

1974
June 28

[MALACHTOS, J.] .

—
CHARALAMBOS
SARANTI,
v.
REPUBLIC
(SENIOR
MINES
OFFICER)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHARALAMBOS SARANTI,

Applicant

and

THE REPUBLIC OF CYPRUS, THROUGH
THE SENIOR MINES OFFICER,

Respondent.

(Case No. 370/72).

*Mines and Quarries (Regulation) Law, Cap. 270—Prospecting permit—
Granted under section 13 of the Law—Can only be cancelled
under the provisions of section 18 of the Law.*

*Administrative Law—Administrative Acts—Revocation of—Principles
of Administrative Law governing revocation of administrative
acts—Applicable only when there is no law regulating such revoca-
tion—Prospecting permit granted under section 13 of the Mines
and Quarries (Regulation) Law, Cap. 270—Can only be cancelled
under the provisions of section 18 of the Law.*

The applicant, who was the holder of a prospecting permit that had been issued to him under the provisions of section 13 of the Mines and Quarries (Regulation) Law, Cap. 270, was informed by the respondent that the prospecting permit was cancelled on the ground that the area covered by the permit was “considered of touristic importance and mine works would cause irreparable damage to the physical environment”.

Counsel for the applicant argued that the respondent had no power to apply the general principles of administrative law, relating to revocation of administrative acts, which are applicable only when there is no law regulating such revocation; and in this case, counsel went on, there is special provision in section 18 of the Mines and Quarries (Regulation) Law (*supra*) which reads as follows:

“The Governor (now the Council of Ministers) may cancel any prospecting permit if, in his opinion, its holder fails to

comply with or observe any of the provisions of this Law or any Regulations made thereunder or any term or condition of such permit”.

Held, (1) The principles of administrative Law governing revocation of administrative acts are only applicable in the absence of legislative provisions expressly governing and regulating the question of revocation in each particular case. (See Conclusions of Case Law of the Greek Council of State 1929-1959 pp. 198-199).

(2) The respondent authority could not revoke their previous decision, which was a lawful one, by cancelling the prospecting permit of the applicant which was issued to him under s. 13 of the Law and in compliance with all the requirements thereof. Such permit could only be cancelled under the provisions of section 18 of the Law.

(3) Therefore the decision of the respondent by which the said prospecting permit was cancelled, is declared *null* and *void* and of no legal effect whatsoever.

Sub judice decision declared null and void.

Recourse.

Recourse against the decision of the respondent by virtue of which prospecting permit No. 2460 granted to applicant was cancelled.

A. *Pandelides*, for the applicant.

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

Cur. adv. vult.

The following judgment* was delivered by:

MALACHTOS, J.: The applicant in this recourse applies for a declaration of the Court that the decision of the respondent contained in the letter dated 29.8.72 addressed to the applicant by which the prospecting permit under No. 2460 granted to him on 10.1.72, was cancelled, is *null* and *void* and of no legal effect.

* An appeal has been lodged against this judgment. The appeal has been heard and judgment thereon has been reserved.

1974
June 28

CHARALAMBOS
SARANTI
v.
REPUBLIC
(SENIOR
MINES
OFFICER)

1974
June 28

CHARALAMBOS
SARANTI
v.
REPUBLIC
(SENIOR
MINES
OFFICER)

The applicant also claims a declaration of the Court that the said decision of the respondent was taken in excess of power.

The facts relevant to the issues in this recourse are the following:

On 23.8.71 the applicant applied under the Mines and Quarries (Regulation) Law, Cap. 270, for a prospecting permit covering an area situate between the Pera Pedhi main state forest and the village of Moniatis in the Limassol District. On 10.1.72 a prospecting permit in the prescribed form Class "A" under No. 2460 signed by the Senior Mines Officer, was granted to the applicant by virtue of section 13 of the law. The said permit to which the relevant plan is attached, has been produced and marked as *exhibit 1* in the proceedings.

By letter dated 5th February, 1972, *exhibit 4*, addressed to the Director-General of the Ministry of Commerce and Industry the Director-General of the Cyprus Tourism Organization asked for the cancellation of the said permit of the applicant so that the destruction of the natural environment of an area which is of touristic importance should be avoided.

By letter dated 3rd March, 1972, *exhibit 3*, the Senior Mines Officer, to whom the objection of the Cyprus Tourism Organization was referred, informed the applicant that due to new facts the prospecting permit granted to him might be cancelled and he was advised not to proceed with the prospecting works in the said area, thus incurring further expenses.

It is not in dispute that as from the time of the granting of the said permit to him up to the time he received the letter, *exhibit 3*, or at any time thereafter, the applicant carried out any prospecting works in the area in question.

By letter dated 29.8.72 the Senior Mines Officer informed the applicant that his prospecting permit was cancelled. The said letter reads as follows:

"Prospecting Permit under No. 2460

The above prospecting permit which was granted to you on the 10th January, 1972, is hereby cancelled.

You have already been notified by my letter dated 3rd March, 1972, that this prospecting permit might be can-

celled and you were advised not to proceed and incur prospecting expenses.

The reasons of cancellation of the prospecting permit are that this area is considered of touristic importance and mine works would cause irreparable damage to the physical environment.

The sum of £24.-, which you paid for rent for the first year will be refunded to you through the Accountant-General".

The application is based on the following grounds of law -

1. The respondent had no power to cancel the prospecting permit for other reasons than those referred to in section 18 of the Mines and Quarries (Regulation) Law, Cap. 270; and
2. The respondent had no power to cancel and/or revoke the said prospecting permit, under the general principles of administrative law.

It has been argued on behalf of the applicant that the respondent authority had no power to apply in the case in hand the general principles of administrative law since there is special provision in section 18 of the Mines and Quarries (Regulation) Law, Cap. 270. This section reads as follows:

" The Governor (now the Council of Ministers) may cancel any prospecting permit if, in his opinion, its holder fails to comply with or observe any of the provisions of this Law or any Regulations made thereunder or any term or condition of such permit".

The reason for cancellation of the prospecting permit of the applicant is not specifically mentioned in the said section.

The general principles of administrative law in case of revocation of administrative acts, are applicable, counsel for applicant argued, only when there is no law regulating such revocation.

It is well accepted that in the field of administrative law our Courts look for guidance in the continental legal systems and, in particular, to the principles of administrative law prevailing in Greece. As a general rule an administrative act in Greece

1974
June 28

CHARALAMBOS
SARANTIS
v.
REPUBLIC
(SENIOR
MINES)
OFFICER)

is revocable, as such act does not possess the strength of *res judicata*. (See Kyracopoulos on Greek Administrative Law, 4th edition, volume 2 page 407). The above principles apply to both lawful and unlawful administrative acts. However, in cases of lawful administrative acts where there is legal provision regulating the subject of their revocation, the position is different.

In Conclusions of Case Law of the Greek Council of State 1929–1959 at page 198 to 199 we read.....

* “ ‘Εν τῇ ἡμετέρᾳ νομοθεσίᾳ, δὲν ὑφίστανται γενικοῦ περιεχομένου διατάξεις, προβλέπουσαι περὶ ἀνακλήσεως τῶν διοικητικῶν πράξεων. Τὸ κενὸν τοῦτο πληροῦται διὰ τῶν ἐν τῇ νομολογίᾳ τοῦ Συμβουλίου τῆς Ἐπικρατείας διαμορφωθεισῶν γενικῶν ἀρχῶν, αἵτινες ὁμως ἐφαρμόζονται μόνον ἐν ἐλλείψει νομοθετικῆς διατάξεως ρητῶς προβλεπούσης καὶ ρυθμιζούσης τὸ θέμα τῆς ἀνακλήσεως ἐν ἐκάστη ἐιδικῇ περιπτώσει: 543/39, 1189/49, 1529–1532/52. Ὅπου ὑφίστανται τοιαῦται διατάξεις τυγχάνουσιν αὐται καὶ μόναι ἐφαρμοστέαι: 1289/47, 103/52, 1998/56, ὡς λ.χ. ἡ τοῦ ἀρ. 80 τοῦ Ἀγροτικοῦ Κώδικος, ἣτις ρυθμίζει τὰ τῆς ἀναθεωρήσεως, τῶν ἀποφάσεων τῶν Ἐπιτροπῶν Ἀπαλλοτριώσεων: 544–548/44, 1226/53, 1877/56 τοῦ Α. Ν. 1731/1939, ἔνθα ὀρίζονται αἱ περιπτώσεις, καθ’ ὅς συγχωρεῖται ἡ ἀνάκλησις τῶν πράξεων, δι’ ὧν κηρύσσεται ἀναγκαστικὴ ἀπαλλοτρίωσις: 1655/54 κ.λ.π.”.

Applying the above principles to the facts and circumstances of the present case I am of the view that the respondent authority could not revoke their previous decision, which was a lawful one, by cancelling the prospecting permit of the applicant. The applicant became the holder of a prospecting permit issued under section 13 of the law and in compliance with all the requirements thereof. Such permit could only be cancelled under the provisions of section 18 of the law. Therefore, the decision of the respondent contained in the letter dated 29.8.72 (*exhibit 2*) by which the prospecting permit under No. 2460 granted to the applicant on 10.1.72 was cancelled, is declared *null and void* and of no legal effect whatsoever.

* An English translation of this text appears at p. 343, *post*.

Respondent to pay £20.- towards the costs of the applicant.

*Sub judice decision declared null
and void. Order for costs as
above.*

This is an English translation of the Greek text appearing at p. 342, *ante*.

“In our legislation there are no general provisions governing revocation of administrative acts. This vacuum is filled up by the general principles enunciated by the case law of the Council of State, which are only applicable in the absence of legislative provisions expressly governing and regulating the question of revocation in each particular case: 543/39, 1189/49, 1529-1532/52. Where such provisions exist, only these provisions are applicable: 1289/47, 103/52, 1998/56, e.g. the provisions of section 80 of the Rural Code, which regulate the revocation of the decisions of the Acquisition Committees: 544-548/44, 1226/53, 1877/56, of A.N. 1731/1939, which specify the instances in which revocation of the acts is excused, and whereby a compulsory acquisition is declared: 1655/54 etc.”.

1974
June 28

—
CHARALAMBOS
SARANTI
v.
REPUBLIC
(SENIOR
MINES
OFFICER)