

1985 February 16

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

BOULOS AYOUB AYOUB,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
1. THE MINISTER OF INTERIOR,  
2. THE DIRECTOR OF LANDS AND SURVEYS  
DEPARTMENT,

*Respondents.*

(Case No. 167/83).

—————  
*Legitimate interest—Article 146.2 of the Constitution—Free and unreserved acceptance of an administrative act or decision—Deprives acceptor of a legitimate interest, under the above article, to challenge it by means of a recourse.*

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*Immovable Property—Transfer—Transfer fees—Assessment of market value of property sought to be transferred—Within discretion of Director of Lands and Surveys—Proviso to para. 3 (b)(iv) of the Schedule to the Department of Lands and Surveys (Fees and Charges) Law, Cap. 219 (as amended)—Position when purchaser does not purchase directly from the registered owner.*

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When the applicant submitted to the D.L.O. a declaration of transfer of immovable property, wherein it was declared that on the 8th February, 1983 the registered owner of the property described in the declaration agreed to transfer such property in his name by reason of "sale" at the purchase price of £63,490 the D.L.O., acting under the proviso to paragraph 3(b)(iv) of the Schedule to the Department of Lands and Surveys (Fees and

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Charges) Law, Cap. 219 (as amended by Law 66/1979) assessed the market value of the properties in question, as at the 8th February, 1983, and found that it was £110,000. Thereupon the applicant paid the transfer fees payable on the basis of such assessment upon making the following statement: "I accept as purchase price of the aforesaid property the sum of C£110,000 as same was assessed by the Lands Office by virtue of Law No. 81/70".

Upon a recourse by the applicant whereby he challenged the above assessment of the purchase value:

*Held*, that there does not exist a legitimate interest in order to challenge an administrative act or decision if it is issued on the application or at the request or with the consent of the applicant; that, also, an applicant deprives himself of a legitimate interest where he has expressly or impliedly accepted the act or decision of the administration which acceptance must, in any event be unreserved and free and must not have taken place under the pressure of forthcoming injurious consequences for such applicant; that considering the facts of the present case in the light of the aforesaid principles, the applicant has no legitimate interest as he has accepted unreservedly and freely the sub judice administrative act; and that the recourse should, therefore, be dismissed on this ground.

*Held, further, on the merits of the recourse*, (1) that the assessment as regards the market value of the property in question was a matter within the powers of the Director by virtue of the proviso to paragraph 3 (b)(iv) of the Schedule to Cap. 219.

(2) That if there existed an agreement in force at the time of the declaration of transfer between applicant and Pieris Estates Ltd., there should have been made two transfers, one from the registered owner—Skoutaris—to Pieris Estates Ltd., with the consequential payment of the appropriate transfer fees and other charges and a second one from Pieris Estates Ltd., the new registered owner, to

the applicant (see *Ayios Andronikos Development Company Ltd., v. The Republic through the Minister of Interior and Others* (1984) 3 C.L.R. 1176).

*Application dismissed.* 5

**Cases referred to:**

- Myrianthis v. Republic* (1977) 3 C.L.R. 165 at p. 168;
- Ioannou and Others v. Republic* (1983) 3 C.L.R. 150 at p. 154;
- Stylianides v. Republic* (1983) 3 C.L.R. 672; 10
- Metaforiki Eteria Ayios Antonios v. Republic* (1981) 3 C.L.R. 221;
- Tomboli v. C.Y.T.A.* (1982) 3 C.L.R. 149 at pp. 154-155;
- Zambakides v. Republic* (1982) 3 C.L.R. 1017 at pp. 1024-1025; 15
- Five Bus Tours Ltd. v. Republic* (1983) 3 C.L.R. 793;
- Michaelides v. Republic* (1983) 3 C.L.R. 963;
- Ayios Andronikos Development Co. v. Republic* (1984) 3 C.L.R. 1176.

**Recourse.** 20

Recourse against the decision of the respondents whereby the purchase price of two building sites bought by applicant was assessed at £110,000.= and the transfer fees payable were based on the above assessment.

*E. Efthymiou for C. Tsirides*, for the applicant. 25

*M. Florentzos*, Senior Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

A. LOIZOU J. read the following judgment. The applicant is a foreign national who had been granted permission by the Council of Ministers and special permit from the 30

Central Bank to acquire the immovable property described in the Declaration of Transfer made at the D.L.O. Limassol on the 8th February 1983, photocopy of which has been produced as exhibit 1.

5 In the said Declaration (Form No. 270) Alexandros Theodorou Skoutaris of Athens through his advocate and authorised Attorney declared that he was the registered owner of the immovable property described in the Schedule contained in the form and that on the 8th February 1983,  
10 he agreed to transfer the said immovable property to Boulos Ayoup of Limassol as set out in the said Schedule and he thereby prayed that same be transferred and registered in his name.

The applicant also declared therein that he had agreed  
15 as hereinabove to accept the transfer of the immovable property described in the Schedule, contained in the said form, and further asked that same be transferred and registered in his name. The properties so sought to be transferred consisted of two building-sites in Yermasoyia  
20 village, one under Registration No. 22065, dated 27th August 1979 sheet/plan LIV/52, plot 67/5/5 of an extent of two evleks and 2,300 ft. and the other under Registration No. 22064, dated 27th August 1979, sheet/plan LIV/52 plot, 67/5/6 of an extent of two evleks and 1,200 sq. feet.  
25 The reason for the aforesaid transfer given in the said Declaration was "sale" and the purchase price was declared to be £20,000 for the one and £43,490 for the the other. On this second building-site it was declared that there stood a house with garden, three bedrooms, kitchen  
30 WCs etc., which had been built thereon by the purchaser, the present applicant.

The D.L.O. officer who dealt with the declaration of transfer referred the matter to the Valuation Department and asked them to assess the market value of the properties  
35 in question as on the 8th February 1983, which was assessed as on 8th February 1983, at £110,000 and the transfer fees payable on the basis of the said assessment were paid by the applicant who accepted same by making a statement as follows: "I accept as purchase value of the  
40 aforesaid property the sum of C £110,000 as same was

assessed by the Lands Office by virtue of Law No. 81/70."

The assessment of the purchase value of the immovable was made as provided by the relevant statutory provisions on the basis of the situation that existed on the 8th February 1983, when as stated in the declaration the agreement to transfer the said property took place. Furthermore the respondents claim that the decision as regards the fees payable and actually paid by the respondents was consented to and accepted by him. It is not in dispute and in fact the applicant could not lawfully go behind the statement made by him to the effect that the agreement for the transfer of the properties between him and their registered owner took place on the 8th February 1983, a fact which is admitted by the applicant in the written address filed by counsel on his behalf. The relevant paragraph reads as follows:

"The transfer agreement between the registered owner and the applicant indeed was made on the 8th February 1983, the date on which the transfer took place. But the registered owner entered into this agreement having before that cancelled the sale agreement of the said building-sites which he had concluded with A. Pieris Estates Ltd."

The fees and charges to be levied and taken by the Lands and Surveys Department in matters relating to immovable property are prescribed by the Department of Lands and Surveys (Fees and Charges) Law, Cap. 219, as amended by Law No. 66 of 1979 and the Schedule referred in section 3 paragraph 3(b) (iv) thereof which provides as follows:

"Registration of Title (payable by the person to be registered)-

(a) .....

(b) by transfer -

.....  
 (iv) upon sale other than by parent to child the fee reckoned on the sale price on the basis of the scale in Chapter 17:

Provided that whenever the Director is not

5 satisfied that the declared purchase price represent the market value of the immovable on the date on which the sale was agreed, the Director may at his discretion impose and collect fees on the basis of the scale in Chapter 17 assessed on its market value. In such a case the registration in the name of the purchaser is completed without awaiting the assessment of the market value by the Director and after collecting the fees on 10 the declared purchase price and in addition a certain amount which the Director may fix in order to cover any difference in the fees payable upon the completion of the assessment of the market value:

15 *Provided further that such assessment of the market value will be completed within a period of three months from the date of the declaration of transfer. The assessment of the market value is communicated to the person entitled*  
20 *who has a right of appeal in accordance with section 80 of the Immovable Property (Tenure, Registration and Valuation) Law."*

25 As regards the acceptance by the applicant of the assessment of the fees payable by him, it has been alleged in the address in reply filed on his behalf that: "Applicant is a foreigner and does not know Greek. The relevant form was completed by the appropriate Lands Officer in Greek and the applicant signed it without knowing the contents of this declaration. At no stage the contents of the declaration were explained to him in English."  
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I am afraid I cannot accept such contention which has not been substantiated on oath or otherwise and which contradicts a clear written declaration coupled with the consequential payment of the substantially higher fees.

35 The first point for determination is whether the acceptance by the applicant of the valuation, may deprive him of a legitimate interest entitling him to make an administrative recourse for the annulment of such act on decision. (See *Myrianthis v. The Republic* (1977) 3 C.L.R. 165 at  
40 p. 168, quoted with approval in *Ioannou and others v. The*

*Republic* (1983) 3 C.L.R. 150 at p. 154. See also *Stryliandes v. The Republic* (1983) 3 C.L.R. 672, and the case of *Metaforiki Eteria Ayios Antonios v. The Republic* (1981) 3 C.L.R. 221; the judgment of the Full Bench in the case of *Tomboli v. Cyprus Telecommunications Authority* (1982) 3 C.L.R. 149 at pp. 154-155, and *Zambakides v. The Republic* (1982) 3 C.L.R. 1017 at pp. 1024-1025 and also the *Five Bus Tour Limited v. The Republic* (1983) 3 C.L.R. 793; *Michaelides v. The Republic* (1983) 3 C.L.R. 963. These authorities establish the principle that there does not exist a legitimate interest in order to challenge an administrative act or decision if it is issued on the application or at the request or with the consent of the applicant. Also an applicant deprives himself of a legitimate interest where he has expressly or impliedly accepted the act or decision of the administration which acceptance must, in any event be unreserved and free and must not have taken place under the pressure of forthcoming injurious consequences for such applicant.

Considering the facts of the present case in the light of the aforesaid principles, I have come to conclusion that the applicant has no legitimate interest as he has accepted unreservedly and freely the sub judice administrative act. The recourse should therefore be dismissed on this ground, if, however, this conclusion was found to be wrong and the applicant was held to possess a legitimate interest I would still have dismissed the recourse on its merits. The statement in the Declaration of Transfer that the agreement for the transfer of the subject property on the ground of sale between the applicant and the vendor was concluded on the 8th February 1983, was committing the parties and binding on them as being a true statement which the Director accepted as such and acted upon it. If it were a false statement the applicant and the vendor would have committed an offence under section 49 of the Immovable Property (Transfer and Mortgage) Law 1965 and be liable on conviction to the same penalty as if they had given false evidence in a judicial proceeding, being a statement required to be made under the provisions of section 18(1) of the said Law.

The applicant could not on the one hand invoke the agreement with Pieris Estates Ltd., and on the other maintain

that same had been cancelled. If there existed such an agreement in force at the time of the declaration of transfer between him and Pieris Estates Ltd., there should have been made two transfers, one from the registered owner  
5 Skoutaris to Pieris Estates Ltd., with the consequential payment of the appropriate transfer fees and other charges and a second one from Pieris Estates Ltd., the new registered owner, to the applicant (see *Ayios Andronikos Development Company Ltd., v. The Republic through the*  
10 *Minister of Interior and others* (1984) 3 C.L.R. 1176.

Moreover the direction made that an assessment be made and actually made as regards the market value of the property in question, was a matter within the powers of the Director by virtue of the proviso to paragraphs 3(b)  
15 (iv) of the Schedule to Cap. 219 hereinabove set out, obviously not being himself satisfied that the declared purchase price represented the market value of the immovable on the date when sale was agreed, such date being the one declared by the parties to be in the declaration of  
20 transfer. Moreover there is nothing to question the correctness of the assessment as such.

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

25 *Recourse dismissed.*  
*No order as to costs.*