1983 March 29

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

TH. PAPAEFSTATHIOU AND OTHERS,

Applicants,

v.

1. THE REPUBLIC OF CYPRUS, THROUGH THE DISTRICT OFFICER NICOSIA, AS CHAIRMAN OF THE IMPROVEMENT BOARD OF STROVOLOS,
2. THE MINISTER OF INTERIOR, THROUGH THE DISTRICT OFFICER, NICOSIA,
3. THE DISTRICT OFFICER, NICOSIA,

Respondents.

(*Case No.* 276/82).

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and

THE IMPROVEMENT BOARD OF STROVOLOS,

Applicants.

v.

1. THE REPUBLIC OF CYPRUS, THROUGH THE DISTRICT OFFICER NICOSIA, AS CHAIRMAN OF THE IMPROVEMENT BOARD OF STROVOLOS,
2. THE MINISTER OF INTERIOR, THROUGH THE DISTRICT OFFICER, NICOSIA,
3. THE DISTRICT OFFICER, NICOSIA,

Respondents.

(*Case No.* 277/82).

Legitimate interest—Article 146.2 *of the Constitution—Local Authorities—Improvement Boards and individual members of—Whether vested with legitimate interest to challenge acts of the Central Government affecting the interests of the Improvement Board.*

Time within which to file a recourse—Article 146.3 *of the Constitution*

—Decision of Minister of Interior, under section 4(3) *of the Petrol Stations Law,* 1968, *granting permit for the construction of petrol station—Licensing Authority, under the Law, declining to issue permit and permit issued by District Officer—Only the issue of the permit an executory act—Time for the purposes of the above article begins to run after issue of permit.*

Administrative Law—One cannot create a legitimate interest for judicial review out of his own illegal act—Refusal of Licensing Authority under the Petrol Stations Law, 1968 *to implement decision of Minister taken under s.*4(3) *of the Law, for the grant of permit to interested parties to construct a petrol station—Licensing Authority estopped from challenging by recourse issue of the permit by the District Officer.*

On 17.8.1979 the interested party applied for permission to construct a petrol station in the Strovolos area. It was submitted to the licensing authority, the Improvement Board of Strovolos. As required by s.4(2) of the Petrol Stations Law, 1968, Law 94/68, the Licensing Authority passed on the application to the consultative bodies, named in the law, for their views before deciding on the merits of the application and they all opined in favour of granting a permit. Thereafter, the Licensing Authority met to examine the application and decided to refuse a permit. In the event of a disagreement between the Licensing Authority and the consultative bodies respecting the outcome of the application, the Law constituted the Minister of the Interior the sole arbiter of the fate of the application (see section 4(3) of Law 94/68 (as amended by Law 7/72). True to this duty, the Licensing Authority referred the application to the Minister for decision. On 10.10.1980 the Minister of the Interior decided to grant the permit and communicated his decision forthwith to the Licensing Authority which, on 11.10.1980 decided not to implement the decision, disregarding it in effect, thereby attempting to neutralise it by inaction.

On 26.4.1982 the District Officer of Nicosia faced with the refusal of the Improvement Board of Strovolos as Licensing Authority to give effect to the decision of the Minister, took it upon himself, presumably acting on instructions to resolve the conflict by issuing the permit applied for. Hence these

recourses by the individual members of the Board and by the Improvement Board.

Held, (I) *on the question of the legitimacy of the Interest, in the sense of Article* 146.2 *of the Constitution, of Members of the Improvement Board of Strovolos to challenge the sub judice decision:*

For an interest to be legitimate in the sense of Article 146.2 of the Constitution it must be direct or personal interest. A member of an association may challenge an act or omission whenever the decision affects his status, duties and responsibilities. Each and every member had an interest that the Chairman of the Board, the District Officer and the Acting District Officer who deputised in his stead, should not assume duties other than those entrusted to the Chairman of the Improvement Board by law. In law, the powers vested in the Chairman in virtue of s.10, Cap. 243, are confined to execution of decisions of the Board; that each and every member of the Board has a personal interest in the manner that decisions of the Improvement Board are taken. Any unauthorised act by a member of the Board, in this case the Chairman, attributed to the Board, amounted to a usurpation of their powers and an act ousting them of their position. And in the case of elected members of the Improvement Board, it superseded their political mandate to exercise the functions of a member of the Improvement Board. The decision complained of was in short an act of usurpation of their legal duties and political mandate. It offended directly the interests of every member to be, collectively with fellow members, the custodian of the powers vested in the Licensing Authority by the Petrol Stations Law. The objection to the justiciability of the recourse, on grounds of lack of interest on the part of members of the Improvement Board fails.

(II) *On the question of the legitimacy of the Interest of the Improvement Board of Strovolos:*

Local authorities are expected, within the sphere of their responsibilities and always subject to their authority under the law, to give effect to what appears best for the locality they serve. There may be a conflict between the wider needs of the country, safeguarded by central administration and local needs. Inasmuch as political responsibility for the acts of local authorities

does not vest in the central government, legal means must be provided for resolving a conflict, if there is any, between organs of central and local administration. Consequently, in an appropriate case, a recourse may be taken by an improvement board against organs of central government for the review of the legality of their actions affecting the interests of the improvement board. Accordingly the Improvement Board had a legitimate interest to challenge the grant, by the Ag. District Officer of a permit to the interested party. Hence the challenge to the validity of the recourse on this account, is ill-founded.

(III) *On the question whether the recourse was filed within the time limit of* 75 *days provided by Article* 146.3 *of the Constitution*

That only executory acts can be made the subject of a recourse. Executory is an act that produces legal consequences; an act definitive of the rights of a person vis-a-vis the administration or any other body. Within the context of the Petrol Stations Law, only the issue of a permit confers a right to construct a petrol station. If the interested party attempted to construct a station without a permit in virtue of the decision of the Minister of the Interior, their acts would be unauthorised and illegal. The issue of a permit made possible what was not otherwise legally permissible. The decision of the Minister paved the way for the grant of a permit but did not settle the fate of the application. And, as far as the interests of the Improvement Board of Strovolos were concerned, it was the decision of the Ag. District Officer, granting a permit that amounted to a usurpation of their rights and effectively deprived them of their authority to issue a permit. Therefore, the recourse cannot be faulted on this ground either.

(IV) *On the question whether the applicants in both or either recourse were estopped from making a recourse because of their own omission to carry out their duty under the law that required them to implement the decision of the Minister:*

That it is an acknowledged principle of administrative law that one cannot create a legitimate interest for judicial review out of his own omissions; that, further, one cannot generate a cause of action out of his own ill-doing; that in examining the legitimacy of the interest of an applicant in proceedings under Article 146, the Court must go to the core of the matter and not restrict the inquiry to the sub judice act. The Court

must delve into the origin of the matter. After all, the revisional jurisdiction of the Court is intended to ensure and entrench the supremacy of the law. Law would hardly reign supreme if the outcome of a successful recourse were to sustain perpetuation of an illegal state of affairs. One cannot build a right upon an illegal act. The right collapses for, an interest to be legitimate and justiciable, it must have a lawful origin. It was the duty of the Improvement Board, as well as that of the applicants individually, to implement the decision of the Minister of the Interior, notwithstanding their reservations about the expediency and propriety of granting a permit to the interested party. Their recourses will therefore, be dismissed. Any other course would be a reward for their illicit omission.

Per curiam:

Nothing said in this judgment should encourage the respondents to usurp the powers of Improvement Boards. In my judgment, the decision of the Ag. District Officer to grant a permit to the interested party, was an act in excess and abuse of his powers.

Applications dismissed.

Cases referred to:

Demetriou v. *Republic*, 1 R.S.C.C. 99;

Cyprus Police Association v. *Republic* (1974) 3 C.L.R. 152;

Bar Association of Nicosia v. *Republic* (1975) 3 C.L.R. 24;

Pitsillos v. *C.B.C.* (1982) 3 C.L.R. 208;

Minister of Finance v. *Public Service Commission* (1968) 3 C.L.R. 691;

Ozturk v. *Republic*, 2 R.S.C.C. 35;

Marcoullides v. *Republic*, 3 R.S.C.C. 30;

Yiannaki v. *Republic* (1965) 3 C.L.R. 561;

*Decisions of the Greek Council of State Nos:*223/60, 779/60, 483/56 and 482/35.

Recourses.

Recourses against the decision of the respondents whereby a permit under the Petrol Stations Law (Law 94/68) was issued to Mobil Oil Cyprus Ltd.

P. Polyviou, for the applicants.

A. Vladhimirou, for the respondents.

A. Dikigoropoulos, for the interested party.

Cur. adv. vult.

PIKIS J. read the following judgment. The co-operation envisaged by law between the representatives of central administration—the District Officer or his Deputy and, the local members of the Improvement Board of Strovolos—broke down giving rise to a chain of events that culminated in the institution of the present proceedings. It seems that the District Officer of Nicosia or his deputy, faced with the refusal of the Improvement Board of Strovolos as licensing authority under the Petrol Stations Law—Law 94/68, to give effect to the decision of the superior authority of his Ministry, the Minister of the Interior, took it upon himself, presumably acting on instructions, to resolve the conflict by issuing the permit applied for. No law or regulation conferred upon the District Officer the power he assumed. The powers conferred upon the District Officer as Chairman of the Improvement Board by s.10 of the Villages (Administration and Improvement) Law, Cap. 243, are limited to the implementation and execution of decisions of the Board. Therefore, the issue of the permit by the District Officer or his deputy, was an unauthorised act in usurpation of the powers of the Improvement Board of Strovolos. Confronted with this abuse of their authority, the Improvement Board decided, at a meeting held on 2.7.1982, to challenge the decision as void. The decision was unanimous, except for the dissent of its Chairman, the Acting District Officer of Nicosia. Also the members of the Board regarded the decision as offensive to their position as members of the Board, so they had recourse to this Court in order to vindicate their status and authority, as members of the Board, by the annulment of the same decision. The two recourses had a common end, the annulment of the decision of the District Officer embodied in the grant of a permit dated 26.4.1982 to Mobil Oil Cyprus Limited, the interested party.

The recourses were opposed on the ground that the applicants in neither case possessed the legitimate interest required by Article 146.2 to seek judicial review of administrative action. The validity of the recourses was questioned on another score as well: Failure to raise them within 75 days, a prerequisite for the exercise of the revisional jurisdiction of the Supreme Court under Article 146.3 of the Constitution.

The two recourses were heard together as they were directed against the same act and raised many similar, and some identical, questions for decision.

The dispute arose in the following circumstances: The interested party applied on 17.8.1979 for permission to construct a petrol station in the Strovolos area. It was submitted to the licensing authority, the Improvement Board of Strovolos. As required by s.4(2) of Law 94/68, the Licensing Authority passed on the application to the consultative bodies, named in the law, for their views before deciding on the merits of the application. After some time and a degree of prevarication on the part of at least one of those consulted, they all opined in favour of granting a permit. Thereafter, the Licensing Authority met to examine the application. They decided to refuse a permit. In the event of a disagreement between the Licensing Authority and the consultative bodies respecting the outcome of the application, the Law constituted the Minister of the Interior the sole arbiter of the fate of the application. Section 4(3) of Law 94/68 (as amended by Law 7/72), provided, in the event of conflict of opinion between the aforesaid authorities as to the propriety of granting or withholding a permit, the decision should rest with the Minister of the Interior. True to this duty, the Licensing Authority referred the application to the Minister for decision. On 10.10.1980 the Minister of the Interior decided to grant the permit and communicated his decision forthwith to the Licensing Authority. It is evident that the Licensing Authority was alarmed by the decision and apparently took exception to the Minister overriding their views on a matter affecting the area under local administration. The situation was reviewed at a meeting held the day following, on 11.10.1980. They decided not to implement the decision, disregarding it in effect, thereby attempting to neutralise it by inaction. Notwithstanding the power vested in the Minister under s.4(3) to decide the fate of an application in the circumstances outlined above, power to issue a permit remained with the Board, in virtue of the provisions of s.4(4) and s.6 of Law 94/68 (as amended).

Faced with the persistent refusal of the Licensing Authority to implement his decision, the Minister sought advice from the Office of the Attorney-General. In response thereto, Mr. Loucaides, Deputy Attorney-General, advised the Minister there was no machinery in law to compel the Licensing Authority to implement the decision of the Minister, bound though they

were to do so. He pointed out, however, that the interested party was not remediless but could challenge the decision by a recourse under Article 146.1 of the Constitution. Also, he hinted at criminal proceedings against those members of the Board who refused to carry out their duties for disobedience of lawful orders under ss. 136 and 137 of the Criminal Code. In fact, criminal proceedings were taken against the members of the Board; later they were discontinued by the entry of a nolle prosecui. The discontinuance of criminal proceedings concided, it seems, with the issue by the Deputy District Officer of a permit, a drastic course of action taken to resolve the impasse.

Why the advice of Mr. Loucaides was not heeded to the end, is not altogether clear. Apparently, a second opinion was received from another officer serving in the Office of the Attorney -General, advising it was competent for the District Officer to dispose of the omission of the Licensing Authority by issuing a permit in the manner he did.

The questions raised for decision are the following, in order of logical priority:-

(a) Was it competent for the members of the Board (Applicants in Recourse 276/82) to challenge the sub judice decision?

The answer depends on whether the decision affected a legitimate interest of the applicants in the sense of Article 146.2 of the Constitution.

(b) Did the Licensing Authority (Applicants in Recourse 277/82) have a litigable cause they could pursue in law? Again the answer depends on whether the decision of the District Officer affected a legitimate interest of the Improvement Board of Strovolos.

(c) Were the recourses taken in time?

The answer depends on the nature of the act of 26.4.80. If executory, the recourse was taken in time but not otherwise.

(d) Are the applicants in both or either recourse estopped from making a recourse because of their own omission to carry out their duty under the law that required them to implement the decision of the Minister?

The Legitimacy on the Interest of Members of the Improvement Board of Strovolos to challenge the sub judice decision:

The concept of legitimate interest in the context of Article 146.2 has, on no occasion been exhaustively defined in Cyprus. But it is settled that, for an interest to be legitimate in the sense of the aforesaid article, it must be a direct or personal interest. (See, inter alia, *Menelaos Demetriou as Chairman of C.B.C. Staff Society and/or personally v. Republic, through The Public Service Commission,* 1 R.S.C.C. 99; *Cyprus Police Association v. The Republic* (1974) 3 C.L.R. 152; *The Bar Association of Nicosia etc. v. The Republic* (1975) 3 C.L.R. 24). In *Pitsillos v. The C.B.C.* (1982) 3 C.L.R. 208, it is pointed out that despite trends in other jurisdictions, especially France, an interest is not legitimate in the sense of Article 146.2, unless it is direct or personal. We pointed out that, subject to certain exceptions, unless the decision has direct implications on the interests of the applicant, he has no right to a recourse. These exceptions mostly concern the rights of members of corporate or unincorporated bodies or associations to raise a recourse where their rights as members, as distinct from the rights of the association as such, are prejudiced by a decision. Extraordinarily, they may be held justified to raise a recourse on behalf of the body if there is a real risk of the interests of the body in question being defeated because of inaction on the part of the management. The trend in Greece is to broaden the right of a member of an association to raise a recourse by relaxing to an extent the element of directness necessary to justify judicial review. It has been held that a member of an association may challenge an act or omission whenever the decision affects his status, duties and responsibilities as a member of an association. A right to judicial review was acknowledged to a professor, member of an academic body, to challenge a decision of the Board regarding an award prejudicial to his position, notwithstanding the fact that his interest as a member of the school was not questioned. (See, *Tsatsos - Application for Annulment before the Greek Council of State,* 3rd ed., p.59 - Instructive on the subject are the *cases under* 223/60 and 779/60).

The interest affected by the decision complained of, need not qualify as a positive right, in the sense of a right actionable per se, in order to justify a recourse. (See, *Tsatsos* supra, p.44).

As we pointed out in *Pitsillos* supra, the path to judicial review should not be blocked, unless inevitable, in view of the provisions of Article 146.2.

What interests of members of the Board were actually offended or affected by the decision in question?

Each and every member had an interest that the Chairman of the Board, the District Officer and the Acting District Officer who deputised in his stead, should not assume duties other than those entrusted to the Chairman of the Improvement Board by law. In law, the powers vested in the Chairman in virtue of s.10, Cap.243, are confined to execution of decisions of the Board.

Each and every member of the Board has a personal interest in the manner that decisions of the Improvement Board are taken. Any unauthorised act by a member of the Board, in this case the Chairman, attributed to the Board, amounted to a unsurpation of their powers and an act ousting them of their position. And in the case of elected members of the Improvement Board, it superseded their political mandate to exercise the functions of a member of the Improvement Board. The decision complained of was in short an act of usurpation of their legal duties and political mandate. It offended directly the interests of every member to be, collectively with fellow members, the custodian of the powers vested in the Licensing Authority by the Petrol Stations Law. The objection to the justiciability of the recourse, on grounds of lack of interest on the part of members of the Improvement Board, fails.

The Legitimacy of the Interest of the Improvement Board of Strovolos to raise Recourse 277/82:

Objection to the amenability of the recourse of the Improvement Board to review, stems from the principles adopted by the Supreme Court in *Minister of Finance v. Public Service Commission* (1968) 3 C.L.R. 691. The principle adopted was that an organ of public administration cannot challenge a decision of another organ or authority of public administration for much the same reasons that were found by the Greek Council of State to justify a similar approach in Greece. Mr. Vladhimirou for the respondents, suggested that the principle in the aforesaid case is fatal to the validity of the proceedings.

Mr. Polyviou for the applicants, argued that the decision in *Minister of Finance* supra, valid though it is in the area it covers, it is inapplicable in the present case because of differences in the factual situation and the nature of the bodies concerned and, for that reason, it should be distinguished. The principle emerging from the aforesaid case should be limited to recourses among organs of central administration. No compelling reasons justify extension of the principle to bodies of local administration.

The conflicting arguments advanced are finely balanced. Unaided by direct Cyprus authority on the subject, as to the competence of a local authority to challenge a decision of an organ of central administration, considerations relevant to the policy of the law acquire especial significance. In Greece, where the jurisdiction of the Council of State is comparable to that of the Supreme Court under Article 146, recourses by local authorities against acts of organs of central administration, have been held to be entertainable where interests of the local administration, as distinct from those of local residents, are affected in consequence of a given decision. (See, *Tsatsos - Application for Annulment before the Greek Council of State,* 3rd ed., 57 and, *Decisions of the Greek Council of State, Vol.A,* 1956 - *p.*613, *Decision* 483/56). The reasoning behind Greek case-law on the subject is, as I understand it, that there is objectively sufficient division of interests between organs of central and local administration, as to justify judicial review as an avenue for the determination of a dispute in the event of conflict of interests. In France, the revisional jurisdiction reposed in the Council of State is wider than that vested in administrative Courts in either Greece or Cyprus. The Court can take cognizance of a recourse not only by an organ of local administration but by an organ of central administration against another central authority.

Before attempting to answer the question, we may note that it has been authoritatively settled that the word "person",in the context of Article 146.2, includes a public authority (see *Turhan M. Ozturk v. The Republic,* 2 R.S.C.C. 35 and, *Andreas Antoniou Marcoullides v. The Republic,* 3 R.S.C.C. 30).

The question ultimately turns on the existence, if any, of satisfactory reasons for making a distinction between the right of an authority of central administration and a body of local

administration to pursue a recourse against a decision of an organ of central government. It is in the public interest to maintain unity of purpose and coherence in policy, among organs of central administration. Ultimately, political responsibility for their actions lies with the same body, that is, the government of the country. Such conflicts as may exist, must be resolved by the employment of internal mechanisms that may be devised, as government may deem necessary, for the co-ordination of its policies.

Improvement Boards are authorities of local administration, manned in part by elected representatives of the inhabitants residing in the area of its administration. Their primary aim is to sustain and promote the interests of the locality within the sphere of their authority. For the discharge of their duties, they bear political responsibility to those that elected them, that is, to represent them on the Board. Improvement boards are not, in any sense, organs of central administration. Membership of an officer of central administration, such as the District Officer, ex officio Chairman of the Board, does not subordinate Improvement Boards to central government. In his capacity as Chairman, the District Officer is, like any other member of the Board, entrusted with duties pertinent to regional administration and must act with that end in mind. Local government and bodies set up for the purposes, are designed to diffuse the exercise of governmental powers in the interests of wider participation by the citizenry in the affairs of the country. The democratic process is best served by the effective institutionalisation of this participation. The entrustment of local affairs to bodies of local government composed, be it in part as in the case of the Improvement Boards, by elected representatives of the community, is certainly a process that serves democratic rule.

Local authorities are expected, within the sphere of their responsibilities and always subject to their authority under the law, to give effect to what appears best for the locality they serve. There may be a conflict between the wider needs of the country, safeguarded by central administration and local needs. Inasmuch as political responsibility for the acts of local authorities does not vest in the central government, legal means must be provided for resolving a conflict, if there is any, between organs of central and local administration. Consequently, in an appropriate case, a recourse may be taken by an improvement board

against organs of central government for the review of the legality of their actions affecting the interests of the improvement board.

What happened in effect in this case, was that an organ of central government - the District Officer or the officer acting on his behalf, organs subordinate to the Minister of the Interior - usurped the powers of the Improvement Board of Strovolos, ousting them thereby of their authority under the law. Consequently, they had a legitimate interest to challenge the grant, by the Ag. District Officer of a permit to the interested party. Hence the challenge to the validity of the recourse on this account, is ill-founded.

Timeliness of the Recourse:

On behalf of the respondents we were invited to rule that the proceedings were taken out of time because the issuing of the permit was nothing other than an act of execution. The only executory decision was that of the Minister of 10.10.1980 and, inasmuch as it was not challenged, any attempt for its review after the lapse of 75 days, is precluded by the time limit of 75 days set up by Article 146.3 of the Constitution. For the applicants it was submitted that the decision of the Minister was not in itself executory, an inchoate administrative act, paving the way for the grant of a permit.

I shall not review the case-law on the subject of executory acts. The ground is so well trodden and so solid as not to require support from any particular decision. Executory is an act that produces legal consequences; an act definitive of the rights of a person vis-a-vis the administration or any other body. The production of legal consequences must be objectively identifiable and not subjectively determined. Within the context of the Petrol Stations Law, only the issue of a permit confers a right to construct a petrol station. If the interested party attempted to construct a station without a permit in virtue of the decision of the Minister of the Interior, their acts would be unauthorised and illegal. The issue of a permit made possible what was not otherwise legally permissible. The decision of the Minister paved the way for the grant of a permit but did not settle the fate of the application. Also, it must be said that the decision of the Minister did not and could not settle all matters relevant to the permit, for instance, it was the responsibility of the Impro-

vement Board of Strovolos to determine the conditions that should be attached to the grant of a permit incidental to the decision of the Minister. And, as far as the interests of the Improvement Board of Strovolos were concerned, it was the decision of the Ag. District Officer, granting a permit that amounted to a usurpation of their rights and effectively deprived them of their authority to issue a permit. Therefore, the recourse cannot be faulted on this ground either.

Implications of the Illegal Omission of the Improvement Board of Strovolos to implement the Decision of the Minister of the Interior on the Justiciability of the Recourses:

The refusal of the Improvement Board of Strovolos to implement the decision of the Minister of the Interior was an act in defiance of the law and, a negation of the duties cast upon them thereunder. In the contention of the respondents and the interested party, their illicit act deprives them of a right to judicial review, in that it saps of legitimacy, an interest arising in consequence thereof. The applicants, without purporting to justify the omission of the Improvement Board and its members to implement the decision of the Minister, argued that the acts complained of in these proceedings should be divorced from their own omissions. It is an acknowledged principle of administrative law that one cannot create a legitimate interest for judicial review out of his own omissions. (See, inter alia, *the Decisions of the Greek Council of State under* 482/35). This principle is, to my comprehension, an aspect of a wider principle of the law, reflecting its policy in all spheres of legal activity. It is this: *One cannot generate a cause of action out of his own illdoing.* It is a rule of considerable antiquity,encountered from the early days of civil law, expressed by the maxim "ex turpi causa non oritur actio". The maxim of equity that one must come to Court with clean hands, is another manifestation of the policy of the law in the sphere of equity.

In Paraskevi Yiannaki v. The Republic (1965) 3 C.L.R. 561, Triantafyllides, J., as he then was, denied legitimacy to the interest of a party complaining of the refusal of the appropriate authority to sanction the deepening of a well illegally sunk. The ratio of the decision is that in examining the legitimacy of the interest of an applicant in proceedings under Article 146, the Court must go to the core of the matter and not restrict the

inquiry to the sub judice act. The Court must delve into the origin of the matter. After all, the revisional jurisdiction of the Court is intended to ensure and entrench the supremacy of the law. Law would hardly reign supreme if the outcome of a successful recourse were to sustain perpetuation of an illegal state of affairs. That, I am afraid, would be the result of this recourse if the acts of the respondents, illegal though they are, were set aside. You cannot build a right upon an illegal act. The right collapses for, an interest to be legitimate and justiciable, it must have a lawful origin. It was the duty of the Improvement Board, as well as that of the applicants individually, to implement the decision of the Minister of the Interior, notwithstanding their reservations about the expediency and propriety of granting a permit to the interested party. I shall, therefore, dismiss both recourses. Any other course would be a reward for their illicit omission.

Nothing said in this judgment should encourage the respondents to usurp the powers of Improvement Boards. In my judgment, the decision of the Ag. District Officer to grant a permit to the interested party, was an act in excess and abuse of his powers. Indeed, a decision taken in defiance of the law. It is appropriate to remind the respondents, as well as all organs of government, of the dicta of *Mr. Justice Brandeis* in *Olmstead v. United States*, 72 L.Ed. 944: "In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example". Later on, the learned Justice adds that, if government breaks the law, it breeds contempt for the law. "It invites every man to become a law unto himself; it invites anarchy".

Although the above comments were made in relation to crime, they apply with equal cogency to every act of government. It is an article of faith in a democracy that government shall be by law, not above or outside but subject to and within the law.

The recourses are dismissed. There shall be no order as to costs.

Recourses dismissed with no order as to costs.