

[A. LOIZOU, J.]

1974
Mar. 22

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS NICOLAOU,

Applicant,

and

THE MINISTER OF INTERIOR AND ANOTHER,

Respondents.

—
GEORGHIOS
NICOLAOU
v.
THE MINISTER
OF INTERIOR
AND ANOTHER

(Case No. 28/73).

Buildings—Building permit—Dispensation under Regulation 64 of the Streets and Buildings Regulations with requirements of Regulation 6 (3)—Recourse against such dispensation by owner of adjacent plot—Respondent legally entitled to dispense with said requirements—No wrong exercise of discretionary powers established on the totality of facts and circumstances and the general conditions obtaining in the area—See further immediately herebelow.

Discretionary powers—Proper exercise of—Due inquiry carried out—Properly reasoned—What constitutes due inquiry and due reasoning for a decision is a matter depending on the circumstances of each case—Application for a building permit—Considered by all appropriate Government Departments and their views obtained—A due inquiry has been carried out and the sub judice decision is a duly reasoned one—Inasmuch as the reasoning therefor can be found, and is supplemented by the material, in the relevant file.

Inquiry—Due inquiry—See supra.

Reasoning—Due reasoning—See supra.

This is a recourse directed against the decision of the respondents whereby in granting a building permit to the applicant's neighbour they dispensed, under Regulation 64 of the Streets and Buildings Regulations, with the requirements of Regulation 6 (3). The facts of the case are sufficiently set out in the judgment of the learned Judge dismissing this recourse, holding that the dispensation complained of was lawfully made and duly reasoned, after a proper inquiry had been carried out into the material factors.

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Recourse.

Recourse for a declaration that a building permit issued by respondent 2 to the interested parties by which relaxation was granted to the effect that they would built up to the boundaries of their plot is *null* and *void*.

Fr. Saveriades, for the applicant.

Cl. Antoniadès, Counsel of the Republic, for the respondents.

Cur. adv. vult.

The following judgment was delivered by:-

A. LOIZOU, J.: By this recourse the applicant who is the administrator of the estate of the deceased Costas Petrou Koumi, of Angastina, seeks a declaration of the Court that a building permit issued on the 4th November, 1972 by respondent 2 to the Church Committee of Ayia Paraskevi of the said village (hereinafter referred to as "the interested party") and by which relaxation was granted to the effect that they would build up to the boundaries of their plot, should be declared *null* and *void*.

The grounds relied upon in this recourse, as finally argued by learned counsel for the applicant, are that -

- (1) Respondent 2 in granting the said relaxation has exercised his discretion wrongly and in excess or abuse of power.
- (2) No due inquiry was carried out, and
- (3) The said decision was not duly reasoned.

Under the Streets and Buildings Regulations to be found in the Subsidiary Legislation of Cyprus, vol. 1, at p. 307 and in particular Regulation 6, paragraph (3),

"No part of the main building or alteration or addition to any existing main building and no open verandah higher than 4 feet from the ground level shall be less than 10 feet from any boundary of the plot on which it stands..."

Relaxation, however, of this Regulation may be granted under Regulation 64 which provides that -

"Notwithstanding anything in these regulations contained, where the appropriate authority is the Commissioner of

the district or a board of which the Commissioner is the Chairman such authority may dispense with all or any of the requirements of these regulations or apply them with such modifications, not being more onerous, as to such authority may seem fit having regard to the particular circumstances of any case or the general conditions obtaining in the area”.

The facts of the case are briefly as follows:-

The plot in respect of which the said building permit was issued, is of an extent of 37 ft. by 90 ft. It formed part of the yard of the house of the deceased Costas Petrou Koumis of Angastina who originally sold it to the Nationalist Clubs of Angastina by a contract in writing dated the 12th March, 1963 (exhibit 'B' blue 18) for the sum of £140. Subsequently, and in fact on the 15th March, 1966, the said plot of land was transferred to the name of the interested party by way of gift and it now stands registered in their name under Reg. No. 4174 plot 63.1.2 Sheet Plan 22/31, the remaining property of the applicant being identified as plot 63.1.1, of the same sheet plan. On the 6th October, 1971, the interested party applied to respondent 2 for the issue to them of a building permit for the erection of premises intended to house the Nationalist Clubs of the village. The deceased wrote to respondent 2 on the 22.11.71, objecting to the granting of a building permit to the interested party, “in contravention of the Streets and Buildings Regulation Law, Cap. 96, as his information was that they did not intend to build at such a distance from the boundaries as prescribed by the Regulations”.

The matter was in the first place investigated by the Assistant District Inspector and his comments (exhibit 'B' blue 10) were to the effect that the deceased had originally consented to the building being erected on the boundaries, but later objected to it for political reasons; this officer's suggestion was that the appropriate Authority might not insist on the strict application of Regulation 6 (3) of the said Regulations. In the meantime and before the permit was issued the deceased died and two new identical objections in writing were submitted to respondent 2 dated the 29th October, 1972, the one by the administrator of the estate of the deceased and the other by the owner of the property adjacent to the south boundary.

The application for a building permit was considered also by the appropriate Government Department, such as the District

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Medical Services and the Divisional Engineer and their views were obtained before the issue of the relevant permit. In the circumstances and before proceeding any further, I would like, at this stage, to conclude that there has been an adequate inquiry and that the decision is duly reasoned, inasmuch as the reasoning for the decision can be found and is supplemented from the material in the relevant file. One should not lose sight of the principle that what constitutes a proper inquiry and due reasoning for a decision is a matter depending on the circumstances of each case.

Respondent 2 issued on the 4th November, 1972 the building permit (*exhibit 'B'* blue 17) on certain conditions, one of them being that the building should be placed 25 feet from the centre of the road and with a relaxation regarding the requirement of Regulation 6 (3) as to standing 10 ft. from the remaining boundaries.

It has been urged by learned counsel for the applicant that respondent 2 should not have exercised its discretion under Regulation 64 in favour of the said relaxation, inasmuch as by doing so the amenities of this adjacent house, in particular the circulation of air would be unduly affected and also such proximity would interfere with his privacy, and that in failing to take all these into consideration, respondent 2 has exercised his discretion wrongly and in excess or abuse of power. It may be observed here, however, that the properties in question are situated in the centre of the village which is a densely built up area.

Considering the totality of the facts and circumstances, as they appear in the relevant file and the views expressed on the matter, as well as the general conditions obtaining in the area, a factor that might be taken into consideration under Regulation 64 hereinabove set out I have come to the conclusion that it has not been established, to my satisfaction, that there has been any wrong exercise of discretion in the circumstances. Respondent 2 was legally empowered to dispense with the requirements of Regulation 6 (3). In the circumstances, he was justified in doing so, in spite of the change of mind by the deceased—pursued later by the administrator of his estate—by bearing in mind the purpose for which that property was ceded and donated, as well as its extent, which was such as to render impossible or impracticable its use for the purpose for which the property was acquired without relaxation being granted.

In my view, respondent 2 has exercised his discretion under regulation 64 in a lawful manner within the objects of the Law, has taken into account all material considerations and has given to them due weight.

For all the above reasons the present recourse is dismissed, but in the circumstances I make no order as to costs.

Application dismissed; no order as to costs.

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