

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

DJEMAL MOULLA MOUSTAFA,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF INTERIOR AND ANOTHER,

*Respondents.*

(Case No. 366/69).

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*Administrative acts or decisions—Which alone can be challenged by a recourse—Article 146.1 of the Constitution—Refusal of the Director of Lands and Surveys Department to allow the transfer to applicant of a field—Because such transfer would affect adversely public security—Sections 5, 13 and 14 of the Immovable Property (Transfer and Mortgage) Law, 1965 (Law No. 9 of 1965)—Such action taken by the respondent Director is a matter within the domain of public law intended to serve primarily a public purpose—And therefore the sub judice decision is within the ambit of Article 146.1 of the Constitution—Which, therefore, could be made the subject of a recourse thereunder.*

*Public law—Private law—See supra.*

*Director of Lands and Surveys Department—Refusal to allow for reasons of public safety transfer to applicant of a field—Matter within the domain of public law—Recourse under Article 146 maintainable against such refusal—See further supra.*

The Director of Lands and Surveys Department refused, for reasons relating to public safety, to allow the transfer (and registration) to the applicant of a field which the latter has bought from its owner under an agreement in writing dated October 17, 1969. Rejecting a preliminary objection by the respondent Director, the Court held that the present recourse, directed against the said refusal, is maintainable under Article 146 of the Constitution on the ground that

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the action of the Director, taken for reasons of public safety under sections 5, 13 and 14 of Law No. 9 of 1965 (*infra*), is a matter within the domain of public law. The facts of the case are very briefly as follows :

The applicant in this case complains against the refusal of the respondent Director of Lands and Surveys Department to allow the transfer to him (the applicant) of a field, situate at Trahonas village, and which was sold to him by its lawful owner under an agreement in writing dated October 17, 1969. It would seem that the Director, acting under sections 5, 13 and 14 of the Immovable Property (Transfer and Mortgage) Law, 1965 (Law 9/65), took the view that, considering the situation created in Cyprus since December 1963 and the area where the field in question is situated, its transfer might adversely affect public security.

Counsel for the respondent Director took the preliminary point that the present recourse is not maintainable on the ground that the refusal complained of is a matter within the domain of private law. Counsel argued in this respect that in applying the aforesaid legislation the administration does not exercise State authority in the domain of public law but it renders only a public service in the domain of private law; counsel for the respondent relied in particular on the case *Charalambides and The Republic*, 4 R.S.C.C. 24, in which it was held that no recourse could be made under Article 146 of the Constitution against the refusal of a Principal Land Registry Officer to alter the date fixed for the sale of mortgaged property, because such refusal did not involve the exercise of a power having as its primary object the promotion of any public purpose but only concerned civil law rights.

Distinguishing *Charalambides'* case (*supra*), the learned President of the Supreme Court rejected the said preliminary objection by counsel for the respondents and :-

Held, (1). It appears to be well settled in our case-law that in so far as a public officer is vested with competence to take action in connection with civil law rights in immovable property and the primary object of this action is not the promotion of a public purpose but the regulation of civil law rights, then such action on his part is a matter within the domain of private law and does not

amount to an act or decision in the sense of paragraph 1 of Article 146 of the Constitution, which relates only to acts or decisions in the domain of public law; see, *inter alia*, *Hadjikyriacou and Hadjiapostolou*, 3 R.S.C.C. 89, *Valana and The Republic*, 3 R.S.C.C. 91, *Charalambides (supra)*, and *Cyprus Industries and Mining Co. Ltd. (No. 1) v. The Republic* (1966) 3 C.L.R. 467; the corresponding approach of French administrative law is analogous to that adopted here in Cyprus; see, *inter alia*, *Odent, Contentieux Administratif*, 1970 - 1971, pp. 363 and 370.

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- (2) In the light of the principle of law applicable and of the particular circumstances of this case, including especially the already stated reasons for which the respondent Director refused to allow the transfer to the applicant of the field in question, I have no doubt that the *sub judice* decision amounts to action taken by a public officer in the domain of public law in order to serve primarily a public purpose, namely public security, and, therefore, such decision is within the ambit of Article 146.1 of the Constitution; so this recourse could be made thereunder.

*Order in terms.*

Cases referred to :

*Charalambides and The Republic*, 4 R.S.C.C. 24;

*Hadjikyriacou and Hadjiapostolou*, 3 R.S.C.C. 89;

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

*Cyprus Industrial and Mining Co. Ltd (No. 1) v. The Republic* (1966) 3 C.L.R. 467.

**Recourse.**

Recourse against the refusal of respondent No. 2 to allow the transfer to the applicant of immovable property under Reg. No. C140 of 6.12.1957 situate at Trahonas.

*P. Frakalas*, for the applicant.

*K. Talarides*, (while being Senior Counsel of the Republic), for the respondents.

*Cur. adv. vult.*

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The following decision was delivered by :-

TRIANTAFYLIDIS, P. : By this recourse the applicant complains against the refusal of the respondent Director of the Lands and Surveys Department to allow the transfer to the applicant of immovable property—a field, under registration No. C140 of the 6th December, 1957—at Trahonas.

As it appears from the facts stated in the recourse this property was sold to the applicant by its owner by an agreement in writing dated the 17th October, 1969, for £9,000, out of which the applicant paid on that date on account £500. By a letter dated the 18th October, 1969, permission was requested for the transfer to the applicant, and registration in his name, of the property, but, as already stated, the respondent Director refused such permission.

In the Opposition which was filed in the proceedings by counsel for the respondents it is stated that the relevant decision of the Director was lawful in view of the special circumstances of the case; and by particulars given, by counsel for the respondents, it was explained that the special circumstances were that in view of the situation created in Cyprus since December 1963, and of the area where the property in question is situated, its transfer might affect adversely public security.

Moreover, counsel for the respondents has objected that this recourse could not be made under Article 146 of the Constitution because the *sub judice* decision did not come within the ambit of the jurisdiction under such Article.

As this objection concerns the jurisdiction of this Court to deal with this case it has to be decided as a preliminary issue :

Counsel for the respondents has stated that the legislation under which the respondent Director has acted are sections 5, 13 and 14 of the Immovable Property (Transfer and Mortgage) Law, 1965, (9/65), and has argued that in applying such legislation the administration does not exercise State authority in the domain of public law but it renders only a public service in the domain of private law; counsel has, in this respect, relied

in particular on the case of *Charalambides and The Republic*, 4 R.S.C.C. 24, in which it was held that no recourse could be made under Article 146 against the refusal of a Principal Land Registry Officer to alter the date fixed for the sale of mortgaged property, because such refusal did not involve the exercise of a power having as its primary object the promotion of any public purpose but only concerned civil law rights.

Counsel for the applicant has argued that in the present case the respondent Director acted in the domain of public law, in view of the nature of his *sub judice* decision.

It appears to be well settled by means of our case-law that in so far as a public officer is vested with competence to take action in connection with civil law rights in immovable property and the primary object of this action is not the promotion of a public purpose but the regulation of civil law rights, then such action on his part is a matter within the domain of private law and does not amount to an act or decision in the sense of Article 146.1 of the Constitution, which relates only to acts or decisions in the domain of public law; see, *inter alia*, *Hadjikyriacou and Hadjiapostolou*, 3 R.S.C.C. 89, *Valana and The Republic*, 3 R.S.C.C. 91, *Charalambides, supra*, and *Cyprus Industrial and Mining Co. Ltd. (No. 1) v. The Republic* (1966) 3 C.L.R. 467; in the last mentioned case it was held that administrative action taken in relation to the fixing of the reserve price in respect of the sale by auction of mortgaged property was, in the light of the circumstances of that case and of the provisions of the relevant legislation, action primarily intended to serve a public purpose and therefore a recourse could be made under Article 146.

The corresponding approach of French administrative law—which has been referred to by counsel for the respondents—is analogous to that adopted here in Cyprus; see, *inter alia*, *Odent's Contentieux Administratif*, 1970-1971, p. 363 and p. 370.

In the light of the principle of law applicable and of the particular circumstances of this case, including especially the already stated reasons for which the respondent Director refused to allow the transfer of the property concerned to the applicant, I have no doubt that the

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*sub judice* decision amounts to action taken by a public officer in the domain of public law in order to serve primarily a public purpose, namely public security, and, therefore, such decision is within Article 146.1; so this recourse could be made thereunder.

There remains to be examined, in the further course of these proceedings, the validity of the *sub judice* decision.

I reserve the question of the costs of the proceedings regarding the preliminary issue hereby decided.

*Order in terms.*