

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

THECLOU PANAYIOTOU ANTONIOU,

Applicant.

and

THE REPUBLIC OF CYPRUS, THROUGH

1. THE DISTRICT OFFICER PAPHOS,
2. THE DIRECTOR OF THE DEPARTMENT OF ANTIQUITIES,

Respondents.

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OFFICER
PAPHOS
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(Case No. 121/74).

Antiquities Law, Cap. 31—Ancient monument—Immovable property declared an ancient monument under s. 6 (1) of the Law and included in the Second Schedule thereto—Appropriate organ to grant a permit, in addition to the building permit required under the Streets and Buildings Regulation Law, Cap. 96, is the Director of Antiquities—Section 8 (1) of the Law—Section 11 (1) not not applicable.

Permit—Property declared an ancient monument under s. 6 (1) of Cap. 31—Appropriate organ for the grant of.

10 The applicant is the registered owner of a building site situated at Kato Paphos, which was declared an ancient monument by virtue of section 6 (1) of the Antiquities Law, Cap. 31 and was added to the Second Schedule of the Law. As in view of such
15 declaration he had to secure a permit in order to erect a building on his said plot, in addition to the building permit required under the Streets and Buildings Regulation Law, Cap. 96, he applied to the District Officer for the purpose who transmitted such application to the Director of Antiquities. The sole question for consideration in this recourse was which was the
20 appropriate organ to grant such permit.

Held, (1). The appropriate organ to grant such permit is the Director of Antiquities under the powers vested in him by virtue of section 8 (1)* of the Antiquities Law, Cap. 31. Section

* Quoted at p. 173 *post*.

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11 (1)* has no application in the present case. Fact that applicant wrongly applied to the District Officer is of no significance since her application was finally transmitted to the Director of Antiquities who decided not to grant the permit applied for.

(2). This recourse can only proceed as against the Director of Antiquities but not as against the District Officer who did not and could not take any decision on the matter, and an order is made accordingly.

Order accordingly.

Recourse.

Recourse against the decision of the respondents by virtue of which they refused applicant's application for a building permit.

A. Skarparis with Ph. Valiantis, for the applicant.

N. Charalambous, Counsel of the Republic, for the respondents.

Cur. adv. vult.

The following judgment was delivered by:-

MALACHTOS, J.: The applicant in this recourse is the registered owner of a building site situated at Kato Paphos, under Registration No. 3251 dated 20/4/72 being plot 226/3 of Sheet 51 Plan 10, 18. The whole plot 226 before its sub division into building sites, was declared by Not. 658 in Supplement No. 3 to the Cyprus Gazette of 22/9/66 an ancient monument by virtue of section 6 (1) of the Antiquities Law, Cap. 31 and was added to the Second Schedule of the said Law.

On 23/11/73 the applicant applied for a building permit to erect a building on the said site and she submitted to the Municipality of Paphos, as the appropriate authority under the Streets and Buildings Regulation Law, Cap. 96, the relevant form (*exhibit 2*), to which the survey plan, the certificate of registration and the architectural plans, were attached.

In view of the fact that the building site in question was affected by the Antiquities Law, Cap. 31, the applicant on 4/12/73 submitted to the District Officer of Paphos an applica-

* Quoted at pp. 172-173 *post*.

tion on form Comm. 6 (*exhibit 3*), for a permit to build on her aföresaid plot. On 8/12/73 the District Officer of Paphos transmitted the applicant's application to the Director of Antiquities for his consideration. On 22/12/73, the Director wrote a letter, (*exhibit 5*), to the District Officer on the subject, which reads as follows:

“ With reference to your letter under the above number dated 8/12/73 on the above subject, I wish to inform you that the said site is one of the few which remained uncovered and are situated between the Hellenic Theatre and the Frankish Baths. I suggest that the application be refused and that we should proceed to its compulsory acquisition.

The documents sent to me are returned herewith”.

On receipt of the above letter the District Officer sent the following letter dated 10/1/74 (*exhibit 1*), to the Chairman of the Municipal Committee of Paphos:

“ I wish to refer to the application of Mrs. Theclou P. Antoniou for a permit to build on plot No. 226/3, S/P 51/10, 18 at Kato Paphos and to inform you that the Director of Antiquities suggests that the application be refused because the said site is one of the few which remained uncovered and is situated between the Hellenic Theatre and the Frankish Baths.

2. The relevant documents are attached”.

The Municipal Committee of Paphos in its turn, by letter dated 15/1/74 (*exhibit 6*), wrote to the applicant as follows:

“ With reference to your application dated 4/12/73 for the issue of a building permit on your plot 226/3 of S/P 51/10, 18 under registration No. 3251 dated 20/4/72, I inform you that the Director of Antiquities suggests that your application be refused since the said site is one of the few which remained uncovered and is situated between the Hellenic Theatre and the Frankish Baths.

Therefore, we return the attached relevant documents with a photo-copy of the letter of the District Officer of Paphos under File No. 7/65 dated 10/1/74, which speaks in connection with your said application”.

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As a result the applicant filed the present recourse against the Republic of Cyprus, through 1. The District Officer of Paphos and 2. The Director of Antiquities, claiming a declaration of the Court that the act and/or decision of the respondents dated 10th January, 1974, by which they refused the application of the applicant for a building permit on Plot No. 226/3 of S/P 51/10, 18 at Kato Paphos, is *null* and *void* and of no legal effect whatsoever. 5

When the case came on for hearing counsel for the respondents submitted that the decision complained of referred to in the letter of the District Officer dated 10/1/74, (*exhibit* 1), is not an executory administrative act but is only of an informative nature, and so it cannot be the subject of a recourse under Article 146 of the Constitution. This point was, with the consent of counsel for applicant, heard first as a preliminary legal issue. 10 15

Counsel for the respondents argued that the letter of the District Officer dated 10/1/74 (*exhibit* 1), does not constitute an executory administrative act but it is a document by which the opinion of an organ is expressed for the information of the Municipal Committee of Paphos, which is the responsible authority under the Streets and Buildings Regulation Law, Cap. 96, for the issue of building permits in the area in question. This recourse, therefore, ought to be directed against the Municipal Committee of Paphos and not against the District Officer or the Director of Antiquities. He further argued that in view of the fact that the property of the applicant was affected by the Antiquities Law, Cap. 31, she had to submit, in addition to her application to the Municipal Committee of Paphos under Cap. 96, an application under section 11 of Cap. 31. In fact, on the form of application she submitted (*exhibit* 3), it is stated that the application is made under section 11 of Cap. 31. 20 25 30

Section 11 (1) of Cap. 31, as amended by Law 48/64 and 32/73 reads as follows:

“ 11.(1) The Council of Ministers with a view to ensuring that buildings in the neighbourhood of an ancient monument shall as regards height and style of architecture be in keeping with the character and style of such monument and that the amenities thereof may be preserved, may by notice to be published in the Gazette order that, within such area as may be specified in such notice no building 35 40

shall be erected reconstructed, repaired, or demolished, and no tree shall be felled save in accordance with the terms of a permit in writing from the District Officer previously obtained”.

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5 Finally, counsel for the respondents submitted that the spirit of the letter of the Municipal Committee to the applicant (*exhibit* 6), is that since the applicant could not secure a permit under Cap. 31 the relevant documents were returned to her as her application for a building permit could not be accepted. So, the decision complained of is the dismissal of her application of 23/11/73 to the Municipal Committee of Paphos and this recourse ought to be directed against the said Committee.

15 On the other hand, counsel for applicant submitted that the letter of 10/1/74 (*exhibit* 1), contains the decision of the Director of Antiquities which was taken in exercising his discretionary powers under section 8 (1) of the Antiquities Law, Cap. 31. This decision has by itself produced legal results, and, consequently, it may be the subject of a recourse under Article 146 of the Constitution.

20 Section 8 (1) of the Antiquities Law, Cap. 31, as amended by Law 32 of 1973, reads as follows:

25 “ No person beneficially interested in any ancient monument specified in the Second Schedule to this Law, or in any other ancient monument as from time to time be added thereto shall make any alterations, additions or repairs affecting its architectural character to such ancient monument or shall demolish the same or fell any tree growing within the boundaries of the same or shall do any other act which might damage or destroy the archeological importance and stratification of the ancient monument, save in accordance with the terms of a permit in writing from the Director previously obtained”.

35 It is clear from the wording of the above section that as regards immovable property which was declared an ancient monument and was included in the Second Schedule of the Law, as in the case in hand, the appropriate organ to grant a permit is the Director of Antiquities under the powers vested in him by virtue of section 8 (1) of Cap. 31.

40 Section 11 of Cap. 31, by virtue of which the District Officer is empowered to grant a permit has no application in the present

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case. This section, as it is clear from its wording, applies only in cases where immovable property which was not declared an ancient monument is in the neighbourhood of an ancient monument. Furthermore, there must be a publication in the Official Gazette of the Republic of the relevant order of the Council of Ministers affecting such property. 5

The applicant, therefore, as a person beneficially interested in an ancient monument specified in the Second Schedule of the Antiquities Law, ought to apply directly to the Director of Antiquities for a permit, as the only responsible authority to grant such a permit under the said Law. The District Officer had no say in this matter. The fact, however, that the applicant wrongly applied to the District Officer on Form Comm. 6 under section 11 of the Law, is of no significance since her application was finally transmitted to the Director of Antiquities who decided not to grant the permit applied for. The said decision was communicated to her through the District Officer and the Municipal Committee of Paphos. 10 15

It should be noted here that the letter of the Municipal Committee dated 15/1/74 (*exhibit 6*), informs the applicant as regards her application of 4/12/73 under the Antiquities Law, Cap. 31, and makes no mention of her application of 23/11/73 under the Streets and Buildings Regulation Law, Cap. 96. 20

For the above reasons I rule that this recourse can only proceed as against the Director of Antiquities but not as against the District Officer who did not and could not, as explained above, take any decision on the matter, and an Order is made accordingly. 25

The further Hearing of this recourse to be fixed on the application of either party. 30

The costs thrown away to be costs in cause but in no case against the applicant.

Order accordingly.