[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

LOIZIANA HOTELS LTD.,
Applicants,

and

THE MUNICIPALITY OF FAMAGUSTA,
Respondents.

(*Case No.* 211/71).

Administrative act—Validity—Material time—As a rule, the validity of an administrative act is determined on the basis of the legal status existing at the time of its issue—But this general principle is subject to the exception that the pre-existing legislation is applicable when there has been an omission on the part of the administration to perform within a reasonable time what it was duty bound to do before the change of the Law—Unreasonable delay of respondents in the instant case in dealing with applicants' application for a permit to erect a five-storey building—Such permit could and would be issued as a matter of course long before the change of legislation imposing restrictions on the number of storeys etc.—The omission on the part of the respondents to issue the permit applied for in time amounts to an excess and abuse of power—And the respondents ought to have granted such permit as applied for even after the subsequent enactment of the said restrictive legislation—And their refusal to do so amounts to a misdirection in Law—See further infra.

Buildings—Tourist zones—Restrictions regarding, inter alia, *the number of storeys of buildings to be erected in said areas—Application for a building permit submitted* 3½ *months before change of legislation whereby severe restrictions on the number of storeys were imposed—Application decided upon and refused after such change by Notification No.* 61 *of January* 29, 1971 (infra)—*Respondents refraining from deciding finally within reasonable time but contemplating change of the Law instead—Unreasonable delay and improper omission by respondents to perform what it was duty bound to do—Excess and abuse of powers*—Sub-judice *decision (refusal) annulled accordingly—Cf. also* supra ; *see further* infra.

Tourist zones—Streets and Buildings Regulation Law, Cap. 96, *section* 14 (1), *(as amended by Law* 14/59, 67/63, 6/64, 12/69 *and* 38/69)*—Notification No.* 61 *published in the Official Gazette, Supplement* 3, *of January* 29, 1971, *made by the respondents under said section* 14 (1) *and declaring,* inter alia, *tourist zones and imposing restrictions on the height of buildings, number of storeys etc.—Such Notification neither illegal or* ultra vires *or unconstitutional—Article* 23.3 *of the Constitution.*

Right of ownership—Restrictions or limitations—Article 23.3 *of the Constitution—Tourist zones—Restrictions on the height of buildings and the like—Cf.* supra.

The applicants applied on September 16, 1970, to the respondents for a building permit for the erection of a five-storey building, exclusive of the basement and ground floor, consisting in all of 20 flats etc. Complying with suggestions made on two occasions by the Municipal Engineer, the applicants submitted corrected plans on November 16 and 21, 1970, respectively, which were examined on December 2, 1970. They were then passed on to the Public Works and the Fire Service Departments for their views, which they gave on December 10, 1970. The file of the applicants was examined by the technical department of the respondents and on December 28, 1970, the said department recommended the granting of the building permit.

However, no meeting of the respondent Municipal Committee took place before the 29th January, 1971, when, on that date, Notification No. 61 was published in Supplement No. 3 of the Official *Gazette* whereby the area in which the property of the applicants is found was declared "a tourist zone" by the respondents themselves acting in the exercise of the powers vested in them under section 14 (1) of the Streets and Buildings Regulation Law, Cap. 96 (as amended by Laws 65/64 and 38/69). It should be noted here that by virtue of the said Notification No. 61, as from January 29, 1971, the maximum number of storeys of buildings in the area is limited to two *viz.* ground floor and first floor.

It is common ground that by December 28, 1970, the applicants' case was ripe for decision, everything being in order by then, and that, had their application been dealt with before the 29th January, 1971, the building permit applied for would have been issued as a matter of course. Be that as it may, the respondents by their letter dated March 29, 1971, addressed

to the applicants, informed them that in view of the aforesaid Notification No. 61 of the 29th January, 1971, their said application of September 16, 1970 for a building permit for the erection of a five-storey building etc. (*supra*) is refused.

It is against, *inter alia*, this refusal that the applicants instituted their present recourse on the broad ground that in the circumstances it is in excess and abuse of powers.

Annulling the aforesaid refusal of the respondents to issue the building permit applied for, the Court :—

Held, (1). From the principles of administrative Law, as they are established both here and in Greece, it appears that independently from the construction of the relevant legislation, the general principle that the validity of an administrative act is determined on the basis of the legal status existing at the time of its issue, is subject to the exception that the pre-existing legislation is applicable when there has been an omission on the part of the administration to perform within a reasonable time what it was duty bound to do before the change of the Law. (Cf. *Andriani Lordou* v. *The Republic* (1968) 3 C.L.R. 427, at p. 434 ; cf. also the decisions of *the Greek Council of State Nos.* 1235/1956 *and* 1477/1958).

(2) (*a*) The unreasonable delay by the respondents in determining the application of the applicants dated September 16, 1970 (*supra*) and their subsequent application of the Law as it was on March 15, 1971, amounts to my mind to a misdirection as to the Law applicable and in fact to an excess and abuse of power.

(*b*) The Law applicable, therefore, is the Law as it was before the 29th January, 1971 under which it is common ground the permit could and would be issued as a matter of course.

(3) The applicants having complied with the requirements of the Law by the 10th December, 1970, cannot be punished merely because the respondents, as the appropriate authority, were, on the one hand, refraining from deciding finally the applicants' application for the said building permit and, on the other hand, were themselves considering, deciding upon and publishing new legislation whereby restrictions were imposed on the use of applicants' property.

(4) In the circumstances, the decision of the respondents whereby the applicants were refused the building permit applied for should be annulled as being in excess and abuse of powers.

Sub judice decision annulled. No order as to costs.

Cases referred to :

Andriani Lordou v. *The Republic* (1968) 3 C.L.R. 427, at p. 434 ;

Decisions of the Greek Council of State : *Nos.* 1235/1956 *and* 1477/1956.

Recourse.

Recourse against the refusal of the respondents to issue to applicants a building permit for the erection, in Famagusta, of a building of five storeys.

J. Kaniklides, for the applicant.

S. Marathovouniotis, for the respondents.

Cur. adv. vult.

The following judgment was delivered by :—

A. LOIZOU, J. : The applicant applies for " (1) a declaration of the Court that the decision of the respondents contained in Notification No. 61, published in Supplement No. 3 of the Cyprus *Gazette* No. 851 of the 29th January, 1971, whereby are created touristic zones pursuant to which the number of storeys of buildings in the locality where the subject property is situate is limited to 2, *i.e.* ground floor and 1st floor only, is in excess or abuse of powers, unconstitutional and/or ultra vires of the Streets and Buildings (Regulation) Law, Cap. 96, as amended by Laws 14/59, 67/63, 6/64, 12/69, 38/69 and illegal.

(2) For a declaration of the Court that the refusal of the Municipality of Famagusta (and/or decision) embodied in a letter dated the 29th March, 1971 and addressed to the applicants, whereby the application of the applicants to erect a five-storey building, exclusive of the basement and ground floor, consisting of 20 flats, and two cafeterias was turned down is in excess or abuse of powers, unconstitutional and/or ultra vires of the Streets and Buildings (Regulation) Law, Cap. 96, as amended, and illegal."

The applicants, a company limited, are the registered owners of a plot No. 289 plan/sheet 33/29.3.iv Block E, Ayios Memnon, Famagusta. On the 16th September, 1970, they applied to the respondents for a building permit for the erection of a five-storey building, exclusive of the basement and ground floor, consisting in all of 20 flats, one cafeteria on the ground floor and one cafeteria in the basement.

On the 8th October, 1970, the Municipal Engineer by letter pointed out to the applicants certain amendments that had to be done to the plans submitted. On the 16th November, 1970, the applicants sent the amended plans and again on the 21st November, 1970, the Municipal Engineer wrote to the applicants pointing out new amendments that had to be made. On the 23rd November, 1970, the applicants submitted corrected plans which were examined on the 2nd December, 1970. They were then passed on to the Public Works and the Fire Service Departments for their views, which they gave on the 10th December, 1970. The file of the applicant was examined by the technical department of the respondents and on the 28th December, 1970, the said department recommended the granting of the building permit. However, no meeting of the respondent Committee took place before the 29th January, 1971, when, on that date, Notification No. 61 was published in Supplement No. 3 of the official *Gazette*, whereby the area in which the property of the applicants is found was declared a tourist zone by the respondents, in exercise of the powers vested in them under section 14 (1) of the Streets and Buildings Regulation Law, Cap. 96 as amended by Laws 65/64 and 38/69.

As it appears from the notice of opposition in Case No. 106/71, everything was in order by the 28th December, 1970. It is common ground that had the application of the applicant been dealt with before the 29th January, 1971, the building permit could have been issued as a matter of course. In fact, because of this, the respondents by their letter of the 29th March, 1971, (*exhibit* 1) informed the applicants that " in view of the fact that their application was made before the publication of the Notification regarding the establishment of a Tourist zone, decided to ask from the Council of Ministers to allow relaxation of the relevant legal provision, so that it will be possible to grant the permit applied for."

It is significant to point out here that Notification No. 61, hereinabove referred to, bears the signature of the Chairman of the respondents and is dated 11th January, 1971. During,

therefore, the time that the respondents did not meet for the purpose of examining and determining the applicant's application, they were contemplating and deciding the declaration of the area in which the property of the applicant lies, as a tourist zone with all the consequential limitations to the building that could be thereafter erected thereon. To my mind there was unreasonable delay in the circumstances.

It is the contention of the applicant that the general principle of administrative law that decisions should be decided in accordance with the law in force at the time the act or decision is taken is subject to exceptions and these exceptions depend on the special circumstances of the case under consideration. Regarding this argument I was referred to passages in the judgment in *Andriani Lordou* v. *The Republic etc.* (1968) 3 C.L.R. p. 427, where in distinguishing Decision 1235/56 of the Greek Council of State, Triantafyllides, J., as he then was, said the following at p. 434 :—

> "A perusal of the abovementioned decision shows at once, that the situation in that case is clearly distinguishable from the situation in the present case : There, before the coming into effect of the new legislation, there appears to had arisen a duty of the appropriate authority to issue the permit applied for, in view of the fact that the application therefor complied fully with all relevant conditions. In the present case, the application of the applicants was submitteed on the 17th May, 1967 ; it was studied, within reasonable time, by the technical services of respondent No. 2 ; and on the date when the Notice in question was published the position was that the applicants were still required to supply some further collateral plans and effect a modification to those already submitted ; it could not be said that by the 25th May, 1967, the matter had ripened to such an extent that the building permit applied for by the applicants could, and *should*, have been issued already."

On the facts of the present case as hereinabove set out the first point for determination is whether the said delay of the respondents in deciding the applicant's application for a building permit was such as to amount to an omission which could have been put right by applying the law as it was when it should have been determined and not as the law happened to be at the time the decision was actually taken. Reference has already been made to the case of

Andriani Lordou, *supra*. Relevant to the point in issue is also the following passage from the Decision 1235/56 of the Greek Council of State, which reads :

> " .... the applications for the issue of a building permit, submitted before the publication of the Royal Decree in the Government *Gazette*, with the necessary supporting documents (complete architectural study) are governed by the pre-existing legal position by virtue of the provisions of which all the conditions by law required for the granting of the building permit applied for were fulfilled, the applicant being entitled since such fulfilment to the permit as having complied with all his lawful obligations required in this connection and the Administration being obliged to issue the relevant decision. A contrary view would lead to the absurdity of possibly upsetting, through no fault of the applicant and due to putting off by the Administration, technical studies and financial combinations and agreements, and to an unequal treatment between those who submitted applications for the issue of a building permit under the pre-existing law."

It appears that in Greece itself the legal principles set out in Decision 1235/56 came under consideration in a subsequent case, Decision 1477/56, where observations were made regarding the legal effect of the first Decision as follows :

> " Given that, that in accordance with established principles of Administrative Law the validity of an administrative act is determined on the basis of the legal status existing at the time of its issue unless same is issued so that the administration may conform with an omission to act which had already occurred prior to the alteration of the legal status or unless the law otherwise expressly provides."

From the aforesaid exposition of the law, as it is established both here and in Greece, it appears that independently from the construction of the relevant legislation, the general principle that the validity of an administrative act is determined on the basis of the legal status existing at the time of its issue, is subject to the exception that the pre-existing legislation is applicable when there has been an omission on the part of the administration to perform within a reasonable time what it was duty bound to do before the change of the law.

The unreasonable delay by the respondent in determining the application of the applicant and their subsequent application of the law as it was on the 15th March, 1971, amounts, to my mind, to a misdirection as to the law applicable and in fact to an excess and abuse of power. The law applicable is the law as it was before the 29th January, 1971, under which it is common ground the permit could be issued as a matter of course.

The applicant having complied with the requirements of the law by the 10th December, 1970, cannot be punished merely because the respondents, as the appropriate authority, were, on the one hand, refraining from deciding finally the applicant's application and, on the other hand, were themselves considering, deciding upon and publishing new legislation whereby restrictions were imposed on the use of applicant's property. In the circumstances, the decision of the respondents whereby the applicants were refused the building permit applied for should be annulled.

Before concluding, I would like to deal briefly with the second point raised by the applicant to the effect that the decision of the respondents contained in Notification No. 61 (*supra*) is ultra vires, unconstitutional, illegal and in excess or abuse of power. The said Notification was published by virtue of the powers given to the respondents by section 14 (1) of the Streets and Buildings Regulations Law, Cap. 96, as amended by Laws 65/64 and 38/69. I need not set out herein verbatim the whole section, suffice it to say that both its paragraphs (*b*) and (*d*) give ample authority to regulate the type of buildings, as well as their height. It cannot be said, therefore, that there is anything ultra vires or illegal in the said Notification, nor that there is any excess or abuse of power, inasmuch as the purpose for which the said decision was taken is a purpose envisaged by the relevant statutory provision.

Lastly, the claim for unconstitutionality has been based mainly on the fact that whereas under section 19 the regulations to be made have to be placed before the House of Representatives before they become effective, in the case of a notification under section 14 (1) the media of the House of Representatives is not required before it becomes effective.

In relation to the unconstitutionality issue, it has been argued that this restriction of the height of buildings is unconstitutional as it is a substantial limitation of the right of ownership, safeguarded by Article 23 of the Constitution. The first leg of this argument to my mind cannot stand as

the objectives aimed to be served by the two sections are entirely different. There is nothing unconstitutional in the procedure followed by the legislature, in defining zones under section 14, which by its very nature and their repercussions call for a speedier form of action. The fact that a different legislative procedure is followed under another section does not change the position and it does not lead to absurdity as it was claimed by applicant's counsel.

On the other hand, under Article 23.3 of the Constitution, the exercise of the right of ownership may be subjected to limitations or restrictions absolutely necessary in the interests, *inter alia*, of town and country planning or the development and utilization of any property to the promotion of the public benefit and on the material before me I am not prepared to hold that the limitations imposed by Notification No. 61 are outside the ambit of Article 23.3 and at that unconstitutional.

For all the above reasons the refusal of the respondents to issue the building permit applied for has to be annulled and is hereby declared null and void. In the circumstances, however, I make no order as to costs.

Sub judice decision annulled; no order as to costs.