

1982 June 2

[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

COUDOUNARIS FOOD PRODUCTS LTD.,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE DISTRICT
LANDS OFFICER OF LIMASSOL,

Respondent.

(Cases Nos 23/77, 24/77, 32/77).

*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,
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, declined by the extension of
its provisions to urban areas by means of section 8 of Law 60/1966
—Therefore decision fixing a reserve price a matter within the
realm of private Law and not of public law—And as such it cannot
be made the subject of a recourse under the above Article.*

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The applicants in the above recourses challenged the decision of the Lands and Surveys Department fixing the reserve price of their property, under compulsory sale, in exercise of powers under section 4 of the Immovable Property (Restriction of Sales) Law, Cap. 223 (as amended by section 8 of Law 60/1966).

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Counsel for the respondent raised the preliminary objection that this Court had no jurisdiction to deal with the recourses on the ground that the decisions complained of were in the domain of private law and not of public law and as such they could not be made the subject of a recourse under Article 146 of the Constitution.

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On the preliminary objection:

Held, that the Immovable Property (Restriction of Sales)

5 Law, Cap. 223 was a piece of legislation that was principally intended to protect the property of farmers from sales at ruinous prices; that at the time of its enactment and for many years subsequently the value of land in rural areas and particularly the financial position of farmers, was of very grave concern to the public considering that Cyprus was an intensely agricultural country largely dependent on the productivity of farmers; that by extending the application of the provisions of Cap. 223, by means of section 8 of Law 60/66, to urban areas, the special association of Cap. 223 with land in rural areas and the financial position of farmers, has as from 1966 ceased to exist; that, consequently, it may be validly presumed that the interest of the public in the enforcement of the Law has correspondingly declined particularly its interest in the protection of farmers; that the disappearance of the special interest of the public in the enforcement of Cap. 223, arising from its connection with rural properties and the financial position of farmers takes away that special interest that might conceivably be invoked to render a decision fixing the reserve price to the jurisdiction of this Court; that, therefore, the fixing of a reserve price is a matter within the realm of private law and not of public law and as such it cannot be made the subject of a recourse under Article 146.1 of the Constitution; accordingly the recourses should fail.

Applications dismissed.

25 Cases referred to:

Republic v. M.D.M. Estate Developments, a decision of the Full Bench given on May 17, 1982, still unreported.

Recourses.

30 Recourses for a declaration that the decision of the respondent whereby the reserve price at which the property of the applicants under compulsory sale was fixed was null and void.

G. Talianos, for the applicant.

N. Charalambous, Senior Counsel of the Republic, for the respondent.

35 *M. Papas*, for the interested parties.

Cur. adv. vult.

HADJIANASTASSIOU J. read the following judgment. In these three consolidated recourses, the applicants seek a declaration that the decision of the Lands and Surveys Department

of Limassol whereby the reserve price at which the property under compulsory sale was fixed in exercise of the powers vested by s.4 of the Immovable Property (Restriction of Sales) Law, Cap. 223 (as amended by s.8 of Law 60/66) is null and void and/or of no effect whatsoever.

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Indeed, on 22nd November, 1978, when the facts were presented by all counsel before the Court, counsel for the respondents gave notice that he intended to raise a preliminary point as to the jurisdiction of this Court. In the light of this statement, Mr. Talianos, as well as Mr. Papas appearing for Mr. Cacoyannis requested an adjournment of the recourses to enable them to receive further instructions. On 2nd March, 1979, Mr. Charalambous on behalf of the respondents, raised the objection that this Court had no jurisdiction to deal with all the applications, on the ground that the decisions complained of are in the domain of private law and not of the public law, and as such they cannot be the subject of review under Article 146 of the Constitution.

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On the contrary, Mr. Talianos argued to the opposite and having heard all the parties concerned, finally I was asked to reserve my own judgment in view of the fact that one of my colleagues, Mr. Justice Malachtos had already reserved his judgment on the very same point and would be delivering his judgment within a short period. With that in mind, I have reserved my own judgment pending the decision of my learned brother.

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Indeed, Mr. Justice Malachtos, having considered the arguments of both counsel before him and having stated that in his opinion the fixing of a reserve price under Cap. 223 was an action which was 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, he proceeded to state the following at p. 35:-

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"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 Cyprus Industrial

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and *Mining Co. Ltd. v. The Republic* (1966) 3 C.L.R. 467, was wrongly decided or that it 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”.

On appeal, the Full Bench in its Revisional Jurisdiction Appeal No 223 was invited by counsel to reverse a series of decisions at first instance. On 17th May, 1982, in delivering the majority decision of the Supreme Court, and after quoting and reviewing a number of cases, I had this to say:-

“The Immovable Property (Restriction of Sales) Law, Cap. 223, as one may gather from its provisions and the reasons that led to its enactment, is a piece of legislation that was principally intended to protect the property of farmers from sales at ruinous prices. At the time of the enactment of Cap. 223, and for many years subsequently, the value of land in rural areas and particularly the financial position of farmers, was of very grave concern to the public, considering that Cyprus was an intensely agricultural country, largely dependent on the productivity of farmers. Realities had changed considerably since, a fact heeded by the legislature in 1966, by extending the application of the provisions of Cap. 223 to urban areas, equating thereby town and country properties for the purposes of the law. (See section 8 Law 60/66). This does not mean that Cyprus had ceased to be an agricultural country or that the position of farmers is no longer of interest to the public at large. But it signifies that the position of farmers is not, in comparison to other sections of the community, as vulnerable as it used to be. The special association of Cap. 223 with land in rural areas and the financial position of farmers, has, as from 1966, ceased to exist. Consequently, it may be validly presumed that the interest of the public in the enforcement of the law has correspondingly declined, particularly its interest in the protection of farmers. We may also take stock of the fact that the number of forced sales of agricultural

properties has, over the last decades, dropped appreciably in view of the improvement of credit facilities to farmers.

The question we must, therefore, resolve, is whether any valid grounds subsist for elevating a matter primarily affecting private rights into the realm of public law because of any special interest of the public in the proper enforcement of the particular piece of legislation. That the fixing of the reserve price is otherwise a matter of private law, we are in no doubt considering its implications on the rights of debtor and creditor involved. The decision in *Valanas*, supra, clearly establishes that decisions of the public administration relevant to the adjustment of private rights are pre-eminently matters of private law. A recent decision of first instance, notably, *Silentsia Farms v. Republic*, (1981) 3 C.L.R. 450, re-inforces this view. In our judgment, the disappearance of the special interest of the public in the enforcement of Cap. 223, arising from its connection with rural properties and the financial position of farmers, takes away that special interest that might conceivably be invoked to render a decision fixing the reserve price to the jurisdiction of this Court. Therefore, for all the above reasons, the appeal is allowed, but we are not prepared to make an order for costs".

In the light of this decision, I would dismiss the three recourses of the applicants, but in view of the particular circumstances of this case, I am not making an order for costs.

Applications dismissed. No order as to costs.