

1971
April 12

[TRIANTAFYLIDIS, P.]

HANNIBAL
FRANCIS
AND OTHERS
v.
THE ATTORNEY-
GENERAL
AND ANOTHER

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

HANNIBAL FRANCIS AND OTHERS,

Applicants,

and

1. THE ATTORNEY-GENERAL,

2. THE DISTRICT OFFICER OF LARNACA,

Respondents.

(Case No. 230/69).

Constitutional law—Article 146, paragraphs 1 and 2 of the Constitution—Notice imposing building restrictions in respect of areas in which applicants own properties—Notice made and published on May 2, 1969 (in the Third Supplement of the Official Gazette of the Republic, Notification No. 303) under section 14(1) of the Streets and Buildings Regulation Law, Cap. 96, as amended by section 2 of the Streets and Buildings Regulation (Amendment) Law, 1964 (Law No. 65 of 1964) and section 2 of the Streets and Buildings Regulation (Amendment) Law, 1969 (Law No. 12 of 1969)—Such notice is an exercise of executive or administrative authority in the sense of Article 146, paragraph 1, of the Constitution and not a legislative act outside the ambit of the said Article—Case of Police and Hondrou, 3 R.S.C.C. 82, distinguished—Moreover, applicants as owners of properties in the said areas, possess an existing legitimate interest in the sense of Article 146, paragraph 2, of the Constitution, which is being adversely and directly affected by the mere publication of the said Notice—For the above reasons a recourse lies against such Notice.

Recourse under Article 146 of the Constitution—The Notice complained of (supra) is an exercise of administrative or executive authority within Article 146, paragraph 1 of the Constitution, and not a legislative act outside the ambit of the said Article—Consequently, a recourse lies against that Notice—See also supra.

Exercise of administrative or executive authority—Within Article 146.1 of the Constitution—Or legislative act outside the ambit of that Article—See supra.

*Legitimate interest—Article 146, paragraph 2, of the Constitution—
See supra.*

Cases referred to :

Police and Hondrou, 3 R.S.C.C. 82, *distinguished* ;

Decisions of the Greek Council of State Nos.: 1867/1966,
783/1967, 785/1967, 235/1968 and 2936/1968.

The facts sufficiently appear in the following decision of the Court on preliminary legal points, whereby it was held that (a) the subject decision is an administrative decision within Article 146.1 of the Constitution liable to be challenged by the recourse under that Article, (b) a legitimate interest of the applicants-owners was directly and adversely affected thereby in the sense of Article 146.2, and (c) consequently, this recourse should proceed to a hearing on the merits.

Decision on Preliminary Legal issues.

Decision on the preliminary issue of Law raised by the respondents to the effect that the decision complained of in this recourse does not yet affect adversely and directly any existing legitimate interest of the applicants, in the sense of Article 146.2 of the Constitution and that it is a legislative act and could not be challenged by a recourse under Article 146.

G. *Nicolaides*, for the applicants.

K. *Talarides*, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

The following decision was delivered by :—

TRIANTAFYLLIDES, P. : In this case the applicants complain against a Notice published in the Official *Gazette* on the 2nd May, 1969 (in the Third Supplement, Not. 303), under section 14 (1) of the Streets and Buildings Regulation Law (Cap. 96) as amended by section 2 of the Streets and Buildings Regulation (Amendment) Law of 1964 (65/64) and section 2 of the Streets and Buildings Regulation (Amendment) Law of 1969 (12/69).

By virtue of such Notice the District Officer of Larnaca, as the appropriate authority under section 3 (2) of Cap. 96, imposed certain building restrictions in respect of two areas—(described in the Notice as “tourist zones”)—which are adjacent to the main Larnaca-Famagusta road.

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The applicants allege in their recourse that they are owners of properties within the said areas and for the purposes of this Decision this has to be assumed as a fact until the contrary is proved.

It has been contended by counsel for respondents that the recourse should be dismissed because the decision challenged, *viz.* the Notice in question, does not *yet* affect adversely and directly any existing legitimate interest of the applicants, in the sense of Article 146.2 of the Constitution. He has, also, submitted that the Notice is a legislative act and, therefore, could not be challenged, itself, by a recourse under Article 146.

Having considered both these two issues I am of the view that the Notice, in view of its nature, is an exercise of executive or administrative authority, in the sense of Article 146.1 ; and that it is not a legislative act outside the ambit of the said Article. The present case is distinguishable from the case of *Police and Hondrou*, 3 R.S.C.C. 82, where an Order made by the Council of Ministers—under section 6 of the Betting Houses, Gaming Houses and Gambling Prevention Law, Cap. 151—declaring a certain game to be a game for the purposes of the said section, was treated as an exercise of delegated legislative powers.

Moreover, I am of the opinion that, in their capacities as owners of properties within the zones defined in the *sub judice* Notice, the applicants possess an existing legitimate interest which is being adversely and directly affected by the mere publication of the Notice, as such publication is inevitably bound, in view of the restrictions imposed by it, to affect, *inter alia*, the economic value of their properties.

I think that my decision regarding the two aforementioned matters is duly supported by relevant case-law in Greece (see the decisions 1867/1966, 783/1967, 785/1967, 235/1968 and 2936/1968 of the Greek Council of State).

For these reasons I find that this recourse should proceed to a hearing on the merits.

Order accordingly.