

1982 May 8

[TRIANTAFYLIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SAVVAS KARSERAS,

Applicant.

v.

THE IMPROVEMENT BOARD OF STROVOLOS,

Respondent.

(Case No. 54/80).

Administrative Law—Administrative acts or decisions—Executory act—Confirmatory act—Refusal of application for building permit—Application for reconsideration of the matter—Such application not containing any new material on the basis of which there could take place a reconsideration of the case leading to a new executory decision—Respondent’s reply to the above application not an act or decision of an executory nature but merely of a confirmatory nature which cannot be challenged by a recourse under Article 146 of the Constitution. 5

Streets and Buildings Regulation Law, Cap. 96—“Communication” in section 8(c) of the Law—See also section 8(d) of the Law as amended by Law 24/78. 10

On the 8th January, 1977, the applicant the owner of a plot of land at Strovolos, applied for a building permit allowing him to build a house on his said plot and on 3rd October 1977 he was informed in writing that his application could not be granted because the house was to be so situated as to render impossible the future extension of a public road which was adjacent to his property; and he was asked to modify his plans so that the building to be erected would not impede the envisaged extension of the public road. 15 20

By a letter dated 27th October 1977 the applicant indicated his disagreement with the position taken by the respondent in

its aforesaid letter of 3rd October 1977 and made alternative proposals which were, however, rejected by the respondent on 11th May, 1979; in a letter of that date the respondent reiterated its refusal to grant a building permit as applied for by the applicant.

On 11th October 1979 the applicant applied for reconsideration of his case and the respondent by a letter dated 27th February 1980 informed him that his application had been examined very carefully but it was not possible to grant it; hence this recourse.

Held, that the letter of the applicant, dated 11th October, 1979, does not contain any new material on the basis of which there could take place a reconsideration of his case leading to the reaching of a new executory decision by the respondent; and that, therefore, the letter of the respondent dated 27th February 1980 is not an act or decision of an executory nature, but merely of a confirmatory nature which cannot be challenged by a recourse under Article 146 of the Constitution; accordingly the recourse must fail.

Held, further, that because, particularly, of the term "communication" in section 8(c) of Cap. 96, the respondent was legally empowered to refuse, on 3rd October, 1977 to grant the building permit sought by the applicant (see also section 8(d) of Cap. 96 as amended by Law 24/78).

Application dismissed.

Cases referred to:

- Marangos Ltd. v. Municipality of Famagusta* (1979) 3 C.L.R. 73 at pp. 75, 76;
- Evangelou v. Electricity Authority of Cyprus* (1979) 3 C.L.R. 159 at p. 168;
- Kyriacou v. Republic* (1981) 3 C.L.R. 555 at pp. 562, 563;
- Korai v. Cyprus Broadcasting Corporation* (1973) 3 C.L.R. 546 at p. 556;
- Oryctako Ltd. v. Republic* (1981) 3 C.L.R. 174 at p. 184;
- Metaphoriki Eteria "Ayios Antonios" Spilia-Courdali Ltd. v. Republic* (1981) 3 C.L.R. 221 at p. 237;
- Vassiliou v. Republic* (1982) 3 C.L.R. 220;

- Holy See of Kitium v. Municipal Council of Limassol*, 1 R.S.C.C.
15 at p. 28;
Kalogeropoulos v. Republic (1966) 3 C.L.R. 33 at p. 43;
Sofroniou v. Municipality of Nicosia (1976) 3 C.L.R. 124 at p.136.

Recourse.

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Recourse against the refusal of the respondent to grant applicant a building permit.

A. Pandelides, for the applicant.

Cr. Papaloizou, for the respondent.

Cur. adv. vult. 10

TRIANAFYLLIDES P. read the following judgment. By means of the present recourse the applicant challenges, in effect, the refusal of the respondent Improvement Board, contained in its letter of 27th February 1980, to grant him a building permit.

The applicant is the owner of a plot of land at Strovolos. 15

On 8th January 1977 he applied for a building permit allowing him to build a house on his said plot and on 3rd October 1977 he was informed in writing that his application could not be granted because the house was to be so situated as to render impossible the future extension of a public road which was adjacent to his property; and he was asked to modify his plans so that the building to be erected would not impede the envisaged extension of the public road. 20

By a letter dated 27th October 1977 the applicant indicated his disagreement with the position taken by the respondent in its aforesaid letter of 3rd October 1977 and made alternative proposals which were, however, rejected by the respondent on 11th May, 1979; in a letter of that date the respondent reiterated its refusal to grant a building permit as applied for by the applicant. 25 30

On 11th October 1979 the applicant applied for reconsideration of his case and the respondent by a letter dated 27th February 1980 informed him that his application had been examined very carefully but it was not possible to grant it; and it is as a result of this reply of the respondent that the present recourse was filed. 35

In my opinion the letter of the respondent dated 27th February 1980 is not an act or decision of an executory nature, but merely of a confirmatory nature which cannot be challenged by a recourse under Article 146 of the Constitution (see, inter alia, *Marangos Ltd. v. The Municipality of Famagusta*, (1979) 3 C.L.R. 73, 75, 76, *Evangelou v. The Electricity Authority of Cyprus*, (1979) 3 C.L.R. 159, 168, and *Kyriacou v. The Republic*, (1981) 3 C.L.R. 555, 562, 563). The confirmatory nature of the above letter of the respondent, which is attached to the application in the present recourse (as exhibit 1), is obvious not only from its own contents but, also, from the contents of the related thereto letter of the applicant, dated 11th October 1979, which is attached to the written address of counsel for the applicant (as exhibit D) and which does not contain any new material on the basis of which there could take place a reconsideration of his case leading to the reaching of a new executory decision by the respondent.

This recourse has, therefore, to be dismissed on the above ground; and it could not succeed as against the initial refusal by the respondent of the building permit in question, by means of the letter dated 3rd October 1977, because, having been filed on 29th March 1980, it is out of time in respect of such refusal.

The aforesaid initial refusal of the building permit applied for by the applicant was clearly based on section 8(c) of the Streets and Buildings Regulation Law, Cap. 96, which at the time read as follows:

“8. Before granting a permit under section 3 of this Law, the appropriate authority may require the production of such plans, drawings and calculations or may require to be given such description of the intended work as to it may seem necessary and desirable and may require the alteration of such plans, drawings and calculations so produced, particularly -

- (a) _____
- (b) _____
- (c) With the general object of securing proper conditions of health, sanitation, safety, communication, amenity

and convenience in the area in which the intended work is to be carried out”.

Section 8, above, was amended, on 8th May 1978, by section 5 of the Streets and Buildings Regulation (Amendment) Law, 1978 (Law 24/78), through the addition of the following paragraph:

“(δ) ἐπὶ τῷ σκοπῷ διασφάλισης τῆς περαιτέρω βελτιώσεως τοῦ ὁδικοῦ δικτύου τῆς περιοχῆς”.

“(d) with the object of securing the further improvement of the road network in the area”.

In my view, because particularly of the term “communication” in section 8(c) of Cap. 96, the respondent was legally empowered to refuse, on 3rd October 1977, to grant the building permit sought by the applicant; and even if it was not so empowered then this factor could not affect the outcome of the present recourse because the applicant is precluded, by the provisions of Article 146.3 of the Constitution, from challenging now so belatedly by this recourse the validity of the refusal of the permit on 3rd October 1977.

If, on the other hand, it could be said, contrary to what has already been held earlier on in this judgment, that there was communicated an executory decision by means of the letter of 27th February 1980 - and it is only in respect of this letter that this recourse could be made within time under the aforesaid Article 146.3 - then the legal basis for the refusal of the building permit in question is to be found, also, set out in section 8(d) of Cap. 96 as amended by Law 24/78.

It has been submitted by counsel for the applicant that the letter of 27th February 1980 does not contain due reasoning. I can, of course, examine this submission only on the assumption that, notwithstanding my already expressed opinion to the contrary, there was by the said letter communicated to the applicant an executory decision; because, if such letter is only of a confirmatory nature no recourse could be made in respect of it.

In any event, I may state that, in my opinion, even if such letter had been found by me to contain an executory decision,

I would not be prepared to annul that decision for lack of due reasoning, because the reasoning for that decision is set out in the previous correspondence commencing with the letter of respondent dated 3rd October 1977; and it has been repeatedly stated by this Court that due reasoning may be found in relevant official records (see, inter alia, *Korai v. The Cyprus Broadcasting Corporation*, (1973) 3 C.L.R. 546, 556, *Oryctako Ltd. v. The Republic*, (1981) 3 C.L.R. 174, 184, *Metaphoriki Eteria "Ayios Antonios" Spilia - Courdali Ltd. v. The Republic*, (1981) 3 C.L.R. 221, 237 and *Vassiliou v. The Republic*, case 322/80 in which the judgment was delivered on 16.3.82 and not reported yet*).

Before concluding this judgment I might state, too, that even if the refusal to grant to the applicant a building permit applied for by him could be challenged by filing the present recourse in respect of the letter of the respondent dated 27th February 1980 - and I have already held that this could not be done in view of the confirmatory nature of such letter - I would find that the said refusal was duly reached in the course of the exercise of discretionary powers vested in the respondent and that such refusal did not result in a contravention of Article 23 of the Constitution, because the regulation of building works under section 8 of Cap. 96, as was done on the present occasion, is constitutionally possible in view of the provisions of paragraph 3 of Article 23 (see, inter alia, *The Holy See of Kitium v. The Municipal Council of Limassol*, 1 R.S.C.C. 15, 28, *Kalogeropoulos v. The Republic*, (1966) 3 C.L.R. 33, 43 and *Sofroniou v. The Municipality of Nicosia*, (1976) 3 C.L.R. 124, 136).

When I had fixed, on 28th April 1982, this case for delivery of judgment today I stated that I would decide on those issues which could be determined without referring to disputed facts; and in view of the reasons for which I have now found that this recourse has to be dismissed in any event any disputed facts are no longer material.

In the light of all the foregoing this case is dismissed, but I will not make any order as to its costs against the applicant.

Recourse dismissed. No order as to costs.

* Now reported in (1982) 3 C.L.R. 220.