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GEORGE  
ASPROFTAS

v.

REPUBLIC  
(MINISTRY OF  
INTERIOR)

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

GEORGE ASPROFTAS,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTRY OF INTERIOR,

*Respondent.*

(Case No. 127/72).

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*Recourse under Article 146 of the Constitution—Not maintainable in cases where the administrative action complained of falls in the domain of private law i.e. in the domain of civil rights—"Act" or "decision" in the sense of Article 146.1 of the Constitution which can be made the subject of the recourse under that Article—Acts or decisions within the domain of public law alone can be challenged by said recourse—Therefore decisions regulating civil law rights in property (such as the sub judice decision) are outside the ambit of that Article—Cf. further infra.*

*Immovable property—Decision of the Director of Lands and Surveys to register a strip of land in the name of the applicant—A decision in the circumstances of this case regulating civil law rights—And does not amount, therefore, to an "act" or "decision" in the sense of Article 146.1 of the Constitution (Roidou's case, infra, distinguished)—Cf. section 18 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224.*

The applicant in this recourse applied on February 22, 1971, to the District Land Officer, Nicosia, to cause registration to be made in his name of a strip of land, situate at Nicosia, for the following two reasons:

- (1) That his predecessor in title, owner of plots 130 and 130/2 in between which the said strip of land is situated, was originally the owner of this strip of land; and

(2) that he purchased it from the Nicosia Municipality on 8th October, 1959 for the sum of £230. The strip in question, it stated in the said application, was part of a larger strip of land which at a time circa 1900 was intended to be converted into a public road; in any event the intention of creation of such road was abandoned by the Government in 1935. In answer to this application the D.L.O. informed the applicant by letter dated March 31, 1972 that, after full examination of the matter, the Director of Lands and Surveys came to the conclusion that he could not register in the name of the applicant the strip of land in question because it is registered in the books and appears in the plans of the District Land Office as a "public road"; and as to his (the applicant's) allegation that he had purchased the said abandoned public road from the Municipality of Nicosia (*supra*), the applicant was referred to the provisions of section 18 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224 which reads (so far as material) as follows:

"18. The Governor (now the Council of Ministers) may grant, lease, exchange or otherwise alienate any Crown property (now any property of the Republic) by virtue of the provisions of this Law, *other than a public road* ....., for any purposes and on such terms and conditions as he may deem fit:

Provided that the Governor (now the Council of Ministers) may exchange or alienate any part of *any public road* if satisfied that other adequate public road has been provided in the place thereof or that such exchange or alienation will improve such public road:

Provided also .....

As a result the applicant filed on May 2, 1972, the present recourse under Article 146 of the Constitution, claiming a declaration that the aforesaid refusal of the Director of Lands and Surveys to register in his name the strip of land in question is null and void.

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It was objected by counsel for the respondent that this recourse is not maintainable on the ground that the *sub judice* decision is within the domain of private law involving civil law rights. The learned Judge of the Supreme Court accepted the contention of counsel for the respondent and, after reviewing the facts, —

Held, (1). In the present case the applicant claims ownership and, therefore, registration into his name of the strip of land in question on the aforesaid two grounds (*supra*). It is clear, therefore, that the decision of the Director in this matter is not an executory decision in the sense of Article 146.1 of the Constitution, regulating merely civil law rights.

- (2) The word “act” or “decision” in Article 146.1 of the Constitution meant an act or decision falling in the domain of public law only, and not of private law; and where the primary object of an act or decision of a public officer is not the promotion of a public interest but the regulation of civil law rights, such act or decision would be a matter of private law and would not amount to an “act” or “decision” which can be made the subject of a recourse under Article 146 (*Valana and The Republic*, 3 R.S.C.C. 91; and *Achilleas HadjiKyriacou and Theologia HadjiApostolou*, 3 R.S.C.C. 89, letter F, applied; *Roditis v. The Directress of the Pancyprian Gymnasium for Girls and Others* (1965) 3 C.L.R. 230, *distinguished*).

*Recourse dismissed.*

Cases referred to :

*Roditis v. The Directress of the Pancyprian Gymnasium for Girls and Others* (1965) 3 C.L.R. 230;

*Valana and The Republic*, 3 R.S.C.C. 91;

*Achilleas HadjiKyriacou and Theologia HadjiApostolou*, 3 R.S.C.C. 89, letter F;

*Nicos Kolokassides v. The Republic* (1965) 3 C.L.R. 542, C.A.

**Recourse.**

Recourse against the decision of the Director of Lands and Surveys refusing the registration in applicant's name of a strip of land situated between applicant's plots 130 and 130/2.

*L. Clerides*, for the applicant.

*N. Charalambous*, Counsel of the Republic,  
for the respondent.

*K. Michaelides*, for the interested party.

*Cur. adv. vult.*

The following judgment was delivered by :-

MALACHTOS, J. : The applicant in this recourse is the owner of Plots 130 and 130/2 of Block 25 S/P XXI. 54.2.II situated at Tripiotis Quarter in Nicosia. In between these plots there is a small strip of land of 2,300 sq. ft. in extent, which formed part of a proposed road. This strip of land was created after a plan of a building committee which was appointed in 1904 in order to advise the appropriate authority on applications for the issue of building permits on land of Arazi Mirie category. The said committees were acting on instructions which were included in Notification No. 7211 of the 1st July, 1904 which was published in the Cyprus Gazette, up to 1927 when they were abolished and new committees were created under the provisions of Law 25 of 1927. The whole scheme proposed by the said building committee was registered in the Lands Office before 1926 when the new General Survey for Nicosia took place.

The owners of plots 130, 130/2, 760 (former plot 145/1) 136, 484 (former part of plot 137) and 704 (former plot No. 135), consented to the proposed scheme and the said strip of land was declared as a road in describing the boundaries of the aforesaid plots.

The owner of plot 144, who was also affected by the said scheme, did not accept it. In view of this the said scheme remained inapplicable and as a result the new committee, which was created under the provisions of Law 25 of 1927, decided in 1935 to abolish it. Consequently, the then chief clerk of the Land Registry

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Office amended the affected certificates of registration of the owners of the said properties by way of restitution but for unknown reasons no instructions were given for the amendment of the certificates of registration as regards plots 130 and 130/2, and so the said strip of land remained in the books of the D.L.O. Registry as "road" or "proposed road" and was referred to in the boundaries of plots 130, 130/2, 137 and 138.

In 1946 the applicant purchased plots 130 and 130/2. In 1949 Plot 137 was divided into four plots one of which is plot 484. This plot 484 was later on sold to Efthymios Onisiforou and Artemis S. Poerou, the interested parties in this recourse.

Plot 138, now plot 678, was sold in 1956 to the Electricity Authority of Cyprus. Plots 484 and 678 abut the said proposed road which is referred to as one of their boundaries in their respective certificates of registration. When plot 678 was registered in the name of the Electricity Authority of Cyprus the line separating the part of the road with that plot was deleted as the said part had always been shown in the plans of the D.L.O. as forming part of plot 678.

In 1956 the Municipality of Nicosia declared the said strip of land as surplus and sold it to the applicant for the sum of £230. In 1963 the applicant produced to the Director of Lands and Surveys a declaration of sale in respect of this strip of land but the D.L.O. refused to accept it and by letter dated 11th September, 1963, was informing the applicant that his application for registration in his name of the said strip of land would not proceed unless the written consent of the owners of plot 484, *i.e.* the interested parties, was obtained. In view of the above letter of the Director the applicant on 16th November, 1963, filed recourse No. 221/63 where he applied for a declaration that the decision of the D.L.O. dated 11th September, 1963, requiring from the applicant the consent in writing by the adjoining owners of plot 484 in order to accept a declaration for registration of this strip of land in applicant's name, is null and void as being illegal and/or unconstitutional and/or in abuse of his powers. This recourse was finally withdrawn as the respondent by

letter dated 31st March, 1964, undertook to reconsider their decision of the 11th September, 1963.

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The respondent, after reconsidering their decision, by letters dated 20th November, 1967, and 3rd July, 1968, decided that the consent in writing of the adjoining owners was necessary for the transfer of the said plot of land in the name of the applicant. In view of the above the applicant filed on the 2nd day of September, 1968, recourse No. 306/68 claiming a declaration that the decision of the D.L.O. dated 3rd July, 1968, requiring from the applicant the written consent of the owners of plot 484 in order to accept a declaration for registration of the strip of land in question in applicant's name, is null and void as being illegal and/or unconstitutional and/or in abuse of powers.

In the course of the hearing of this recourse and after hearing evidence by Mr. Stelios Kyranides, a District Lands Officer, the then counsel for the respondent stated that the Director of the Department of Lands and Surveys was prepared to re-examine the whole matter in the light of the evidence of Mr. Kyranides and other relevant matters. In view of that statement advocate for the applicant, with the leave of the Court, withdrew the said recourse.

On the 22nd February, 1971, applicant's counsel wrote to the District Lands Officer, Nicosia, a letter (*exhibit 4*), on the question of re-examination of the case, in which, among other things, he referred to the evidence of Mr. Kyranides, which, according to his allegation, proved that legally there was never in existence a road within the property of the applicant and that the intention of creation of such road was abandoned by the Government in 1935. Furthermore, this evidence proved that instructions were given for the abolition of the said road, which instructions were complied with fully, with the exception of the applicant. However, this did not create any right to the interested parties. On the contrary, it proves that the interested parties have no right on the said abolished road which, in any case, was bought by the applicant from the Municipality of Nicosia on 8th October, 1959 for the sum of £230.

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In the light of the above facts applicant's advocate claimed that instructions should be given for immediate registration of the said strip of land in the name of the applicant.

By letter dated 31st March, 1972 (*exhibit 5*) and, in particular, paragraph 2 thereof, the applicant was informed that after re-examination of his application in the light of the facts contained in the books of the Department and the evidence of Mr. Kyranides, the Director of Lands and Surveys came to the conclusion that he could not register in the name of the applicant the strip of land in question which is registered in the books and appears in the plans of the D.L.O. as a public road. As to his allegation that he had purchased the said abandoned public road from the Municipal Committee of Nicosia the applicant was referred to the provisions of section 18 of the Immovable Property (Tenure Registration and Valuation) Law, Cap. 224. This section reads as follows :

"The Governor may grant, lease, exchange or otherwise alienate any Crown property or immovable property vested in the Crown by virtue of the provisions of this Law, other than a public road or the foreshore, for any purpose and on such terms and conditions as he may deem fit :

Provided that the Governor may exchange or alienate any part of any public road if satisfied that other adequate public road has been provided in the place thereof or that such exchange or alienation will improve such public road :

Provided also that the Governor in Council may lease any part of the foreshore for the purposes of harbours, jetties, piers, wharves, fisheries and any other purpose of public utility subject to such conditions as he may think fit."

As a result the applicant filed on 2nd May, 1972, the present recourse claiming a declaration of the Court that the decision of the Director of Lands and Surveys communicated to the applicant's counsel by letter dated 31st March, 1971, refusing the registration in the applicant's name of a strip of land situated between applicant's plots

130 and 130/2, should be declared null and void and of no effect whatsoever.

The application is based on the following points of law :

1. That the decision of the Director of Lands Registration and Surveys, conflicts with the provisions of sections 13 and 14 of Law 9/65.

2. That the said decision conflicts with Article 23 of the Constitution, which safeguards the right to property; and

3. That it conflicts with Article 28 of the Constitution in that it is discriminatory because of the reasons set out in the facts attached to the recourse.

The first ground of law in opposition which was also adopted by the interested parties, is that the decision of the Director of Lands Registration and Surveys, does not constitute an act or decision in the sense of Article 146 of the Constitution and is not amenable within the competence of this Court, since it is concerned with and affects private rights for the determination of which only the civil Courts have jurisdiction.

On 12th February, 1973, when the case came on for hearing before the Court, on the submission of counsel for the respondent, and with the consent of counsel for the applicant, this first ground of law set out in the opposition, was taken first as a preliminary legal issue.

It has been argued on behalf of the applicant that the decision of the respondent complained of constitutes an act or decision in the sense of Article 146 of the Constitution and, therefore, amenable within the competence of this Court. He also argued that the undertaking to re-examine the case of the applicant in recourse No. 306/68 operates as an estoppel against the respondent to raise the objection of competency of this Court as this point was raised in that recourse and abandoned. He alleged that the organ of the Republic which undertook in the course of an administrative recourse to re-examine the case, and which case in fact did re-examine, cannot in any subsequent recourse against this new decision on the same subject matter, put forward the allegation that

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its new decision does not fall in the domain of public law. He relied on the case of *Roditis v. The Directress of the Pancyprian Gymnasium for Girls and 2 Others* (1965) 3 C.L.R. 230. In that case the applicant, a minor, through her father, sought a declaration that the decision of the Director of Greek Education as contained in his letter of the 14th May, 1964, confirming her expulsion for 3 days by way of disciplinary punishment, from the Pancyprian Gymnasium for Girls at Pallouriotissa, was null and void. The facts of this case were as follows :

“On the 3rd May, 1963, applicant’s mother had gone to the school to complain to a schoolmistress, in relation to applicant’s marks for a certain subject taught in the 3rd form, in which applicant was at the time; eventually applicant, her mother and the said schoolmistress had a talk in the corridor of the school. Applicant was allegedly seen by another schoolmistress to make, towards the first schoolmistress a gesture, by striking one clenched fist against the other. There and then the news of applicant’s conduct in the corridor reached respondent 1, the headmistress, who proceeded to investigate the matter.

Eventually applicant admitted making the gestures in question, having denied it at first.

The case of applicant’s gesture was placed before the Masters’ Council of the school, and the said Council imposed a three days’ expulsion, which was put into effect.

The Masters’ Council reverted to the matter on the 3rd July, 1963, when fixing the applicant’s conduct rating for that school year and it was decided to give her a rating of 16 out of 20 because of the expulsion.

As a result, recourse 111/63 had been filed; that recourse was withdrawn, on the 16th January, 1964 when it was undertaken by the Director of Greek Education (respondent 2) to conduct himself an inquiry into the whole matter.”

At page 247 of this Report Triantafyllides, J. as he then was, had this to say:

“The next issue is whether the expulsion of applicant is an exercise of administrative or executive authority in the sense of Article 146 of the Constitution. But this issue does not really arise in the proceedings at all nor is it likely ever to arise in relation to this particular expulsion because the whole matter, having become in the special circumstances of this Case the object of administrative review, by concerted action of all parties concerned, it has been rendered, thus, a matter of public law and any future decision of the Director will be an exercise of executive or administrative authority in the sense of Article 146.”

Advocate for the respondent, on the other hand, in support of his argument relied mainly on the case of *Savvas Valana v. The Republic* (1962) 3 R.S.C.C. 91. In that case the applicant was the registered owner of a house and yard situated at Platanistassa. By a letter dated the 22nd May, 1961, the respondent informed the applicant that it was proposed to correct an error in the description of the boundaries of the applicant's said property by which an area which was formerly part of his property would henceforth form part of a public road.

The applicant sought a declaration of the Court that the decision of the respondent was null and void and of no effect whatsoever.

Held: (a) the word “act” or “decision” in Article 146.1 meant an act or decision falling in the domain of public law only, and not of private law (*Achilleas HadjiKyriacou* and *Theologia HadjiApostolou*, 3 R.S.C.C. letter F. p. 89);

(b) where the primary object of an act or decision of a public officer was not the promotion of a public purpose but the regulation of civil law rights in property, such act or decision would be a matter of private law and would not amount to an “act” or “decision” in the sense of Article 146.1.

It is well established that a decision, an act or omission of any organ, authority or person exercising any executive or administrative authority, must be of an ex-

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cutory nature in order to be amenable within the competence of this Court under Article 146 of the Constitution. This principle has been accepted by the Full Bench of this Court in its appellate jurisdiction in the case of *Nicos Kolokassides v. The Republic* (1965) 3 C.L.R. 542.

In the present case the applicant claims ownership and, therefore, registration into his name of the strip of land in question for the following reasons :

1. That his predecessor in title owner of plots 130 and 130/2 in between which the said strip of land is situated was originally the owner of this strip of land; and

2. That he purchased it from the Nicosia Municipality on 8th October, 1959 for the sum of £230.

It is clear, therefore, that the decision of the Director in this matter regulates civil law rights in the property and does not amount to an act or decision in the sense of Article 146.1 of the Constitution.

The mere fact that the case of the applicant was re-examined by the Director in the light of the evidence given in the previous recourse No. 306/68, by Mr. Kyranides, cannot automatically convert it into an act or decision in the sense of Article 146.1.

The *Roditou* case, *supra*, was decided on different facts and circumstances and is clearly distinguishable from the present case. There the whole matter having become in the special circumstances of the case the object of administrative review by concerted action of all parties concerned, it was rendered a matter of public law and the decision of the Director of Greek Education, respondent No. 2, who undertook to conduct himself an enquiry, was an exercise of executive or administrative authority in the sense of Article 146.1.

For the reasons stated above, I accept the submission of counsel for the respondent that the decision complained of does not fall in the domain of public Law, and, therefore, this recourse fails.

The applicant is adjudged to pay the costs of the interested parties, to be assessed by the Registrar.

As between the applicant and respondent there will be no order as to costs.

*Application dismissed.*  
*Order for costs as above.*

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