

1985 May 28

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

NAKIS BONDED WAREHOUSE LIMITED,

Applicants,

v.

THE MUNICIPAL COMMITTEE OF LARNACA,

Respondents.

(Case No. 268/82).

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- 5 *Legitimate interest—Article 146.2 of the Constitution—Acceptance of an administrative act disentitles the acceptor from challenging it thereafter—Recourse against condition imposed in a building permit—Statement by applicants' Counsel before the Supreme Court, accepting the condition, upon withdrawal of a criminal appeal against demolition order—Legitimate interest to challenge the condition by recourse forfeited.*
- 10 *Administrative Law—Administrative acts or decisions—Executory act—Confirmatory act—Recourse against condition imposed in a building permit granted in 1982—Same condition imposed in a building permit granted in 1978 when owners of the land were different—A building permit running with the land the 1978 condition bound the owner of the land whoever he might happen to be—Therefore the*
- 15 *1982 condition confirmatory of the 1978—And as such cannot be made the subject of judicial review.*
- 20 *Constitutional Law—Right to property—Article 23 of the Constitution—Building permit—Condition therein for cession of land for use as a public road—Not amounting directly or indirectly to an act of compulsory acquisition—But is an act of limitation and not deprivation.*
- Building permit—It runs with the land.*

Soon after the execution of a written agreement for the

purchase by the applicants of a piece of land they applied for a building permit to build a warehouse and a fence thereon; and the building permit was granted in 1978 on condition that part of the land would be ceded to the public for use as a road. The applicants did not question the permit or the said condition but they built the warehouse specified therein without complying with the above condition; and this led to the prosecution of the applicants of the offence of using a building without a certificate of approval, contrary to the provisions of the Streets and Buildings Regulation Law, Cap. 96. During the pendency of the criminal case the applicants became the registered owners of the land and submitted a fresh application for building five offices and ancillary buildings thereon. As on the first permit the applicants were required by the new permit, which was granted in 1982, to cede part of the land for use as a public road.

As against the validity of this condition the present recourse was filed.

Applicants having pleaded guilty to the above charge they were fined and they were further adjudged "to demolish the building within two months, unless a permit was obtained in the meantime". The demolition order was challenged by means of an appeal which was withdrawn, upon counsel for the appellant stating* that appellants undertake to comply fully with the terms of the 1978 permit by 31.3.1983 and upon Counsel for the respondents undertaking not to execute the demolition order before 31.3.1983.

Held, (1) that the effect of the statement which was made before the Supreme Court and acted upon by the respondents who agreed to postpone enforcement of the demolition order, constituted an unqualified acceptance of the term under consideration, an acceptance the applicants now seek to resile therefrom; that acceptance of an administrative act disentitles the acceptor from challenging

* The statement reads:
«Mr. Clerides states that the appellants undertake to comply fully with the terms of building permit No. 186/78, dated 17.12.79 and that such compliance will be completed not later than 31.3.83».

it thereafter and the acceptor forfeits any legitimate interest to challenge the action accepted.

5 (2) That a building permit runs with the land and whoever happens to be the owner, can exercise the rights and is under a corresponding duty to heed the obligations imposed thereunder; that, consequently, the conditions imposed in 1978 for the use of the land for building purposes, bound the owner of the land, whoever he might happen to be, and ran with the land; that cession of part of the plot for use as a public road, was a basic condition for its utilisation for building purposes by whoever happen to be the owner thereafter; that the condition imposed for the use of the land for building purposes, attached to the 1982 permit subject matter of these proceedings, was confirmatory of the condition attached to the 1978 permit and as such cannot be made the subject of judicial review.

On the merits of the recourse:

20 That the applicants altogether failed to establish that the condition for the cession of the land for use as a public road amounted directly or indirectly to an act of compulsory acquisition; that conditioning the division or development of the land on the cession of part of it for use as a public road, is ordinarily an act of limitation and not deprivation, as was indeed the case with regard to the permit under consideration; accordingly the application must fail.

Application dismissed.

Cases referred to:

- 30 *Myrianthis v. Republic* (1977) 3 C.L.R. 165;
Simonis and Another v. Impr. Board of Latsia (1984) 3 C.L.R. 109;
Tomboli v. C.Y.T.A. (1980) 3 C.L.R. 266;
HadjiConstantinou v. Republic (1980) 3 C.L.R. 184;
35 *Andronikou v. Republic* (1983) 3 C.L.R. 1280;

Lordos & Anastassiades and Another v. District Officer of Limassol and Another (1976) 2 C.L.R. 145;

Pieris v. Republic (1983) 3 C.L.R. 1054;

Holy See of Kitium v. Municipal Council of Limassol, 1 R.S.C.C. 15; 5

Nicos Kirzis and Others v. Republic (1965) 3 C.L.R. 46;

Booksellers Association of Cyprus v. Republic (1985) 3 C.L.R. 1171;

Frangos and Others v. Republic (1982) 3 C.L.R. 53 at p. 61. 10

Recourse.

Recourse against the decision of the respondent to impose conditions on the building permit issued to applicant for the erection of five offices and ancillary buildings.

L. N. Clerides, for the applicants. 15

Chr. Theodoulou, for the respondents.

Cur. adv. vult.

PIKIS J. read the following judgment. Exposition of the facts in order of time will not only simplify the issues but will also suggest compellingly, I believe, the answer to the issues to be resolved, namely, the justiciability of the complaint of the applicants and, if amenable to review, the legality of a condition attached to the building permit requiring them to cede part of the area of their land for use as a public road and asphalt part of the road envisaged therein. The condition was attached to building permit under No. 243/82 that licensed the erection on the site of five offices and ancillary buildings on condition of compliance, inter alia, with the aforesaid term. 20 25

Years ago, in 1971, the predecessors in title of the applicants, Thekla, Angela and Eleftheria M. Phili, applied to have the land divided into building sites. Respondents considered the application and decided to approve it, subject to their plans for the development of the area. It was decided to sanction the division provided part of the land 30 35

was ceded to the public road. In the end, the owners abandoned the application and matters were left at that until 12th December, 1977, when they agreed to sell the land to the applicants in these proceedings.

5 Soon after the execution of the written agreement to
purchase the land, an application was submitted to the
appropriate authority, care of the applicants, for a permit
to build thereto a warehouse and a fence, a building de-
signed for use for the bonded warehouse business of the
10 applicants. Though the application was made in the name
of the former owners of the land, in whose name the pro-
perty was still registered at the time, there is no doubt the
applicants were the only parties interested in securing the
permit exclusively connected with their plans for develop-
15 ment of the site. The building permit was granted, subject
to conditions requiring cession of part of the land, similar
to those contemplated for approval of the division of the
land into building sites in 1973 (see Permit 186/78). Per-
mission was given to build the warehouse and fence applied
20 for on condition, inter alia, that part of the land would be
ceded to the public for use as a road, coupled with a re-
quirement that owners of the land would pave in asphalt
part of this road.

Not only the permit, or any condition attached to it was
25 not questioned, but it was acted upon by applicants erecting
on the land the warehouse and fence authorised by the
permit, a positive act signifying acceptance of the permit
and conditions attached thereto. Notwithstanding failure
to challenge the conditions to the permit and reliance there-
30 of, by building the warehouse specified therein, the appli-
cants refused to cede the area envisaged by the permit and
carry out the other terms associated therewith. Worse still,
the applicants put the premises erected to use for their
business without first securing a certificate of approval.
35 This led to the prosecution of the applicants before the
District Court of Larnaca for use of a building without a
certificate of approval, contrary to the provisions of the
Streets and Buildings Law¹ (Criminal Case No. 6218/80).
40 After numerous adjournments the case came up for trial
before the Court on 26.7.82. Meantime, the applicants be-

¹ Cap. 96.

came the registered owners of the property and, as they informed the Court, they submitted a fresh application for building on the land five offices and ancillary buildings. The new application was made without first demolishing or stopping making use of the warehouse. Like the first application, the use of the land for the erection of the building applied for was approved subject to the same conditions respecting the cession of part of the land for use as a public road and other related terms. As on the first occasion, the applicants were required, as a condition for the use of the land for building purposes, to cede part of it to the public road and asphalt a strip of it (see Permit No. 243/82). The present recourse is directed against the validity of the condition for cession of the specified strip of the land for use as a public road, unconstitutional and illegal in the contention of the applicants because it amounts, in effect, to an act of acquisition of their property, in breach of the provisions of Article 23 of the Constitution, paragraph 4 in particular.

It is material, adjudicating upon the complaint of the applicants to notice the outcome of the criminal proceedings and statements made in the course thereof. Applicants pleaded guilty to the charge. In addressing the Court in mitigation, counsel for the applicants informed of the pendency of the present proceedings and other relevant developments surrounding the case. The Court sentenced the applicants to pay a fine of £15.- and costs amounting to £130.-. Further, in the exercise of its discretion, it adjudged the applicants to demolish the building within two months, unless a permit was obtained in the meantime. The order for demolition was challenged on appeal as unwarranted in the circumstances of the case. On the date of hearing, the appeal was withdrawn subject to a correction of the order made to read, "subject to a certificate of approval" instead of "subject to a permit" for, what was at issue was use of the premises without a certificate of approval. It is crucial to notice the statement made by counsel for the applicants introducing the intention to withdraw the appeal. The statement was the following:

"Mr. Clerides states that the appellants undertake to comply fully with the terms of building permit No.

186/78, dated 17.12.79 and that such compliance will be completed not later than 31.3.83.”

Furtherdown, he signified the intention to withdraw the appeal provided the other side undertook not to execute the demolition order before 31.3.83. And the appeal was
5 withdrawn upon the aforesaid proposal being accepted by Mr. Theodoulou, counsel for the Municipality, as the record of the proceedings, dated September 21, 1982, reads: The only reservation made on behalf of the applicants concerned their right to seek compensation to which they
10 “may be entitled under the Constitution or any law.”

Following the above, the appeal was dismissed. Compliance with the 1978 permit entailed cession of the area required to be ceded to the public under both the 1978 and
15 1982 permits. The effect of the above statement, made in what I perceive to be the most solemn circumstances, before the Supreme Court, and acted upon by the respondents who agreed to postpone enforcement of the demolition order, constituted an unqualified acceptance of the term
20 under consideration, an acceptance the applicants now seek to resile from. Acceptance of an administrative act disentitles the acceptor from challenging it thereafter. The acceptor forfeits any legitimate interest to challenge the action accepted¹.

25 Another reason that makes the subject matter of the present recourse non justiciable, is, in the submission of counsel for the respondents, the nature of the act itself—confirmatory, in his suggestion, of the decision of 1978 concerning conditions for the use of the land for building
30 purposes. In *Simonis And Another v. Imp. Board of Latsia*², I stressed that the owner has no inherent right to the development of the land; the development must be orderly, compatible with plans for development of the area. The above case serves to indicate the width of the discretion of the appropriate authority to impose conditions
35 necessary for the development of the area.

¹ See, inter alia, *Myrianthis v. Republic* (1977) 3 C.L.R. 165; *Tomboli v. CY.T.A.* (1980) 3 C.L.R. 266; *Hadjiconstantinou v. Republic* (1980) 3 C.L.R. 184; *Andronikou v. Republic* (1983) 3 C.L.R. 1280.

² (1984) 3 C.L.R. 109.

In view of the indisputable identity of the relevant conditions attached to both the 1978 and 1982 permits, respecting the prerequisites for use of the land for building purposes, counsel for the applicants sought to counter the argument of repetition of the act by submitting that a building permit is personal to the owner; consequently, his clients were unaffected by the conditions of the 1978 permit as they were not the registered owners at the time. First, the argument is factually unsound for the applicants were the parties interested in the permit and its implementations on both occasions. Secondly, as a matter of Law, a permit runs with the land. Rights conferred and duties imposed, benefit and bind the owner of the land impersonally. Whoever happens to be the owner, can exercise the rights and is under a corresponding duty to heed the obligations imposed thereunder. The nature of a building permit and jurisdic implications arising therefrom, were examined in great detail by Triantafyllides, P., in the majority judgment of the Court, in *Lordos & Anastassiades and Another v. District Officer of Limassol and Another*¹. A permit is in the nature of a licence in rem, in much the same way as in Germany. In Germany, the learned Judge noted the position as follows:

“In other words, the rights and duties under a building permit do not vest in the property owner to whom it is issued in his capacity as an individual but in his capacity as the property owner, and, therefore, they are transmitted automatically by virtue of the transfer of the property to which the building permit relates.”

Consequently, the conditions imposed in 1978 for the use of the land for building purposes, bound the owner of the land, whoever he might happen to be, and ran with the land. Cession of part of the plot for use as a public road, was a basic condition for its utilisation for building purposes by whoever happened to be the owner thereafter.

The condition imposed for the use of the land for building purposes, attached to the permit subject matter of these proceedings, was confirmatory of the condition at-

¹ (1976) 2 C.L.R. 145.

5 attached to Permit No. 186/78; it was imposed for precisely the same reasons that necessitated its imposition in 1978. It was in no way associated with the nature of the building envisaged in 1978, or any particular building, but an essential condition for its development for building purposes. In *Pieris v. Republic*¹ we explained the nature of confirmatory acts and their implications on the rights of parties affected thereby. No need arises to survey the principles anew; suffice it to say that the condition impugned in these proceedings and the permit, in so far as it relates to the prerequisites for development of the land for building purposes, is confirmatory of the decision embodied in Permit 186/78 and as such cannot be made the subject of judicial review. This is an additional reason that renders the subject matter of these proceedings non justiciable.

20 On the merits, the recourse of the applicants would fair no better either. It rests on the allegation that the condition attached to the use of the land for building purposes, renders the land valueless and constitutes in effect an act of acquisition. The submission is based on a valuation of Mr. Kimonis, a private valuer. Examination of this report reveals that the view of the valuer is hardly based on any facts bearing out his views. The contention of the applicants that the land will be rendered valueless by the implementation of the relevant term is disputed by the respondents who maintained, on the basis of a valuation report of the Lands Department that, not only the value of the land would not be adversely affected but it will be enhanced as well. The report of the Lands Department is well documented and unlike the report of Mr. Kimonis it does not rest on assumptions, unsubstantial as they appear to me to be. In my judgment, the applicants altogether failed to establish that the condition for the cession of the land for use as a public road amounted directly or indirectly to an act of compulsory acquisition. Conditioning the division or development of the land on the cession of part of it for use as a public road, is ordinarily an act of limitation and not deprivation¹, as was indeed the case with regard

¹ (1983) 3 C.L.R. 1054.

¹ See, inter alia, *Holy See of Kitium v. Municipal Council of Limassol*, 1 R.S.C.C. 15; *Nicos Kirzis and 2 Others v Republic* (1965) 3 C.L.R. 46.

to the permit under consideration.

For the reasons indicated above, the recourse of the applicants is wholly unfounded. It is dismissed. With regard to costs, guided by the principles referred to in the cases of *Booksellers Association of Cyprus v. Republic*¹, and *Frangos and Others v. The Republic*², I adjudge the applicants to pay the costs of the respondents. The costs to be assessed by the Registrar.

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*Recourse dismissed with
costs against the applicants.*

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¹ (1985) 3 C.L.R. 1171.

² (1982) 3 C.L.R. 53, 61.