

1984 May 4

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MICHAEL ANTONIOU AND OTHERS.

Applicants.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE DIRECTOR OF LANDS AND SURVEYS DEPARTMENT.

Respondent.

(Case No. 165/83).

Act or decision in the sense of Article 146.1 of the Constitution—Which can be made the subject of a recourse thereunder—Must be an act in the domain of public law and not of private law—Decision of Director of Lands and Surveys registering a limitation as to the use of immovable property, under section 11(1)(g) of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224 (as amended by Law 16/80)—Is a decision in the domain of private law and cannot be made the subject of a recourse under the above article.

10 The applicants, challenged a decision of the Director of the Lands Department to impose limitations on the use of immovable property, building sites, they acquired by purchase from a third party, namely, Sophoclis Soteriou Soteriades. The Director registered a limitation as to the use of the property in exercise of the undoubted powers vested in him by virtue of section 11(1)(g) of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, as framed by Law 16/80. The limitation restrained the owners from using the property, except for housing purposes; commercial and other uses were prohibited.

15
20 *On the question whether the sub judice decision was a decision in the domain of public law in contrast to private law, and could be made the subject of a recourse under Article 146.1 of the Constitution:*

Held, that the jurisdiction under Article 146.1 is confined to the review of acts, decisions or omissions in the domain of public law; that the domain of public law encompasses decisions expressive of the policy of the administration in matters of interest to the public at large or a distinct section of it; that the ascertainment of the rights of citizens to immovable property is primarily of interest to the parties immediately affected thereby; that the public has but a remote interest in the matter and is therefore a matter of private law; accordingly the *sub* judge decision is not a decision in the domain of public law but is one in the domain of private law and must be dismissed for lack of jurisdiction on the part of this Court to entertain it.

Application dismissed.

Cases referred to:

- Frangos v. Medical Disciplinary Board* (1983) 1 C.L.R. 256; 15
- Hadjikyriakou v. Hadjiapostolou*, 3 R.S.C.C. 89;
- Valana v. Republic*, 3 R.S.C.C. 91;
- Asproftas v. Republic* (1973) 3 C.L.R. 366;
- Republic v. M.D.M. Estates* (1982) 3 C.L.R. 642;
- Kalisperas v. Minister of Interior* (1982) 3 C.L.R. 509. 20

Recourse.

Recourse against the decision of the respondent to impose limitations on the use of immovable property, building sites, the applicants acquired from a third party.

- A. Eftychiou*, for the applicants. 25
- A. Vladimirov*, for the respondent.

Cur. adv. vult.

PIKIS J. read the following judgment. In order to determine the justiciability of the cause sought to be litigated by this recourse, it is necessary to refer to the facts giving rise to it. The merits can only be inquired into if there is jurisdiction to take cognizance of the recourse. 30

The applicants, six of them, challenge a decision of the Director of the Lands Department to impose limitations on the use of immovable property, building sites, they acquired by purchase from a third party, namely, Sophoclis Soteriou Soteriades. The Director registered a limitation as to the use of the property 35

in exercise of the undoubted powers vested in him by virtue of section 11(1)(g) of the Immovable Property Law, Cap. 224, as framed by Law 16/80. The limitation restrains the owners from using the property, except for housing purposes; commercial and other uses are prohibited.

Reflecting upon the nature of the decision under consideration, following the written address of the parties, I directed the submission of supplementary addresses on the amenity of this Court to review the sub judice decision under Article 146.1 of the Constitution. In particular, I invited arguments as to the domain in which the decision was taken considering that only acts in the domain of public law are reviewable in exercise of the revisional jurisdiction of the Supreme Court. Counsel acknowledged, as they were bound to, that only decisions taken by administrative bodies in the domain of public law can be made the subject of review under Article 146.1 of the Constitution. This is an essential prerequisite for judicial review of administrative action, both as a matter of principle and on authority. However, they differed and voiced conflicting opinions on the nature and basic characteristics of the sub judice acts. Therefore, I must resolve whether a decision under section 11(1)(g), Cap. 224, is a decision in the domain of public law in contrast to private law.

To complete the factual background of the case as it may be gathered from the statement of facts accompanying the application supplemented by the addresses, the limitation in question was attached at the request of the vendor and with the consent of the purchasers. Apparently it reproduced a limitation as to use incorporated in the contracts of sale preceding transfer of the properties.

The jurisdiction under Article 146.1 is confined, as indicated above, to the review of acts, decisions or omissions in the domain of public law. In other words, only administrative or executive decisions of public bodies in the domain of public law can be made the subject of judicial review. The domain of public law encompasses decisions expressive of the policy of the administration in matters of interest to the public at large or a distinct section of it. The intrinsic nature of the act or decision and public interest in its effect are the decisive factors for the classi-

fiction of the act; the nature and status of the organ though relevant is of itself an inconclusive consideration. The test is substantive, not formal (see, inter alia, *Frangos v. Medical Disciplinary Board* (1983) 1 C.L.R. 256). The inquisitorial process devised for the judicial review of administrative action is specially designed to ensure examination in depth of the legality of administrative action in areas of interest to the public. The review is conducted in the interest of the rule of law provided the process for review is set in motion by a party having a direct interest in the matter as laid down in Article 146.1 of the Constitution. The division of law into public and private spheres, prominent in continental law, derives its origin from the Roman law. The division was instructive then, as it is at present, to earmark the jurisdiction of different judicial authorities.

The definition and adjustment of property rights of citizens is par excellence a matter of private law. It concerns the rights of citizens as defined by the general law. The intervention of the administration in their adjustment is rarely necessary and then only principally for the purpose of ascertaining the facts; otherwise no power vests in the administration to determine such rights. The definition of such rights is in no way dependent on the exercise of discretionary powers by the administration. Once the facts are established, the duty of the Department of Lands and Surveys is to give effect to the law.

The ascertainment of the rights of citizens to immovable property is primarily of interest to the parties immediately affected thereby. The public has but a remote interest in the matter.

By a series of decisions the Supreme Constitutional Court acknowledged that resolution by the Land Department of property disputes is primarily a matter of private law as it is predominantly of concern to the disputants; it affects the civil law rights of the parties, a matter exclusively referable to the civil jurisdiction of the Courts of the country. In *Achilleas Hadjikyriacou v. Theologia Hadjiapostolou & Others*, 3 R.S.C.C. 89, it was held that determination by the Director of a boundary dispute involved a decision regulatory of civil law rights and as such was beyond the scope of review under Article 146.1. In the same spirit they decided in *Savvas Yianni Valana v. The*

Republic, 3 R.S.C.C. p. 91, that a decision of the Director purporting to correct an error in the description of boundaries of immovable property is for the same reasons a matter of interest to the parties immediately affected thereby. The decision
5 itself merely concerned the ascertainment of the civil law rights of the parties in the matter under consideration.

The Supreme Court was alive to the conceptual difficulties inherent in drawing the dividing line between acts of administration in the domain of public law on the one hand and in the
10 domain of private law on the other. In one sense the public is interested in every decision of the administration. Underlying the above decisions is the appreciation by the Court that the degree of interest on the part of the public in actions of the administration varies in proportion to the extent to which such
15 decisions are likely to affect the public or sections of it. The Supreme Constitutional Court adopted a practical test to chart the line of demarcation between decisions in the domain of public and private law. It revolves round the primary object of the act or decision. If the decision is primarily aimed to
20 promote a public purpose it falls in the domain of public law; otherwise in that of private law. Naturally the public has a livelier interest in public purposes.

A public purpose is one in which the public at large or a noticeable section of it has an interest in the sense that its proper
25 promotion has repercussions extending beyond those immediately affecting the parties directly affected thereby. If the decision intended to promote a public purpose entails adjustment of private rights, it is nonetheless justiciable under Article 146.1 because of the need to ensure proper scrutiny of its legality.
30 Inevitably the public has but limited interest in the precise definition of immovable property rights of its members. It can confidently be predicated that decisions in this area are primarily of interest to them. The interest of the public in such matters is remote. The parties affected thereby can be
35 expected to protect their rights by recourse to the civil Courts and in that manner correct abuses, if any, of due process of the law.

The decisions of the Supreme Constitutional Court noted above were consistently followed by the Supreme Court. A

good illustration is afforded by the decision of Malachos J., in *George Asproftas v. The Republic* (1973) 3 C.L.R. 366, pronouncing that a decision of the Land authorities disposing of an application pertaining to the registration of a strip of land in the name of the applicant was not justiciable under Article 146.1, for it concerned primarily private law rights. 5

The decision of the Full Bench in *Republic v. M.D.M. Estate* (1982) 3 C.L.R. p. 642, that public interest in a given matter may decline on account of changing social or other circumstances reducing the importance of decisions in a given area for the public or any distinct section of it. Thus it was resolved that the fixing of the reserve price under the Sale of Mortgaged Property Law, Cap. 233, ceased to be a matter of primary concern to anyone other than the parties affected thereby. And this because of changes brought about with regard to the sale of mortgaged properties and reduction of the incidence of such sales. Whereas the law was originally aimed to protect owners of land in rural areas from having their property sold at unreasonably low prices changed social circumstances had made the likelihood of such event occurring unlikely to the point of minimizing public interest in such decision. I followed the decision in *M.D.M.* (supra) in *Kalisperas v. The Minister of the Interior* (1982) 3 C.L.R. 509. I explained that the law is no less interested in decisions bearing primarily on property rights of citizens. Exclusion of the possibility of review of such decisions by administrative Courts does not mean that the parties are remediless. Their grievances can be ventilated before a civil Court the procedure of which is specially fashioned to elicit comprehensively and resolve such disputes in a manner befitting their nature. 10
15
20
25
30

Setting the facts of the present case in a proper perspective, one can appropriately notice that a prominent complaint of the applicants is that their consent to the registration of the limitation was the result of alleged pressure brought to bear by the vendors. It had nothing to do with the exercise of any discretionary powers on the part of the Director. Evidently, discharge or variance of any contractual obligation of the purchasers to subscribe to such a limitation is a matter exclusively referable to the jurisdiction of a civil Court. 35

In the light of the above the recourse must necessarily be dismissed for lack of jurisdiction on the part of this Court to entertain the remedy sought.

The recourse is dismissed. Let there be no order as to costs.

5

Recourse dismissed with no order as to costs.