

1982 May 22

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KALISPERAS ESTATE CO. LTD. AND OTHERS,

*Applicants.*

v.

MINISTRY OF INTERIOR AND ANOTHER,

*Respondents.*

(Cases Nos. 141/79, 142/79,  
150/79 and 198/79).

Act or decision in the sense of Article 146.1 of the Constitution—Which  
can be made the subject of a recourse thereunder—Fixing of  
reserve price of property under compulsory sale by virtue of  
section 4 of the Immovable Property (Restriction of Sales) Law,  
5 Cap. 223 (as amended by Law 60/66)—Interest of the public in  
the enforcement of Cap. 223, which was principally intended  
to protect the property of farmers, subsided by the extension of  
its provisions to urban areas by means of section 8 of Law 60/1966  
—Therefore decision fixing a reserve price is pre-eminently an  
10 act in the domain of private law and not justiciable under  
Article 146 of the Constitution.

The above recourses were directed against a decision of the  
Lands and Surveys Department whereby the reserve price at  
15 which property under compulsory sale was fixed in exercise  
of the powers vested by section 4 of the Immovable Property  
(Restriction of Sales) Law, Cap. 223 (as amended by section 8  
of Law 60/66).

Counsel for the respondents raised objection to the jurisdiction  
of the Court to take cognizance of the recourses on the ground  
20 that the decisions complained of belong to the domain of private  
law, and as such, they are not subject to review under Article  
146 of the Constitution.

*On the objection:*

*Held*, that by the amendment of section 11 of Cap. 223, by

means of section 8 of Law 60/1966, extending the application of the provisions of the law to the compulsory sale of immovable property situate anywhere on the Republic, such grounds, as may have existed in the past, making the adjustment of the reserve price a matter of public law disappeared; that because of this amendment the distinct danger that once existed, of agricultural lands being sold at ruinous prices to the detriment of farmers and the interest of the general public in averting such a situation, has subsided, thereby reducing the issue to one of adjustment of the rights of the parties immediately affected thereby; that, therefore, a decision fixing the reserve price under Cap. 223, is pre-eminently an act in the domain of private law and not justiciable under Article 146 of the Constitution; accordingly the recourses should be dismissed.

*Applications dismissed.* 15

Cases referred to:

*Republic v. M.D.M. Estates Development*, a decision of the Full Bench given on May 17, 1982 still unreported.

### Recourses.

Recourses for a declaration that the decision of the respondents, whereby the reserve price at which property under compulsory sale was fixed, was null and void. 20

*A. Markides*, for the applicants.

*M. Kyprianou*, Senior Counsel of the Republic, for the respondent. 25

*Cur. adv. vult.*

PIKIS J. read the following judgment. Each of the four recourses under trial is directed against a decision of the Lands and Surveys Department, whereby the reserve price at which property under compulsory sale was fixed in exercise of the powers vested by section 4 of the Immovable Property (Restriction of Sales) Law, Cap. 223 (amended by ε. 8, Law 60/66). The respondents raised objection to the jurisdiction of the Court to take cognizance of the applications on the ground that the decisions complained of belong to the domain of private law, and as such, they are not subject to review under Article 146. The similarity of the issues raised in the four recourses, especially the one going to jurisdiction, justified the joint trial of the applications, and directions to that end were given with the concurrence of the parties. 30 35 40

Arter hearing the parties, I reserved judgment in anticipation of the decision of the Supreme Court in the exercise of its revisional appeal jurisdiction in *Recourse No. 223\** between the *Republic of Cyprus through, 1. The Minister of Interior and*  
5 *2. The Director of the Department of Lands and Surveys v. M.D.M. Estates Development Limited*, expected to solve conclusively a similar jurisdictional issue. The Full Bench of the Supreme Court was invited to reverse a series of decisions at first instance, deciding that decisions pertaining to the fixing  
10 of the reserve price by the appropriate authority of the lands department, are amenable to the revisional jurisdiction of the Supreme Court, on account of the interest of the public in the propriety of such acts, giving public law character to the decision. The majority decision of the Supreme Court, delivered by Hadji-  
15 anastassiou, J. on 17.5.1982, simplifies my task because it settles, on the one hand, authoritatively the matter under consideration, and on the other, it finds me in full agreement. It was decided that a decision, fixing the reserve price under Cap. 223, is pre-eminently an act in the domain of private law and,  
20 therefore, not justiciable under Article 146 of the Constitution. Such grounds, as may have existed in the past, making the adjustment of the reserve price a matter of public law, disappeared, as it was held, by the amendment of s.11 of Cap. 223, in virtue of the provisions of s.8 of Law 60/66, extending the application  
25 of the provisions of the law to the compulsory sale of immovable property situate anywhere in the Republic. As Hadjianastassiou, J., pointed out, the distinct danger that once existed, of agricultural lands being sold at ruinous prices to the detriment of farmers and the interest of the general public in averting  
30 such a situation, has subsided, thereby reducing the issue to one of adjustment of the rights of the parties immediately affected thereby.

It is implicit, as repeatedly acknowledged, that the revisional jurisdiction under Article 146 is restricted to acts, decisions  
35 and omissions of administrative authorities taken in the domain of public law. Article 146 aimed to introduce a process of judicial review of administrative acts, as developed and practised on the continent of Europe, designed to create special machinery for the speedy and effective review of administrative acts in

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\* Judgment delivered on 17.5.1982, still unreported,

areas where the public at large has a marked interest in the proper employment of the machinery of the law and the correctness of the decision taken. *The process of review is of an inquisitorial character, especially adapted to the need to carry out a searching scrutiny of administrative action in areas where the policy of the administration is of concern to the general public in contrast to decisions of lesser interest to the wider public and of direct concern only to those immediately affected thereby;* 5  
 not that the law is disinterested in the legality of the action of the administration in matters falling in the domain of private law. In that area, decisions are primarily intended to adjust private rights of the citizens and do not reflect the policy of the administration in areas that are of interest to a wider section of the public. The law is equally interested in the correctness of all decisions but the machinery provided by the civil law process is regarded as specially suitable for the adjudication of disputes of a fundamentally private character. No need arises to carry out an inquiry ranging beyond the realm of the determination of the rights of the parties to the disputes who, with appropriate vigilance, may have recourse to a civil law court for their elucidation. I need not debate in these proceedings what form such action may take. If there is no statutory machinery conferring a right to recourse to a civil court—and I am not ready at this stage to give a conclusive answer on the subject—but assuming there is no such machinery, I would have thought it is always possible to move a civil court for a declaration of the rights of the parties. 20  
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In view of my decision on the jurisdictional aspect of the case, I need not probe into the facts of the case, especially in view of the authoritative pronouncement of the Full Bench of the Supreme Court on the subject. 30

In the result, the recourses are dismissed. There will be no order as to costs.

*Applications dismissed. No order as to costs.* 35