

1985 February 16

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

SOFOCLIS HAJIOSIF AND OTHERS,

Applicants,

v.

1. THE IMPROVEMENT BOARD OF LAKATAMIA,
2. THE REPUBLIC OF CYPRUS, THROUGH-
THE DISTRICT OFFICER NICOSIA,

Respondents

(Case No. 108/83).

5 *Streets and Buildings Regulation Law, Cap. 96—Building sites
—Division of land into—Permit for—Renewal—Time of
application for, not a condition precedent to renewal—
Renewal refused because of requisition of the land and
its possession by third parties—Reasons of refusal not
postulated by any Regulations as a ground for refusal
to renew a permit—They are, therefore, invalid and
vitiating the refusal in its entirety—Proviso to section 5
of the Law.*

10 In 1968 two permits were granted to the applicants
authorising the division of their land into building sites.
The applicants were unable to complete the division, be-
cause of the requisition of the land by the Republic of
Cyprus for use by the National Guard. The permits were
15 renewed continually on a yearly basis until 1981. The
last renewal expired on 26.3.1981; and the applicants on
25.6.1981 applied for yet another renewal which was
refused because of the requisition of the property and
its possession by third parties. Hence this recourse.

20 *Held*, that renewal must be granted as a matter of course,
unless the terms of the permits conflict with any

subsequent Regulations in force at the time of application for renewal; that the reasons relied upon for refusal in this case, notably, possession of the land by third parties, is not postulated by any Regulations as a ground for refusal to renew a permit; that the Requisitioning Authority may conceivably authorise the implementation of the work; that, therefore, the reason given for refusing the permits in this case, was invalid and as such vitiated the decision in its entirety; accordingly the sub judice decision must be annulled. 5 10

Held, further, that the law does not make the time of application for renewal a condition precedent to renewal.

Sub judice decision annulled. 15

Cases referred to:

Siman (No. 2) v. Municipality of Famagusta (1972) 3 C.L.R. 329;

Alexandra Rent A Car v. Republic (1984) 3 C.L.R. 1105.

Recourse. 20

Recourse against the refusal of the respondents to renew applicants' permits for the division of their land into building sites.

A. Ladas, for the applicant.

E. Odyseos, for the respondents. 25

Cur. adv. vult.

PIKIS J. read the following judgment. In 1968 two permits were granted to the applicants authorising the division of their land into building sites. Because of the requisition of the land by the Republic of Cyprus for use by the National Guard, the applicants were unable to complete the division despite their professed readiness to do so. And they have been unable to complete the division since, owing to the continuous renewal of requisition orders putt- 30

ing the land in the possession of the National Guard. The owners were able to comply within the first year with such terms of the permit as did not necessitate entry and scaping of the land. Thus they were unable to complete the network
5 of roads and other incidental works envisaged by the permit.

The permits were renewed continually on a yearly basis until 1981. The last renewal expired on 26.3.81. A while later, on 25.6.81, application was made for yet another renewal of the permits. It was refused at a meeting of the
10 Improvement Board of Lakatamia, the respondents, on 29.10.82 and communicated to the applicants by a letter dated 20.1.83. As the decision discloses, renewal was refused for one reason only; namely that the land was in the possession of the National Guard. Examination of the files of
15 the case suggests the decision was preceded by an inquiry into town planning policy in the area, in the course of which the views of the appropriate government department were sought. In 1979, it seems, new building Regulations were introduced in the area, modifying the pre-existing building
20 ratio (see Blue 34—File 604/67). Under the new Regulations the number of building sites into which the land could be divided is smaller. For this reason, the Town Planning Department recommended refusal of the renewal, unless plans for the division of the land were altered in a
25 way ensuring compliance with the new Regulations. Thereupon, the views of the Attorney-General were sought. It was advised on behalf of the Attorney-General that although the change in zoning regulations affecting the area justified refusal, nevertheless, renewal was recom-
30 mended in order to avoid the payment of damage likely to become payable, because of inability to complete on account of the continued requisition of the land by the Republic (see Blue 36—File 604/67).

In the opposition respondents hint at the above develop-
35 ments but, as counsel for the respondents explained in his address, the decision rested squarely on the fact that the land was not in the possession of the applicants, a fact that made impossible fulfilment of the terms of the permit. The decision was founded neither on the recommendations of
40 the Town Planning Department or the advice of the Attorney-General. Apart from the fact that the land was not in the occu-

pation of the applicants, refusal was also justified because of failure on the part of the applicants to make application for renewal before expiration of the last permit. To that extent, the decision can, in the submission of respondents, be supplemented from the facts in the file. The possibility of compensation becoming payable to the applicants in consequence of the requisition, did not concern them, as they were not the Authority liable for any such damage. Any claim for damages due to refusal to renew the permit, would have to be addressed to the Republic, the requisitioning Authority. Summarising, it is the position of the respondents the decision was justified because:-

- (a) The property to which the permit related, was in the possession of third parties, and
- (b) belated submission of application for renewal, that is, after the lapse of the permit sought to be renewed.

The case for the applicants, as foreshadowed in the re-course and expanded in the address of counsel is, briefly, as follows:

Work for the implementation of the permit began within the first year of the issue of the permit, as admitted by the respondents. Division remained incomplete because of the supervening event of the requisition of the property. Ever since, completion of the work for the division of the land remained in abeyance owing to the refusal of the requisitioning Authority to allow the owners to enter the land and carry out the necessary works. Inability of the applicants to complete the work on account of the above, did not preclude the respondents from annually renewing the permits until 1981. Nor did they require for renewal the submission of an application prior to the expiration of the permits. They renewed them because division work had commenced but had to be suspended in view of the inability of the applicants, objectively established, to complete the work.

In the submission of counsel for the applicants, the refusal to renew the permits after 1981 was arbitrary because, under the proviso to s. 5—Cap. 96, the respondents were dutybound to renew the permits unless they con-

flicted with any "Regulations" in force. And as none existed, the permits ought to have been renewed notwithstanding that application for their renewal was made after their expiration. Counsel argued that Regulations, in the context of the proviso to s. 5, should be construed as regulations made under the Streets and Buildings Law—Cap. 96. The limitation is not warranted either by the meaning of "Regulations" as a matter of grammar, the text of the proviso or the objects of the law underlying the proviso to s. 5. As a matter of construction of the plain provisions of the law, renewal may be refused if the terms of the division conflict with any regulations in force at the time of renewal. The object here is to put the burden on the owner of the land, in respect of which a permit was granted, in failing to complete the work within the period of one year. If he does not complete he runs the risk of his permit not being renewed or having to be modified if planning policy in the area changes by proper planning regulations. Thus the owner of a permit cannot postpone indefinitely the implementation of the permit. This is said parenthetically in relation to the changes made in the zoning of the area, subsequent to the issue of the permits, notably in 1979. But as counsel for the respondents explained, and as the decision itself suggests, this was not the reason for refusing renewal. In other words, renewal was not refused because it conflicted with the 1979 zoning regulations introduced subsequently to the time of issue of the permit, but solely for the reason of the acquisition of the property and its possession by third parties. Therefore, the decision cannot be supplemented by the reference to the file of the case. Here, the reasons for the refusal were explicitly stated and the legality of the action must be judged exclusively by reference to their validity¹.

For the respondents it was submitted that the proviso to s. 5, like every enactment, must be reasonably construed. It cannot have been, counsel argued, the intention of the legislature to authorise the perpetual renewal of a building permit, provided some work, however slight it may have been, has been done for the division of the land into building sites. He drew some support from the decision of

¹ See, *Alexandra Rent a Car v Republic* (1984) 3 C.L.R. 1105

the Supreme Court in *Nina Siman (No. 2) v. The Municipality of Famagusta* (1972) 3 C.L.R. 329. In that case, it was decided that unless division work commences within the first year, the licence becomes abortive. The words "not completed", in the proviso to s. 5, plainly imply building work should commence within the first year of the permit. The case of *Siman* does not support the submission of applicants. If any light is thrown on the proviso to s. 5, it is that it must be construed according to the tenor of its provisions. I may point out that the fears of counsel as to likely abuses and possibly absurdities from the grammatical construction of the proviso to s. 5, are largely unjustified. If there is change of legislative policy respecting the division of land into building sites in any particular area, as above explained, that may be a proper consideration for refusing renewal of the permit. I am of opinion that renewal must be granted as a matter of course, unless the terms of the permits conflict with any subsequent Regulations in force at the time of application for renewal.

The reasons relied upon for refusal in this case, notably, possession of the land by third parties, is not postulated by any Regulations as a ground for refusal to renew a permit. The Requisitioning Authority may conceivably authorise the implementation of the work. In any event, what I am required to decide is whether possession of the land by third parties is, in itself, envisaged by any Regulation as a ground for refusing the division of land into building sites. No such regulation has been brought to my notice and none, I believe, exists. Therefore, the reason given for refusing the permits in this case, was invalid and as such vitiated the decision in its entirety.

For the reasons indicated above, I am not concerned in these proceedings to decide whether the terms of the permits conflict with the 1979 zoning of the area or decide whether such conflict entitled the respondents to refuse renewal. The matter will have to go back before the respondents for reexamination, by reference to the factual and legal background prevailing at the time of the application for renewal. The law, it must be stressed, does not make the time of application for renewal a condition precedent

to renewal. The law does not stipulate such a precondition.

In the light of the above, the sub judice decision must be annulled. Let there be no order as to costs.

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*Sub judice decision
annulled. No order as
to costs.*