

1982 April 3

[TRIANAFYLLIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

REA HADJIANASTASSIOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE COUNCIL OF MINISTERS AND OTHERS,

Respondents.

(Case No. 175/79).

*Administrative Law—Administrative acts or decisions—Reached by
an incompetent organ—Annulled.*

On November 4, 1971, the applicant applied for a permit allowing the division of her property at Ayios Athanassios into building sites, but her application was refused. She challenged this refusal by means of a recourse which was eventually withdrawn on an undertaking of the appropriate authority to reconsider the matter. By means of a letter dated February 28, 1979, signed by an officer of the District Office in Limassol, on behalf of the District Officer, applicant was informed of the rejection of her application and hence this recourse.

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Under the second proviso to section 3(2)(b) of the Streets and Buildings Regulation Law, Cap. 96, the appropriate Authority, in this case, was the Improvement Board of Ayios Athanassios, in which the District Officer participates as the ex officio Chairman. In the relevant administrative file there did not exist any minutes of a meeting of the Improvement Board of Ayios Athanassios at which the application of the applicant was examined before the aforesaid letter was sent to her. Such letter was not signed on behalf of the District Officer in his capacity as Chairman of the Ayios Athanassios Improvement Board.

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Held, that the sub judice decision has been reached by an incompetent organ and, for this reasons, it has to be annulled

and the matter of the relevant application of the applicant has to be dealt with properly by the appropriate authority, which is the Ayios Athanassios Improvement Board.

Sub judice decision annulled.

5 **Recourse.**

Recourse against the refusal of the respondents to grant applicant a permit for the division into building sites of land of hers at Ayios Athanassios.

A. *Triantafyllides*, for the applicant.

10 G. *Constantinou (Miss)*, Counsel of the Republic, for the respondents.

Cur. adv. vult.

15 TRIANTAFYLLIDES P. read the following judgment. By means of the present recourse the applicant challenges, in effect, a decision to reject her application for a permit for the division into building sites of land of hers at Ayios Athanassios. This decision was communicated to her by means of a letter dated February 28, 1979.

20 The applicant applied on November 4, 1971, for a permit allowing the division of her property as aforesaid but her application was refused on February 7, 1972, on the ground that the proposed building sites could not be supplied with water from the existing water-supply of Ayios Athanassios village.

25 The said refusal was then challenged by means of recourse No. 100/72 which was eventually withdrawn on an undertaking of the appropriate authority to reconsider the matter.

30 On February 18, 1977, the District Officer of Limassol informed the applicant that her application was to be re-examined after the implementation of a plan for increasing the water-supply to the village concerned. Such letter was signed by the District Officer in his capacity as Chairman of the Ayios Athanassios Improvement Board.

35 Eventually, the applicant was notified, as already stated, by means of a letter dated February 28, 1979, about the rejection of her application, and she proceeded to file the present recourse.

The said letter is signed by an officer of the District Office in Limassol on behalf of the District Officer.

Counsel for the respondent has pointed out in her written address that according to the second proviso to section 3(2)(b) of the Streets and Buildings Regulation Law, Cap. 96, the appropriate authority, in the present case, was the Improvement Board of Ayios Athanassios, in which the District Officer participates as the ex officio Chairman; and she went on to state, very fairly indeed, that it is possible to argue validly that the complained of by the applicant decision did not appear to emanate from the appropriate for the purpose authority since it was signed only on behalf of the District Officer as such and not as Chairman of the said Board. 5 10

In the relevant administrative file, No. D1044/71 (*exhibit I*) there do not exist any minutes of a meeting of the Improvement Board of Ayios Athanassios at which the application of the applicant for the applied for division permit was examined before the aforesaid letter dated February 28, 1979, was sent to her; and, such letter is, indeed, not signed on behalf of the District Officer in his capacity as Chairman of the Ayios Athanassios Improvement Board. 15 20

I have, therefore, come to the conclusion that the sub judice decision has been reached by an incompetent organ and, for this reason, it has to be annulled and the matter of the relevant application of the applicant has to be dealt with properly by the appropriate authority, which is the Ayios Athanassios Improvement Board. 25

Before concluding this judgment I would like to observe that in the said administrative file (*exhibit I*) there exist minutes of a special meeting of the Ayios Athanassios Improvement Board, which was held on October 7, 1981, and at which the application in question of the applicant was examined further. These minutes strengthen, in my view, my above conclusion, that the sub judice refusal of the application of the applicant was not communicated to her, on February 28, 1979, as a result of the decision of the appropriate authority, which was still considering the matter on October 7, 1981. In any event what happened at the said special meeting of October 7, 1981, cannot 30 35

influence the outcome of the present recourse, which was filed much earlier, on May 4, 1979.

I have decided not to make any order about the costs of this case.

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*Sub judice decision annulled.
No order as to costs.*