

1978 December 8

[TRIANTAFYLIDIS, P., STAVRINIDES AND A. LOIZOU, JJ.]

THE MUNICIPALITY OF NICOSIA,

Appellant.

v.

ANNA ANTONIOU AND OTHERS,

Respondents.

(*Criminal Appeal No. 3774*).

Building—Building without permit—Demolition order—Discretion of the Court—Principles applicable—Rebuilding wall of room, which had been demolished through negligence of employee of appellant Authority, in a manner ceding a space to the public road—Building affected by street-widening scheme—Trial Judge refusing to make a demolition order—Court of Appeal not satisfied that it should interfere with the exercise of trial Judge's discretion in the very special circumstances of this case—Sections 3(1)(b) and 20 of the Streets and Buildings Regulation Law, Cap. 96.

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On January 5, 1976, a motor vehicle belonging to the appellant Municipality knocked on the wall of a room of respondents' house, which was used as a lavatory, and demolished part of it. The respondents complained to the appellant and the latter closed the demolished part with corrugated iron sheets. This temporary repair was found to be unsatisfactory by the respondents who proceeded to demolish the affected wall and rebuild it from the ground with bricks in a manner which resulted in ceding to the public road a triangular space of four feet by two.

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The respondents were prosecuted for building a wall without a permit, contrary to sections 3(1)(b) and 20 of the Streets and Buildings Regulation Law, Cap. 96. The trial Judge, being of opinion that this contravention of the Law was a technical one and warranted no more than a nominal sentence of £1 fine by each respondent, refused to make a demolition order which he considered would be too harsh.

Upon appeal by the Municipality against the refusal to make a demolition order it was argued that no building permit could be issued as there existed an approved and binding street-widening scheme affecting the building in question

Held, that the respondents exhibited the utmost good faith in trying to remedy and restore the damage caused by the negligent action of an employee of the appellant, that the gesture of the respondents to cede to the road as much as they could in the circumstances, instead of filling in the hole opened in the wall, which would have meant that the state of things would remain as before with regard to the street alignment, renders their offence of such a nature as to justify this Court in dismissing the appeal, because it has not been satisfied that it should interfere with the exercise of the Court's discretion in the very special circumstances of this case

Appeal dismissed

Per Curiam Our approach to this case of unique facts does not purport to set down any general proposition of Law regarding the exercise by the Courts of their discretion under section 20 of Cap 96, nor could we be taken as suggesting a departure from the principles laid down in a line of authorities (see, *inter alia*, *Improvement Board of Kaimakli v Sevastides* (1967) 2 C L R 117)

Cases referred to

- District Officer Nicosia v HadjiYiannis*, 1 R S C C 76, 25
Improvement Board of Kaimakli v Sevastides (1967) 2 C L R 117;
Golden Seaside Estate Company Ltd, v Municipal Corporation of Famagusta (1973) 2 C L R 58,
Municipality of Nicosia v Pierides (1976) 7 J S C 1160 (to be reported in (1976) 2 C L R) 30

Appeal.

Appeal by the Nicosia Municipality against the refusal of the District Court of Nicosia (Boyadjis, S.D.J) (Criminal Case No 2073/76) to make a demolition order upon conviction of the respondents on one count of the offence of building a wall

without a permit contrary to sections 3(1)(b) and 20 of the Streets and Buildings Regulation Law, Cap. 96.

A. Indianos, for the appellant.

A. Paikkos, for the respondent.

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Cur. adv. vult.

TRIANTAFYLIDIS P.: The judgment of the Court will be delivered by Mr. Justice A. Loizou:—

A. LOIZOU J.: This is an appeal by the Municipality of Nicosia as the appropriate authority under the Streets and Buildings Regulations Law, Cap. 96, against the refusal of the trial Court to make a demolition order upon the conviction of the respondents for building a wall without a permit contrary to sections 3(1)(b) and 20 of the aforesaid Law.

The short facts of the case are as follows: Respondent 1, is the mother of all other respondents, all being the joint owners of a house situated on the corner of Alexander the Great and Periklis streets.

On the 5th January, 1976, a motor vehicle belonging to the appellant Authority, knocked on the wall of a room of the said house which was used as a lavatory, and demolished part of it, opening a big hole and so making the use of this room impossible. The respondents complained to the appellant Authority about the damage caused by their vehicle and the latter closed the hole with corrugated iron sheets. The respondents on finding this temporary repair unsatisfactory and unsafe for the use of the room in question, proceeded to demolish the affected wall and rebuild it from the ground with bricks in a manner which resulted in ceding to the public road a triangular space of four feet by two, the length of the new wall being four and a half feet long.

The approach of the trial Judge was that this contravention of the Law was a technical one and warranted no more than a nominal sentence and in fact he ordered each respondent to pay £1.— fine and £1,500 mils costs, and refused to make a demolition order which he considered would be too harsh. Had the respondents not rebuilt the wall, they would have either to go without the use of the lavatory or to use it with the hole closed with corrugated iron sheets.

The prosecution appealed and argued in favour of a demolition order, as there exists and affects the building in question an approved binding Street Widening Scheme and so no permit could be issued by the appellant Authority.

The Law on the question of making demolition orders under section 20 may be summed up as follows: 5

Under the legislation as originally enacted, the making of a demolition order was compulsory, and trial Courts had no discretion in the matter until the amendment of section 20(3) by Law 67/63, which gave statutory effect to the decision of the then Supreme Constitutional Court in the case of *District Officer, Nicosia and HadjiYiannis*, 1 R.S.C.C. p. 79, that that provision was unconstitutional. There followed a number of judgments of this Court setting down the guide-lines for the exercise of the Court's discretion in the matter. 10 15

In the case of *The Improvement Board of Kaimakli v. Pelopidas Sevastides*, (1967) 2 C.L.R., 117, it was pointed out that this amendment should not be understood or applied in a manner frustrating the very purpose of which the Law exists, and for which the provision for a demolition order had been enacted, but some examples were, also, given of cases where a demolition order need not be made, such as instances where a condition of the permit had not been complied with or where an infringement of minor importance had occurred. 20

In the case of *Golden Sea-side Estate Company Ltd. v. Municipal Corporation of Famagusta* (1973) 2 C.L.R., 58, the same approach was followed, as well as in the case of the *Municipality of Nicosia v. Nicos Pierides* (1976) 7 J.S.C. 1160*, where again the construction effected in that case was found not capable of being treated as involving "only a trivial *bona fide* infringement of the relevant Law and Regulations" and, therefore, not deserving the exercise of discretion against an order of demolition. 25 30

Our approach to this case of unique facts does not purport to set down any general proposition of Law regarding the exercise by Courts of their discretion under section 20 of the Law, nor could we be taken as suggesting a departure from the prin- 35

* To be reported in (1976) 2 C.L.R.

ciples laid down in the line of authorities just referred to in this judgment. Unquestionably the respondents exhibited the utmost good faith in trying to remedy and restore the damage caused by the negligent action of an employee of the appellants.

5 Instead of filling in the hole opened in the wall, which would have meant that the state of things would remain as before with regard to the projected street alignment, they pulled down part of the remaining wall and built it diagonally, and so they ceded to the road as much as they could in the circumstances,

10 without pulling down the remaining part of their building. This gesture of the respondents renders, in our view, their offence of such a nature as to justify us in dismissing the appeal, for we have not been satisfied that we should interfere with the exercise of the Court's discretion in the very special circumstances of this case.

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Appeal dismissed.