

1979 December 29

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

M.D.M. ESTATE DEVELOPMENTS LTD.,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF THE INTERIOR,

2. THE DIRECTOR OF LANDS AND SURVEYS,

Respondents.

(Case No. 212/77).

Administrative Law—“Act” or “decision” in the sense of Article 146.1 of the Constitution—Fixing a reserve price under sections 4 and 6 of the Immovable Property (Restriction of Sales) Law, Cap. 223 (as amended by Law 60/66)—Whether an action primarily intended to serve a public purpose and, therefore, an “act” or “decision” in the realm of public law and within the ambit of Article 146 of the Constitution—Cyprus Industrial and Mining Co. Ltd. (No. 1) v. The Republic (1966) 3 C.L.R. 467 followed.

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Administrative Law—Forms prescribed by administrative legislation—Omission to comply with—Effect—Review of reserve price of mortgaged property—Non-participation of village authority concerned as provided by section 6 of the Immovable Property (Restriction of Sales) Law, Cap. 223 (as amended by Law 60/66)—An essential omission leading to annulment of the act fixing the price.

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Mortgaged property—Sale of—Review of reserve price by District Lands Officer—Participation of village authority concerned essential—Section 6 of the Immovable Property (Restriction of Sales) Law, Cap. 223 (as amended by Law 60/66).

This recourse was directed against the decision of the respondents to fix the reserve price for applicants' property, situated at Ay. Emoloyites Quarter in Nicosia at £162,000. The

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property in question was mortgaged as security for a loan of £41,537 and the mortgaged creditors having obtained a judgment for this amount applied to the District Lands Office for the sale of the property in satisfaction of the judgment debt. The District Lands Officer, in the exercise of his powers under sections 3* and 4* of the Immovable Property (Restriction of Sales) Law, Cap. 223 (as amended by Law 60/66) fixed the reserve price of the property in question at £1,500.—. Upon an application of the applicants for a review of the price, the District Lands Officer, acting under s.6** of the above Law, which provides, *inter alia*, that such price shall be assessed by him in conjunction with the village Authority concerned, fixed the reserve price at £136,000 and the sale for the 15th June, 1975. This sale was called off by the District Lands Officers on the instructions of the Director of Lands and Surveys who also directed that a new local inquiry should be carried out for the purpose of reassessing the reserve price. After a new local inquiry the reserve price was fixed at £162,000 and the sale was, following an application for stay, eventually fixed for the 12th June, 1977. There followed an application from the applicants, dated the 3rd June, 1977 for the reassessment of the reserve price, who, on June 4, 1977, were informed by the District Lands Officer that the sale which was about to take place on the 12th June, 1977 was called off due to technical reasons.

On June 27, 1977 a new local inquiry was carried out, in the absence of the village authority concerned, and the reserve price was again fixed at £162,000. Hence this recourse.

On the questions whether:

- (a) *The decision complained of was in the domain of public law and as such it could be made the subject of a recourse under Article 146 of the Constitution; and*
- (b) *The non-participation of the village authority concerned in the refixing of the reserve price by the District Lands Officer was an essential omission which rendered the act or decision complained of a nullity or in the circumstances of this case was a mere formality which could be dispensed with:*

* Quoted at p. 58 *post*.

** Quoted at pp. 59-60 *post*.

Held, (1) that although this Court entertains some doubts as to whether the fixing of a reserve price under sections 4 and 6 of Cap. 223, is a decision that falls within the domain of public law, yet it is not inclined to go as far as to hold that the case of *Cyprus Industrial and Mining Co. Ltd. (No. 1) v. The Republic* (1966) 3 C.L.R. 467, by which it was decided that the fixing of a reserve price under the above sections was a decision primarily intended to serve a public purpose and it was, therefore, within the ambit of Article 146 of the Constitution, was wrongly decided or that it is no longer good law; that the abolition of section 11 of Cap. 223, by means of Law 60/66 has not changed the purpose of the Law and that the object of the legislator in abolishing this section was to extend the application of the law so as to cover the creditors and debtors in the urban areas as well; that, therefore, the decision or act complained of is a matter in the domain of public law and can be made the subject of a recourse under Article 146 of the Constitution.

(2) That as a general rule the omission to comply with a prescribed form in administrative Law is essential and has, as a result, the annulment of the administrative acts (see in this respect the Law of Administrative Acts by Stasinopoulos, 1951 Edition, p. 229); that every form which is prescribed by administrative legislation is considered as essential and only in exceptional cases the administrative Judge may consider certain forms prescribed by legislation as non-substantive (see in this respect System of Administrative Law by PapaHadjis, 5th Edition 1976, at pages 476-477); that in the present case the non-participation of the village authority is considered as an essential omission; that their presence at the local enquiry is indispensable as they are the people who know better than anybody else the current prices of immovable property in the particular area and their advice to the assessor of the D.L.O. nominated by the District Lands Officer to assess the value of the property concerned is essential; and that, therefore, the decision of the District Lands Officer complained of is declared null and void.

Sub judice decision annulled.

Cases referred to:

Cyprus Industrial and Mining Co. Ltd. (No. 1) v. The Republic (1966) 3 C.L.R. 467;

Valana v. The Republic, 3 R.S.C.C. 91;

HadjiKyriakou and HadjiApostolou, 3 R.S.C.C. 89.

Recourse.

Recourse against the decision of the respondents whereby the reserved price of applicants' property under Registration No. A371 situated at Ay. Omoloyites was fixed at £162,000.—

- 5 *A. Triantafyllides*, for the applicants.
 N. Charalambous, Counsel of the Republic, for the respondents.
 L. Papaphilippou, for the interested party N.P. Lanitis Ltd.
 10 *D. Papachrysostomou*, for the judgment-creditor of applicants Kyriakos Kyriakides.
 I. Spanopoulos, for the judgment-creditor of applicants Michael Pavlou.

Cur. adv. vult.

- 15 MALACHTOS J. read the following judgment. The applicants in this recourse claim a declaration of the Court that the decision of the respondents to fix the reserve price for their property under Registration No. A371 situated at Ayious Omoloyites Quarter in Nicosia at £162,000.—is null and void and of no effect whatsoever and/or the omission of the respondents to fix
 20 the reserve price for at least the sum of £350,000.—ought not to have been made and whatever has been omitted should have been performed.

- 25 The history of these proceedings, as it appears from the application and the opposition as well as from the relevant files of the District Lands Office, *exhibits* 1 to 4, is as follows:

- 30 The applicants are the registered owners of a building site under Registration No. A371 dated 10th November, 1969 situated at Nicosia at Ayious Omoloyites Quarter locality Prodomos and is plot 335 of S/P XXI, 54.1.IV. Due to, and in the course of erection of a block of flats on the said building site, the applicants contracted, among other loans, a loan of
 £41,537.—from the interested party N.P. Lanitis, Ltd., which was secured by mortgaging the said property to them under mortgage No. Y966/71.

- 35 On the 22nd March, 1972, the interested party filed against the applicants in the District Court of Nicosia Action No. 1823/72 and on 23/10/72 obtained judgment for the above sum and an order for the sale of the mortgaged property.

On 13/7/73, the interested party applied to the Nicosia District Lands Office for the sale of the said property in satisfaction of the judgment debt.

The law placing certain restrictions on the sales of immovable property through the D.L.O. and with which we are concerned in this recourse, is the Immovable Property (Restriction of Sales) Law, Cap. 223, as amended by the Immovable Property (Restriction of Sales) (Amendment) Law 1966, Law 60/66, and, particularly, sections 3 to 6 which read as follows: 5

“3(1) Subject to the provisions of section 7, at any sale of immovable property the District Lands Officer may, if having regard to all the circumstances of the case he considers it fair and reasonable so to do direct that such sale be carried out subject to a reserve price to be fixed by him. 10

(2) The reserve price fixed by the District Lands Officer shall be specified in the auction bill and no bidding for the immovable property to which such reserve price relates shall be accepted unless it is equal to or exceeds the reserve price. 15

4. The reserve price to be fixed by the District Lands Officer shall not exceed the assessed value of the immovable property. 20

5(1) The District Lands Officer shall, not less than one month before the posting of the auction bill, cause the debtor and every creditor to be informed, by registered letter addressed to the last known place of residence of the debtor and of such creditor, of the reserve price and the production of the receipt of the Post Office authorities as to the posting of such letter shall, unless the letter is returned undelivered, be deemed to be conclusive evidence that the parties concerned have been duly informed of the reserve price. 25 30

(2) If a letter is returned undelivered, the District Lands Officer shall cause notice of the reserve price to be posted in a conspicuous place within the area of the town, village or quarter in which the immovable property is situated and on the notice board of the District Lands Office in the principal town of the district in which such property is situated 35

and such posting shall be deemed to be conclusive evidence that the person whose letter has been returned undelivered has been duly informed of the reserve price.

5 6(1) Within three weeks from the date of the posting of the letters as in subsection (1) of section 5 provided, application may be made to the District Lands Officer by the debtor or a creditor for a review of the reserve price:

10 Provided that any person whose letter has been returned undelivered may apply to the District Lands Officer for a review of the reserve price within one week from the date of the posting of the notices as in subsection (2) of section 5 provided.

15 (2) The application provided by sub-section (1) shall be accompanied by the local enquiry fees and charges levied for the time being by the Department of Lands and Surveys and upon receipt of the same a local enquiry into the immovable property in respect of which the application was made shall be held, at which the actual value of such immovable property shall be assessed by an officer of the District Lands Office, to be nominated by the District Lands Officer, in conjunction with the village authority of the town, village or quarter within the area of which such immovable property is situate.

25 Provided that, if the officer and the village authority disagree as to the actual value of such immovable property or the village authority fails or refuses to co-operate in the assessment thereof, such actual value shall be determined by the District Lands Officer.

30 (3) Following the assessment or determination, as the case may be, of the actual value of the immovable property in respect of which the application was made, as in subsection (2) provided, the reserve price shall be fixed by the District Lands Officer on the basis of such actual value of such immovable property:

35 Provided that the reserve price shall not exceed the actual value.

(4) If no application is made to the District Lands Officer for a review of the reserve price, the reserve price contained

in the letters posted as in subsection (1) or the notice posted up as in subsection (2) of section 5 provided shall be the reserve price for the sale of the immovable property to which such letters or such notice relate.”

In the present case the District Lands Officer presumably acting under section 4 of the Law, fixed the reserve price of the building site in question at £1,500.—and by letter dated 14/2/74 notified all parties concerned. 5

By letter dated 5/3/74 the applicants applied to the District Lands Officer for a review of the reserve price. In the said letter the applicants informed the District Lands Officer that on the said building site there were under construction and almost at the completion stage 27 flats. As it appears from the D.L.O. file, *exhibit 4*, a reassessment of the reserve price was made on 1/4/74 and it was fixed at £136,000.— 10 15

By letter dated 18/4/75, the District Lands Officer informed the parties concerned that the sale of the property in question was fixed for 15/6/75 at 10 a.m. at Ayious Omoloyites. On 8/5/75 the applicants addressed the following letter to the District Lands Officer: 20

“ We have received your letter dated 18/4/75 regarding the sale of our immovable property by order of the District Court of Nicosia and by the present letter we bring to your knowledge the following:

1. Our letter of objection dated 5/3/74 remains unanswered; 25
2. Your notice for the reserve price of our said immovable property was never sent to us;
3. As from June and up to December, 1974, we have spent on the said property according to the attached accounts the sum of £43,692.436 mils without your knowledge and since June, 1974, we came to an agreement with the Embassy of the Peoples Republic of China, by virtue of a contract of lease for the period of five years, and the sum of £35,000.—has been paid to us for the purpose of completion of the building; 30 35
4. Due to the Turkish Invasion we have been unable to complete the said building and efforts are now being made for this purpose;

5. We, therefore, pray, if it is possible, for two to three years extension of time so as to be able to meet our commitments;
6. We also pray for a reassessment of the reserve price, since, as you must realise, we shall suffer damage to a great degree as well as our collaborators who work for the completion of the said building, and also eight purchasers of flats who have paid to us the sum of £29,000.—
7. We hope that you will help us on the said subject and this due to the situation created”.

The Director of Lands and Surveys to whom the above letter of the applicants was referred to, by letter dated 24th May, 1975, instructed the District Lands Officer of Nicosia to call off the sale of the property and to carry out a new local enquiry as soon as possible in order to reassess the reserve price. The District Lands Officer in compliance with the above instructions called off the sale and after carrying out a new local enquiry fixed the reserve price at £162,000.—and by letter dated 9/10/75 notified all interested parties, including the applicants.

In the meantime, the applicants on 10/5/75 filed an application in the District Court of Nicosia by virtue of the Debtors Relief (Temporary Provisions) Law of 1975 for an Order of the Court to stay the sale which was about to take place on 15/6/75.

On 13/2/76, when that application came on for hearing before the District Court, an Order was made staying the sale of the said property till 31/10/76. The sale of the property was then fixed for the 12th June, 1977 at 10 a.m. at Ayios Omoloyites and a notice dated 20/5/77, was sent to all interested parties by the D.L.O. informing them accordingly.

On the 3rd June, 1977, the applicants, through their advocates, addressed the following letter to the District Lands Officer:

“ On behalf of our clients M.D.M. Estate Developments Ltd., we refer to your letter of 20/5/77, by which you inform us that the sale of the immovable property of the said company will take place on 12th June, 1977.

On the 9th October, 1975, you fixed the reserve price for the sum of £162,000.—but the sale was stayed by a decision of the Court.

We are, therefore, of the view that when you fixed a new date of sale you had to fix again a new reserve price based on the present prevailing circumstances since the prevailing circumstances of the market changed considerably from October, 1975 till today, and the present value of the property of our clients is much greater and exceeds, according to the estimates of the assessors of our clients, the sum of £350,000.— 5

By our present letter we call upon you that—

- (a) you fix a new reserve price for the forced sale of the property of our clients; and 10
- (b) furthermore, and in the alternative, we call upon you that you review the already fixed reserve price of October, 1975.

Since the sale of the property of our clients is fixed for the 12th June, 1977, we pray that we may have the soonest possible your answer on our present letter. 15

We enclose herewith the necessary fees for the local enquiry”.

By letter dated 4th June, 1977, the District Lands Officer informed the interested parties that the sale of the property in question which was about to take place on the 12th June, 1977, was called off due to technical reasons and that the sale of the property was to be fixed the soonest possible. 20

On 27/6/77 a new local enquiry was carried out and the reserve price of the property in question was again fixed at £162,000.— and by letter dated 16/7/77 the District Lands Officer informed all the interested parties accordingly. 25

As a result the applicants filed the present recourse.

One of the arguments of counsel for applicants is that the respondents had a duty, once they decided to reassess the value of the property in question, to follow the machinery provided by section 6 of the Law de novo and not to start from the objection stage. It is not in dispute that at the local enquiry held on 27/6/77 although the applicants were represented the village authorities were not present. 30 35

The presence of the said authorities as counsel for applicants submitted, is mandatory and the omission on the part of the respondents to secure their presence, in the absence of any justification, vitiates the administrative act complained of.

5 In the opposition filed by the interested party it was raised as a point of law that the decision complained of was not in the domain of public law and so this Court had no jurisdiction to decide on the matter as it is not a decision in the sense of Article 146 of the Constitution. In answer to the above point of law
10 counsel for applicants relying on the case of the *Cyprus Industrial and Mining Co. Ltd. (No. 1) v. The Republic* (1966) 3 C.L.R. 467, submitted that the present case is within the domain of public law and not of private law. In that case it was decided that the fixing of the reserve price under sections 4 and 6 of Cap.
15 223, is a decision which is primarily intended to serve a public purpose and, therefore, it is within the ambit of Article 146 of the Constitution.

Counsel for the respondents, on the other hand, argued on this point that the case of the *Cyprus Industrial and Mining Co. Ltd., supra*, is no longer law in view of the subsequent amendment of the law by Law 60/66 by which section 11, which provides that "nothing in this law shall apply to the sale of any immovable property registered in the books of the District Lands Office and situated within the limits of the towns of Nicosia,
20 Famagusta, (including Varosha), Ktima (including Paphos), Larnaca (including Scala), Limassol and Kyrenia, except with the written consent of the creditor at whose instance such property is put up for sale", has been repealed. He referred to a passage at page 472 of the case of the *Cyprus
25 Industrial and Mining Co. Ltd.*, which reads as follows:

35 "As the fixing of the reserve price in the present Case has, no doubt, been made by an organ of administration, it follows that it should be looked upon, to begin with, as an 'act' or 'decision' within Article 146, unless it is established that it only amounts to action in the domain of private law, thus being outside the sphere of administration and consequently outside also the ambit of Article 146.

Looking at the provisions of Cap. 223 as a whole—and

particularly at its long title which reads 'A law to restrict forced sales of immovable property in certain cases', and at the provisions of section 11 thereof, which renders the Law applicable to rural areas—it does appear that the fixing of a reserve price in cases of a public sale by auction of mortgaged property is intended to ensure that rural properties shall not be allowed to be so sold at prices below their proper values. It is thus a measure intended to protect the rural community of Cyprus, by way of public policy; it is noteworthy in this respect that under Cap. 223 (see sections 4 and 7 thereof) a reserve price may be fixed even where a sale of immovable property has been ordered by a Court and such Court has not proceeded to fix itself a reserve price (as under section 40 of the Civil Procedure Law, Cap. 6).

I am, thus, of the opinion that the fixing of a reserve price under Cap. 223, is action which is primarily intended to serve a public purpose and, therefore, an 'act' or 'decision' in the realm of public law, and within the ambit of Article 146 of the Constitution".

So, since the repeal of section 11 the whole purpose of the law, which was to protect the interest of both the creditor and the debtor in rural areas, has changed in substance and now this law is regulating civil differences.

Counsel for the interested party went even further and submitted that the case of the *Cyprus Industrial and Mining Co. Ltd.*, was wrongly decided in the first place as it is not and cannot be distinguishable from the case of *Savvas Yianni Valana v. The Republic*, 3 R.S.C.C. 91. In that case the applicant was the registered owner of a house and yard situated at Platanistassa. By a letter dated the 22nd May, 1961, the respondent informed the applicant that it was proposed to correct an error in the description of the boundaries of the applicant's said property by which an area which was formerly part of his property would henceforth form part of a public road. The applicant sought a declaration of the Court that the decision of the respondent was null and void and of no effect whatsoever. Held: (a) the word "act" or "decision" in Article 146.1 meant an act or decision falling in the domain of public law only and not of private law (*Achilleas HadjiKyriakou and Theologia HadjiAposto-*

lou, 3 R.S.C.C. page 81); and (b) where the primary object of an act or decision of a public officer was not the promotion of a public purpose but the registration of civil law rights in property, as in that case, such act or decision would be a matter of private law and would not amount to an act or decision in the sense of Article 146.1.

On the question of non-participation of the village authority at the last assessment of the property of 27/6/77, counsel for the respondents submitted that the omission is not one of substance so as to render the decision complained of null and void. The Immovable Property (Restriction of Sales) Law, Cap. 223, was enacted in 1941 and by virtue of section 11 applied only in rural areas. At that time there was no valuation section of the District Lands Office and rural properties were assessed by the village authority. However, after the establishment of the valuation section of the D.L.O., immovable properties are assessed on scientific basis and the cooperation of the village authorities is only a mere formality.

At the conclusion stage of his reply, counsel for applicants made the following statement:

“ It has been agreed with my learned friend on the other side that we should request the Court to decide these two points before proceeding further because at this stage I will argue that I am entitled to bring some sort of evidence. My learned friend will object but if you decide the jurisdiction point against me then no question of evidence arises. If you decide the jurisdiction point in my favour then, again, no evidence arises because the administrative act will be set aside. It is only if you decide the jurisdiction point in my favour and the Mukhtar point against me that we shall have to consider whether and what evidence we shall call. So, I respectfully submit, and my learned friend agreed, that we should leave the case at this stage until these two points are decided before proceeding any further.”

Then counsel for the respondents stated the following:

“ I have no objection to this course suggested by the other side being taken. It is for the Court, after deciding these points to decide whether on the arguments advanced by both sides it is necessary to hear any evidence and if so, may reopen the case.”

Now, as regards the question of jurisdiction, although I entertain some doubts as to whether the fixing of a reserve price under sections 4 and 6 of Cap. 223, is a decision that falls within the domain of public law, yet, I am not inclined to go as far as to hold that the case of the *Cyprus Industrial and Mining Co. Ltd.*, was wrongly decided or that is no longer good law. I do not subscribe to the view that the abolition of section 11 has changed the purpose of the law but I am of the opinion that the object of the legislator in abolishing this section was to extend the application of the law so as to cover the creditors and debtors in the urban areas as well.

As it has been stated earlier in this judgment, in the present recourse we are concerned with the application and the legal effect of sections 3 to 6, inclusive, of Cap. 223. In this case the District Lands Officer under the powers vested in him by virtue of section 3 of the Law, decided that the sale of the property should be carried out subject to a reserve price and fixed it at £1,500.—which is the assessed value of the property as registered in the books of the District Lands Office. It is obvious that in fixing such a low price the D.L. Officer had in mind the provisions of section 4 of the Law, but before its amendment by Law 60/66, by virtue of which he was bound to do so. After the amendment by which the words “as registered in the books of the District Lands Office” from the end of section 4 were deleted, the D.L. Officer is not bound to do so. This, however, has no significance on the issues involved in this case as the debtor applied for a review of the reserve price under section 6(1) of the Law. The District Lands Officer then proceeded and on the 1st April, 1974, fixed the reserve price of the property at £136,000.—following the procedure prescribed in section 6(2) and (3) of the Law and fixed the sale thereof for the 15th June, 1975. This sale was called off on instructions given by the Director of Lands and Surveys to the District Lands Officer. A new local enquiry took place, the reserve price was then fixed at £162,000.—and on 9th October, 1975 all persons concerned were notified. To this assessment there was no objection till the 3rd June, 1977 when the sale of the property had already been fixed for the 12th June, 1977.

It is clear from the wording of the provisions of the Law, quoted above, that once the District Lands Officer decides that

the sale of immovable property should be carried out subject to a reserve price, then he is bound to fix such price according to the provisions of section 4 of the Law. If an application is made within the appointed time by either the debtor or anyone
5 of the creditors for the review of such price, then he fixes the reserve price following the provisions of section 6, subsections (2) and (3) of the Law. Once the reserve price is fixed under the provisions of section 6 of the Law, the District Lands Officer is not bound to accept any other application to reconsider it
10 on the grounds that the prices had gone up from the date of assessment till the date of the fixing of the sale of the property by public auction. In the case in hand, however, the District Lands Officer called off the sale and carried out a new local enquiry and fixed the reserve price again at £162,000.—. So
15 the question posed is whether the non-participation of the village authority in refixing the reserve price is an essential omission which renders the act or decision complained of a nullity or in the circumstances of the present case is a mere formality which could be dispensed with.

20 As a general rule the omission to comply with a prescribed form in administrative Law is essential and has, as a result, the annulment of the administrative acts. (See in this respect the *Law of Administrative Acts by Stasinopoulos*, 1951 Edition, p. 229).

25 Every form which is prescribed by administrative legislation is considered as essential and only in exceptional cases the administrative Judge may consider certain forms prescribed by legislation as non-substantive. (See in this respect *System of Administrative Law by PapaHadjis*, 5th Edition 1976, at pages
30 476-477).

In the present case I consider the non-participation of the village authority as an essential omission. Their presence at the local enquiry is, in my view, indispensable as they are the people who know better than anybody else the current prices
35 of immovable property in the particular area and their advice to the assessor of the D.L.O. nominated by the District Lands Officer to assess the value of the property concerned is essential.

For this reason the decision of the District Lands Officer complained of is declared null and void.

On the question of costs, taking into consideration all the circumstances of the present case, I make no order.

Sub judice decision annulled. No order as to costs.