

1979 June 9

[STAVRINIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DORA HOURIDOU AND ANOTHER,

Applicants.

v.

THE IMPROVEMENT BOARD OF AYIOS DHOMETIOS,

Respondents.

(Case No. 271/68).

Administrative Law—Administrative acts—Acknowledgement and acceptance—Must be made clearly and unreservedly otherwise it does not deprive the interested party of the right of applying to the Court—Permit to divide a “two-dwelling building” into two buildings—Subject to condition that part of the plot, affected by the street-widening plan, shall be ceded free of buildings to the public road—Respondent had no right to impose such condition—Section 9(1)(c) of the Streets and Buildings Regulation Law, Cap. 96—Fact that applicants did not protest is not, in the circumstances of this case, an “acknowledgement or acceptance” of the subject condition, especially having regard to its glaring illegality—Refusal to issue certificate of approval, under section 10(2) of the Law, unwarranted in law and in abuse of the respondents’ powers.

Building—Two-dwelling building—Division of—Does not amount to division of “land”—Section 3(1) of the Streets and Buildings Regulation Law, Cap. 96—No right to impose condition for the cession of part of plot affected by street-widening plan.

The applicants being the registered owners in undivided shares of a building site at Ayios Dhometios, “in or about 1963 erected thereon a two-dwelling building intended to be used as two separate, self-contained and independent residences”, in accordance with the terms of a permit in that behalf issued to them by the respondents, who are “the appropriate authority” under the Streets and Buildings Regulation Law, Cap. 96.

On March 3, 1967, the applicants applied to the respondents for a permit to divide that building into two dwellings with a view to the issue of separate certificates of registration—one to each owner—in severalty. On the following August 5 the respondents wrote to the applicants informing them that “subject to the conditions overleaf your application for a division permit is approved”. One of the conditions, which were set out in para. 2 of the permit, read:

“ (c) the strip, part of the plot, affected by the street-widening plan (‘rymotomia’) shall be ceded free of buildings to the public road for the purpose of its being widened.”

Three days later the permit, to which a plan was attached, was issued to the applicants upon payment of the required fee.

The applicants having complied with the conditions stipulated in the permit other than the cession of the strip the subject of condition (c), applied to the respondents for a certificate of approval under s. 10(2) of Cap. 96. This was refused on the ground of non-compliance with that condition and hence the instant application for a declaration that that refusal “is null and void and without any legal effect whatsoever”.

Counsel for the applicants argued that the condition in question was unlawful because it was not authorised by any provision of Cap. 96 and pointed to the fact that the division of buildings is regulated by s. 3(1) of the Law and that the only provision in the Law authorising the imposition of a condition as to the widening of a street was that contained in s. 9(1)(c) thereof, which related to the laying out or division of “land” for building purposes. Clearly it was impossible to argue that what the applicants sought to do here was to divide “land”. Accordingly the respondents had no right to impose the condition here in question.

Counsel for the respondents maintained that the applicants by not protesting on receiving the above letter and the permit and plan had “accepted” that condition.

Held, that the acknowledgement and acceptance (of an administrative act or decision) must be made clearly and unreservedly, otherwise it does not deprive the interested party of the right of applying to the Court (see Stasinopoulos’s Law of Admini-

strative Disputes, p. 205); that the fact that the applicants did not protest is not, in the circumstances of this case, an "acknowledgement or acceptance" of the subject condition, especially having regard to its glaring illegality; and that, accordingly, the refusal to issue the certificate of approval was unwarranted in law and the applicants are entitled to a declaration that the refusal in question was in abuse of the respondents' powers.

Sub judice decision annulled.

Recourse.

10 Recourse against the refusal of the respondents to issue a certificate of approval to the applicants, in respect of a "two-dwelling building", under section 10(2) of the Streets and Buildings Regulation Law, Cap. 96.

E.C. Efsthliou, for the applicants.

15 *K. Michaelides*, for the respondents.

Cur. adv. vult.

STAVRINIDES J. read the following judgment. The applicants being registered owners in undivided shares of a building site at Ayios Dhometios, near Nicosia, "in or about 1963" erected on it "a two-dwelling building intended to be used as two separate, self-contained and independent residences". These buildings were erected in accordance with the terms of a permit in that behalf issued to them by the respondents, who are the "appropriate authority" under the Streets and Buildings Regulation Law, Cap. 96.

On March 3, 1967, the applicants applied to the respondents for a permit to divide that building into two dwellings with a view to the issue of separate certificates of registration—one to each owner—in severalty. On the following August 5 the respondents wrote to the applicants informing them that "subject to the conditions overleaf your application for a division permit is approved" (*exhibit 2*). One of the conditions, which are set out in para. 2 of the permit, reads:

35 "(c) the strip, part of the plot, affected by the street-widening plan ('rymotomia') shall be ceded free of buildings to the public road for the purpose of its being widened."

Three days later the permit, to which a plan was attached, was issued to the applicants (*exhibits 3(a) & (b)* respectively), upon payment of the required fee.

The applicants having complied with the conditions stipulated in the permit other than the cession of the strip the subject of condition (c), applied to the respondents for a certificate of approval under s. 10(2) of the Law. This was refused on the ground of the non-compliance with that condition (*exhibit 1*); and the instant application is for a declaration that that refusal "is null and void and without any legal effect whatsoever".

Counsel for the applicants argued that the condition in question was unlawful because it was not authorised by any provision of Cap. 96 and pointed to the fact that the division of buildings is regulated by s. 3(1) of the Law and that the only provision in the Law authorising the imposition of a condition as to the widening of a street was that contained in s. 9(1)(c) thereof, which relates to the laying out or division of "land" for building purposes. Clearly it is impossible to argue that what the applicants sought to do here was to divide "land". Accordingly the respondents had no right to impose the condition here in question.

Now counsel for the respondents maintained that the applicants by not protesting on receiving the letter *exhibit 2* and the permit and plan *exhibits 3(a)* and *(b)* had "accepted" that condition. However, as stated in Stasinopoulos's Law of Administrative Disputes, p. 205,

"The acknowledgement and acceptance (of an administrative act or decision) must be made clearly and unreservedly, otherwise it does not deprive the interested party of the right of applying to the Court. Thus a dismissed public officer who has collected the compensation paid to him on his dismissal is held to have accepted the dismissal."

In my judgment the fact that the applicants did not protest is not, in the circumstances of this case, an "acknowledgement or acceptance" of the subject condition, especially having regard to its glaring illegality. Accordingly the refusal to issue the certificate of approval was unwarranted in law and the applicants are entitled to a declaration accordingly.

Declaration that the refusal in question was in abuse of the respondents' powers.

Respondents to pay the applicants £ 20 costs.

Sub judice decision annulled. Order for costs as above.