[A. Loizou, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

XENIA A. ZEVEDEOU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH

1. THE COUNCIL OF MINISTERS,
2. THE DIRECTOR OF THE DEPARTMENT OF ANTIQUITIES,

Respondents.

(Case No. 92/71).

Antiquities Law Cap. 31—Ancient monuments—Declaration of certain properties as ancient monuments—Publication of notice of such proposed declaration under section 6(2) of the said Law—Sufficiency of notice and property owner's right to lodge an objection—Description of applicant's properties as given in the relevant title deeds, different from the one in the said notice, due to a change of the existing system of description of properties in the land register of which the applicant - owner in this case had neither actual or constructive knowledge—Such description in the aforesaid notice held not to have amounted to a sufficient notice whereby the apparent intention of the legislator to afford applicant an opportunity to be heard, by lodging an objection under said section 6(2) can be said to have been satisfied—Consequently, the resulting declaration of the applicant's properties as ancient monument has to be annulled as far as said properties are concerned.

Antiquities—Notice of intended (or proposed) declaration of a property as an ancient monument—Section 6(2) of Cap.

31 (supra)—*Description therein of property subject-matter of the proposed declaration—Name of the property owner need not be included in the notice.*

Ancient monuments—Declaration of a property as an ancient monument—Notice of proposed declaration—Due such notice—Necessary ingredient or of the relevant machinery resulting in the declaration of the property as an ancient monument—In other words such notice is a prerequisite to the making of the final order—See further supra.

Immovable Property—Land Register—Change of system of description of properties therein—Manner in which change may be brought to the knowledge of property owners and to the public at large—Posting on the Notice Board of the District Lands office held not to be sufficient—Survey Law Cap. 327—The Immovable Property (Tenure, Registration and Valuation) Law Cap. 224, sections 45, 49(1), 51(a), 52 and 75(4).

Land Register—Change of system of description of properties therein—Notices—Publications—See supra.

This is a recourse whereby the applicant challenges the vadility of an order of the Council of Ministers published on March 12, 1971 declaring applicant's properties as an ancient monument under the Antiquities Law, Cap. 31, section 6.

The applicant is the owner of immovable property situate at Kato Kyrenia under title deeds dated 1946 and 1947, respectively. Some time in 1958 a change was effected in the system of description of property in the Land Register. Notice of such change was posted on February 17, 1958, on the Notice Board of the District Lands Office, Kyrenia. It is conceded that the applicant had never had knowledge, actual or constructive, of such change until some time in 1971 after the making of the order—declaration subject matter of these proceedings.

Now, in accordance with the provisions of section 6(2) of the Antiquities Law, Cap. 31, the Director of Antiquities published a notice in the Official Gazette of the Republic dated August 28, 1970, of a proposed declaration as ancient

monuments of certain properties including the aforesaid properties of the applicant. By the said notice persons whose interests might be prejudicially affected by the proposed declaration were informed that they might, within one month thereafter, lodge their objections with the Director for consideration by the Council of Ministers. The applicant did not lodge such objection. Eventually the Council of Ministers in exercise of their powers under section 6(1) of the Antiquities Law, Cap. 31, decided that by order to be published in the Official Gazette certain properties including those of the applicant *(supra)* be declared as ancient monuments.

It is common ground that the description of the applicant's said properties as given in her said title-deeds is different from the description of the properties appearing in the aforementioned notice of August 28, 1970 of the proposed declaration.

Annulling the order-declaration made by the Council of Ministers declaring, *inter alia*, the applicant's said properties as ancient monuments, the Court:

Held, (1) The notice under section 6(2) of the Antiquities Law, Cap. 31 of a proposed declaration of a property as an ancient monument is a procedural requirement, mandatory in its nature, and a prerequisite to the making of a final order. The basic issue, therefore, in this case is the sufficiency of the notice in this case given by the Director on August 28, 1970 *(supra)*.

(2) It is common ground that the description of the applicant's properties as given in her relevant title-deeds is different from the description of the properties appearing in the aforesaid notice of the Director of the proposed declaration dated August 28, 1970 *(supra)*.

(3) (a) On the other hand the legality of the act of the Director of Lands and Surveys in 1958 whereby a change was effected in the description of the properties in the Land Register, is not in issue. What has become of importance in this case in particular is whether this change effected by the

Director of Lands and Surveys came to the actual knowledge of the applicant at any stage thereafter or whether by operation of law she can in law be presumed to have had knowledge that her properties referred to in the notice of the Director of Antiquities of August 28, 1958, should, since then, be identified by the new system of description and not as recorded in her title-deeds.

(b) In the circumstances of this case, it cannot be said that the applicant had either actual or constructive konwledge of this crucial matter.

(c) And on account of recording in the aforesaid notice of the proposed declaration (dated August 28, 1970, *supra*), given by the Director of Antiquities as aforesaid, a description of the properties by which the applicant was not, and could not be presumed to be, aware that it referred to her properties, the inherent validity of the order-declaration made thereafter by the Council of Ministers was undoubtedly affected, inasmuch as the notice failed to convey the message it was intended to convey.

(4) Consequently, this recourse succeeds and the *sub judice* decision *i.e.* the order made by the Council of Ministers of the 11th February, 1971, published in the Official Gazette, under Notification 146, Supplement No. 3 of Gazette No. 860, of March 12, 1971, has to be annulled in so far as the applicant is concerned.

Sub judice decision annulled.

Cases referred to:

Venglis v. *The Electricity Authority of Cyprus* (1965) 3 C.L.R. 252, at p. 258;

Pissas (No. 1) v. *The Electricity Authority of Cyprus* (1966) 3 C.L.R. 634, at p. 639.

1972
Apr. 29

XENIA A ZEVEDEOU

v.

REPUBLIC (COUNCIL OF MINISTERS AND ANOTHER)

Recourse.

Recourse against the decision of the respondents to declare applicant's immovable property situated at Kato Kyrenia as ancient monuments and to add the said property to the Second Schedule to the Antiquities Law, Cap. 31.

L. Papaphilippou, for the applicant.

V. Aristodemou, Counsel of the Republic, for the respondent.

Cur. adv. vult.

The following judgment was delivered by :-

A. LOIZOU, J. : The applicant is the registered owner of immovable property situated in Kato Kyrenia.

The title deeds covering same, issued one in 1946 and the rest in 1947, have been produced as *exhibits* 3, 4, 5 and 6.

In accordance with the provisions of section 6(2) of the Antiquities Law, Cap. 31, the Director of Antiquities published a notice (*exhibit* 7) under notification No. 699, in Supplement No. 3 of the Gazette of the 28th August, 1970, of the proposed declaration as ancient monuments and their addition to the Second Schedule of the said law, of the properties described therein, among which the aforesaid properties of the applicant were included. By the said notification persons whose interests might be prejudicially affected by the proposed declaration were informed that they might, within the period of one month thereafter, lodge their objections with the Director of Antiquities for consideration by the Council of Ministers. This notice is a procedural requirement, mandatory in its nature, and a prerequisite to the making of a final order. The basic issue is, therefore, the sufficiency of this notice.

The Council of Ministers considered the whole question and rejected the objections lodged at its meeting of the 11th February, 1971, and, in exercise of the powers

vested in it by section 6(1) of the law, decided that by order to be published in the Gazette the said properties be declared as ancient monuments and be added to the Second Schedule of the law. See *exhibit* 9.

It is common ground that the description of the properties of the applicant as given on the four title deeds *exhibits* 3—6, is different from the description of the properties appearing in the notification, *exhibit* 7. This difference was brought about by the fact that in 1957 the Director of Lands and Surveys decided to change the existing manner under which properties were recorded in the Land Register, and on the strength of which the title deeds of the applicant had been issued, and introduce the block system of plot numbering in Kyrenia District beginning with Kyrenia town. This decision and the manner in which it was to be carried out, appear in a letter addressed to the Director of Lands Office, Kyrenia, (*exhibit* 11).

When the change was effected, a notice was posted on the 17th February, 1958, (*exhibit* 10), on the Notice Board of the District Lands Office in Kyrenia, which purported to be a notification for general information, that the block system had been introduced in Pano and Kato Kyrenia and, all the owners of immovable property falling within the said area were, thereby, invited to produce their certificates of registration for amendment of the Survey Reference. The same system was introduced at the same period in Nicosia and Famagusta districts. Unlike the procedure followed in Kyrenia, however, for Nicosia and Famagusta notifications were published in the Gazette and in local Greek and Turkish newspapers. (See the Cyprus Gazette of the 16th July, 1959, Notification No. 708). This block system of plot numbering was introduced by powers vested in the Director of Lands and Surveys under the provisions of the Revenue Survey Law, Cap. 327.

It was argued by counsel for the respondent that the powers of the Director under the Revenue Survey Law were in addition to the powers he was given by sections 51(a) and 52 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224. Under the said

two sections the Director has power to keep in each District Lands Office a separate land register for each town and village in such form as he may determine, and also every certificate of registration shall contain such particulars and shall be in such form as the Director again may determine.

These powers, naturally, imply the power to change an existing system of description of properties in the land register; neither, of the two sections contains any provision regarding the manner in which the decision of the Director to effect such a change will be brought to the knowledge of the public at large, and the persons affected in particular. In the case however of a general Registration under section 45 of the same law provision is made in paragraph (a) thereof for the publication in the Gazette and such other newspaper as the Director may deem necessary of a notice informing the public that a general registration will be made. It was the case for the respondent that the Director has a discretion in the matter and that posting up of the notice, *exhibit* 10, is sufficient notification as it is "a public instrument" as defined in section 2 of the Interpretation Law, Cap. 1, and this being so, brings this notice within the provision of section 43 of the same Law to the effect that such a public instrument is *prima facie* evidence in all Courts and for all purposes whatsoever for the due making or issuing and tenor thereof.

Before proceeding further I would like to point out that whenever the legislator thought fit to provide for the posting up of a notice, as a mode of informing the interested persons of a particular act or decision affecting their immovable property, he said so specifically in the relevant section of the Immovable Property (Tenure, Registration and Valuation) Law as for example in section 49(1); and it also made provision by section 75(4) thereof that where any notice is required to be posted up under the provisions of this law—if the property affected is situated in any town the notice shall be posted upon the notice board of the District Lands Office in such town—and a certificate by the person posting up such notice, stating the date which same was posted up shall be deemed to be *prima facie* evidence of such

posting up. No similar provision for posting up notices can be found in the Revenue Survey Law.

The legality of the act of the Director of 1958 is not in issue in these proceedings. What has become of importance in this case in particular is the question whether this change effected by the Director came to the actual knowledge of the applicant at any stage thereafter or whether by operation of law she can in law be presumed to have had knowledge that the property referred to in the notice, *exhibit* 7, should, since then, be identified by the block system description introduced by him and not as recorded on her title deeds. If either of the two aforesaid alternatives is answered in the affirmative, then she cannot complain that she was not afforded an opportunity to be heard before the order under section 6(1) of the Antiquities Law was made.

In addition to the aforesaid, it was contended by her counsel that the said notice was not good, in as much as the properties set out therein were not identified by specific mention of the applicant's name as well. As far as the mention of the name is concerned, I am of the opinion that section 6(2) of the Antiquities Law does not require such particular to be included in the notice, the persons interested being identified by means of a description sufficient to identify such property in relation to the Lands Office record. Such a view is consonant with the approach made by Munir J. in relation to similar—and more strict one might say—requirements for publication of notice of acquisition under section 4 of the Compulsory Acquisition of Property Law 15/62, in the case of *Maria Ch. Venglis* v. *The Electricity Authority of Cyprus* (1965) 3 C.L.R. 252 at p. 258, with which view Triantafyllides J. also agreed in *Pissas* (No. 1) v. *The Electricity Authority of Cyprus* (1966) 3 C.L.R. 634 at p. 639.

It is an uncontradicted fact that the applicant had no actual knowledge of the change in as much as she had no dealings whatsoever with the Lands Office since the title deeds were issued to her and there is nothing to suggest that she came to know of the notice, *exhibit* 10, then posted up. It remains, therefore, to consider whether, on

the basis of that notice *exhibit* 10, she can be considered to have had constructive knowledge of the new description. As I have already pointed out there is no provision in either of the two relevant laws for posting up. This being so the registered owner and the public at large cannot be presumed to have constructive knowledge of the change effected in the description of registered property.

In the circumstances of the Revenue Survey Law and sections 51 and 52 of the Immovable Property (Tenure, Registration and Valuation) Law, a public notice should have been given, that is to say an announcement not of a legislative nature which is gazetted, in which case the provisions of section 43 of the Interpretation Law could be invoked, and I see no reason why the further steps of publishing similar announcements in the newspapers, as the practice was, should be departed from in this case, a practice which ensured that the utmost publicity was given to a decision of such far reaching consequences to the individual property owners. It may be useful if the appropriate authority considered this point and took the appropriate steps to remedy same, so that similar problems as the one under consideration will not arise in the future.

In the circumstances of this case it cannot, therefore, be said that the applicant had either actual or constructive knowledge of this crucial matter. And, though the procedure laid down by section 6 of the Antiquities Law has been, on the face of it, complied with by the respondents, it had to be examined whether the description of the properties of the applicant, of which she had no knowledge and on the basis of which she could not identify same, mentioned therein as being her property, amounted to a sufficient notice whereby the apparent intention of the legislator to afford her an opportunity to be heard was satisfied. The absence of such knowledge completely deprived the applicant of the opportunity to be heard, by lodging an objection if she so wished, which is a safeguard for her interests likely to be affected by the order. This right was given to her by the very provisions of the relevant law. On account of recording therein a description of the property by which she was

not, and could not be presumed to be, aware that it referred to her property, the inherent validity of the order made thereafter was undoubtedly affected, in as much as the notice failed to convey the message it was intended to convey.

In the circumstances, therefore, the *sub judice* decision of the Council of Ministers of the 11th February, 1971, published under Notification 146, Supplement No. 3 of Gazette No. 860 of the 12th March, 1971, is, in so far as the applicant is concerned, hereby declared null and void.

Respondent to pay £15 against applicant's costs.

Sub judice decision annulled; order for costs as above.