

1985 July 19

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

S. RAFTIS CO. LTD.,

Applicants,

v.

THE MUNICIPALITY OF PAPHOS,

Respondent.

(Case No. 416/81).

Building Permit—Refusal to issue—The Antiquities Law, Cap. 31 as amended by Laws 48/1964 and 32/1973 ss. 8 and 11—If property comes within the provisions of section 8 no alteration, addition or repair can be effected, save in accordance with the terms of a permit in writing from the Director of Antiquities previously obtained—A permit under section 8 or under section 11 should be in writing. 5

Administrative Law—General Principles—Revocation of a lawful administrative act—There is power to revoke such an act in the public interest—Revocation in order to protect ancient monuments, i.e. the historic heritage of the country, is in the public interest. 10

Legitimate Interest—Article 146.2 of the Constitution—Applicant does not possess such an interest, if he has unreservedly accepted the relevant administrative act. 15

The applicant company seeks a declaration that the decision of the respondent Municipality, communicated by letter dated 21.10.1981, whereby the company's application for a permit to build a Hotel on plot 80/3 at Kato Paphos was rejected, is null and void. 20

The said property had been declared an ancient monument and was added to the second Schedule of the Antiquities Law, Cap. 31 as amended by Laws 48/1964 and

32/1973 (hereinafter referred to as the Laws). As a result the property came within the provisions of section 8 of the Laws.

5 On 29.3.1980 Savvas Raftis, the second accused in a criminal prosecution hereinafter mentioned, applied on Form Comm. 6 for a permit to build in the neighbourhood of ancient monuments under section 11 of the Laws. At the bottom of the application there is a note dated 6.5.1980 made by the District Officer as follows: "Permit 10 is hereby granted accordingly, subject to the following modifications....".

15 With reference to the application for a building permit submitted by the applicant company on the 6.6.1980 and their new architectural plans, they were, on the 19.5.1981 informed that, on account of the various observations listed in the letter, the permit applied for cannot be issued and that the attached plans are returned for further action by the applicant company in accordance with the said observations.

20 In July, 1981 the applicant company started building without a permit when some ancient tombs were discovered. Upon their discovery the respondent Municipality instituted criminal proceedings in the District Court of Paphos against the applicant Company and Savvas Raftis 25 for building without a permit.

The applicants, upon being found guilty and convicted by the District Court, were sentenced to fine and, in addition, a demolition order was made against them.

30 On the 8.8.1981 the Director of the Department of Antiquities wrote to the Chairman of the respondent Municipality suggesting that any building on the said property should be stopped. On 15.9.1981 he again wrote to the said chairman informing him that Mr. Raftis undertook to submit various solutions which would not affect 35 the ancient monuments and requesting the Municipality not to grant any permit, until the completion of the study and the taking of a final decision.

On the 8.10.81 counsel for applicants wrote to the

respondent Municipality pointing out that the plans submitted had been approved by the Cyprus Tourism Organisation and the Antiquities Department on the 28.3.1980 and 5.5.1980 respectively. The following reply, dated 21.10.1981, was given:

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"I wish to refer to your letter of the 8.10.1981... and I wish to inform you that in view of the letter of the Director of the Department of Antiquities, under No. 53/47/25, dated 6.10.1981 to Savvas Raftis as well as the expression, in various ways, of the said Department that they do not consent nor do they permit the construction of any building on the said plot, the Appropriate Authority, that is the Municipality of Paphos, is not entitled to the issue of the building permit applied for.

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The aforesaid decision of the Appropriate Authority is based on the provisions of, the Streets and Buildings Regulation Law, Cap. 96 and the Regulations, the Antiquities Law, Cap. 31, and the judgment of the Administrative Court (Justice Malachtos) in the case of *Antoniou v. The Republic* (1975) 3 C.L.R. 169."

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Held, dismissing the recourse (1) Since the property in question came within the provisions of section 8 of the Law, no alteration, addition or repair could be effected "save in accordance with the terms of a permit in writing from the director previously obtained". (*Antoniou v. The Republic* (1975) 3 C.L.R. 169 followed). The correspondence between the parties does not resolve the issue whether the applicant company did in fact, as alleged, obtain a permit under section 8 of the Laws on the 6.5.1980, inasmuch as the said correspondence speaks of the procedure followed, but not that the Director of Antiquities assigned to the District Officer, to the knowledge of the respondent Municipality, his statutory power under the said section. Furthermore, in this case, there was an application to the District Officer under section 11 and not one, under section 8, to the said Director. Also a permit under both sections should be in writing.

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(2) Even on the assumption that the note dated 6.5.1980 by the District Officer amounts to a permit under section

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8 of the Laws, there were on account of the illegal commencement of construction by the applicant company, developments that obviously called for the drastic revision of the attitude of the Department of Antiquities. An administrative organ possesses power, irrespective of the existence or not of any statutory provision, given to the administration by the general principles of administrative Law to revoke in the public interest a lawful administrative act. (In this case the protection of the antiquities discovered). In fact under section 8 the Director has power to prohibit completely the building. In this case there had been a revocation of the original permit, if at all such permit was ever given.

(3) As far as the Municipality is concerned such revocation is not in issue, as the Municipality rightly refused the issue of a permit inasmuch as it did not have the necessary under section 8 permit in writing from the Director of Antiquities.

(4) In any event the applicant company does not have any legitimate interest to pursue this recourse as they accepted unreservedly the relevant administrative act, by undertaking the obligation to submit various solutions that would not affect the ancient monuments, which had been uncovered.

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Recourse dismissed.
No order as to costs.

Cases referred to:

Antoniou v. The Republic (1975) 3 C.L.R. 169;

Republic v. Saranti (1979) 3 C.L.R.:139;

30 *Michael v. The Improvement Board of Idhalion* (1969)
3 C.L.R. 112.

Recourse.

Recourse against the refusal of the respondents to issue

to applicants a permit to build a hotel on their property at Kato Paphos.

L. Kythreotis, for the applicants.

K. Chrysostomides, for the respondents.

Cur. adv. vult. 5

A. LOIZOU J. read the following judgment. By the present recourse the applicant Company seeks the annulment of the decision of the respondent Municipality communicated to them by letter dated 21st October, 1981, by which they refused to them the issue of a permit to build a hotel on their property at Kato Paphos, under plot No. 80/3 Sheet/Plan L. I. 10. 10

The property in question had been declared an ancient monument under Notification No. 205 published in Supplement III(1) to the Official Gazette of the Republic of the 23rd September, 1977 and was added to the Second Schedule of the Antiquities Law, Cap. 31 as amended by Laws Nos. 48 of 1964 and 32 of 1973 (hereinafter to be referred to as the Laws). As a result of its being so declared it came within the provisions of section 8 of the Law, and no alteration, addition or repair could be effected "save in accordance with the terms of a permit in writing from the director previously obtained." 15 20

As it was held in the case of *Theklou Panayiotou Antoniou v. The Republic*, (1975) 3 C.L.R. p. 169 at p. 174:- 25

"The applicant, therefore, as a person beneficially interested in an ancient monument specified in the Second Schedule of the Antiquities Law, ought to apply directly to the Director of Antiquities for a permit, as the only responsible authority to grant such a permit under the said Law. The District Officer had no say in this matter. The fact, however, that the applicant wrongly applied to the District Officer on Form Comm. 6 under section 11 of the Law, is of no significance since her application was finally transmitted to the Director of Antiquities who decided not to grant the permit applied for. The said decision was 30 35

communicated to her through the District Officer and the Municipal Committee of Paphos.”

5 In the present case Savvas Raftis, who was the second accused in a criminal prosecution to which reference will be made shortly (exhibit “A”), applied on Form Comm. 6 for a permit to build in the neighbourhood of ancient monuments under section 11. The application was made on the 29th March, 1980 and at the bottom thereof there is a note dated 6th May, 1980, made by the District Officer, 10 as follows: “Permit is hereby granted accordingly, subject to the following modifications, that is to say: There is no objection to the granting of a building permit for constructing a ground floor and one storey only. The construction of a second storey is not recommended because 15 it will protrude over the walls.” (Exhibit “A”(1)).

Section 11 applies only to cases of immovable property which was not declared an ancient monument but is in the neighbourhood of an ancient monument and there must be a publication in the Official Gazette of the Republic of the relevant order of the Council of Ministers affecting such property. 20

With reference to the application for a building permit submitted by the applicant Company, on the 6th June, 1980, and their new architectural plans, they were, on the 25 19th May, 1981, informed that after a study of the new plans there were the following observations:-

30 “(a) A number of sanitary conveniences were not adjacent to the open air and there was no provision for the installation of mechanical ventilation in accordance with Regulation 31 (plan to be submitted).

(b) There has not been submitted with the application the title-deed for plot 80/3 (see our relevant letter dated 22nd June, 1980, as well as the oral observations to Mr. Tsangaris dated 4th March, 1981).

35 (c) The architectural plans submitted have not been signed by the architect who made the study as provided by the Architects and Civil Engineers Law.

(d) The plan for the frontage of the building side-view is omitted and the plan is not clear.

(e) The plans submitted present several drawing defects (see the relevant notes on them).

(f) There has been a plan only of a vertical section. 5
It is essential to submit another two (see relevant note on the ground plans).

(g) There have not been submitted static calculations for the new architectural plans, nor also sewers plans. It should be noted that the construction of an absorption pit will not be allowed on the said plot by the Appropriate Authority. 10

(h) The plans submitted have not been numbered.

(i) There has not been submitted a plan for making the empty space of the plot into a parking space, nor a plan for the position of the swimming pool and its cost. 15

(j) There has not been submitted any other plan for details about the hotel.

(k) Also there has not been submitted to the Appropriate Authority an approved Memorandum of Association of the Company Savvas Raftis Ltd. (applicants) certified by the Registrar of Companies as well as any powers of attorney to the members of the said Company. 20
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On account of the above the permit applied for cannot be issued and the attached plans are returned to you for further action in accordance with the aforesaid observations."

On the 8th October, 1981, counsel for the applicants wrote to the respondent Municipality pointing out that the plans submitted had been approved by the Cyprus Tourism Organization and the Antiquities Department on the 28th March, 1980 and the 5th May, 1980, respectively. The following reply, dated the 21st October, 1981, was given: 30
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5 "I wish to refer to your letter of the 8.10.1981.....
and I wish to inform you that in view of the letter of
the Director of the Department of Antiquities, under
No. 53/47/25, dated 6.10.1981 to Savvas Raftis as
well as the expression, in various ways, of the said
Department that they do not consent nor do they
permit the construction of any building on the said
plot, the Appropriate Authority, that is the Muni-
10 cality of Paphos, is not entitled to the issue of the
building permit applied for.

15 The aforesaid decision of the Appropriate Autho-
rity is based on the provisions of, the Streets and Bul-
dings Regulation Law Cap. 96 and the Regulations,
the Antiquities Law, Cap. 31, and the Judgment of
the Administrative Court (Justice Malachtos) in the
case of *Antoniou v. The Republic*, (1975) 3 C.L.R.
169."

20 It was also urged on behalf of the applicants that they
had complied with the observations and resubmitted their
application, but, in the meantime, there had been a num-
ber of developments. In July, 1981 they started building
without a permit when some ancient tombs were discov-
ered. Upon their discovery the respondent Municipality
25 *instituted criminal proceedings in the District Court of*
Paphos against the applicant Company and Savvas Raftis
for building without a permit.

The applicants, upon being found guilty and convicted
by the District Court, were sentenced to fine and, in ad-
dition, a demolition order was made against them.

30 On the 8th August, 1981, the Director of the Depart-
ment of Antiquities wrote to the Chairman of the respon-
dent Municipality confirming his previous letter of the
28th July, 1981, and informing him that the excavations
for the ascertainment of the existence of burial and other
35 monuments in the building site in which the Hotel "Melina"
was being built were continuing and it was suggested that
any building should be stopped.

40 On the 15th September, 1981, another letter was sent to
the Chairman of the respondent Municipality by the Di-
rector of Antiquities, informing him that they were still study-

ing the position and that on that date a meeting took place in the office of the Minister of Communications and Works in the presence of Mr. Raftis, owner of the Hotel, and Mr. Raftis undertook the obligation to submit various solutions which would not affect the ancient monuments which had been discovered. Until the completion of the study of this solution and the taking of final decision the Municipality was requested not to issue a building permit to Mr. Raftis. 5

The letter of the 31st July, 1981 is part of the bundle of documents attached to exhibit "A", the record of the Criminal Proceedings, together with the permit given by the Cyprus Tourism Organization for the building of the hotel. A cable in the said bundle comes from the Chairman of the respondent Municipality seeking instructions as to what was to be done in view of the discovery, and whether a permit could be granted. 10 15

On the question of the practice followed regarding the issue of a permit under section 8 of the Law an exchange of letters took place in order to avoid the unnecessary calling of evidence. Counsel for the applicants wrote to the Director of Antiquities on the 14th May, 1983 (exhibit "Z") in which he asked "whether the permit granted to S. Raftis and Co. Ltd., on the 6th May, 1980, by the District Officer Paphos to build on plot 80 Sheet/Plan L. I. 10 Kato Paphos, was granted in consultation with him and on his instructions." In the reply, dated 18th June, 1983 (exhibit "Y") it is stated that "with regard to your letter dated the 14.5.1983, the Appropriate Authority for the issue of a building permit at Kato Paphos is the Municipality of Paphos. The applications for the issue of building permits on places declared as Ancient Monuments on Schedule "B" or in "Controlled Areas" are sent through the District Officers to whom we transmit the views of the Department of Antiquities. The District Officers transmit them to the Appropriate Authorities of the place. The same procedure was followed and in this case to which you refer." 20 25 30 35

I cannot say that this exchange of correspondence resolved the issue whether a permit under section 8 of the Law, as far as the respondent Municipality was concerned, was, as claimed, obtained by the applicant Company on 40

the 6th October, 1980, inasmuch as the said correspondence speaks of the procedure followed but not that the Director of Antiquities assigned to the District Officer of Páphos, to the knowledge of the respondent Municipality, the statutory powers given to him by the said section. The letter of the 14th May 1983, (exhibit "Y"), speaks of the procedures followed in the instance of properties declared as ancient monuments on the Second Schedule or—and this is significant—in "Controlled Areas" which latter expression must refer to the instances covered by section 11 of the Law. In the latter case the Commissioner of the District has the statutory power to issue a written permit and prescribe its terms.

Furthermore, in the case in hand, there was only an application to the District Officer under section 11 of the Law and not one, under section 8, to the Director of the Department on Antiquities. Also, a permit under both sections has to be in writing but even if I were to hold that there had been given a permit under section 8 by the Director of Antiquities, through the note made by the District Officer on the 6th October, 1980, that, to my mind, does not resolve the matter as in the meantime there were, on account of the illegal commencement of construction by the applicant company, developments that obviously called for drastic revision of the whole attitude of the Department of Antiquities on the subject.

There, as we have seen, resulted the institution of the criminal proceedings and the refusal of the Director of Antiquities to give any permit with the ultimate result of stopping any building and asking the applicants to re-arrange their plans which, through their Managing Director Mr. Raftis at a meeting held in the Ministry of Communications and Works, he agreed to do. This could not but be taken as a revocation of the original permit if at all such a permit was ever given and even if such permit was treated as a lawful one, as done in the public interest, this being in this case the protection of the antiquities discovered, that is the historic heritage of the country, such a power is possessed by an administrative organ irrespective of the existence or not of any statutory provisions, as part of such powers given to the administration by the general principles of admini-

strative law. (See *The Republic v. Saranti*, (1979) 3 C.L.R. p. 139). In fact, under section 8 of the Law the Director of Antiquities had power to prohibit completely the building. (See *Aphroditi Michael v. The Improvement Board of Idhalion*, (1969) 3 C.L.R. 112 at p. 119).

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In the present case tombs and other ancient monuments were discovered through the illegal commencement of construction by the applicant Company and it was obvious that it was in the public interest for the Department of Antiquities to have the whole stand reconsidered. This change of mind was within the knowledge of the applicant Company as seen in the correspondence attached to exhibit "A". Subsequent to this there followed a different approach, revised plans were submitted and the part affected by the discovery of antiquities was excluded from any building and indeed compulsorily acquired by the Government.

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This brings me to another point which I feel I should raise *ex proprio motu*, namely the absence of any legitimate interest by the applicant Company which accepted unreservedly the relevant administrative act, by undertaking the obligation to submit various solutions that would not affect the ancient monuments which had been uncovered, as it can be seen in the letter of the 15th September, 1981, (exhibit 3).

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As far as the respondent Municipality is concerned, and the issues raised in this recourse, such implied, if not express, revocation is not in issue. The Municipality was rightly entitled to refuse the issue of a permit inasmuch as it did not have the necessary, under section 8 of the Law, permit in writing from the Director of Antiquities. That they expected such a permit it is obvious from the correspondence and the cables exchanged between the Chairman of the respondent Municipality and the Department of Antiquities (exhibits 4 and 5).

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In the light of the totality of the circumstances and for the reasons given, the recourse is dismissed but there will be no order as to costs.

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Recourse dismissed.
No order as to costs.