

1985 June 28

[L. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION.

KYRIAKOU MINA PATSALOU AND OTHERS,

Applicants,

v.

THE MUNICIPAL COMMITTEE OF LARNACA,

*Respondent.**(Case No. 486/80).*

Administrative Law—Administrative act or decision—Whether decision not to proceed further with the examination of an application to divide land lying outside the area of Water Supply unless applicants indicate another source of water supply is of an executory nature.

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Streets and Buildings—Application for permit to divide land into building sites—Land outside area of Water Supply—Streets and Buildings Regulation Law, Cap. 96 as amended by Law 13/74, s. 9—Interpretation of—Whether permit should be granted subject to condition regarding water supply.

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The applicants are the owners of certain plots of land which were originally situated within the boundaries of Aradhippou village but were, since 1976 by virtue of an order under s. 5 of the Municipal Corporations Laws, made by the Council of Ministers, included within the Municipal limits of the Municipality of Larnaca. The lands remained outside the water supply area of the Water Board of Larnaca.

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The applicants first applied to the respondent Municipal Committee for a permit to divide their land into building sites on the 20.3.1979. Their application was dismissed by a decision of the respondents dated 20.3.1979, against which the applicants filed Recourse No. 57/80, which was later withdrawn, as applicant's counsel had been informed by letter dated 11.6.1980 by counsel appearing for

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the respondent Committee, that the said decision had been revoked and the application of the applicants was under re-examination.

5 As a result of correspondence exchanged between the Chairman of the respondent Committee and the Water Board of Larnaca and between the Chairman of the respondent Committee and the Director of the Water Development Department of the Ministry of Agriculture and Natural Resources, the respondents finally replied to the
10 applicants by letter dated 13.10.1980 addressed to their counsel. This letter reads as follows:

15 "I refer to your letter and I wish to inform you that we sought the view of the Director of the Water Development and there is a difficulty and or impossibility in finding an adequate quantity of suitable water for the water supply of your proposed building sites, since your area lies outside the area of the Water Board of Larnaca as you know, and in accordance with the letter
20 of the Chairman of the Water Board of Larnaca to you dated 17.6.1980.

25 *The Municipality is therefore unable to proceed further with your application unless you indicate to us another source from which you could supply your building sites with a suitable and adequate quantity of water."*

As a result the present Recourse was filed against the above decision of the respondents.

30 Counsel for the applicants argued that the respondents should have granted a permit and imposed conditions regarding the supply of water to the subject properties, in which case the applicants would have to apply to the Water Board in order to secure the necessary water supply and satisfy the conditions.

35 *Held*, (1) The Recourse would be dismissed as the sub judice decision is not of an executory nature, but it only constitutes a step preparatory to a final decision.

(2) The Recourse would also be dismissed because when the land to be divided lies outside an area of Water Sup-

ply, then the provisions of section 9(3) of the Streets and Buildings Regulation Law, Cap. 96 as amended by Law 13/74 apply; by virtue of these provisions the appropriate authority cannot grant a division permit, unless, after obtaining the views of the Director of the Water Development Department, it is satisfied that the fulfilment of the condition as to the supply of water is assured. It is clear from the facts of this case that the fulfilment of a condition as to the supply of water could not be assured in the present case. It was, therefore, reasonably open to the respondents to decide not to proceed any further with the examination of the application of the applicants unless the latter indicated another source of water supply in which case it would have been possible for the respondents to grant a permit imposing a condition as per section 9(1)(c)(ii) of the said Law.

*Recourse dismissed.
No order as to costs.*

Cases referred to:

Orphanides and Another v. The Improvement Board of Ayios Dhometios (1979) 3 C.L.R. 466; 20

Simonis and Another v. The Improvement Board of Latsia, (1984) 3 C.L.R. 109;

Polyviou v. The Improvement Board of Ayia Napa (1985) 3 C.L.R. 1058. 25

Recourse.

Recourse against the refusal of the respondent to grant applicants a division permit in respect of the property situated within the municipal limits of Larnaca.

A. Kramvis, for the applicants. 30

G. M. Nicolaidis, for the respondent.

Cur adv. vult.

L. LOIZOU J. read the following judgment. The applicants seek a declaration that the decision of the respondents dated 13th October, 1980, by which their applica- 35

tion for a division permit for their plots Nos. 90/1, 84/1, 84/2, 84/3, 84/4 and 84/5 of Sheet/Plan 40/48 was dismissed and/or was not approved and/or was not proceeded with is null and void and of no legal effect whatsoever.

5 The applicants are the owners of the aforesaid plots which were originally situated within the boundaries of Aradhippou village but were, since 1976, by virtue of an order under s.5 of The Municipal Corporations Laws made by the Council of Ministers and published in Supplement
10 No. 3 to the Gazette of the 15th October, 1976, under Notification 210, extending the municipal limits of Larnaca, included within the municipal limits of the Municipality of Larnaca.

The applicants first applied to the respondent Municipal
15 Committee of Larnaca for a permit to divide their land into building sites on the 20th March, 1979. Their application was dismissed by a decision of the respondents dated 24th January, 1980, against which the applicants filed a recourse No. 57/80. By letter of counsel appearing for the
20 Municipality dated 11th June, 1980, applicants' counsel was informed that the aforesaid decision of the respondents was revoked and the application of the applicants was under re-examination (exhibit 4). Counsel for applicants wrote, on the 12th June, 1980, a letter to the respondents (exhibit
25 2) informing them that recourse No. 57/80 was withdrawn and requesting a reply to the said application of the applicants within thirty days.

As a result the Chairman of the Municipal Committee informed, by letter dated 13th June, 1980 (exhibit 5) the
30 Director of the Water Board of Larnaca about the application and requested to be informed whether the Board was in a position to supply water for the purposes of the division of the said property.

The District Officer, as Chairman of the Water Board
35 of Larnaca, replied to the above letter by letter dated the 17th June, 1980, stating that as there was a difference of opinion on the subject between the legal advisers of the Water Development Department and the Water Board of Larnaca, he had sought the advice of the Attorney-General

who advised him that the Water Board had no obligation to supply water to the new areas included in the Municipal limits of Larnaca, because "extension of the Municipal limits does not necessarily mean an extension of the water supply area." The District Officer concluded his letter as follows: 5

"3. In view of the decision of the Water Board of Larnaca to act in accordance with the advice of the Attorney-General and the fact that we are faced with an acute problem of water supply to our present consumers, I inform you, with regret, that we are unable to supply water for the above or any other divisions of land into building sites in this newly included area." 10

The Chairman of the Municipal Committee then addressed another letter, dated 10th July, 1980, to the Director of the Water Development Department of the Ministry of Agriculture and Natural Resources, seeking his view as to whether the said properties could be supplied with water. To this letter a reply was given on the 30th July, 1980, to the effect that the properties in question were outside the area of supply of the Water Board of Larnaca and the Water Development Department therefore objected to the supply of water to them from the water supplies of Larnaca. The Chairman of the Municipal Committee wrote again on the 6th August, 1980, to the Water Development Department, requesting to be informed whether there was any other possible way of supplying water to the said properties, from any other source. The Director of the Water Development Department replied on the 28th August, 1980, stating that:- 15
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"2. Since, at present, the proposed building sites cannot be supplied with water from the water supply of Larnaca, the applicant should indicate another source of water supply, without this meaning that you, as the appropriate authority, have any obligation to make such an indication to any applicant." 35

The respondent finally replied to the applicants by letter dated the 13th October, 1980 (exhibit 1) addressed to their counsel, which reads as follows: 40

5 "I refer to your letter and I wish to inform you that we sought the views of the Director of the Water Development Department and there is a difficulty and or impossibility in finding an adequate quantity of suitable water for the water supply of your proposed building sites, since your area lies outside the area of the Water Board of Larnaca as you know, and in accordance with the letter of the Chairman of the Water Board of Larnaca to you dated 17.6.1980.

10 The Municipality is therefore unable to proceed further with your application unless you indicate to us another source from which you could supply your building sites with a suitable and adequate quantity of water."

15 As a result the applicants filed the present recourse against the above decision of the respondents.

20 The only argument advanced by learned counsel for the applicants is that the respondents should have granted a permit and imposed conditions regarding the supply of water to the subject properties, in which case the applicants would have to apply to the Water Board in order to secure the necessary water supply and satisfy the conditions.

25 Counsel for the respondents submitted that the Municipality cannot issue a division permit in view of the provisions of s. 9(3)(a) of Cap. 96 as amended by s. 2(c) of Law 13/74 unless there is an adequate water supply and in this case the Water Board of Larnaca had already refused the supply of water and there was no other source of water available. He further argued that it is not for the respondents to question whether the Water Board rightly considers the area outside the water supply area, and in any case no steps were taken under Cap. 350 for the extension of the water supply area so as to cover the new areas included within the Municipal limits of Larnaca after 1973 and
30 that this is a matter within the competence of the Council of Ministers. Counsel also submitted that the letter exhibit
35 1 does not amount to an executory decision.

I propose to deal first with the last point raised by counsel

for the respondents, that is whether the letter exhibit 1 amounts to an executory decision.

In this respect useful reference may be made to the case of *Orphanides and Another v. The Improvement Board of Ayios Dhometios* (1979) 3 C.L.R., 466, where it was held that a letter of the respondent informing the applicants that their application for a building permit could not be examined unless they modified their plans in the way indicated by the respondent did not amount to an executory decision.

The same view was also taken in the case of *Simonis and Another v. The Improvement Board of Latsia* (1984) 3 C.L.R., 109 where it was held that suggestions by the respondents for the alteration of plans submitted by the applicants for the division of their land into building sites did not amount to an executory decision and only the decision which was definitive of the stand of the administration could be challenged by a recourse under Article 146 of the Constitution.

In the case of *Polyviou v. The Improvement Board of Ayia Napa* in which judgment was delivered on the 31st May, 1985 (not yet reported)* the respondents, in reply to an application made by the applicant for a building permit, wrote a letter informing him that in order to be able to re-examine his application he should modify his plans so that the proposed building should be at a distance of ten feet from the street alignment and ten feet from the boundary of the proposed road. Following the above authorities I decided although, as I said, somewhat reluctantly, that the above decision was not of an executory nature not being a final decision but only preparatory to the reaching of such decision.

Applying the above to the facts of the present case, I have come to the conclusion that there has not been an express and definite decision of the respondents and exhibit 1 only constitutes a step preparatory to a final decision. The applicants did not take any further step manifesting their refusal or inability to comply with the suggestion of the respondents regarding the indication by them of another source of water supply in which case a refusal of the res-

* Now reported in (1985) 3 C.L.R. 1058.

pondents would have been a final decision and of an executory nature. It is, therefore, my conclusion that, in the circumstances of the case, the decision challenged is not of an executory nature and cannot, therefore be challenged by
5 a recourse.

Although this disposes of the matter, I, nevertheless, propose to deal briefly with the merits of the case. It is not in dispute that the land in question lies outside the water supply area as defined by the order made by the Council
10 of Ministers and published under Not. 124 in Supplement No. 3 to the Gazette of the 8th June, 1973.

The applicants' complaint is, in effect, that a permit should have been granted to them on condition that they secure an adequate supply of water.

15 Section 3(1) of the Streets and Buildings Regulation Law, Cap. 96, provides that:

“3. (1) No person shall -

(a)

(b)

20 (c) lay out or divide any land

into separate sites;

without a permit in that behalf first obtained from the appropriate authority as in subsection (2) provided...”

25 Section 9 of Cap. 96 makes provision for the granting of permits on conditions. This section, as amended by Law 13/74 reads, so far as relevant to the present case, as follows:-

30 “9. (1) In granting a permit under the provisions of section 3 of this Law, the appropriate authority shall have power, subject to any Regulations in force for the time being, to impose conditions as hereinafter, to be set out in the permit, that is to say-

(a)

(b)

(c) with regard to the laying out or division of any land for building purposes, conditions as to -

(i)

(ii) the conveyance, installation and constant supply of suitable water which must be sufficient, as well as the proper and satisfactory maintenance and operation of the installation and water supply hereinbefore mentioned: 5

Provided that, in determining, in any particular case, the sufficiency of water as above provided, regard shall be had to the needs of the area as a whole from which the supply is provided." 10

A new subsection (3) added to section 9 by s. 2(c) of Law 13/74, provides as follows: 15

“(3)(a) Whenever an application is made -

(i) under paragraph (a) or (c) of subsection (1) of section 3 in respect of any land;

or

(ii) under paragraph (b) or (d) of subsection (1) of section 3 in respect of any building, other than a single dwelling house not forming part of a building or group of buildings or building complex or other building development, 20

situated outside an area of supply, the appropriate authority shall not grant a permit in respect of the land or building concerned, unless it is properly satisfied, after obtaining the advice of the Director of the Department of Water Development of the Ministry of Agriculture and Natural Resources (hereinafter in this subsection referred to as the ‘said Director’), that the condition at sub paragraph (ii) of paragraph (c) of subsection (1) of section 9 in respect of any land, or the condition at sub-paragraph (xi) of paragraph (b) of subsection (1) of section 9 in respect of any building, 25
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as the case may be, has been fulfilled to the satisfaction of the appropriate authority or that its fulfilment is assured in the said manner:

5 Provided that if, in any particular case, the appropriate authority disagrees with the said Director, it shall forthwith refer the matter to the Minister of Interior who shall decide thereon the soonest possible and communicate his decision forthwith to all concerned, and the decision of the Minister shall be enforced as from the date of such communication.

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(b) the appropriate authority shall not grant any permit under section 3, unless it is satisfied that the applicant has complied with the provisions relating to the supply and provision of water contained in this or any other Law or in any Regulation in force for the time being;

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(c) for the purposes of this subsection 'area of supply' means any area in which any Water Board is authorized to supply water under any Law in force for the time being and includes such other area as the District Officer may, in consultation with the said Director, specify as an 'area of supply' for the purposes of this subsection."

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It appears from the above that when the land to be divided lies outside an area of supply, then the provisions of s. 9(3) apply under which the appropriate authority cannot grant a division permit, unless, after obtaining the views of the Director of the Water Development Department it is satisfied that the fulfilment of the condition as to the supply of water is assured.

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Reverting to the facts of the present case, the Water Board of Larnaca considered the land in question to be outside its area of supply. The respondents, being the appropriate authority, in compliance with the requirements of s. 9(3)(a) of the Law, sought the advice of the Director of the Water Development Department who replied by letters dated 30th July, 1980 and 28th August, 1980 (reference to which has been made earlier on) to the effect that the said Department objected to the supply of water to the property in question from the water supplies of Larnaca,

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since the property was outside the area of supply of the Water Board of Larnaca and the applicants themselves should therefore indicate another source of water supply.

It is clear from such correspondence that the fulfilment of a condition as to the supply of water could not be assured in the present case and I must, therefore, hold that it was reasonably open to the respondents to decide not to proceed any further with the examination of the application of the applicants, unless they indicated another source of water supply, in which case it would have been possible for the respondents to grant a permit imposing a condition as per section 9(1)(c)(ii). 5 10

I must, therefore, conclude that this recourse cannot succeed on its merits either.

In the result this recourse fails and it is hereby dismissed. There will be no order as to costs. 15

*Recourse dismissed.
No order as to costs.*