1982 May 17

[TRIANTAFYLLIDES, P., HADJIANASTASSIOU, A. LOIZOU, SAVVIDES, JJ.]

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF INTERIOR,
2. THE DIRECTOR OF THE DEPARTMENT OF LANDS AND SURVEYS,

Appellants,

v.

M.D.M. ESTATE DEVELOPMENTS LTD.,

Respondents.

(*Revisional Jurisdiction Appeal No.* 223).

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.*

The sole issue in this appeal was whether a decision of the Lands and Surveys Department fixing the reserve price of immovable 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 60/66) was a decision in the domain of public law and as such could be made the subject of a recourse under Article 146 of the Constitution.

Held, Triantafyllides, P. dissenting, that the Immovable Property (Restriction of Sales) 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, equating thereby town and country properties for the purposes of the law 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 of the public that might conceivably be invoked to render a decision fixing the reserve price to the jurisdiction of this Court; and that, therefore, the fixing of a reserve price is a matter within the realm of private law and not of public law and it cannot be made the subject of a recourse under Article 146.1 of the Constitution.

Appeal allowed.

Cases referred to:

Achilleas HadjiKyriakos v. *Theologia Hadjiapostolou and Others*, 3 R.S.C.C. 89 at pp. 90–91;

Valana v. *Republic*, 3 R.S.C.C. 91 at pp. 93–94;

Greek Registrar of Co-operative Societies etc. v. *Nicolaides* (1965) 3 C.L.R. 164 at pp. 170–171;

Cyprus Industrial Mining Co. Ltd. v. *The Republic* (1966) 3 C.L.R. 467;

Galip v. *Minister of Interior and Another* (1974) 3 C.L.R. 94;

Silentsia Farms v. *Republic* (1981) 3 C.L.R. 450;

Charalambides v. *Republic*, 4 R.S.C.C. 24;

Christodoulou v. *Republic* (1970) 3 C.L.R. 38 at p. 46 (and (1970) 3 C.L.R. 377 C.A.);

White Hills Ltd. v. *The Republic* (1970) 3 C.L.R. 132;

Kourris v. *The Supreme Council of Judicature* (1972) 3 C.L.R. 390 at p. 401;

Moustafa v. *The Republic* (1973) 3 C.L.R. 47 at p. 51;

Poyiadjis v. *The Republic* (1975) 3 C.L.R. 378;

I.W.S. Nominee Co. Ltd. v. *The Republic* (1967) 3 C.L.R. 582 at p. 586;

M.D.M. Estate Developments Ltd. v. *The Republic* (1980) 3 C.L.R. 54.

Appeal.

Appeal against the judgment* of a Judge of the Supreme Court of Cyprus (Malachtos, J.) given on the 29th December, 1979 (Revisional Jurisdiction Case No. 212/77) whereby the fixing of a reserve price under Cap. 223 was found to be an act or decision in the realm of public law and within the ambit of Article 146 of the Constitution.

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

A. Triantafyllides, for the respondents.

Cur. adv. vult.

TRIANTAFYLLIDES, P.: The Judgment of the Court will be delivered by Mr. Justice Hadjianastassiou.

HADJIANASTASSIOU J.: This is an appeal against the Judgment of a Judge of the Supreme Court of Cyprus given on the 29th December, 1979, whereby the fixing of a reserve price under Cap. 223 for the property in question was wrongly found to be an act or decision in the realm of public law and within the ambit of Article 146 of the Constitution.

THE FACTS:

The applicants in their recourse claimed a declaration of the Court that the decision of the respondents to fix the reserve price for their property under Registration No. 8371 situated at Ayii Omoloyites Quarter, Nicosia at £162,000 is null and void. Indeed, the applicants are the registered owners of building site under Registration No. 8371 dated 10th November, 1969 situated at Nicosia at Ayii Omoloyites Quarter locality, Prodromos, and is plot 335 of S/P XXI 54.1 IVX. In the meantime, and in the course of the erection of a block of flats on the said building site, the applicant contracted among other loans a loan of £41,537.-, from the interested party N.P. Lanitis

* Reported in (1980) 3 C.L.R. 54.

Ltd., which was secured by mortgaging the said property to them under Mortgage No. Y966/71.

On 22nd March, 1972, the interested party filed against the applicants in the District Court of Nicosia Action No. 1823/72 and on 23rd October, 1972, obtained judgment for the above sum and also an order for the sale of the mortgaged property. On 13th July, 1973, the interested party applied to the District Lands Office of Nicosia for the sale of the property in question in satisfaction of the judgment debt.

The D.L.O., acting under s.4 of the Immovable Property (Restriction of Sales) Law, Cap. 223, (as amended) fixed the reserve price of the building site in question at £1,500.000 and addressed a letter dated 14th February, 1974, notifying all parties concerned.

On 5th March, 1975, the applicants applied to the D.L.O. for a review of the reserve price. The applicants informed the District Lands Officer that on the said building site there were under construction 27 flats which were almost at a completion stage. In addition, it appears from the D.L.O. file that there was a re-assessment of the reserve price which was made on 1st April, 1974, and it was fixed at £136,000. (See exh. 4).

By a new letter dated 18th April, 1975, the D.L.O. informed the parties concerned that the sale of the property in question was fixed on 15th June, 1975, at 10.00 a.m. at Ayii Omologites. On 8th May, 1975, the applicants addressed a letter to the District Lands Officer and had this to say:-

> "We have received your letter dated 18th April, 1975, 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 5th March, 1974, remains unanswered; (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 amounts the sum of £43,962.436 mils without your knowledge and since June 1974 we came to an agreement that the Embassy of the People's Republic of China by virtue of a contract

of lease for the period of 5 years and the sum of £30,000 has been paid to us for the purpose of completion of the building; (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 2-3 years' extension of time so as to be able to meet our commitments; (6) we also pray for a re-assessment of the reserve price since as you must realize we shall suffer damage to a great degree as well as our collaborators who work for the completion of the said building and also the purchasers of land who have paid to us the sum of £28,000. (7) We hope that you will help us on the said subject and this is due to the situation created."

The Director of Lands and Surveys instructed the District Lands Officer of Nicosia to call off the sale of the property and carry out a new local inquiry as soon as possible in order to reassess the earlier reserve price. In compliance with the instructions, the officer concerned called off the sale, and after carrying out a new local inquiry, fixed the reserve price at £162,000, and by letter dated 9th October, 1975, notified all interested parties including the applicants. In the meantime, the applicants on 10th May, 1975, filed an application in the District Court of Nicosia by virtue of the Debtors Relief (Temporary Provisions) Law for an order of the Court to stay the sale which was about to take place on 15th June, 1975.

On 13th February, 1976, when that application came on for hearing before the District Court, an order was made staying the sale of the said property till 31st October, 1976. Indeed, the sale of that property was fixed for the 12th June, 1977 at 10.00 a.m. at Ayii Omologites and a notice dated 20th May, 1977 was sent to all interested parties informing them accordingly. On 3rd June, 1977, the applicants, through their advocates, addressed the following letter to the D.L.O.:-

"On behalf of our clients M.D.M. Estate Developments Ltd., we refer to your letter of the 20th May, 1977, 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 have 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.

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 (b) furthermore and in the alternative we call upon you that you review the already fixed price of October, 1975. Since the sale of the property of our clients is fixed for the 12th June, 1975, we pray that we may have the soonest possible your answer."

On 4th June, 1977, the District Lands Officer informed the interested parties that the sale of the property in question was called off due to technical reasons and that the sale of the property was to be fixed the soonest possible.

On 27th June, 1977, a new local inquiry was carried out and the reserve price of the property in question was again fixed at £162,000, and the D.L.O. informed all the interested parties by a letter dated 16th July, 1977.

FINDINGS OF FACT:

The learned trial Judge, having considered the arguments of both counsel and having stated that in his opinion the fixing of a reserve price under Cap. 223 was an 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, proceeded to state the following at p. 66:-

"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. v. The Republic*, 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 pur-

pose 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."

Then the learned trial Judge, having dealt with the legal effect of ss. 3–6 inclusive of Cap. 223, had this to say at pp. 66–67:-

"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 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 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 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.

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 Stasinopoullos* 1951 Edition, p. 229).

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).

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 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."

GROUNDS OF LAW:

Counsel for the appellants, in support of his grounds of law argued very ably indeed that the trial Judge wrongly decided that he had jurisdiction in accordance with the provisions of Article 146 of the Constitution to try that case because the decision under attack was regulating private rights in dispute which relate to the realm of private law. He further added that the main criteria as to the jurisdiction is whether the object of the law is public as distinct from private. Counsel relies on *Achilleas Hadjikyriakos and Theologia Hadjiapostolou and Others*, 3 R.S.C.C. 89 at pp. 90 - 91; *Savvas Yianni Valana and The Republic (Director of Lands and Surveys)* 3 R.S.C.C. 91 at pp. 93 - 94.

On the contrary, Mr. Triantafyllides, in a strong argument, also stated that this Court in a number of cases said that the main criterion as to jurisdiction is whether the object of the law is a public one as distinct to the private law. (See also *Valana* v. *The Republic* (supra) and the *Greek Registrar of Co-operative Societies etc. v. Nicos A. Nicolaides* (1965) 3 C.L.R. 164 at pp. 170 -171. Also *The Cyprus Industrial Mining Co. Ltd. v. The Republic* (1966) 3 C.L.R. 467). Counsel further argued that the principle formulated applies here also with regard to the fixing of the price once it is a matter of public law. Indeed, counsel went on to add that 10 years later this Court decided in *Said Galip v. the Minister of Interior and Another* (1974) 3 C.L.R. 94, that the fixing of a reserve price, primarily aims at

serving a public purpose and therefore is administrative action not in the realm of private law.

In *HadjiKyriakos v. Hadjiapostolou and Others* (supra), Forsthoff P., in delivering the judgment of the Court had this to say at pp. 90 - 91:-

"It is not within the ambit of this reference to deal in general with the whole question of the distinction between the domains of public and private law. Nor is it material, in the case under reference, to decide in general upon the constitutionality of section 80 of Cap. 224, in relation to all orders, notices or decisions of the Director (as he is defined in section 2 of Cap. 224) because only an appeal against a decision of the Director under section 58 of Cap. 224 is the subject-matter of civil application No. 4/61.

Section 58 of Cap. 224 provides for the determination by the Director of disputes as to boundaries of immovable property.

The determination of disputes as to boundaries of immovable property is a matter in the domain of private law. In so far as a public officer, i.e. the Director in a case of this nature, is vested with competence to take action in connection with the determination of such disputes as to boundaries, with the primary purpose of regulating private rights, then such action is a matter in the domain of private law and not in the domain of public law; consequently this is not a matter within the ambit of Article 146."

In *Valanas* case (supra), Forsthoff P. had this to say at pp. 93 - 94:-

"What falls to be decided is whether the action of Respondent complained of by Applicant amounts to an 'act' or 'decision' in the sense of paragraph 1 of Article 146.

As stated in the Decision of this Court in Case No. 23/62 (Achilleas Hadjikyriacou (supra) letter F p. 89), an 'act' or 'decision' in the sense of paragraph 1 of Article 146 is an act or decision in the domain only of public law and not an act or decision of a public officer in the domain of private law.

Civil law rights in immovable property are, as a rule, matters in the domain of private law.

In so far as a public officer, in this case the Director, is vested with competence to take action in connection with civil law rights in immovable property, and the primary object of such action is not the promotion of a public purpose, but the regulation of the aforesaid civil law rights, then such action is a matter within the domain of private law and does not amount to an 'act' or 'decision' in the sense of paragraph 1 of Article 146.....

In the circumstances of this case the Court has no competence to entertain this recourse under Article 146 and it is dismissed accordingly.

It should be observed that there may be other cases under section 61 of Cap. 224 where the primary object of the action taken is the promotion of a public purpose and in all such cases this Court would have competence under Article 146."

In *Nicolaides* case (supra), Triantafyllides, J. (as he then was), in delivering his judgment, had this to say at p. 173:-

"In determining preliminary objection (1) I have to decide whether the exercise of the particular power, under rule 89, has resulted in a decision or act in the domain of public law or in the domain of private law. If the latter is the case then it is clear that no recourse lies under Article 146, in view of the nature of the competence under such Article. (See *Hadjikyriacou and HadjiApostolou*, 3 R.S.C.C. p. 89 at p. 90 and *Valana and the Republic*, 3 R.S.C.C., p. 91 at p. 93).

The same organ may be acting either in the domain of private law or in the domain of public law, depending on the nature of its action. This is clearly stated in the aforesaid two cases of *Hadjikyriacou* and *Valana* and has been, also, recognised under the jurisprudence of the Greek Council of State. (See Conclusions from the Jurisprudence of the Council of State, 1929-1959, p. 126).

The function of Respondent under rule 89 is one which, in my opinion, has as its primary object the promotion

of a public purpose viz. the proper functioning of co-operative societies. Such an object has been treated as a characteristic of an act or decision in the domain of public law in *Valana and the Republic* (above)."

In *Cyprus Industrial & Mining Co. Ltd. (No. 1) v. The Republic* (1966) 3 C.L.R. 467 on a preliminary point taken by counsel for the respondent it was said that the fixing of such reserve price is a matter of civil law and therefore it cannot be challenged by a recourse under Article 146 of the Constitution. Triantafyllides, P., in dealing with this point, had this to say at p. 472:-

"It is, first of all, necessary to bear in mind that once an act or decision emanates from an organ of administration, then, as a rule, it is an 'act' or 'decision' within the ambit of a revisional jurisdiction such as the one laid down under article 146 (vide Conclusions from the Jurisprudence of the Greek Council of State 1929-1959 p. 228).

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 inapplicable 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 an 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."

In *Said Galip v. Minister of Interior and Another* (1974) 3 C.L.R. 94 at p. 98, Triantafyllides, P. had this to say:-

"The mortgaged properties of the applicant, in the present case, are properties in a rural area; in other words, they are not in one of the urban areas to which, because of its section 11, Cap. 223 was inapplicable, except with the consent of the creditor concerned. I cannot agree with the view that the repeal of section 11 of Cap. 223, by section 8 of the Immovable Property (Restriction of Sales)(Amendment) Law, 1966 (60/66), with the consequence that the distinction - in applying Cap. 223 - between properties in rural and properties in urban areas was abolished, has resulted in the fixing of a reserve price not being any longer action primarily intended to serve a public purpose; in my opinion the abolition of the said distinction extended the scope of serving such public purpose, by including therein properties in urban areas as well."

Finally, in a recent case, in *Ioakim v. The Republic*, (1981) 3 C.L.R. 603, Triantafyllides, P., dealing with the refusal of the respondent to review the amount which was fixed as the reserve price in respect of the sale by public auction of property of the applicant at Kalopanayiotis village, in relation to a mortgage debt due by her to the interested party, had this to say at p. 606:-

"As our law stands at present, it appears that when a decision fixing the reserve price is challenged, this Court has, prima facie, jurisdiction, under Article 146 of the Constitution to entertain a recourse against such decision (see *Cyprus Industrial and Mining Co. Ltd. (No. 1)* v. *The Republic* (1966) 3 C.L.R. 467, *Galip* v. *The Minister of Interior and another*, (1974) 3 C.L.R. 94, *M.D.M Estate Developments Ltd.* v. *The Republic* (1980) 3 C.L.R. 54). The judgments in all these cases are first instance judgments of Judges of this Court, but by means of Revisional Jurisdiction Appeal No. 223, which has been

filed against the judgment in *M.D.M. Estate Developments Ltd.* v. *The Republic* (1980) 3 C.L.R. 54, the Supreme Court is being asked to hold that there is no jurisdiction to challenge by recourse the fixing of the reserve price in a case such as the present one; as, however, that appeal is still being heard I have, for the time being, to take it that this Court possesses jurisdiction to entertain the present recourse of the applicant."

It emerges from a study of the case law, arising from the long series of first instance judgments earlier referred to, that the fixing of the reserve price is a matter in the domain of public law on account of the interest of the wider public in the outcome of the process. Consequently, it was repeatedly held that jurisdiction vests in the Supreme Court under Article 146 to take cognizance of the matter. The act possesses the remaining insignia of an administrative act, it emanates from a body of public administration, in this case charged with the application of the provisions of Cap. 223.

We have been invited to depart from this line of authority on the ground that the decision falls outside the domain of public law. Essentially, we were asked to hold that the sub judice decision concerns primarily, if not exclusively, the debtor and creditor directly affected thereby. The interest of the wider public being of a general character, limited to insisting as in other areas, on the faithful application of the law.

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, reinforces 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 of the public 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.

Appeal allowed. No order as to costs.

A. LOIZOU J.: I am in agreement with the judgment just delivered by my brother Judge Mr. Justice Hadjianastassiou which I had the advantage of reading in advance and I have nothing to add.

SAVVIDES J.: I, also, am in agreement with the judgment

just delivered by my brother Judge Mr. Justice Hadjianastassiou which I had the advantage of reading in advance and to which I have nothing to add.

TRIANTAFYLLIDES P.: In this case I have had the privilege of studying in advance the judgment which has just been delivered by my learned brother Mr. Justice Hadjianastassiou and though I agree with the view that the approach adopted in *Valana v. The Republic*, 3 R.S.C.C. 91, is still the correct approach, I will deliver a separate dissenting judgment because I do not agree with the way in which the ratio decidendi of the *Valana* case, supra, is to be applied, in the present instance, to the matter of the reserve price which was fixed for the purposes of a compulsory sale, by public auction, in satisfaction of a mortgage debt of the respondents.

That in the light of the judgment in the *Valana* case, supra, a decision of the Director of Lands and Surveys, in the exercise of his relevant discretionary powers, as regards the fixing of the sale of mortgaged property in satisfaction of a mortgage debt is a matter coming within the domain of private, and not of public, law appears to be well established in view of the judgment in *Charalambides v. The Republic*, 4 R.S.C.C. 24, which was referred to with approval in, inter alia, the cases of *Cyprus Industrial and Mining Co. Ltd. (No. 1) v. The Republic* (1966) 3 C.L.R. 467, 471, *Christodoulou v. The Republic*, (1970) 3 C.L.R. 38, 46 (and see, also, on appeal *Christodoulou v. Republic*, (1970) 3 C.L.R. 377), *White Hills Ltd. v. The Republic* (1970) 3 C.L.R.132, 134, *Kourris v. The Supreme Council of Judicature*, (1972) 3 C.L.R. 390, 401, *Moustafa v. The Republic*, (1973) 3 C.L.R. 47, 51, *Galip v. The Minister of Interior*, (1974) 3 C.L.R. 94, 96, *Poyiadjis v. The Republic* (1975) 3 C.L.R. 378, 384 and *Silentsia Farms Ltd. v. The Republic* (1981) 3 C.L.R. 450, 454.

On the other hand, in the case of *Cyprus Industrial and Mining Co. Ltd. (No. 1)*, supra, it was held that the fixing of the reserve price for the purposes of sales by auction of mortgaged properties in rural areas was a matter within the domain of public law, and the said case was referred to with approval in *I.W.S. Nominee Co. Ltd. v. The Republic*, (1967) 3 C.L.R. 582, 586, in *Moustafa*, supra, at p. 51, *Galip*, supra, at p. 96, *Poyiadjis*, supra, at p. 385, and by the learned trial Judge in

the present case (see, *M.D.M. Estate Developments Ltd.* v. *The Republic* (1980) 3 C.L.R. 54).

In the *Galip* case, supra, I took the view that the fixing of the reserve price for the purposes of a public sale, for the satisfaction of a mortgage debt, of a property in a rural area was still a matter in the domain of public law even after the Immovable Property (Restriction of Sales) Law, Cap 223, was amended by the Immovable Property (Restriction of Sales) (Amendment) Law, 1966 (Law 60/66), so as to delete therefrom section 11, which rendered Cap. 223 applicable to rural areas outside the limits of the six main towns of Cyprus.

In the present case, the mortgaged property is in an urban area, in Nicosia, and I cannot agree with the view that the fixing of the reserve price, in the present instance, during the difficult times now prevailing, is not a matter in the domain of public law, especially when one bears in mind that the still continuing abnormal situation has rendered necessary the enactment of legislation such as the Debtors Relief (Temporary Provisions) Law, 1979 (Law 24/79), as amended by the Debtors Relief (Temporary Provisions) (Amendment) Law, 1980 (Law 78/80).

The property involved in the present proceedings does not appear to come within the protection afforded by Laws 24/79 and 78/80 but I think that the situation which has rendered necessary the enactment of such Laws shows that the fixing of the reserve price in relation to the compulsory sale, by public auction, of any immovable property is very much, indeed, a matter relevant to the public interest and should, therefore, be treated as coming within the domain of public law in the light of cases, such as *Cyprus Industrial and Mining* Co. Ltd., supra, and *Galip* supra.

I, respectfully, observe that, unless I am mistaken, the judgment of Hadjianastassiou J., which is going to be the majority judgment in this case, will result in judgment debtors, who object to a reserve price, having no remedy before any Court, because there is not such remedy provided in Cap. 223, as amended by Law 60/66; nor would the remedy under section

80 of the Immovable Property (Tanure, Registration and Valuation) Law, Cap. 224, be available in a case such as the present one because the remedy under the said section 80 is available only in respect of decisions, orders or notices based on the provisions of Cap. 224, as amended, inter alia, by the Immovable Property (Tenure, Registration and Valuation) (Amendment) Law, 1980 (Law 16/80).

For all the foregoing reasons I would dismiss this appeal.

TRIANTAFYLIDES P.: In the result this appeal is allowed by majority, but there shall be no order as to its costs.

Appeal allowed. No order as to costs.