

1985 October 3

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

CHRISTAKIS THEOPHILOU,

Applicant,

v.

THE IMPROVEMENT BOARD OF YERMASOYIA,

Respondent.

(Case No. 254/81).

*Streets and Buildings (Regulation) Law, Cap. 96 s.10(2)—
Certificate of approval—Once the appropriate authority
is satisfied that the division of applicant's land was made
in full compliance with the relevant division permit issued
under section 3 of the said law, it has to give the certificate
of approval asked for—And the fact that part of the
property had been in the meantime compulsorily acquired
makes no difference.* 5

*Compulsory Acquisition, Notification and Order of—Compul-
sory Acquisition of part of applicant's land in respect of
which a division permit under section 3 of Cap. 96 had
been issued—No valid reason to refuse applicant a cer-
tificate of approval under section 10(2) of said law.* 10

*Time within which to file a recourse—Constitution—Article
146.3—The District Officer of Limassol decided not to
grant the certificate of approval for the division of appli-
cant's land and informed the applicant accordingly by
letter dated 5.9.79—The District Officer was not the
competent organ to take a decision on the matter—The
competent organ was the respondent authority—As the
decision emanated from an incompetent organ time did not
begin to run as from such a date.* 15 20

Legitimate Interest—Constitution—Article 146.2—Recourse

5 *challenging the omission to reply to applicant's application dated 6.3.81 for a certificate of approval for the division of his land—As, however, applicant proceeded to challenge the substance of the case by treating the said omission as a refusal and suffered no material detriment by reason of such omission, he lost his legitimate interest as regards the omission aforesaid.*

10 On 24.11.1972 the respondent issued to the applicant a permit for the division of applicant's land Plot 341 at Yermasoyia Limassol into four building sites. This permit was renewed every year and in the meantime works were carried out for effecting such division as aforesaid.

15 On 24.3.1977 a notice of acquisition of part of the applicant's said land was published in the official Gazette. On the same date an order for the requisition of such part was also published in the official Gazette. On 28.3.1977 respondent decided that it had no right to ask for the amendment of the originally approved plans and approved the renewal of the permit. As a result the permit was renewed on 3.6.1977 on the same conditions as the original permit.

25 On 3.3.1978 an order for the acquisition of the said part of applicant's land was published in the official Gazette. On 30.3.1978, before the expiration of his renewal permit the applicant sent a letter to the District Officer of Limassol, stating that the works for the division of his property had been completed and asked for the relevant certificate of approval. No reply was given to the applicant.

30 On 7.6.1979 applicant sent another letter to the District Officer and requested a reply within a month. On 13.7.1979 the legal adviser of the respondent advised it that it could not refuse the issue of the certificate of approval.

35 On 5.9.1979 the District Officer wrote to the applicant that in view of the notification for acquisition and the requisition of part of the applicant's land the grant of the certificate was not possible.

This decision was impeached by recourse Case No.

431/79 filed by the applicant under Article 146 of the Constitution. This recourse was withdrawn on 15.9.1981.

In the meantime a new application was made, on 6.3.1981, to the Improvement Board of Yermasoyia, i.e. the respondent for the issue of the certificate of approval. No reply was ever given to such application and as a result the applicant filed the present recourse on 31.7.1981, praying, inter alia, for a declaration that the omission to reply and/or act on his said application dated 6.3.1981 is null and void and that the omission of the respondent to issue the certificate applied for is void.

On 17.9.1981, i.e. after the filing of the present recourse, the respondent Board met under the chairmanship of the District Officer and "approved of the decision" of the District Officer.

Counsel for the respondent raised the following preliminary objections: (a) That as the applicant has proceeded to challenge the substance of the case, i.e. the refusal of the respondent to grant the certificate in question, he lost his legitimate interest with regard to the alleged omission of the respondent, (b) that the recourse is out of time as the applicant knew since 10.9.1979 when he received the District Officer's letter of the 5.9.1979 of the decision of the respondent not to grant the certificate of approval; and (c) that the alleged omission is not an omission but an administrative act.

Held, (A) As regards the first of the above preliminary objections: The applicant proceeded in respect of the substance of the case by treating the omission of the respondent to reply to his letter dated 6.3.1981 as a refusal to grant his application and issue the certificate applied for. For this reason and as there is no evidence showing that the applicant has suffered any material detriment as a result of the omission aforesaid, he has no longer any existing legitimate interest as provided by Article 146.2 of the Constitution amenable by this recourse as regards the said omission. (*Phedias Kyriakides v. The Republic* (1961) 1 R.S.C.C. 68 applied).

(B) As regards the second of the above preliminary objections: The letter of the District Officer dated 5.9.1979

was written before any decision had been taken by the respondent. It was signed by the District Officer in his personal capacity communicating a decision taken by him personally. That letter contained the decision of an incompetent organ. The only competent organ to take a decision on the matter was the respondent authority and the matter was placed before it for the first time on 17.9.1981. Applicant's application dated 6.3.1981 was submitted to the respondent through the District Office, who kept it in abeyance for six months. He summoned the meeting of the respondent Improvement Board on 17.9.1981 not for the purpose of carrying out a proper examination of the matter but for ratifying an arbitrary and unauthorised action taken by him without consulting the Board. The decision of 17.9.1981 is simply a decision confirming the act of an incompetent organ.

In view of the above the District Officer's decision is a decision of an incompetent organ and, therefore, the prescribed 75 days' time limit could not run from such date.

(C) *As regards the last of the above preliminary objections:* It is clear that this recourse is directed not only against the omission to give a reply but also to the substance that such omission amounts to a refusal of the application.

(D) *As regards the substance of this recourse:*

(1) The respondent Board instead of examining the application on its merits and exercising its discretion on the matter, approved the decision already taken by its chairman which had been communicated to the applicant two years earlier. By so acting, the respondent Board has acted erroneously as the matters taken into consideration were extraneous matters. This is a sufficient ground for nullifying such decision.

(2) The applicant fully complied with the conditions of the division permit granted to him under section 3 of the Streets and Buildings Regulation Law, Cap. 96. Under section 9 of the same law the appropriate authority in granting permit may impose conditions. In the present

case the respondent authority did impose certain conditions before granting the division permit. By virtue of section 10(2) of the same law the appropriate authority "if satisfied that the work or matter has been duly completed in accordance with the permit, shall furnish the holder with a certificate of approval...". It is clear that the object of requiring a certificate of approval is to give to the appropriate authority which issued the permit the opportunity "to be satisfied that the work or matter has been duly completed in accordance with the permit." If so satisfied, it has to issue the certificate of approval asked for; once the authority is so satisfied it has no power to impose new conditions or restrictions for the grant of a certificate. Any such refusal is ultra vires and arbitrary rendering its decision a nullity.

(3) Time and again the Supreme Constitutional Court and the Supreme Court have pronounced on the rights of ownership and possession of property in respect of which an acquisition order has been made (*Aspri v. The Republic*, 4 R.S.C.C. 57, *Michael Theodosiou Co. Ltd. v. The Municipality of Limassol* (1975) 3 C.L.R. 195).

The refusal of the respondent to grant a certificate of approval on the ground that part of the property had been compulsorily acquired is not a valid reason and is unwarranted by law and the applicant is entitled to a declaration accordingly.

Observations: When Government officials are presiding, ex officio, statutory bodies such as Improvement Boards, they have no right to take decisions at their own caprice in matters which are entrusted by law to the Boards which are the only competent organs to take decisions on such matters.

*Sub judice refusal annulled.
Order for £150 costs in favour
of applicant.*

Cases referred to:

Phedias Kyriakides v. The Republic (1961) 1 R.S.C.C. 68;

Rea Hadjianastassiou v. The Republic of Cyprus through the Council of Ministers (1982) 3 C.L.R. 672;

Dionysios Nicola v. The Republic (1967) 3 C.L.R. 308;

Evridiki Aspri v. The Republic, 4 R.S.C.C. 57;

5 *Michael Theodosiou Co. Ltd. v. The Municipality of Limassol* (1975) 3 C.L.R. 195.

Recourse.

10 Recourse against the refusal of the respondent to issue to applicant a certificate of approval of the division of his land into building sites on the basis of building permit No. 155 dated 24.11.1972.

A. Theofilou, for the applicant.

G. Cacoyiannis, for the respondent.

Cur. adv. vult.

15 SAVVIDES J. read the following judgment. The applicant in this recourse prays for a declaration of the Court that the omission of the respondent to reply and/or act on his application dated 6.3.1981 for the issue of a certificate of approval of the division of his land into building
20 sites on the basis of a permit, No. 155 dated 24.11.1972 is null and void and of no legal effect whatsoever; and further, for a declaration that the above omission of the respondent to issue the certificate of approval applied for is void and anything omitted should have been performed.

25 The facts of the case are as follows:

30 The applicant is the owner of Plot No. 341, sheet/plan LIV/43, at Yermasoyia, Limassol. In 1971 the applicant applied for the division of his land into 7 building sites (blue 3 in the file of the administration which was produced as exhibit 1). This application was approved by the
35 applicant's property. Applicant consented to such altera-

tion in view of the fact that by the construction of such major road his building sites would acquire access to the main Limassol - Nicosia road and for this reason he claimed no compensation for the part of his property compulsorily acquired for such purpose. A permit was then issued, on 24.11.1972, to the applicant for the division of his property into four building sites. 5

The division permit was renewed every year and in the meantime works were carried out for effecting such division in accordance with the conditions set out in the permit and the designation of the various authorities concerned. In the meantime on 24.3.77, a notice of acquisition of part of applicant's property was published in the official Gazette of the Republic, under Not. No. 234. On the same date an order of acquisition of the same property was published in the official Gazette of the Republic. 10 15

On 28.3.1977, whilst a new application by the applicant for the renewal of his permit was pending, the Improvement Board of Yermasoyia had a meeting on the matter. The extract from the minutes of such meeting (blue 38 in the file) reads as follows: 20

"17 Application for a building permit by Chr. Theophilou D. 474/71.

The application concerns the renewal of the division permit No. 155 which was issued on the 24th November, 1972. The District Engineer of Public Works proposed the amendment of the original plans, because the division is affected by the new Limassol - Nicosia road. 25

The Chairman mentioned that the works for the division have started since 1972 and have already reached their final stage. In view of that, the Board, as the Appropriate Authority has no right to ask at the present stage the amendment of the originally approved plans. 30 35

In view of the explanations given, it is decided to approve the renewal of the permit on the basis of the original plans and conditions."

After the applicant was notified and paid the prescribed fees for the renewal, the permit was renewed on 3.6.1977 on the same conditions as the original permit and its subsequent renewals, and applicant proceeded to complete
5 the final works for the division of his land.

On 3.3.1978 an Order of Acquisition regarding the part of applicant's property concerned, was published in the official Gazette and on 30.3.1978, before the expiration of his renewal permit the applicant sent a letter (blue 45) to
10 the District Officer of Limassol, stating that the works for the division of his land had been completed and asked for a certificate of approval for his four building sites. Applicant attached to his said application certificates from the appropriate authorities (such as the Electricity Authority
15 and the Chief Foreman of the District Administration) that the division was carried out to their satisfaction (blues 46 - 48). No reply was however given to the applicant within a reasonable time.

On 7.6.1979 the applicant wrote a letter to the District
20 Officer of Limassol, (blues 50-51), paragraph 4 of which reads as follows:

"I have sent a letter since 30.3.78, applying for a certificate of approval. Now, after a year has elapsed, I am told from your office, not in writing but orally,
25 that with the new widening of the Avenue, my building sites must be reduced to 2 instead of 4, and the exit to the Avenue will be closed, advising me to accept another passage to the Avenue which is 3,200 feet away and will pass through several plots of land
30 many of which have not yet been submitted for division....."

And the letter goes on as follows:

"...Therefore, in order to accept other alternative solutions, there should be, first, granted to the last
35 two out of my 7 building sites, a passage to the Avenue, even if it is a bit more narrow than 35 feet. Or, at least, grant me the approval of my building sites in accordance with the division permit...."

Applicant ended his letter by requesting a reply within one month.

The Improvement Board of Yermasoyia asked for the advice of its legal adviser on the matter, who, on 13.7.1979, sent a letter to the District Officer (blue 52) advising the Board that it could not refuse the issue of the certificate of approval asked for by the applicant. 5

On 5.9.1979, the District Officer sent the following letter to the applicant (blue 53):-

"I wish to refer to your above application and inform you as follows: - 10

2. Part of the divided land (two building sites) is affected by the new Limassol - Nicosia road, for the construction of which there have been published in the official Gazette of the Republic No. 1342/24.3.77, the Notification of Acquisition No. 234/24.3.77 and Requisition Order No. 237/24.3.77. 15

3. For the reason stated in paragraph 2 above the grant of the certificate of approval applied for is not possible at present but I am willing to consider favourably a new application for the division of your land if you accept the plan prepared by the Town Planning and Housing Department, a copy of which is sent to you. 20

Yours faithfully, 25
(Signature)
District Officer."

On 21.9.1979 applicant's counsel addressed a letter (blues 56 - 57) to the District Officer, stating, inter alia, that because of the last renewal of his permit (on 3.6.1977) his client had spent an additional amount of £8,000.- on the understanding that the only part of his property affected by the Limassol - Nicosia road was that which he had already granted to the Government with no compensation and that the Government authorities concerned, being aware of the existence of the acquisition, issued in April, 1978 certificates of approval that the works were carried out to their satisfaction and also that the respondent Board 30 35

bearing all facts in mind renewed the permit on 3.6.1977. The letter ends up as follows:

5 "For this to be done, my client proposes that a certificate of approval for his four building sites as they appear in the division permit be issued to him and thereafter, or simultaneously an agreement to be signed for the grant of the two building sites to the administration after a way is found to satisfy the just claim of my client for a right of exit to the Avenue."

10 A copy of the previous letter of the applicant of 7.6.75 addressed to the District Officer, was attached to the above letter.

15 The District Officer replied by letter dated 20.10.1979, that he had nothing to add to his previous letter of 5.9.79 (blue 58).

20 The applicant then filed a recourse (No. 431/79) against the District Officer challenging his decision contained in the latter's letter of 5.9.1979. The District Officer raised a preliminary objection in his opposition that the recourse was wrongly directed against him and that the proper authority against which the recourse should have turned was the Improvement Board of Yermasoyia. Counsel for applicant then filed an application for the amendment of the recourse so as to include the Improvement Board of Yermasoyia which was later withdrawn (on 5.12.1980). The recourse was also withdrawn on 15.9.1981. On 10.3.1981, counsel for the Republic who was handling Recourse No. 431/79, wrote a letter (blue 77) to the District Officer, inquiring whether the decision communicated to the applicant by letter of 5.9.1979 was taken by him in his capacity as District Officer, or as Chairman of the Improvement Board of Yermasoyia. In the meantime a new application was made, on 6.3.1981 to the Improvement Board of Yermasoyia (the proper authority for the issue of a certificate of approval). No reply was ever given to such application and the applicant filed the present recourse on 31.7.1981. On 17.9.1981, after the filing of the present recourse, the Improvement Board of Yermasoyia met under the chairmanship of the District Officer and "approved the deci-

sions" of the District Officer. The minutes of such meeting appear in blue 80 of exhibit 1 and read as follows:

"Application of Christakis Theophilou (No. D. 474/71)... The case concerns the application of Mr. Theophilou for a certificate of approval for the above division. 5

The District Officer acting as Chairman of the Improvement Board dismissed the application for the issue of a certificate of approval for the reason that part of the building sites is affected by the acquisition for the new Limassol - Nicosia road. 10

The Town Planning and Housing Department suggested a new plan for the division of the above building sites but the applicant did not accept it and filed a recourse to the Supreme Court. The Board approved the decision of its Chairman to dismiss the application for division and authorised the Chairman to reply accordingly to the letter of counsel for the Republic dated 10.3.81." 15

The recourse is based on the following grounds of law: 20

1. The sub judice decision and/or omission is contrary to Article 29 of the Constitution, the Streets and Buildings Regulation Law, Cap. 96 and the Municipal Corporations Law, Cap. 240 and/or the Villages (Administration and Improvement) Law, Cap. 243. 25

2. In the light of the facts as set out in the recourse, the respondent acted in excess and/or abuse of powers.

3. The sub judice decision and/or omission is not legally and/or duly reasoned and/or imposes conditions and/or restrictions unlawfully, and/or is contrary to the law and the Constitution. 30

Counsel for respondent by his opposition raised the following preliminary objection:

1. That the applicant cannot challenge the omission of the respondent to reply to his letter of 6.3.1981 because by his recourse he has proceeded to challenge the substance of the case which is the refusal of the respondent to grant 35

the certificate of approval and in this respect he has lost his legitimate interest with regard to the alleged omission of the respondent to reply to his letter and that in any event a reply was given to the applicant on 5.9.1979.

5 2. That the recourse is out of time as the applicant knew since 10.9.1979 when he received the letter of the District Officer about the decision of the respondent not to grant the certificate of approval.

10 3. The alleged omission is not an omission but an administrative act.

In addition to the above preliminary objections counsel for the respondent advanced the following legal grounds in support of his opposition:

15 4. Any reply to the application of applicant dated 6.3.81 was unnecessary since the applicant already knew the answer.

5. The respondent acted lawfully, in good faith and in the correct exercise of its discretionary powers.

20 6. It did not act in excess or abuse of powers but within the scope of its discretionary powers.

25 7. The possible grant of the certificate of approval would have been an unlawful act, and in excess of the powers of the respondent who, in accordance with the Streets and Buildings Regulation Law, Cap. 96, is bound by the plans prepared for the Nicosia -Limassol road and the Notice and Order of Acquisition published.

8. Part of the property of the applicant is affected by the Order of Acquisition published so that the issue of a certificate of approval is impossible in law.

30 9. The reference by the applicant to Article 23, does not concern the respondent and its refusal to grant to the applicant the certificate of approval applied for does not amount to deprivation of his property.

35 I propose to examine first the preliminary objections raised by counsel for respondent as their determination in

favour of the respondent will dispose of the subject matter of this recourse.

In addressing the Court in support of his first preliminary objection counsel for respondent contended that applicant cannot challenge the omission of the respondent to reply to his letter of 6.3.1981 because by his recourse he has proceeded to challenge the substance of the case, which is the refusal of the respondent to grant the certificate of approval and in this respect he has lost his legitimate interest.

From what emanates from the written address of counsel for applicant and the arguments advanced is that the applicant does not only challenge the omission of the respondent to reply and/or act on his application but he has proceeded in respect of the substance of the case by treating such omission as refusal to grant his application and issue the certificate applied for.

In *Phedias Kyriakides and The Republic* (1961) 1 R.S.C.C., 68 the Supreme Constitutional Court in dealing with a similar issue, held at p. 77:

“In the opinion of the Court paragraph 2 of Article 29 gives, inter alia, an aggrieved person a right of recourse to a competent Court in respect of the failure to furnish him with a reply in accordance with paragraph 1 of such Article. It is clear that, where the competent public authority, which has failed to reply as above, is one of those referred to in paragraph 1 of Article 146, then this Court is the competent court in question and proceedings lie before it under Article 146 in respect of such failure itself to reply..

Where, however, a person who has not received a reply as provided under Article 29, has proceeded under Article 146 in respect of the substance of the matter for which a reply had been sought then it cannot be said that such a person continues any longer to have ‘any existing legitimate interest’, as provided by paragraph 2 of Article 146, unless as a result of such failure itself he has suffered some material detriment which would entitle him to a claim for relief

under paragraph 6 of Article 146 after obtaining a judgment of this Court under paragraph 4 of the same Article.

5 Therefore such a person cannot, as a rule, claim under Article 146 a distinct and separate decision of this Court in respect of the failure to comply with Article 29 when he has proceeded in respect of the substance of the matter for which a reply had been sought.

10 In the present case, as the applicant has contested by his application the substance itself of the matter in respect of which he complains that he did not receive a reply under Article 29 and as further there is no evidence showing that he has suffered any material
15 detriment as a result of the failure itself of the District Officer to give him a written and reasoned reply, the claim of applicant for a distinct and separate decision of this Court on this issue fails.”

20 Such principle has been reiterated and followed in a number of cases by this Court.

25 In the light of the above I have come to the conclusion that once the applicant in the present recourse has proceeded in respect of the substance of the matter for which a reply had been sought and there is no evidence showing that he has suffered any material detriment as a result of the failure of the respondent authority to give him a written and reasoned reply, he has no longer any existing legitimate interest as provided by paragraph 2 of Article 146, amenable by this recourse. Therefore, the preliminary objection
30 in this respect, succeeds.

35 Counsel for respondent in support of his second preliminary objection contended that it is evident from the letter of the District Officer of Limassol of 5.9.1979 that applicant was informed that his application for a certificate of approval had been refused and in fact applicant filed Recourse No. 431/79 challenging such decision, which he later withdrew.

Counsel also contended that on the basis of section 3(2)

(a) and (b) and 3(4) (b) of the Streets and Buildings Regulation Law, Cap. 96, the District Officer was competent to issue the decision of 5.9.1979. But even if it is found that he was not so competent and there is an omission on the part of the Improvement Board of Yermasoyia to issue a decision, this omission was known to the applicant a long time ago, since he had applied for a certificate of approval on 30.3.1978, 7.6.1979 and 21.9.1979 and the present recourse was filed on the 31st July, 1981, outside the 75 days time limit fixed by the Constitution.

Counsel for applicant on the other hand contended that the letter of the District Officer of Limassol of 5.9.79 containing the alleged decision and any subsequent correspondence of the District Officer of Limassol with the applicant, was signed by him in his capacity as District Officer and not as Chairman of the Improvement Board of Yermasoyia and that the decision contained in the letter of 5.9.1979 is not a decision of the respondent but a personal decision of the District Officer who was an incompetent organ to decide on the matter. The decision of the Board was taken after the filing of the present recourse and, therefore, no question of the 75 days time limit arises.

In *Rea Hadjianastassiou v. The Republic of Cyprus through the Council of Ministers and others* (1982) 3 C.L.R. 672, the Court dealt with a situation in which the District Officer of Limassol who participated in the Improvement Board of Ayios Athanassios as the ex officio chairman, sent to the applicants a letter signed by him as District Officer and not in his capacity as chairman of Ayios Athanassios Improvement Board refusing the application of the applicant for division of land without a prior examination of the matter by the Improvement Board. Triantafyllides P. decided that the sub judice decision had been reached by an incompetent organ and for such reason it had to be annulled and the matter of the relevant application had to be dealt with properly, by the appropriate authority, which was the Ayios Athanassios Improvement Board.

Bearing in mind the above decision and having carefully considered the facts of this case in the light of all relevant material before me, I make the following findings:

(a) The letter of the District Officer of Limassol dated 5.9.1979 alleged as containing the decision of the respondent Board was written before any decision had been taken by the respondent. It was signed by the District Officer in his personal capacity, communicating a decision taken by him personally.

(b) Such decision is a decision taken by an incompetent organ. The only competent organ to take a decision on the matter was the Improvement Board of Yermasoyia and the matter was placed before it for the first time on 17.9.1981.

(c) The applicant submitted his application to the Improvement Board through the District Officer of Limassol in his capacity as ex officio chairman of such Board on 6.3.1981 but the District Officer did not put such application before the Board and kept it in abeyance for six months in full disregard to applicant's request for a certificate of approval. He finally decided to put the application before the Board after the applicant had filed the present recourse and after an inquiry was made by the Legal Department of the Republic as to whether a decision on the matter had been taken by the respondent Board.

(d) The meeting of the Improvement Board of 17.9.1981 was obviously summoned by the District Officer of Limassol not for the purpose of carrying out a proper examination of the matter but for the purpose of ratifying an arbitrary and unauthorised action taken by the District Officer of Limassol in refusing the application without consulting the Board. The decision is simply a decision confirming the act of an incompetent organ on the matter and not a decision taken in the proper exercise of discretion after a due inquiry.

(e) I have not the least doubt that in the present case the District Officer of Limassol acted all along arbitrarily, and without any authority on the matter from the only competent organ, the Improvement Board of Yermasoyia and that when he realised such situation, he tried to shield himself by obtaining, two years later, a ratifying decision of his unauthorised action from the respondent Board of which he was ex officio chairman. I wish to remark, at

this stage, that when Government officials are presiding, ex officio, statutory bodies such as Improvement Boards, they have no right to take decisions at their own caprice in matters which are entrusted by law to the Boards which are the only competent organs to take decisions on such matters. 5

In the light of my above findings. I have reached the conclusion that the decision of the District Officer of 5.9.79 is a decision of an incompetent organ and, therefore, the prescribed under the Constitution, 75 days' time limit could not run from such date. The decision of the competent organ, the Improvement Board of Yermasoyia, was taken after the filing of the present recourse and, therefore, no question of time limitation arises in the present case. 10
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As to the third preliminary objection that the alleged omission is not an omission but an administrative act it is clear that this recourse is directed not only against the omission to give a reply but also to the substance that such omission amounts to a refusal of the application. The trend of the arguments on both sides was whether the respondent was justified in rejecting the application and nothing has been advanced by counsel for respondent in support of such ground. I therefore take it that such ground has been abandoned. 20
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Having dealt with the preliminary legal objections I come now to deal with the substance of this recourse.

As I have already mentioned, hereinabove, the original decision was taken by an incompetent organ, the District Officer of Limassol and after the filing of the present recourse it was submitted to the competent organ, the Improvement Board of Yermasoyia, by its ex officio chairman, for ratification. The respondent Board instead of examining the application on its merits and exercising its discretion on the matter, approved the decision already taken by its chairman which had been communicated to the applicant two years earlier. 30
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By so acting, the respondent Board has acted errone-

ously as the matters taken into consideration were extraneous matters.

5 In *Dionysios Nicola v. The Republic* (1967) 3 C.L.R. 308 at p. 313, Triantafyllides, J. (as he then was) had this to say:

10 “There is, further, a second ground on which I am of the view that the respondent Council’s decision has to be annulled and this is that the Council has erroneously taken into account a totally extraneous factor: It is expressly mentioned in the sub judge decision, as part of the reasons for rejecting the applicant’s claim for reinstatement, that the Minister of Interior in 15 1960 rejected an application of the applicant for compensation, in relation to the termination of his services, on the ground that such termination was not due to political reasons. This was at a time prior to the setting up of the respondent Council under Law 48/61. In my view the respondent Council was neither bound, nor could have been influenced at all, by a 20 decision on the matter reached by another organ, and in relying on such a decision it has exercised its discretion in a defective manner leading to its annulment.”

25 In the present case as in the *Dionysios Nicola* case the respondent by taking into consideration extraneous matters exercised its discretion in a defective manner. This is a sufficient ground for nullifying such decision.

30 Notwithstanding my above conclusions, I shall proceed to examine whether the reasons given in the decision of the respondent of 17.9.1981 which are the same as those contained in the letter of the District Officer of Limassol of 5.9.1979 are valid reasons for refusing the certificate of approval applied for.

35 It is common ground, in the present case, that the applicant fully complied with the conditions of the division permit granted to him by the respondent under section 3 of the Streets and Buildings Regulation Law, Cap. 96. He obtained in this respect certificates of approval from the appropriate governmental Departments and other competent 40 authorities that the work was carried out to their satisfac-

tion and in accordance with the conditions of the permit, which applicant submitted to the respondent together with his application for a certificate of approval. Also it has not been disputed that the applicant had incurred considerable expenditure in effecting the division in accordance with the permit granted to him. 5

Under the Streets and Buildings Regulation Law, Cap. 96, the appropriate authority, in granting a permit under section 3 for the lay-out and construction of any streets and the erection of any buildings, may impose under section 9 conditions as provided therein. In the exercise of its powers under sections 3 and 9 in the present case the respondent imposed certain conditions before granting the division permit to the applicant, with which as already mentioned applicant has complied. 10
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Section 10 of Cap. 96 imposes a duty upon the holder of a permit that before making any use or permitting any other person to use the property in respect of which a permit was issued, to apply for a certificate of approval.

Sub-section (2) of section 10 provides as follows: 20

“(2) The holder of a permit shall, not later than twenty-one days from the completion of the work or matter in respect of which the permit has been granted under the provisions of section 3 of this Law, notify the appropriate authority of such completion and such authority, if satisfied that the work or matter has been duly completed in accordance with the permit, shall furnish the holder with a certificate of approval of the work or other matter in respect of which the permit has been granted: 25
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Provided that the appropriate authority may, where it so thinks fit and is satisfied that all requirements of this Law and the Regulations in force for the time being are complied with, furnish the holder of the permit with a certificate of approval for part only of the work or matter.” 35

It is clear from the above provision that the object of requiring a certificate of approval for the work carried is to give the opportunity to the appropriate authority which

issued the permit to "be satisfied that the work or matter has been duly completed in accordance with the permit." If so satisfied the appropriate authority has to issue the certificate of approval asked for. There is no power under the law vested in the appropriate authority once satisfied that the work was carried out in accordance with the permit issued by such authority to impose new conditions or restrictions for the grant of a certificate of approval. Any such refusal is ultra vires and arbitrary rendering their decision a nullity. Very rightly in my view the legal adviser of the respondent Board, by his letter dated 13th July, 1979 (Blue 52 in the file) advised the District Officer of Limassol as chairman of the Improvement Board of Yermasoyia that '... if the division of the land was carried out by the applicant in accordance with the division permit granted to him you are bound to issue a certificate of approval for the said division and you cannot at this stage impose any conditions or restrictions not contained in his division permit.'

The District Officer of Limassol as ex-officio chairman of the respondent Board ignored such advice and nothing appears in the minutes of the Board of 17.9.1981, which was summoned by him to ratify his unauthorised action, that he brought to the notice of the other members of the Board, the above advice of their legal adviser.

I shall finally proceed to examine as to whether the acquisition of part of the property of the applicant which had been divided into building sites in accordance with the division permit issued by the respondent is a valid ground for refusing a certificate of approval of the division.

Time and again the Supreme Constitutional Court and the Supreme Court have pronounced on the rights of ownership and possession of property in respect of which an acquisition order has been made.

In *Evriliki Aspri and The Republic*, 4 R.S.C.C. 57, it was held by the Supreme Constitutional Court that the simultaneous making of an order of requisition under Article 23.8 and of a notice of acquisition under Article 23.4 could not frustrate the rights of the owner safeguarded under Article 23.4 of the Constitution because, in spite of

the order of requisition, the ownership of a property or any right over, or interest in it, would continue to vest in the owner who would be entitled to payment in cash and in advance of compensation, as in Article 23.4 (c), before he was to be deprived of such property.

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In *Michael Theodossiou Co. Ltd. v. The Municipality of Limassol* (1975) 3 C.L.R. 195, the issue turned as to whether the competent authority, the Municipal Committee of Limassol could refuse a building permit on the ground that it had to acquire compulsorily the property on which the proposed buildings were to be erected. The position as to the effect of a compulsory acquisition or an order for requisition of property on the ownership of immovable property was explained by A. Loizou, J. very lucidly in such case as follows (at pp. 202, 203):

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“Under Article 23.4 of the Constitution, movable or immovable property or any right over or interest in such property, may be compulsorily acquired by the Republic or a Municipal Corporation and under paragraph (c) thereof, upon the payment in cash and in advance, of a just and equitable compensation to be determined, in case of disagreement, by a Civil Court. No doubt, whatever the pre-existing position was, same has been radically changed by the Constitution which has safeguarded the right to property and has permitted interference with such right, only within strictly defined conditions. The property, subject matter of an order of acquisition, does not vest in the Acquiring Authority, except upon payment or deposit with the Accountant-General of the sum agreed or determined to be paid as compensation; the production of satisfactory evidence of such payment or deposit is sufficient authority to the Chief Lands and Surveys Officer of the Republic to cause registration of such property to be made in the name of the Acquiring Authority. (Section 13 of Law No. 15 of 1962).

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The only authority of entry upon such immovable property is to be found in section 5 of Law No. 15 of 1962, whereby upon the publication of a Notice

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of Acquisition an officer authorized in that respect
 may enter for the purpose of surveying, taking levels
 of such immovable property and doing any other act
 that may be necessary to ascertain whether it is
 5 suitable for the purpose for which it is proposed to
 be acquired or to estimate the value thereof. This
 authorization by the law is again subject to restrictions
 set out in the proviso to the section and by sub-
 10 section (2) thereof, the Acquiring Authority is bound
 to pay back any damage done on account of such
 entry.

It is clear that neither the ownership, nor the pos-
 session thereof, is transferred to the Acquiring Autho-
 15 rity by virtue of a decision to acquire irrespective of
 whether a Notice or an Order of Acquisition has been
 published and at no time, prior to the payment of
 the compensation, the Acquiring Authority can take
 over the property or interfere with its enjoyment,
 20 except to the extent permitted by section 5 of the
 Law.”

The decision of the Municipal Committee of Limassol in
 the above case was annulled because even though the notice
 of acquisition had been published in the Gazette under the
 provisions of the compulsory acquisition of Property Law
 25 before the decision of refusing the building permit was
 taken, no further steps were taken and no compensation
 had been paid as provided by Article 23.4 (c) of the Con-
 stitution and the relevant law and this rendered that re-
 30 fusals as null and void as being contrary to law. The judg-
 ment of the Court at pp. 203, 204, reads as follows:

“A refusal to grant a building permit constitutes a
 disturbance of the possession of the owner of the prop-
 erty, who, until the payment of the compensation,
 continues to exercise and have, as owner, intact the
 35 rights prescribed by law regarding possession, disposal
 and enjoyment. There is, however, a limitation to
 the aforesaid, namely, that the property in question
 shall not be destroyed or damaged at any time be-
 40 tween the publication of such notice and the comple-
 tion or abandonment of the acquisition to which the

notice relates, as the case may be (section 19(1)).

Furthermore, that the alienation of immovable property is not affected by an acquisition, is borne out by section 22 of the Law which provides that the proceedings for acquisition are not invalidated by reason of alienation, lease, etc. of such property.” 5

In Saripolos “The system of Constitutional Law of Greece, 4th Edition Vol. 3 at p. 215 it reads:

«Ἄλλὰ τὸ σύνταγμα προστατεύει πρὸ παντός τὴν νομὴν κατὰ πάσης ἀφαιρέσεως ἢ διαταράξεως, ἐφ’ ὅσον δὲν προηγῆθῃ ἡ καταβολὴ τῆς ἀποζημιώσεως. Οὕτω π.χ. οὐ μόνον ἡ κατάληψις ἀπαγορεύεται ἀλλὰ καὶ ἡ ὑπὸ τῆς ἀρμοδίας ἀρχῆς ἄρνησις ἄδειας πρὸς οἰκοδομὴν ἐπὶ χώρου, ἐν οὗ ἀπηγγέλθη ἀπαλλοτριώσις, δὲν κατεβλήθη ὁμως ἡ ἀποζημίωσις τοιαύτη ἀπαγόρευσις τῆς ἀρχῆς ἀναντιρρήτως ἀποτελεῖ διατάραξιν τῆς νομῆς τοῦ ιδιώτου’, ὡς παρατηρεῖ ὁ Γ. Μπαλῆς, αὐτόθι, σ. 43 καὶ 44.» 10
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And in English it reads:

“(But the Constitution, above all, protects the possession from any deprivation or disturbance so long as the payment of compensation has not preceded same. So, for example, not only ‘the entry’ is prohibited but also ‘the refusal by the appropriate authority of a permit to build on a place whose acquisition has been announced but the compensation has not been paid; such refusal by the Authority undoubtedly constitutes a disturbance of the possession of the citizen’, as G. Ballis observes, *ibid*, at pages 43 and 44.)” 20
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Accordingly the refusal of the respondent to grant a certificate of approval on the ground that part of the property had been compulsorily acquired is not a valid reason and is unwarranted by law and the applicant is entitled to a declaration accordingly. 35

In the result the recourse succeeds and the sub judge

decision is annulled. Bearing in mind the circumstances of the present case, I find that there is no reason for not awarding applicant costs. I therefore award £150 costs in favour of the applicant.

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*Sub judice decision annulled.
Respondent to pay £150.- costs.*