

1984 May 26

[A. Loizou, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDROULLA I. PARIDES AND OTHERS,

Applicants.

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTRY OF INTERIOR,
2. THE DIRECTOR-GENERAL OF THE MINISTRY OF INTERIOR,
3. THE MUNICIPALITY OF LARNACA.

Respondents.

(Cases Nos. 334/77, 353/77, 354/77,
355/77, 356/77, 357/77, 358/77,
359/77, 360/77, 361/77, 362/77).

5 *Streets and Buildings Regulation Law, Cap. 96—Street widening scheme—Notice under section 12 of the Law—Objections to Minister of Interior under section 18 of the Law—Whether persons objecting have a right to be heard by the Minister—Creation of a “bus-stop” one of the factors that may be taken into account in relation to the scheme—No discrimination or unequal treatment arising on account of the fact that certain plots were not affected by the scheme in the same way as applicants’ plots because the principle of equality does not exclude reasonable distinctions*
10 *—Effect of scheme on applicants’ properties a limitation within the ambit of Article 23.3 and constitutional.*

15 *Constitutional Law—Right to property—Article 23.3 of the Constitution —Street widening scheme under section 12 of the Streets and Buildings Regulation Law, Cap. 96—Amounts to a limitation within the ambit of the above Article and is not unconstitutional.*

Constitutional Law—Equality and discrimination—Articles 28 and 6 of the Constitution—Street widening scheme — Under section 12 of the Streets and Buildings Regulation Law, Cap. 96—No

discrimination or unequal treatment, contrary to the above Articles, arising by reason of the fact that certain plots were not affected by the scheme in the same way as applicants' plots because though the principle of equality entails the equal or similar treatment of all those found in the same situation it does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things. 5

On the 4th March, 1977 the Municipality of Larnaca, acting under the provisions of section 12 of the Streets and Buildings Regulation Law, Cap. 96, published a notice in the Official Gazette to the effect that plans had been prepared with the object of widening or straightening specified streets in Larnaca. As the said plans affected properties belonging to the applicants the latter raised objections which were considered by the Minister in exercise of his powers under s.18 of the above Law and rejected on the ground that it was ascertained that the preparation of the said plans was carried out after having taken into consideration the future road traffic requirements of the area, as well as the consequences to the present and future development of the affected plots. 10 15 20

Applicants were further informed that they were at liberty, provided they were able to prove that by the implementation of the said town planning plans they will be "caused real hardship, to proceed by virtue of section 13 of the Streets and Building Regulation Law, Cap. 96, and to secure the award of compensation by the appropriate authority, that is, the Municipality of Larnaca". 25

Hence these recourses where applicants prayed for:

- (a) "A declaration that the decision of the respondent Municipality of Larnaca relating to street widening plans in respect of certain streets in Larnaca is null and void and of no legal effect whatsoever. 30
- (b) A declaration that the act or decision of the Minister of Interior dated 7.10.1977, by which the applicants' objections (hierarchical recourses) to the aforesaid street widening plans were rejected, is null and void and of no legal effect whatsoever". 35

Counsel for the applicants mainly contended:

- (a) That the sub judge decision, in so far as it was based

on section 13(1) of Cap. 96, was unconstitutional in that it was contrary to Article 23.3 of the Constitution

- 5 (b) That the applicants were not given the opportunity to be heard by the Minister of Interior during his consideration of their recourses before him.
- 10 (c) That the sub judge decision was not duly reasoned and that it was contrary to Law in that it was contrary to section 18 of Cap. 96 (as amended) as from the wording of the Minister's reply it appeared that he failed to follow the procedure provided for by the section while considering the recourses before him; that, also the decision was reached in respect of some of the applicant's properties for the purpose of creating a sub-stop there, which was not in accordance with the provisions of section 12(1) by virtue of which the sub judge decision was taken, and thus it was both contra to Law and in abuse of power.
- 15 (d) That applicants were subjected to unequal treatment vis-a-vis the owners of adjoining properties whose properties were not affected by the scheme.
- 20 (e) That the proposed scheme amounts to a "deprivation of their rights to their property and not to a mere restriction or limitation, rendering therefore the sub judge decision unconstitutional as contrary to Article 23 of the Constitution.
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Applicants contended in this connection that they will suffer great financial hardship and that they would no longer be able to utilise, develop or dispose of their properties without great financial loss.

30 *Held*, (1) that the Minister of Interior did not base his decision on section 13 of Cap. 96; that section 13 was referred to by the Minister only in relation to the compensation which may be payable under the section—as indeed it is the sole ambit of the section—and not in relation to his reaching the sub judge decision; that in the present instance, no question of damages has yet arisen; and that, therefore, section 13 does not come into play and thus there is no need to decide the issue of the constitutionality of the section at this stage.

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(2) That though section 18 of Cap. 96, as amended by section 3 of the Streets and Building Regulation Law 1974 (Law No. 13 of 1974), gives the Minister a discretion in considering the matter, if he finds it necessary or expedient to hear any objecting applicant it is clear from the section that such applicant has no right to be heard; and that since the case is not of a disciplinary nature or in the nature of a sanction or based on considerations personal to the applicant to render it necessary to be present at the proceedings or to contradict any case against him, there is no requirement to be heard; that, in any event applicants were heard by having put forward their objection which could and obviously did contain their case.

(3) That there is nothing in the decision, which is a duly reasoned one, to suggest that the Minister failed in his duty to observe the proper procedure as alleged and that moreover, as it is clearly stated in the decision of the Minister itself, as well as in the minutes of the meetings of the Municipal Committee leading to the decision, the use of the roads and the traffic were taken into consideration by the appropriate Authority, and as in all street widening schemes the creation of bus-stops is one of the factors that inevitably have to be taken into account in relation to such a scheme.

(4) That the respondents in preparing the sub judice plans took into consideration the particular circumstances of each street, its problems and needs and without doubt no two plots could be affected in the same way or extent as the situation of each plot is governed by different considerations in relation to the road; and that, therefore, no discrimination against the applicants can be established; that, further, though the principle of equality entails the equal or similar treatment of all those found to be in the same situation, nonetheless it "does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things"; that in the present instance the parties cannot be said to be standing on the same footing; and that, therefore, the principle of equality does not come into play.

(5) That under Article 23.3 of the Constitution, the exercise of the right of ownership may be subjected to limitations or restrictions absolutely necessary in the interests, inter alia, of town and country planning or the development and utilization of any property to the promotion of the public benefit; that the

properties concerned are not affected in such a way as to amount to a deprivation, as alleged, but it is only a mere restriction or limitation; that, moreover, many of the plots would acquire betterment by the implementation of the scheme or they can
 5 be developed in a more commercial way; that on the material before it this Court is not prepared to hold that the effect of the street-widening plans on the properties of the applicants are anything more than a limitation; that they are, thus, within
 10 the ambit of Article 23.3 and the constitutional principles laid down in *Sofroniou and Others v. Municipality of Nicosia* (1976) 3 C.L.R. 124 adopted.

Applications dismissed.

Cases referred to:

- 15 *Thymopoulos v. Municipal Committee of Nicosia* (1967) 3 C.L.R. 124.
Constantinou v. Republic (1972) 3 C.L.R. 116;
Hadjipetris v. Republic (1968) 3 C.L.R. 702;
Co-Operative Stores Famagusta Ltd. v. Republic (1974) 3 C.L.R. 295;
 20 *Savva v. Republic* (1979) 3 C.L.R. 250 at p. 259;
Sofroniou and Others v. Municipality of Nicosia (1976) 3 C.L.R. 124;
Thymopoulos v. Municipal Committee of Nicosia (1967) 3 C.L.R. 588;
 25 *Loiziana Hotels Ltd. v. Municipality of Famagusta* (1971) 3 C.L.R. 466 at p. 474.

Recourses.

- Recourses against the decision of the respondent relating to street widening plans in respect of certain streets in Larnaca.
 30 *L. Papaphilippou*, for applicants in Case No. 334/77.
A. Poetis, for applicants in Cases Nos. 353/77—360/77;
Cl. Theodoulou (Mrs.), for applicants in Cases No. 361/77, 362/77.
 35 *N. Charalambous*, Senior Counsel of the Republic, for respondents 1 and 2 in Case Nos. 353/77—360/77 and for respondent 1 in Case Nos. 361/77 and 362/77.
G. Nicolaidis, for respondents 3 in Case No. 334/77 and for respondent 2 in Cases Nos. 361/77 and 362/77.

Cur. adv. vult.

A. Loizou J. read the following judgment. The applicants in the present recourses which have been heard together as they relate to the same administrative act challenge the validity of the decision of the respondents relating to a street widening scheme for the town of Larnaca and claim: 5

(a) A declaration that the decision of the respondent Municipality of Larnaca relating to street widening plans in respect of certain streets in Larnaca is null and void and of no legal effect whatsoever.

(b) A declaration that the act or decision of the Minister of Interior dated 7.10.1977, by which the applicants' objections (hierarchical recourses) to the aforesaid street widening plans were rejected, is null and void and of no legal effect whatsoever. 10

On the 22.2.1972 the Municipal Committee of Larnaca having decided that the town of Larnaca was in need of improvement, wrote to the Department of Town Planning for their expert assistance in respect of widening and straightening specified streets in Larnaca. The Department of Town Planning replied to the respondents on the 25th February, 1972, expressing their willingness to do so and requested the Municipality for particular and specific instructions regarding the streets to be affected by the scheme. The respondent Municipality wrote to them again on the 7.3.1972 and sent them a plan of all the streets proposed to be affected by the street widening scheme. 15 20 25

On the 25th October, 1976, a meeting took place between the Municipal Committee, Mr. G. Phaedonos of the Department of Town Planning and Housing and Mr. A. Chatalambous, the Municipal Engineer, for the purpose of discussing the plans of the proposed scheme. Views were exchanged as to the best ways of implementing the scheme and a sub-committee was set up to deal specifically with this matter. 30

Finally on the 22nd November, 1976, the Municipal Committee met again with the Department of Town Planning and the final plans of the scheme were discussed with all details, specifically regards the financial repercussions to the Municipality of the implementation of the scheme, the compensation that it may be liable to pay to the owners of the private properties affected, the extent that such properties would be affected and its ability 35

to meet such expense in the light of its present and future finances. Having satisfied itself that the plans were feasible, the Committee decided to approve them.

5 As a result, by virtue of section 2 of the Streets and Buildings Regulation Law, Cap. 96, a Notice was published by the Municipality of Larnaca in Supplement No. 3 to the Official Gazette of the 4th March, 1977, under Notification No. 444, to the effect that plans had been prepared with the object of widening or straightening specified streets in Larnaca.

10 As the said plans affected properties belonging to the applicants, they objected to them by letter and their objections were considered by the Minister of Interior and finally rejected as shown in the letters of the Director-General of the Ministry of Interior dated the 7th October, 1977, and which are as follows:-
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“.....and would inform you that your objection was put before the Minister of Interior, as provided by section 18 of th Streets and Buildings Regulation Law, Cap. 96, who however has rejected it as it was ascertained that the
20 preparation of the said plans was carried out after having taken into consideration the future road traffic requirements of the area, as well as the consequences to the present and future development of the affected plots.

Moreover, you are at liberty, provided you are able to
25 prove that by the implementation of the said town planning plans you will be caused real hardship, to proceed by virtue of section 3 of the Streets and Buildings Regulation Law, Cap. 96, and to secure the award of compensation by the appropriate authority, that is, the Municipality of Larnaca”.

30 As a result the applicants filed the present recourses.

It was argued on behalf of the applicant in Case 334/77 that the sub judice decision, in so far as it is based on section 13(1) of Cap. 96, is unconstitutional in that it is contrary to Article 23.3 of the Constitution which provides that:

35 “Just compensation shall be promptly paid for any such restriction.....”.

On the other hand, they claimed section 13(1) becomes oper-

ative "when a permit is granted by an appropriate authority and such permit entails a new alignment for any street..... any space between such alignment and the old alignment..... shall become part of such street without the payment by the appropriate authority of any compensation whatsoever. Provided that if it is established that hardship would be caused if no compensation is paid, the appropriate authority shall pay such compensation as may be reasonable". 5

Therefore, they went on to say, since section 13 provides for no compensation, it is contrary to Article 23 and thus unconstitutional. 10

This argument must fail as from a perusal of the sub judge decision it is clear that the Minister of Interior did not base his decision on section 13 of the Law but on what he states in para. 1 of his decision, that is: 15

".....as it was ascertained that the preparation of the said plans was carried out after having taken into consideration the future road traffic requirements..... as well as the consequences of the present and future development....."

It was referred to by the Minister only in relation to the compensation which may be payable under the section—as indeed it is the sole ambit of the section—and not in relation to his reaching the sub judge decision. In the present instance, no question of damages has yet arisen. Therefore, section 13 does not come into play and thus there is no need to decide the issue of the constitutionality of the section at this stage. 20 25

It was further argued that in any case the respondents, by acting under section 13, acted under a misconception of law and fact, as clearly section 13 applies "when a permit is granted" and since in the present case no question of a permit arose, the section had no application. This argument of the applicants is correct in so far as the interpretation of section 13 is concerned and its application. However, this argument must also be dismissed as there is nowhere to be found from the facts and evidence that the respondents based their decision on section 13. On the contrary it is clear and it is also expressly stated so, that as regards the plans, same were prepared under section 12(1) of Cap. 96 and, as already explained above, the decision of the Minister also was not based on section 13. 30 35

It was further alleged that the plans were made in contemplation of the Town and Country Planning Law, 1972 (Law No. 90 of 1972), (which at the time was not in force), and not on the basis of section 12 of Cap. 96 and were "not prepared or caused
5 to be prepared" by the Municipality but were so prepared by the Town Planning instead, the Municipality not having specified which streets it wished to widen etc. In effect it is claimed the Municipality did not "decide" but merely approved of the plans.

Furthermore, they contended that the respondents failed to
10 carry out a due inquiry into the matter by approving the plans without having first spent enough time to consider them and also without having done any financial study of the proposed project as regards the probable cost of its implementations to the Municipality and on the authority of *Thymopoulos v. Municipal Committee of Nicosia* (1967) 3 C.L.R. 124; the sub judice
15 decision should be annulled.

This argument must fail too. In the first place it is abundantly clear that the Municipality's plans for widening and straightening the streets of Larnaca date almost a year before Law No.
20 90 of 1972 was enacted. There is nothing to substantiate such allegation nor is there any connection of the plans with this Law or that this Law was taken into account in any way. All the evidence, as well as the Notification No. 444, leave no doubt that the plans were prepared by virtue of section 12(1) of Cap.
25 96. Moreover there is also ample evidence that the plans were prepared under and in accordance with specific instructions by the Municipality. The particular streets which it wished to widen were indicated by them and any studies of the Town Planning Department were made in the light of such specific
30 instructions by the Municipality (see letter 7.3.1972 with map attached in exhibit 'X').

Subsequently the study of the Town Planning Department was submitted to the Municipal Committee by the then Acting
35 Director of the Department, Mr. Phaedonos, who was present at the meeting of the Committee during which they considered the plans, as submitted, the extent to which the private properties concerned were affected, the financial repercussions of such plans on the Municipality, and, having taken into consideration the finances of the Municipality and having ascertained that:

“.....the Municipality will easily be able to meet any financial obligations and any compensation payable will be within the financial capabilities of the Municipality

hey reached the sub judge decision which, it is clear, was reach- 5 ed by the appropriate Authority after a due and proper inquiry and after following the proper procedure.

It was also put forward on behalf of applicants in Cases Nos. 53/77 to 360/77, that there was no original decision of the appropriate authority to act in accordance with section 12 of Cap. 10 96, that is, to prepare the plans in question. This is clearly not so, it is apparent from the minutes of the subsequent meetings of the Committee that an original decision was taken for this scheme and as to which particular streets were to be affected, a consequence of which the letters of the 22.2.1977 and 7.3.1977 15 with the plans, were sent to the Town Planning.

It was argued further that the applicants were not given the opportunity to be heard by the Minister of Interior during his consideration of their recourses before him.

Section 18 of Cap. 96, as amended by section 3 of the Streets 20 and Buildings Regulation Law, 1974 (Law No. 13 of 1974), gives the Minister a discretion in considering the matter, if he finds it necessary or expedient to hear any objecting applicant. But it is clear from the section that such applicant has no right 25 to be heard. And since the case is not of a disciplinary nature or in the nature of a sanction or based on considerations personal to the applicant to render it necessary to be present at the proceedings or to contradict any case against him, there is no requirement to be heard.

See: *Ioannis Constantinou v. The Republic* (1972) 3 C.L.R. 30 16; *Mikis Hadjipetris v. The Republic* (1968) 3 C.L.R. 702; *Co-operative Store Famagusta Ltd. v. The Republic* (1974) 3 C.L.R. 295). In any event they were heard by having put forward their objection which could and obviously did contain 35 their case.

It was argued on behalf of applicants in Cases 361/77 and 52/77 that the sub judge decision is not duly reasoned and that it is contrary to Law in that it is contrary to section 18 of Cap. 5 (as amended) as from the wording of the Minister’s reply

it appears that he failed to follow the procedure provided for by the section while considering the recourses before him. Also, that the decision was reached in respect of the applicants' properties for the purpose of creating a bus-stop there, which is
5 not in accordance with the provisions of section 12(1) by virtue of which the sub judice decision was taken, thus it is both contrary to Law and in abuse of power.

I find that there is nothing in the decision, which is a duly reasoned one, to suggest that the Minister failed in his duty to
10 observe the proper procedure as alleged. Moreover, as it is clearly stated in the decision of the Minister itself, as well as in the minutes of the meetings of the Municipal Committee leading to the decision, the use of the roads and the traffic were taken into consideration by the appropriate Authority, and as
15 in all street widening schemes the creation of bus-stops is one of the factors that inevitably have to be taken into account in relation to such a scheme. Therefore, this argument must fail too.

Applicants further alleged that they were subjected to unequal
20 treatment vis-a-vis the owners of adjoining properties whose properties were not affected by the scheme. I find no merit in this. The respondents in preparing the sub judice plans took into consideration the particular circumstances of each street, its problems and needs and without doubt no two plots could
25 be affected in the same way or extent as the situation of each plot is governed by different considerations in relation to the road. No discrimination against the applicants can thus be established. As stated in *Savva v. The Republic* (1979)3 C.L.R. 250, at p. 259, referring to Case 1273/65 of the Greek Council
30 of State, though the principle of equality entails the equal or similar treatment of all those found to be in the same situation, nonetheless it "does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things". In the present instance the parties cannot be said to be standing
35 on the same footing, therefore the principle of equality does not come into play.

I shall now deal with the final argument put forward by all applicants that the proposed scheme amounts to a "deprivation" of their rights to their property and not to a mere restriction

or limitation, rendering therefore the sub judge decision unconstitutional as contrary to Article 23 of the Constitution. They contend, inter alia, that they will suffer great financial hardship and that they would no longer be able to utilise, develop or dispose of their properties without great financial loss. 5

In approaching this matter we shall be guided by the principles laid down by the Full Bench in the case of *Neophytos Sofroniou & Others v. The Municipality of Nicosia* (1976) 3 C.L.R. 124, adopting and confirming the approach of *Thymopoulos v. The Municipal Committee of Nicosia* (1967) 3 C.L.R. 588, as regards the validity of restrictions imposed on land as a result of a street widening scheme under section 12. 10

From the perusal of the documents before me and in particular letters dated 13.5.1977, 14.5.1977, 17.5.1977, 18.5.1977, 25.5.1977, 4.7.1977 and 15.7.1977 by the Town Planning to the Director-General of the Ministry of Interior, it is clear to me that the properties concerned are not affected in such a way as to amount to a deprivation, as alleged, but it is only a mere restriction or limitation. Moreover, as it transpires from the aforesaid letters many of the plots would acquire betterment by the implementation of the scheme or they can be developed in a more commercial way. 15 20

As stated in the case of *Loiziana Hotels Ltd. v. The Municipality of Famagusta* (1971) 3 C.L.R. 466 at p. 474 (a case dealing with zoning regulations): 25

“On the other hand, under Article 23.3 of the Constitution, the exercise of the right of ownership may be subjected to limitations or restrictions absolutely necessary in the interests, inter alia, of town and country planning or the development and utilization of any property to the promotion of the public benefit.....”. 30

And on the material before me I am not prepared to hold that the effect of the street-widening plans on the properties of the applicants are anything more than a limitation. They are thus within the ambit of Article 23.3 and constitutional. Certainly, if the applicants consider that the value of their property is materially affected, they may proceed to claim compensation under Article 23.3, a matter however which should be referred 35

to the civil Courts, as it is not within the competence of this Court. This ground must also fail.

5 Before concluding I wish to point out that from the perusal of the files it transpired that certain of the plots in respect of which a recourse has been filed are not at all affected by the street widening schemes and the sub judice decision, thus the recourse. are dismissed at the outset as far as they relate to these properties which are in Recourse No. 358/77, plot No. 204, Sheet/Plan XL/56.E.1 & 2, Block 'B', and in Recourse No. 10 359/77, plot No. 205, Block 'B', Sheet/Plan XL/56.E.1 & 2.

For all the above reasons these recourses fail and are hereby dismissed. In the circumstances, however, there will be no order as to costs.

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*Recourses dismissed with no order
as to costs.*