

1985 December 28

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

SPYROS NEARCHOU DEMETRIOU AND ANOTHER,

*Applicants,*

v.

THE DISTRICT OFFICER PAPHOS,

*Respondent.*

(Case No. 298/80).

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*Town and Country Planning—The Streets and Buildings Regulation Law, Cap. 96, as amended, ss. 3(2) and 14(1)—The Town and Country Planning Law 90/72 ss. 18 and 85—Zone excluding the erection of certain kinds of buildings and at the same time restricting the number of storeys to two, the height to 27 ft. and the building ratio to 0.08:1—Such restrictions do not amount to a deprivation of the applicants' right to property contrary to Article 23.2 of the Constitution—Said restrictions justified under Article 23.3 of the Constitution—Further and as no local and area plans have been prepared and published for the District of Paphos there was no question to follow the procedure prescribed by ss. 18 and 85 of Law 90/72—Moreover when an organ has competence to act under different laws, the organ may act under either of them.*

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*Constitutional Law—Articles 23.2, 23.3, 26.1 and 28 of the Constitution.*

By the sub judge decision the applicants' property in the village of Tala in the District of Paphos was included in zone ZA. The effect of such inclusion was that all kinds of buildings, except those intended for use as Stores, as Industrial Premises and as premises for the mass breeding of animals and birds, can be erected, the maximum number

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of storeys was restricted to two, the maximum height to 27 ft. and the building ratio to 0.08:1. The purpose of the zone was the protection of the environment and town and country planning.

5      *Held, dismissing the recourse:*

10      (1) The sub judge notification was made by the respondent in pursuance of powers vested in him as the appropriate Authority under s. 3(2)(b) of Cap. 96, as provided by s. 14(1) of the same law. The competent organ is the appropriate Authority and the Council of Ministers has only the power to approve or not to approve the relevant act.

15      (2) The provisions of ss. 18 and 85 of the Town and Country Planning Law 90/72, which provide for the preparation of Local Plans and Area Plans and the procedure of objecting to them, do not carry the case of the applicants any further as so far no such plans have been prepared and published for the District of Paphos and therefore there is no question of the prescribed procedure not being followed. Moreover, the competence of an organ to act under different laws does not exclude the power of such organ to act under either of them.

20      (3) The argument that the sub judge zone deprived the applicants of their property contrary to Article 23.2 of the Constitution is unmerited because the zone in question merely imposes restrictions and limitations which are absolutely necessary in the interests of Town and Country Planning and, therefore, it is permissible under Article 23.3 of the Constitution.

25      (4) There appears to be no question of unequal treatment contrary to Article 28 of the Constitution.

30      (5) The provisions of Article 26.1 of the Constitution, which were invoked by applicants in support of their case and relate to the right of every person to enter freely into any contract, have no bearing in this case.

*Recourse dismissed.  
No order as to costs.*

Cases referred to:

*Loiziana Hotels Ltd. v. The Municipality of Famagusta* (1971) 3 C.L.R. 466;

*Mangli and Others v. The Republic* (1984) 3 C.L.R. 351;

*Bluewave Projects Ltd. and Others v. The Republic* (1985) 3 C.L.R. 2522. 5

Recourse.

Recourse against the decision of the respondents whereby applicants' property situated at Tala village was made subject to zoning restrictions. 10

*L. Kythreotis*, for the applicants.

*G. Erotokritou (Mrs.)*, Senior Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

A. LOIZOU J. read the following judgment. By the present recourse the applicants seek a declaration that the act and or decision of the respondent published in Supplement No. 3, (Part I), to the official Gazette of the Republic of the 25th July, 1980, No. 1619, under Notification 194, whereby the property of the applicants situate in the village of Tala, plot No. 170/1 sheet/plan XLV/35 under Registration No. 9515 is made subject to zoning restrictions, is null and void and of no effect whatsoever, as being contrary to the provisions of the Law and/or of the Constitution and/or in excess or abuse of powers and/or ultra vires. 15 20 25

By the said administrative act the properties of the applicants were included in Zone Z4; it also permitted all kinds of buildings, except those intended for use as Stores, as Industrial Premises and as premises for the mass breeding of animals and birds, the maximum number of storeys was restricted to two, their maximum height to 27 ft., and the building ratio to 0.08:1. The purpose of these zones as set out in the Notification in question is the protection of the environment and town and country planning, which 30 35

are purposes falling within the ambit of the permissible restrictions or limitations as provided by paragraph 3, of Article 23 of the Constitution.

5 The said Notification was made as stated in it by the respondent in pursuance of powers vested in him as the  
Appropriate Authority under paragraph (b) of subsection 2  
of section 3 of the Streets and Buildings Regulation Law,  
Cap. 96, as amended, with the approval of the Council of  
10 Ministers, as provided by section 14(1) of the said Law,  
which in so far as relevant reads:- "The appropriate Authority may, with the approval of the Council of Ministers, by  
Notice to be published to the official Gazette of the Republic, define zones...." This disposes of one of the grounds  
of Law relied upon by the applicants. (See *Loiziana Hotels*  
15 *Ltd., v. The Municipality of Famagusta* (1971) 3 C.L.R.  
466, 473, cited with approval in *Ioulia Mangli and Others*  
*v. The Republic* (1984) 3 C.L.R. 351, 358).

20 Whilst on this point, I may resolve the question of the alleged ultra vires of the said Notification on the ground that as urged by counsel for the applicants, section 14(1) purports to regulate matters expressly reserved to the Council of Ministers. This matter has been decided upon by the Full Bench of this Court in the case of *Ioulia Mangli* (supra) and I need say nothing more except that it fails, as  
25 the competent organ is the appropriate Authority, and the Council of Ministers has only the power to approve same or not.

30 The next ground of Law relied upon by the applicants is that by virtue of the provisions of the Town and Country Planning Law 1972 (Law No. 90 of 1972) and as from the 15th June 1973, when Sections 1-19, 35, 60-66, 80, 81 and 83-88 came into operation (See Notification No. 125/73 p. 157 of the Third Supplement of the Official  
35 Gazette) the publication of zones cannot be effected except on the basis of local Plans and Schemes prepared and published in accordance with the provisions of such Law, the provisions of Section 14(1) of Cap. 96 being inoperative by reason of the provisions of Section 85 of Law No. 90 of 1972.

Connected with this ground is another ground to the effect that the act and/or decision complained of was made and/or taken in excess and/or abuse of the respondents' powers, if any are found to be vested in them, in that:-

- (a) The decision complained of was made and/or taken in a manner inconsistent with all notions of proper administration and/or without the proper and/or due inquiry into all relevant facts and/or circumstances, and/or contrary to the rules of Natural Justice, Applicants having never been given the opportunity to present any special facts and/or circumstances and/or to make any representations as specifically required by section 18(4) of Law No. 90 of 1972. 5  
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Invoking sections 18 and 85 of the Town and Country Planning Law, which provide for the preparation of Local Plans and Area Plans and the procedure of objecting to them, does not carry the case of the applicants any further as so far no such plans have been prepared and published for the Town and District of Paphos and therefore there is no question of the prescribed procedure not being followed and at that, the opportunity to be heard which is required by the said provisions to be given to persons likely to be affected, not having been given to the applicants. Moreover the competence of an organ to act under different laws, does not exclude the power of such organ to act under either of them. These grounds therefore also fail. 15  
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It was further argued on behalf of the applicants that the sub judice act is contrary to the provisions of Article 23.2 of the Constitution in that it virtually deprives the applicants of their property by prohibiting the erection thereon of any building whatsoever in a manner not provided in the said Article 23.2 of the Constitution in that:- 30

- (a) Such prohibition of the use of applicants' property is tantamount to deprivation in the sense of Article 23.2 of the Constitution. 35
- (b) Deprivation of Applicants' property cannot be effected by such indirect way under either Section 14(1) of Cap. 96 or by regulations under Section 19 of the

same law but by Notice of Compulsory Acquisition, as provided under Article 23.4 of the Constitution and The Compulsory Acquisition of Property Law 1962, (Law No. 15 of 1962).

- 5 There is no question of causing in this case by the Notifi-  
fication in question a deprivation to the applicants of their  
property. It merely imposes as already stated restrictions  
and limitations which are absolutely necessary in the  
interest of the Town and Country Planning, and as such  
10 constitutional as permissible by paragraph 3 of Article 23  
of the Constitution. The legal and constitutional aspect of  
the case as regards the powers of an appropriate Authority  
under section 14 of the Law has been extensively dealt  
with and settled, if I may say with respect in the case of  
15 *Ioulia Manglis and Others* (supra). It would serve no pur-  
pose to quote therefrom the relevant passages as I have had  
the opportunity of recently doing so in the case of *Bluewave  
Projects Ltd. of Limassol and Others and the Republic of  
Cyprus* (Recourse No. 423/79 judgment delivered 14th  
20 November, 1985, which is as yet unreported).\*

- In substance the restrictions imposed by the administra-  
tive act in question do not offend Article 23 of the Con-  
stitution as they are obviously, and there is nothing to  
suggest anything to the contrary, absolutely necessary in  
25 the interest of the Town and Country Planning.

- As regards the ground of Law that the sub judge deci-  
sion contravenes Article 26.1 and Article 28 of the Con-  
stitution in that it discriminates between applicants and  
other land owners within and or adjacent to the area, the  
30 subject matter of the said notification, the short answer is  
that Article 26 which provides for the right of every person  
to enter freely into any contract has no bearing in the  
case and regarding Article 28 there appears to be no qu-  
estion of discrimination or unequal treatment.

- 35 For all the above reasons this recourse is dismissed but  
in the circumstances there will be no order as to costs.

*Recourse dismissed.  
No order as to costs.*

\* Reported in (1985) 3 C.L.R. 2522.