1982 October 15

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

COSTAS PAPOUTSOS,

Applicant,

v.

THE MUNICIPALITY OF LIMASSOL,

Respondent.

(*Case No.* 32/79).

Administrative Law—Administrative acts and decisions—Executory act—Meaning—Decision of appropriate authority declaring a building to be in a ruinous and dangerous condition—Is an executory act and can be made the subject of a recourse under Article 146 *of the Constitution.*

Natural justice—Rules of—Cannot apply in matters where public safety is at stake—Citizen has the right to be heard in quasi-judicial proceedings—Decision of appropriate authority declaring a building to be in a ruinous condition—Not of a quasi-judicial nature—Owner given notice of, and time to comply with decision —And Appropriate Authority, instead of implementing decision to demolish the building, filed an action against the owner—Not a case in which owner deprived of his right to be heard.

The applicant was the tenant of the ground floor of a building situated at Limassol. On November 9, 1978, he received a notice from the respondents informing him that they considered the building to be in a ruinous condition and that its immediate demolition was required in the interest of public safety. The notice further asked applicant to proceed with the immediate demolition of the building and that in case he failed to do so the respondents, acting by virtue of the provisions of section 137 of the Municipal Corporations Law, Cap. 240 (as amended) would proceed to demolish it. Though applicant failed to comply with the contents of the said notice respondents did

not proceed to demolish the building themselves, but, instead, they filed an action in the District Court of Limassol seeking relief. By means of this recourse applicant applied for a declaration that the decision of the respondents, by means of which the building in question was declared to be in a ruinous condition, was null and void because the decision has been reached without giving him the opportunity to be heard, in breach of the rules of natural justice.

The respondents opposed the application and they denied that they have acted in breach of the rules of natural justice, in that they had no legal or other obligation to give the applicant the opportunity to be heard before reaching the sub judice decision. They further alleged that the sub judice decision was not one against which a recourse could be made under Article 146 of the Constitution, because such dicision was not an executory act.

Held, (1) (*after dealing with the meaning of an executory act–vide* pp. 896–897 *post*) that the decision of an appropriate authority to declare a building to be in a ruinous and dangerous condition is an executory act and that as such it can be made the subject of a recourse under Article 146 of the Constitution.

(2) That though the rules of natural justice must apply in each particular case for the protection of the rights of the citizens, these rules cannot apply in matters of this or similar nature, when public safety is at stake; that more so because in this country a citizen who feels aggrieved by the decision of an administrative organ can always apply to the Court by recourse under Article 146 of the Constitution for an interim injunction to restrain the organ concerned from enforcing its decision; and that a citizen has to be heard in cases where quasi–judicial proceedings are in play; that the case in hand is not one of a quasi–judicial nature; that as the applicant was given due notice of the decision and of the intentions of the respondents and time within which to comply with the said decision and as within that time he could take steps for the stay of the decision; and that, further, as the respondents, instead of implementing their decision to demolish the house, they filed an action against him and the owner of the premises, by which they sought, inter alia, a declaration that they were entitled to demolish the building

this is not a case in which the applicant was deprived of his right to be heard; accordingly the recourse must fail.

Recourse dismissed. No order as to costs.

Cases referred to:

Cooper v. *Wandsworth Board of Works*, 143 E.R. 414 at pp. 417-418.

Recourse.

Recourse against the decision of the respondent declaring the premises situated at the corner of Anexartisias and Christodoulou HadjiPavlou streets in Limassol as being in a ruinous condition and that as such they had to be demolished.

A. Anastassiades, for the applicant.

Y. Potamitis, for the respondent.

Cur. adv. vult.

DEMETRIADES J. read the following judgment. The applicant by the present recourse prays for a declaration that the decision of the Municipality of Limassol by which they have declared the premises situated at the corner of Anexartisias and Christodoulou HadjiPavlou streets in Limassol to be in a ruinous condition and that as such they had to be demolished, is null and void and of no effect whatsoever.

The facts of the case, as they appear from the record, are as follows: The applicant is a barber and the tenant of the ground floor of the building situated at the corner of Anexartisias and Christodoulou HadjiPavlou streets. The building consists of two storeys and is the property of the Archbishop of Cyprus who holds it as trustee for the son of a certain Toulla Orphanidou, now deceased.

On the 9th November, 1978, the applicant received from the respondents a notice, which is appended to the application as exhibit 'A', addressed to the Archbishop and himself, by which he was informed that the respondents considered the premises to be in a ruinous condition and dangerous to passers by, their occupiers, as well as to neighbouring buildings, because the supporting the roof and the balcony (Kiosk) wooden beams had gone rotten and, further, because there appeared cracks

and loose plastering and that the circumstances were such that the immediate demolition of the said building was required in the interest of public safety. They further asked the recipients of the aforementioned notice that they had to proceed to the immediate demolition of the building and informed them that in case they failed to comply with the contents of the notice within three days of its receipt, they, acting by virtue of the provisions of section 137 of the Municipal Corporations Law, Cap. 240, as amended by the Municipal Corporations Law, 1964 (Law 64/64), would proceed to demolish the premises and to carry out any necessary work or action, in the interest of public safety and that in such a case the Archbishop and the applicant would be held responsible for the payment to the respondents of any costs incurred in this respect.

Though the Archbishop and the applicant failed to comply with the contents of the said notice, the respondents did not proceed to demolish the building themselves, but, instead, they filed an action in the District Court of Limassol seeking relief from the Court.

The applicant now complains that the decision of the respondents has been reached without giving him the opportunity to be heard, in breach of the rules of natural justice.

The respondents oppose the application and they deny that they have acted in breach of the rules of natural justice, in that, they say, they had no legal or other obligation to give the applicant the opportunity to be heard before reaching the sub judice decision. They further allege that the sub judice decision is not one against which a recourse lies under Article 146 of the Constitution, because such decision is not an executory act.

The first issue, therefore, that has to be decided in the present case is whether the sub judice decision is an executory act.

What is an executory act is to be found in a number of decisions of our Supreme Court and the Greek legal literature. The definition of it, as it appears at p. 237 of the Conclusions from the Case-Law of the Council of State in Greece, 1929 - 1959, reads as follows:-

"___ ἐκεῖναι δι' ὧν δηλοῦται βούλησις διοικητικοῦ ὀργάνου, ἀποσκοποῦσα εἰς τὴν παραγωγὴν ἐννόμου ἀποτελέσματος

ἔναντι τῶν διοικουμένων καί συνεπαγομένη τήν ἄμεσον ἐκτέλεσιν αὐτῆς διά τῆς διοικητικῆς ὁδοῦ. Τό κύριον στοιχεῖον τῆς ἐννοίας τῆς ἐκτελεστῆς πράξεως εἶναι ἡ ἄμεσος παραγωγή ἐννόμου ἀποτελέσματος, συνισταμένου εἰς τήν δημιουργίαν, τροποποίησιν ἤ κατάλυσιν νομικῆς καταστάσεως, ἤτοι δικαιωμάτων καί ὑποχρεώσεων διοικητικοῦ χαρακτῆρος παρά τοῖς διοικουμένοις".

("... those by means of which the will of the administrative organ is declared, aiming at producing a legal situation concerning the citizens and entailing its direct execution by administrative means. The main element of the notion of an executory act is the direct production of a legal situation, consisting of the creation, amendment or abolition of a legal situation, in other words rights and obligations of an administrative character concerning the citizens").

In his able address counsel for the applicant has referred the Court to Case No. 133/1929 of the Council of State in Greece, which deals, amongst other issues, with the nature and effect of similar decisions taken by administrative organs in Greece. Its relevant part (at pp. 370 - 371) reads as follows:

" Ἐπειδή τόσον τό ὡς ἄνω πρωτόκολλον αὐτοψίας, ὅσον καί ἡ ἐπικυρώσασα τοῦτο ὑπ' ἀριθ. 31455/1929 πρᾶξις τοῦ ἐπί τῆς Συγκοινωνίας Ὑπουργοῦ εἰσίν ἐκτελεσταί τοιαῦται διοικητικαί ὑπό τήν ἔννοιαν τοῦ ἄρθρου 46 τοῦ νόμου 3713 καί τό μέν πρῶτον, διότι, κατά τά ἄρθρα 4 καί 5 τοῦ ἀπό 20 Σεπτεμβρίου 1852 Β.Δ., ἡ ἀστυνομική ἀρχή ἐπί τῇ βάσει αὐτοῦ προσκαλεῖ τόν ἰδιοκτήτην τῆς ὡς ἐτοιμορρόπου κηρυχθείσης οἰκοδομῆς, ἵνα κατεδαφίσῃ αὐτήν καί ἐν ἀρνήσει τούτου προβαίνει αὕτη εἰς τοῦτο, εἰδοποιουμένων συνάμα τῶν ὁπωσδήποτε κατεχόντων ταύτην, ἵνα ἐκκενώσωσιν αὐτήν, ἡ δέ δευτέρα διότι, ἀσκήσασα ἐπί τοῦ προκειμένου ἱεραρχικόν ἔλεγχον δυνάμενον νά ἐκταθῇ ἐπί πάσης διοικητικῆς πράξεως καί αὐτῆς ἔτι τῆς περιεχούσης ἐν ἑαυτῇ ἀπόφασιν ἐκτελεστήν, ἀρκεῖ τό ἐνεργῆσαν ταύτην ὄργανον νά ἀνήκῃ τῇ διοικητικῇ ἱεραρχίᾳ, εἶναι ὡς τοιαύτη δεκτική ἐπί ἀκυρώσει προσβολῆς".

("Because the above record of inspection as well as the act of the Minister of Communications under No. 31455/1929 confirming it are executory administrative acts in the

sense of section 46 of Law 3713 and the first because by virtue of sections 4 and 5 of the Royal Decree dated 20th September, 1852, the Police Authority on the basis of the above decree calls upon the owner of the declared as ruinous building to demolish it and on his refusal the authority proceeds with the demolition, informing at the same time those who are in any way in possession of it, to evacuate it, and the second because, having exercised in this respect hierarchical control which may be extended on any administrative act and also the act comprising in it an executory decision, it is enough if the organ taking the decision belongs to the administrative hierarchy and is as such acceptable to recourse for annulment").

I think that it is pertinent to set out here the sub judice decision, the English translation of which reads as follows:

"*20th Meeting of the Municipal Committee of Limassol, held on the 7th November,* 1978

Members present:

Photis I. Kolakides, Chairman.
Takis Christodoulou,
Demetrios Sykopetritis,
Nicos Kountas.

Members absent:

Theodoros Papas (due to his absence abroad).

Time:

5165. *Buildings in a ruinous and dangerous condition:*

The Honourable Mr. President deposits and reads before the Body a report dated 3rd November, 1978, by the Municipal Engineer Mr. Christodoulos Stylianides in accordance with which the buildings -

(a) Building under plot No. 255 of Sheet/Plan LIV 58.6.III Ayia Napa Quarter, Limassol, which consists of a ground floor barber shop and first floor uninhabited house, and which is registered in the name of Archbishop Makarios III, and the barber shop of which is used by Mr. Costas Papoutsos of Limassol,

are considered by the said Municipal Engineer as being in a ruinous and dangerous condition both for those using them and for passers by, as well as for neighbouring buildings and he suggests that the necessary steps be taken for their demolition, as well as that the necessary steps be taken for the security of the public.

The Municipal Committee after (a) having taken into consideration that a sub-committee of the Body, consisting of the Chairman and its members Messrs. Demetrios Sykopetritis and Nicos Kountas, had primarily examined such report on the 4th November, 1978 and had carried out thereafter a local inspection and ascertained the correctness of what is referred in the above said report by the Municipal Engineer, and (b) having heard afresh the said Engineer, who was present at the meeting, as well as Mr. L.K. Charaki, the Municipal Engineer who was, also, present at the meeting, and after discussing with both of them the subject and its details, deemed reasonable and decided unanimously as follows:

It was convinced beyond reasonable doubt that the above described premises, which in essence constitute one building, of a ground and first floor, situated at the western corner of the junction formed by Anexartisias and Christodoulou HadjiPavlou streets, are in a ruinous condition and dangerous to passers by and to their occupiers, as well as to neighbouring buildings, because the supporting the roof and the balcony (kiosk) wooden beams, have gone rotten and furthermore cracks and slight plastering appear and the circumstances are such that the immediate demolition of the said building is required.

For these reasons, the Municipal Committee of Limassol decides that by their letter the said owners and/or the administrators of the estate and tenants be given notice and that they should be called upon to raise immediately the dangerous situation of the said buildings and, in particular, that they must proceed to the immediate demolition of them.

Further, the Municipal Committee of Limassol decides that in case the said owners or administrators of the estate

and the tenants of the said buildings neglect or fail to comply with the contents of the letter addressed to them by the Municipal Committee, the Municipality of Limassol, acting in accordance with the provisions of section 137 of the Municipal Corporations Law, Cap. 240, which was incorporated in the Municipal Corporations Law 64/1964 (Section 8(2)), as well as with the relevant provisions of the Streets and Buildings Regulation Law, will proceed to the demolition of the said ground and upper building as well as to any other work or action necessary in the interest of public safety and will hold the owners or the administrators of their estate, as well as the tenants of the said buildings liable for the payment to the Council of whatever expenses they may incur to carry out their decision."

Having gone carefully through the abovesaid decision and having in mind what is an executory act, as well as the extract from the decision of the Council of State in Greece already quoted, I have reached the conclusion that the decision of an appropriate authority to declare a building to be in a ruinous and dangerous condition is an executory act and that as such it can be made the subject of a recourse under Article 146 of the Constitution.

Having reached this conclusion I shall now proceed to deal with the complaint of the applicant that he was not given the opportunity to be heard by the respondents before reaching the sub judice decision.

Learned counsel for the applicant, in his able address on this issue, relied on the common law, on decisions of the English Courts and on English legal literature. He had relied, in particular, on the case of *Cooper v. The Wandsworth Board of Works,* reported in 143 R.R. 414, which concerns an action for pulling down a house of the plaintiff which was in the course of erection. Under the Metropolis Local Management Act, 1855, it was provided that no one might put up a building in London without giving seven days' notice to the local board of works; and that if any one did so, the board might have the building demolished. The plaintiff, nevertheless, began to erect a house without having given due notice and when his building had reached the second storey, the board of works sent men late in the evening who demolished it. The plaintiff contended that

although the words of the statute, taken in their literal sense, without any qualification at all, would create a justification for the act which the district board had done, the powers granted by that statute are subject to a qualification which has been repeatedly recognised, that no man is to be deprived of his property without his having an opportunity of being heard. The district board alleged that no notice was given, and that consequently they had a right to proceed to demolish the house without delay, and without notice to the party whose house was to be pulled down, and without giving him an opportunity of shewing any reason why the board should delay.

ERLE, C.J., in delivering his judgment said (at pp. 417 - 418):-

"I think that the power which is granted by the 76th section is subject to the qualification suggested. It is a power carrying with it enormous consequences. The house in question was built only to a certain extent. But the power claimed would apply to a complete house. It would apply to a house of any value, and completed to any extent; and it seems to me to be a power which may be exercised most perniciously, and that the limitation which we are going to put upon it is one which ought, according to the decided cases, to be put upon it, and one which is required by a due consideration for the public interest. I think the board ought to have given notice to the plaintiff, and to have allowed him to be heard. The default in sending notice to the board of the intention to build, is a default which may be explained. There may be a great many excuses for the apparent default. The party may have intended to conform to the law. He may have actually conformed to all the regulations which they would wish to impose, though by accident his notice may have miscarried; and, under those circumstances, if he explained how it stood, the proceeding to demolish, merely because they had ill-will against the party, is a power that the legislature never intended to confer. I cannot conceive any harm that could happen to the district board from hearing the party before they subjected him to a loss so serious as the demolition of his house; but I can conceive a great many advantages which might arise in the way of public order, in the way of doing substantial justice, and in the way of fulfilling the

purposes of the statute, by the restriction, which we put upon them that they should hear the party before they inflict upon him such a heavy loss. I fully agree that the legislature intended to give the district board very large powers indeed: but the qualification I speak of is one which has been recognised to the full extent. It has been said that the principle that no man shall be deprived of his property without an opportunity of being heard, is limited to a judicial proceeding, and that a district board ordering a house to be pulled down cannot be said to be doing a judicial act. I do not quite agree with that; neither do I undertake to rest my judgment solely upon the ground that the district board is a court exercising judicial discretion upon the point: but the law, I think, has been applied to many exercises of power which in common understanding would not be at all more a judicial proceeding than would be the act of the district board in ordering a house to be pulled down."

The case of *Cooper,* supra, must, however, be distinguished from the present one in that -

(a) the plaintiff in that case merely failed to notify the board of his intention to build,

(b) the question of urgency in view of the public safety, as in the present case, did not arise, and

(c) no notice of the decision of the board for the demolition of the house was given.

Undeniably, the rules of natural justice must apply in each particular case for the protection of the rights of the citizens but, in my view, these rules cannot apply in matters of this or similar nature, when public safety is at stake. More so because in our country a citizen who feels aggrieved by the decision of an administrative organ can always apply to the Court by recourse under Article 146 of the Constitution for an interim injunction to restrain the organ concerned from enforcing its decision.

Professor M. Stasinopoulos, in his book "To Dikeoma tis Iperaspiseos Enopion ton Diikitikon Archon" ("The Right of Defence Before the Administrative Authorities") (1974 Edition)

sets out, at pp. 116 - 119, a list of cases in which French Law expressly provides that before an administrative organ can take a decision, the citizen has the right to be heard. One of the cases mentioned therein is that of the demolition of premises in a ruinous and dangerous condition. In a parenthesis that follows this item, however, he notes the following: "Notice, possibility of objection and application for stay before the local Administrative Court". This appears to me to mean that before the premises which are in a ruinous and dangerous condition are demolished, the owner or occupier must be given notice of the intention of the authority to demolish them and that he must be afforded the opportunity of lodging an objection and of filing an application for the stay of such decision.

Professor Stasinopoulos in his abovementioned book says that there is no such legal provision in Greece (see, also, Case No. 133/1929 of the Council of State, supra) and that where the law is silent on the matter or whether a citizen has the right to be heard before an administrative decision is taken, the Judge has an obligation to seek and find out whether, in the particular case, the hearing of the citizen, before the decision is taken, is necessary so that the principles of the legality of the decision are fulfilled. (See p. 157, para. 22 of the book). He further goes on to say that the Judge has to proceed to estimate the circumstances of the case and reach a conclusion whether, in the absence of legal provision, a hearing is necessary.

The above views of Professor Stasinopoulos do coincide with the rights which are accepted that a citizen has to be heard in cases where quasi-judicial proceedings are in play. But as I am, however, of the view that the case in hand is not one of a quasi-judicial nature and as -

A. the applicant was given -

(a) due notice of the decision and of the intentions of the respondents,

(b) time within which to comply with the said decision and as within that time he could take steps for the stay of the decision,

B. the respondents, instead of implementing their decision to

demolish the house, they filed an action against him and the owner of the premises, by which they sought -

(1) a declaration that they were entitled to demolish the building,

(2) an order prohibiting the applicant and the owner from stopping and/or interfering with the demolition of the whole building,

(3) an order ordering the applicant and the owner to evacuate immediately the building so that the respondents be able to demolish it, and

(4) a declaration that they were entitled to collect from the applicant and the owner the costs for the demolition,

I find that this is not a case in which the applicant was deprived of his right to be heard.

It is further to be observed that from the documents placed before me it appears that the respondents did conduct a due inquiry into the matter and that in reaching the sub judice decision they had before them sufficient material enabling them to arrive at it.

In view of my above findings, I rule that the present recourse must fail and is, therefore, dismissed, but, in the circumstances of the case, I make no order as to costs.

Application dismissed. No order as to costs.