

SALAMIS HOLDINGS LIMITED,

*Appellants.*

v.

MUNICIPALITY OF FAMAGUSTA,

*Respondents.*

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SALAMIS  
HOLDINGS  
LIMITED  
v.  
MUNICIPALITY  
OF FAMAGUSTA

(*Criminal Appeal No. 3475*).

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*Building—Demolition order—A discretionary one—Using a building without a certificate of approval—Section 10 of the Streets and Buildings Regulation Law, Cap. 96—No sufficient material placed before the trial Court so as to enable it to exercise properly its discretion regarding the making of a demolition order—Demolition order quashed.*

*Demolition order—Discretion—Proper exercise of—See supra.*

The Supreme Court, allowing this appeal, set aside a demolition order made by the trial Court, purporting to act under section 10 of the Streets and Buildings Regulation Law, Cap. 96, and held that, such order being a discretionary one, sufficient material ought to have been put by the prosecution before the trial Court in order to enable it to exercise properly its relevant discretion.

The facts sufficiently appear in the judgment of the Court, allowing this appeal and quashing the demolition order made by the trial Court.

Cases referred to:

*Improvement Board of Kaimakli v. Sevastides* (1967) 2 C.L.R. 117, at p. 124;

*Tsimon Estates Ltd. v. The Municipal Corporation of Famagusta* (Criminal Appeal No. 3399, not reported yet);

*Golden Sea-Side Estate Co. Ltd. v. The Municipal Corporation of Famagusta* (reported in this Part at p. 58, *ante*).

**Appeal against sentence.**

Appeal against sentence by Salamis Holdings Limited who were convicted on the 15th June, 1973 at the District Court of

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Famagusta (Criminal Case No. 9595/72) on one count of the offence of using a building without a certificate of approval contrary to sections 10(1) and 20 (1) (a) (2) and (3) of the Streets and Buildings Regulation Law, Cap. 96 and were sentenced to pay a fine of £12.— and £25.— costs and they were further ordered to demolish the said building within two months.

*L. Papaphilippou*, for the Appellant.

*M. Papas*, for the Respondents.

The judgment of the Court was delivered by:—

TRIANTAFYLLIDES, P.: In this appeal the Appellants complain against a demolition order that was made by the District Court of Famagusta after they had pleaded guilty to a count charging them with the offence of using a building—a block of flats—without a “certificate of approval”, issued by the appropriate authority; they were, also, sentenced to pay a fine of £12 and £25 costs of the Respondents, but they do not complain in this respect.

The relevant provision is section 10 of the Streets and Buildings Regulation Law, Cap. 96, which reads as follows:—

“ 10. (1) No person shall occupy or use, or cause, permit, or suffer any other person to occupy or use, any building unless and until a certificate of approval has been issued in respect thereof by the appropriate authority.

(2) The holder of a permit shall, not later than twenty-one days from the completion of the work or matter in respect of which the permit has been granted under the provisions of section 3 of this Law, notify the appropriate authority of such completion and such authority, if satisfied that the work or matter has been duly completed in accordance with the permit, shall furnish the holder with a certificate of approval of the work or other matter in respect of which the permit has been granted:

Provided that the appropriate authority may, where it so thinks fit and is satisfied that all requirements of this Law and the Regulations in force for the time being are complied with, furnish the holder of the permit with a certificate of approval for part only of the work or matter”.

According to the particulars stated in the count to which the Appellants pleaded guilty the salient facts of this case are that between the 9th April, 1970, and the 2nd November, 1972, in Famagusta, the Appellants were using a block of flats without having secured a certificate of approval from the appropriate authority, namely the Respondents.

According to the record before us, counsel appearing for the Respondents before the Court below did not place any other facts before such Court; he stated that the facts were those set out in the charge; and on the basis of such facts he applied for an order that the block of flats in question should be demolished.

Counsel appearing for the Appellants pointed out to the trial Court that without having before it all other relevant facts it could not exercise its discretion regarding the making of a demolition order; counsel added that the Appellants had applied for the certificate of approval, but that they did so only on the eve of the date on which they pleaded guilty to the offence concerned.

The power to make a demolition order, in a case such as the present one, is clearly a discretionary one (see section 20 of Cap. 96, as amended by section 2 of Law 67/63); and as pointed out in *Improvement Board of Kaimakli v. Sevastides* (1967) 2 C.L.R. 117, at p. 124, "there may be cases where a demolition order need not be made; where for instance, some condition in the permit has not been complied with, or there occurred an infringement of minor importance". Thus, it was vitally necessary for the Court below to know, for the purpose of a proper exercise of its discretion, whether there had occurred, in connection with the building of the block of flats in question, any infringement of the relevant legislation or of the conditions of the relevant permit, and, if so, what was the exact nature of such infringement, or whether the only contravention of the law by the Appellants was their failure to obtain in time a certificate of approval, which, in the absence of any infringement, as aforesaid, could have been issued in the usual course.

On the basis of the scanty material placed before the trial Court, as above, it was, in our view, impossible for such Court to have sufficient knowledge of the situation in the particular case so that it could exercise in a proper manner its discretion in deciding whether or not to make a demolition order.

We have been referred to two cases in which this Court has upheld, on appeal, demolition orders; we are of the view that they are both distinguishable from the present case:—

In *Tsimon Estates Ltd. v. The Municipal Corporation of Famagusta*, (Criminal Appeal 3399, not reported yet) the demolition order appealed from had been made in respect, *inter alia*, of the offence of occupying a block of flats without having secured a certificate of approval in relation thereto—as in the present case—but, *also* in respect of the offence of having built in contravention of the conditions of the relevant building permit; and it was quite clear, from the particulars stated in the count relating to the latter offence, what were the material circumstances of that case, namely the nature of the contravention of the building permit, and thus the trial Court was in a position to decide, with knowledge of all necessary facts, whether to make a demolition order.

In the other of the said two cases, *Golden Sea-Side Estate Co. Ltd. v. The Municipal Corporation of Famagusta*, (Criminal Appeal 3440, not reported yet)\* the demolition order was made after the Appellants in that case had pleaded guilty to serious contraventions of Cap. 96, committed through unauthorized building operations, and after evidence had been called before the trial Court by both sides for the purpose of “laying before the Court the material that each party considered would assist it in disposing of the case and in particular in determining the question of whether a demolition order should be made”.

In the present case we are satisfied, in the light of all the foregoing, that there was no possibility for the discretion of the trial Judge, regarding the making of a demolition order, to be exercised properly, and that, therefore, it was not so exercised; so, we have to set aside the order for the demolition of the block of flats in question.

If, apart from the offence with which we are concerned in this case, there has been committed by the Appellants any other offence in relation to the building of the said block of flats then, of course, the matter may be put right by appropriate proceedings.

This appeal is, therefore, allowed; but in the light of all relevant considerations, we are not prepared to make an order

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\* Now reported in this Part at p. 58, *ante*.

as to its costs in favour of the Appellants and against the Respondents, except as regards the costs awarded to the Appellants for the adjournment of the 30th July, 1973, which we assess at £10.

*Appeal allowed. Order for costs as above.*

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