boundaries:- "Plot 135 Government of Cyprus, plot 136 Despina Loizi Xenidi; plot 28 Eleni Djambazi and plot 121 Government of Cyprus".

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As the Applicant did not object to these proposals within the period of 60 days provided in section 45(a) of our law, the Director proceeded to register such property in the name of the Applicant under Registration No. K38/21.5.60 with plot 135 as a boundary to Applicant's property on the side facing the new airport deviation road. Plot 135 was, at the same time, registered in the name of the Government under Registration No. K39 / 21.5.60.

On June 11th, 1963, the Applicant, through his advocates, addressed a letter (*exhibit 1*) to the District Lands Officer of Nicosia, requesting a correction of the registration issued in his name. It reads:-

"We have been instructed by our client the above Applicant to have the following omission and/or mistake and/or error corrected in accordance with section 61 of CAP. 224.

2. The facts of this case are as under:

- (a) On the 30th June, 1959, he was the registered owner of the property under Registration No. 20359 under the old registration of plot 62, sheet XXI plan 51 of an extent of 3 donums, 2 evleks and 2200 ft. at the locality 'Kamini tou Krokatsi' new road of Morphou and bounded by Road; plot 67 Despinou Michael Xyni and plot 63 Elengou Georghiou Djambazi.
- (b) On the 22nd May, 1960, under the General Registration the Applicant was issued for the same property a certificate of registration comprising the following particulars: Registration No. K38 Sheet XXI, plan 51 E.1 & W.1 plot

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134 near plot 28 on scale 1/2500 of an extent of 3 donums, 2 evleks and 2200 ft. at locality 'Kamini tou Krokatsi' and bounded by plot 135 Government of Cyprus; plot 136 Despina Michael Loizi Xenides; plot 28 Eleni Georghiou Djambazi; plot 121 Government of Cyprus.

3. From the latter description of the boundaries of the Applicant's property it is quite clear the road boundary has been omitted which is very essential factor to the value of the property and its use. He therefore requests that this omission, error or mistake be corrected and the road boundary be added to the registration and the certificate of registration of Applicant's property, attached hereto be corrected accordingly."

Nothing was heard or done for a long period of over 4 years but on July 3rd, 1967, the District Lands Officer in reply had this to say in *exhibit 2*:-

« Άναφερόμενος εις την αίτησίν σας Α.2933/63, δι' ης ζητείτε την τροποποίηση των συνόρων του κτήματός σας υπό τεμάχιον 134 του συμπλέγματος Κ Γερολάκκου πληροφορώ ύμās ότι άδυνατώ να προβώ εις οίανδήποτε τροποποίησιν καθ' ότι -

- (α) Το σύνορον δρόμος όπερ αναφέρεται εις την παλαιάν Έγγραφήν, είναι ή παλαιά σιδηροδρομική γραμμή ήτις δέν ήτο δημόσιος δρόμος.
- (β) Ούδεμία ένστασις κατεχωρήθη έντός τής προθεσμίας των 60 ήμερών ώς προβλέπεται εις τό έδάφιον 45 του Νόμου Κεφ. 224 πρό τής συμπληρώσεως τής Γενικής Έγγραφής του χωρίου Γερολάκκου.»

On June 2nd, 1969, this application having been set down for hearing, I have proceeded to hear counsel on the preliminary point of law regarding the competence of the Court to entertain this application under Article 146 of the Constitution. I have followed this course, because in my opinion, the decision of such point disposes substantially of the whole application.

Counsel for the Respondents has contended that the nature of the decision complained of does not fall within the domain of public law, on the authority of *Savvas Yianni Valana and The Republic (Director of Lands and Surveys)* reported in 3

R.S.C.C. 91; and because the amendment of the boundaries of a person's immovable property amounts to a determination of his civil rights and is, therefore, within the domain of private law.

Counsel on behalf of the Applicant, on the contrary, has contended that the Court should proceed to hear the full facts in order to ascertain the primary object of the decision complained of; and that the preliminary point of law should not be decided at this stage.

I propose reviewing the authorities on this issue, and I would deal first, with the case of *Achilleas HadjiKyriacou* and *Theologia HadjiApostolou and Others* reported in 3 R.S.C.C. 89. The head note reads as follows:—

“ At the hearing of an appeal before the District Court of Limassol, (civil application No. 4/61) under s. 80 of Cap. 224, against the decision of the Director of Lands & Surveys (now Chief Lands Officer) under s. 58 of Cap. 224 on a boundary dispute, counsel for the Respondents raised the question of constitutionality of s. 80 of Cap. 224 which was referred to this Court as follows:—

Whether having regard to Article 146 paragraph (1) of the Constitution section 80 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224 as far as the jurisdiction of the District Courts is concerned is unconstitutional”.

Held: (a) the word ‘act’ or ‘decision’ in Art. 146.1 meant an act or decision in the domain of public law only and not also of private law;

(b) the determination of disputes as to boundaries of immovable property was a matter falling within the domain of private law and, therefore, s. 80 of Cap. 224 to the extent to which it provided for an appeal against any ‘order, notice or decision of the Director’ under s. 58 of Cap. 224, was not contrary to, or inconsistent with, Art. 146.”

Forsthoff, P., in dismissing the application had this to say at pp. 90—91:—

“ An ‘act’ or ‘decision’ in the sense of paragraph 1 of Article 146 is an act or decision in the domain only of

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public law and not an act or decision of a public officer in the domain of private law.

The various orders, notices or decisions referred to in section 80 of CAP. 224 comprise acts or decisions in the domains of both public and private law.

Before the coming into force of the Constitution a differentiation between matters in the domain of public law and matters in the domain of private law, such as was introduced by Article 146, was not made.

It is not within the ambit of this reference to deal in general with the whole question of the distinction between the domains of public and private law. Nor is it material, in the case under reference, to decide in general upon the constitutionality of section 80 of CAP. 224, in relation to all orders, notices or decisions of the Director (as he is defined in section 2 of CAP. 224) because only an appeal against a decision of the Director under section 58 of CAP. 224 is the subject-matter of civil application No. 4/61.

Section 58 of CAP. 224 provides for the determination by the Director of disputes as to boundaries of immovable property.

The determination of disputes as to boundaries of immovable property is a matter in the domain of private law. In so far as a public officer, i.e. the Director in a case of this nature, is vested with competence to take action in connection with the determination of such disputes as to boundaries, with the primary purpose of regulating private rights, then such action is a matter in the domain of private law and not in the domain of public law; consequently this is not a matter within the ambit of Article 146."

This case was approved and followed in the *Valanas* case (*supra*). The head note reads:—

“ The Applicant was the registered owner of a house and yard situated at Platanistassa. By a letter dated the 22nd May, 1961, the Respondent informed the Applicant that it was proposed to correct an error in the description of the boundaries of the Applicant’s said property by which

an area which was formerly part of his property would henceforth form part of a public road.

The Applicant sought a declaration of the Court that the decision of the Respondent was *null* and *void* and of no effect whatsoever.

Held: (a) the word 'act' or 'decision' in Art. 146.1 meant an act or decision falling in the domain of public law only, and not of private law (*Achilleas HadjiKyriacou and Theologia HadjiApostolou*, 3 R.S.C.C. letter F. p. 89);

(b) where the primary object of an act or decision of a public officer was not the promotion of a public purpose but the regulation of civil law rights in property, such act or decision would be a matter of private law and would not amount to an 'act' or 'decision' in the sense of Art. 146.1."

Fortsthoff, P., in dismissing the application of the Applicant said at pp. 93—94:—

"What falls to be decided is whether the action of Respondent complained of by Applicant amounts to an 'act' or 'decision' in the sense of paragraph 1 of Article 146.

As stated in the Decision of this Court in Case No. 23/62, an 'act' or 'decision' in the sense of paragraph 1 of Article 146 is an act or decision in the domain only of public law and not an act or decision of a public officer in the domain of private law.

Civil law rights in immovable property are, as a rule, matters in the domain of private law.

In so far as a public officer, in this case the Director, is vested with competence to take action in connection with civil law rights in immovable property, and the primary object of such action is not the promotion of a public purpose, but the regulation of the aforesaid civil law rights, then such action is a matter within the domain of private law and does not amount to an 'act' or 'decision' in the sense of paragraph 1 of Article 146.

In the present case the Director acting under his powers under section 61 of CAP. 224 has purported to proceed to correct an error concerning the boundaries of the

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immovable property in question of Applicant and in doing so it is clear, from the contents of the said notice of the 22nd May, 1961, that the Director has acted with the primary purpose of regulating the relevant civil law rights of Applicant.

The mere fact that as a result of the decision in question of the Director an area which Applicant alleges to be part of his yard would constitute part of a road does not affect the true character of the said decision because the primary object thereof still appears to be the regulation of Applicant's civil law proprietary rights i.e. the exact boundaries of his property and not the promotion of a public purpose, i.e. the widening of a road.

In the circumstances of this Case the Court has no competence to entertain this recourse under Article 146 and it is dismissed accordingly."

Finally in *Theocharis Charalambides and The Republic (District Lands Officer and Another)*, reported in 4 R.S.C.C. 24, the Court in dismissing the application for a provisional Order, to restrain the sale of immovable property, had this to say at p. 25:-

"In the light of the judgment of this Court in the Case of *Savvas Yianni Valana and The Republic (Director of Lands and Surveys)*, 3 R.S.C.C. p.91 at p.93, the Court is of the opinion that it has no competence to entertain this recourse because the said refusal of the Director involves the exercise of a power which does not have as its primary object 'the promotion of any public purpose' but it only concerns civil law rights inasmuch as it is designed to ensure that the sale of mortgaged property takes place in a proper manner for the purpose of safeguarding the interests of the parties concerned. The said refusal, therefore, does not amount to an 'act' or 'decision' in the sense of paragraph 1 of Article 146."

In my view, in view of the facts of this case, it is clear to me that since the year 1963 the Applicant's only complaint was that the road boundary has been omitted from the boundaries of his property; and was asking the Director of the Lands Office to exercise his powers under section 61 of Cap. 224, to correct such error or omission in the certificate of registration. Be that as it may, in the light of the authorities, the correction of errors and/or omissions in any

certificate of registration with regard to immovable property is a matter falling within the domain of private law. As regards, however, the powers of the Director to take action with regard to the correction of such errors or omissions in the certificate of registration, the primary object of his act or decision, in my view, was not the promotion of a public purpose, but the regulation of civil rights in property.

Having reviewed the authorities, I have decided to follow and adopt the principle in the *Valanas* case (*supra*), and have reached the view that the decision or act of the Director is a matter within the domain of private law and not in the realm of public law. I would agree with counsel for the Republic that this is not a matter within the provisions of Article 146 of the Constitution, and therefore, I would dismiss the application because this Court has no competence to entertain this recourse.

Application dismissed.

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