IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS KYRIACOU AND OTHERS,
Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH THE COUNCIL OF MINISTERS,
Respondent.

(Case No. 134/69).

Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224—*Communal Property*—"*Mining*" *in section* 19 (*c*) (*iv*) *of the Law—It includes also* "*quarrying*"—*Therefore, a decision of the Council of Ministers to the effect that certain communal property, required for the purpose of quarrying operations, shall cease to be such communal property, is within the said section* 19 (*c*) (*iv*) *as enacted by Law No.* 8 *of* 1953.

Communal Property—Required for purposes of quarrying—May be declared by the Council of Ministers to have ceased to be communal property—"*Quarrying*" *is included in the notion of* "*mining*" *in* (*iv*) *of paragraph* (*c*) *of section* 19 *of Cap.* 224 (supra).

Statutes—Construction—In view of the state of the legislation at the material time the notion of "*quarrying*" *held to be included in the notion of* "*mining*"—*Section* 19 (*c*) (*iv*) *of the Immovable Property etc. etc. Law, Cap.* 224, supra.

"*Mining*" *in section* 19 (*c*) (*iv*) *of the Immovable Property (Tenure, Registration and Valuation) Law, Cap.* 224, *as the said section was enacted by the Immovable Property (Tenure, Registration and Valuation) (Amendment) Law,* 1953 (*Law No.* 8 *of* 1953)—*The word* "*mining*" *in that section includes* "*quarrying*" *also.*

"*Quarrying*"—"*Mining*"—*See hereabove.*

Words and Phrases—"*Mining*" *in section* 19 (*c*) (*iv*) *of Cap.* 224 (*as amended*), supra.

In this case the applicants, who are inhabitants of Koutsoventis village, complain against a notice published under section 19(c) of the Immovable Property (Tenure, Registra-

tion and Valuation) Law, Cap. 224 by the respondent Council of Ministers on April 10, 1969 by virtue of which it was declared that 314 donums of land of " communal property " of Koutsoventis village ceased to be property of such a nature. It is stated in that Notice that the object of such declaration was to use the land concerned as " ὀρυχεῖον ἢ ὀρυχεῖα " (" mine or mines "). On the other hand, from the relevant decision of, and the proposal made in this respect by the Ministry of Commerce and Industry to, the Council of Ministers it appears that the mining purpose involved was the utilization of the land in question in relation to quarrying operations to be carried out under permits issued by the Government.

Now, section 19(c) provides :

" 19. Where by law or custom any immovable property (in this section referred to as ' the communal property ') is held or enjoyed communally by any town, village or quarter, the following provisions shall have effect, that is to say :—

(*a*)

(*b*)

(*c*) Where the communal property or any part thereof is required for any of the following purposes, that is to say :—

(i)

(ii)

(iii)

(iv) Mining;

(v)

the Council of Ministers may, by notice in the *Gazette*, declare that such property or part thereof shall cease to be communal property

It was objected by counsel on behalf of the appellants that the word " mining " in section 19(*c*)(iv) *supra* does not include " quarrying " and that, therefore, the decision of the respondent Council of Ministers complained of, taken with a view to utilize the land in question in relation to quarrying operations (*supra*), is not warranted by the statute and should, therefore, be annulled

The Court did not accept the submission made by counsel for the applicants and :—

Held, (1). In view of the state of the law when section 19 became part of Cap. 224 (viz. in March 1953 by Law No. 8 of 1953) I am of the opinion that it was intended to include within the notion of " mining " in the said paragraph (*c*) of section 19, the notion of " quarrying " too.

(2) It has been, furthermore, judicially accepted for quite a long time that the term " mine " may be used so as to include, in certain instances, a " quarry " (see *Lord Provost and Magistrates of Glasgow* v. *Farie*, 13 App. Cas. 657, at pp. 675–677). Cf. also Article 23.1 of the Constitution, where it is provided : " The right of the Republic to underground water, minerals and antiquities is reserved ". Nothing is stated therein to the effect that the right of the Republic to quarries (λατομεῖα) is reserved ; but surely it cannot be said that it was not intended to reserve such right too.

(3) In the light of the foregoing I am of the opinion that the word " mining " in section 19(*c*)(iv) of Cap. 224 includes " quarrying " and, therefore, the preliminary objection raised by the appellants cannot be sustained.

Order in terms.

Cases referred to :

Lord Provost and Magistrates of Glasgow v. *Farie*, 13 App. Cas. 657, at pp. 675–677 ;

Borys v. *Canadian Pacific Railway Co.* [1953] 1 All E.R. 451, at p. 455 ;

The Earl of Jersey v. *Guardian of the Poor of the Neath Poor Law Union*, 22 Q.B.D. 555 ;

Bell v. *Wilson*, L.R. Ch. App. Vol. I 303.

Decision on Preliminary Legal Issue.

Decision on the preliminary issue of Law, whether " mining " in section 19 (*c*) (iv) of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224 does include quarrying, raised in the course of the hearing of a recourse against the decision of the respondent to the

effect that 314 donums of land of " communal property " of Koutsoventis village ceased to be property of such a nature.

L. Papaphilippou, for the applicants.

L. Loucaides, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

The following decision was delivered by :—

TRIANTAFYLLIDES, J. : In this case the applicants, who are inhabitants of Koutsoventis village, complain against a Notice published under section 19 (*c*) of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, by the respondent Council of Ministers, on the 10th April, 1969 (No. 239 in the 3rd Supplement to the official *Gazette*) by virtue of which it was declared that 314 donums of land of " communal property " of Koutsoventis village ceased to be property of such a nature.

The aforementioned section 19 (*c*) (as modified in view of Article 188 of the Constitution) reads as follows :—

" 19. Where by law or custom any immovable property (in this section referred to as ' the communal property ') is held or enjoyed communally by any town, village or quarter, the following provisions shall have effect, that is to say :—

(*a*

(*b*) . . . . .

(*c*) where the communal property or any part thereof is required for any of the following purposes, that is to say—

(i) the formation of a village or quarter ;

(ii) reclamation ;

(iii) soil conservation ;

(iv) mining ;

(v) an undertaking of public utility,

the Council of Ministers may, by notice in the *Gazette*, declare that such property or part thereof shall cease to be communal property :

Provided that in every such case property of the Republic of equal utility as the communal property

shall, if available, be assigned in lieu thereof or, if property of the Republic is not available, a sum equal to the value of the communal property, as determined by the Director, shall be provided and disposed of for the benefit of such town, village or quarter ;

(*d*) . "

The " Director " referred to in section 19 (*c*) is the Director of Lands and Surveys (see section 2 of Cap. 224).

Though the Notice in question was published under paragraph (*c*) of section 19 no express reference is made to the particular sub-paragraph of paragraph (*c*) on which it was based ; but as it is stated therein that it is necessary to use the land concerned as " ὀρυχεῖον ἢ ὀρυχεῖα " (' mine or mines ') it is quite clear that the Notice was based on sub-paragraph (iv) of paragraph (*c*).

From the relevant decision of, and proposal made in this respect by the Ministry of Commerce and Industry to, the Council of Ministers (see *exhibit* 3) it appears that the mining purpose involved is the utilization of the land in question in relation to quarrying operations carried out under permits issued by the Government.

It has been submitted by counsel for the applicants that quarrying is not included in the term " mining " in section 19 (*c*) (iv) of Cap. 224 and, therefore, it was not within the powers of the Council of Ministers to publish the relevant Notice under such provision.

On the other hand, counsel for the respondent has submitted that for the purposes of section 19 (*c*) (iv) " mining " does include quarrying. As this legal issue is a fundamental one regarding the outcome of the present recourse it has been deemed fit to determine it as preliminary legal issue :

It should, in the first place, be noted that Cap. 224 came into force in September, 1946 and its present section 19 became part of it in March 1953, by means of the Immovable Property (Tenure, Registration and Valuation) (Amendment) Law, 1953 (Law 8/53). The Mines and Quarries (Regulation) Law, 1953 (Law 14/53 and now Cap. 270), which makes a distinction between " mining " and " quarrying ", came into force soon *afterwards*, in April, 1953.

In earlier statutes, which were repealed in whole or in part by Law 14/53 (the Mines Regulations Amendment Law, Cap. 122 in the 1949—the immediately previous to

the latest, the 1959—revised edition of the Laws of Cyprus, and the Mines Regulations (Amendment) Law, Cap. 123, in the 1949 edition) and which were in force when section 19 of Cap. 224 was enacted as aforesaid, there does not seem to have existed any distinction between "mining" and "quarrying" or between "minerals" and "quarry materials"; in section 2 of the said Cap. 123 "mining" was defined as meaning "any operation for mining or obtaining minerals" and "minerals" were defined as meaning "all materials of economic value forming part of or derived naturally from the crust of the earth including mineral oil, pitch, asphalt and natural gas but not minerals in solution or peat, trees, timber and similar kinds of forest produce".

After section 19 of Cap. 224 was enacted (by Law 8/53) there followed Cap. 270 (as Law 14/53) in which "minerals" are defined, by section 2, as including "all materials of economic value forming part of, or derived naturally from, the crust of the earth including mineral oil, but not minerals whilst in solution or peat, trees, timber and similar kinds of forest produce or any quarry materials". Thus, there was then made the distinction between "minerals" and "quarry materials" which are defined, in section 2, as meaning "sand, stone, slate, granite or other rocks, chalk, clay, flint, gravel, gypsum, limestone, marble, marl and quartz".

In view of the state of the law when section 19 became part of Cap. 224 I am of the opinion that it was intended to include within the notion of "mining", in the said paragraph (*c*) of section 19, the notion of quarrying too. Also, this opinion is strengthened by the object of a provision such as section 19 (*c*) and the obvious absence of any need to differentiate between "mining" and "quarrying" for the purpose of achieving that object. In this respect it is useful to refer, for the sake of comparison, to the wording of the second paragraph of Article 23.1 of the Constitution: It is provided thereby that "τὸ δικαίωμα τῆς Δημοκρατίας ἐπὶ τῶν ὑπογείων ὑδάτων, ὀρυχείων καὶ μεταλλείων καὶ ἀρχαιοτήτων διαφυλάσσεται" ('The right of the Republic to underground water, minerals and antiquities is reserved'). Nothing is stated therein at all—(though in 1960, when the Constitution came into operation, Cap. 270, was already in force)—to the effect that the right of the Republic to quarries (λατομεῖα) is reserved but, surely, it cannot be said that it was not intended to reserve such right too; it was simply not necessary, for the

purpose of the particular constitutional provision, to make the distinction between quarry materials and minerals which is made in, and for the purposes of, Cap. 270.

It has been, furthermore, judicially accepted for quite a long time that the term " mine " may be used so as to include, in certain instances, a " quarry " ; in his judgment in the case of *Lord Provost and Magistrates of Glasgow* v. *Farie*, 13 App. Cas. 657, Lord Watson stated (at pp. 675-677) :—

> " ' Mines ' and ' minerals ' are not definite terms : They are succeptible of limitation or expansion, according to the intention with which they are used.....
>
> There is a class of cases in the English books which determine that the word ' mine ' is, according to its primary meaning, significant merely of the method of working by which minerals are got ; but that is not its only or necessary meaning.....
>
> The fact is of sufficient notoriety to be noticed here, that, although in the extreme south-west of the island slate is obtained by subterraneous workings, the reverse is the rule in North Wales and in Scotland, where it is quarried. The word ' quarry ' is, no doubt, inapplicable to underground excavations ; but the word ' *mining* ' may without impropriety be used to denote some quarries. Dr. Johnson defines a quarry to be a stone mine."

This view of Lord Watson was cited with approval by Lord Porter in delivering the judgment of the Privy Council in the case of *Borys* v. *Canadian Pacific Railway Co.* [1953] 1 All E.R. 451, at p. 455.

On the other hand, when it was necessary for the purpose of strict definition, to resort to particular distinctions, this was done (see, for example, the cases of *Bell* v. *Wilson*, L.R. Ch. App. vol. I 303 and of *The Earl of Jersey* v. *Guardians of the Poor of the Neath Poor Law Union*, 22 Q.B.D. 555).

In the light of the foregoing I am of the opinion that the word " mining " in section 19 (*c*) (iv) includes " quarrying " and, therefore, the preliminary objection raised by the applicants cannot succeed.

Order in terms.