

1986 May 23

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

CHRYSTALLA PHIVOU HJIIOANNOU.

Applicant.

v.

- THE REPUBLIC OF CYPRUS THROUGH
- 1 THE MINISTER OF INTERIOR.
- 2. THE DIRECTOR OF LAND AND SURVEYS.
- 3. THE DISTRICT LAND OFFICER.

Respondents.

(Case No. 216/85)

The Immovable Property (Towns) Tax Law—The Stricken Person: (Relief from Taxation) (Temporary Provisions) Law 34/68—Section 5 and the Rules made thereunder—Exemption from taxation under said Law 34/68 made dependent by the said rules on application being submitted the latest by 30.6.74—The Stricken Persons (Relief from Taxation) (Temporary Provisions) Law 62/75, ss. 2 and 5 —Law 62/75 repealed and replaced Law 34/68—Law 62/75 confined exemption from taxation exactible under the Immovable Property (Town) Tax Law to areas made inaccessible by the Turkish invasion. 5 10

Constitutional Law—Constitution. Article 28—Equality—Only acts well founded in law can give rise to a claim for equality.

Time within which to file a recourse. 15

Words and phrases: "Area" in s. 2 of Law 62/75.

The applicant is the owner of immovable property on what was known upto 1974 as the "green line", that is, the line between the Greek and Turkish sector of Nicosia.

or very near it. Prompted by the issuance of a writ of movables by a Court of competent jurisdiction for the recovery of tax imposed on the applicant in respect of her said property under the Immovable Property (Towns) Tax Law, the applicant applied for the first time in 1983 for exemption from taxation under the said law for the entire period ranging from 1968 to 1982.

The applicant's said property is not situated in an area which became inaccessible by reason of the Turkish invasion of Cyprus.

The applicant's said request was turned down on the ground that it was too late in the day to seek exemption from taxation respecting the period up to 1973, whereas for the period ensuing thereafter the law made no provision for exemption of her property from taxation.

Hence, the present recourse. Counsel for the applicant complained, inter alia, of discriminatory treatment in that other immovable properties situated in the same streets, equally accessible as applicant's property, were classified as inaccessible.

Held, dismissing the recourse: (1) Law 34/68 provided for the exemption from taxation of properties made inaccessible by the events of 1963 or properties bordering thereto, to which the owners of the properties would otherwise be liable under the provisions of the Immovable Property (Town) Tax Law. The Rules made under s. 5 of the said law provided that the application for exemption should be made the latest by 30.6.74. Law 34/68 was repealed and replaced by Law 62/75 (section 5). Exemption from taxation exactible under the Immovable Property (Towns) Tax Law was confined to areas made inaccessible by the Turkish invasion. Unlike Law 34/68, neighbouring properties did not qualify for exemption. A suggestion to the contrary is irreconcilable to the definition of "area" given in s. 2 of Law 62/75. Consequently, the recourse has to be dismissed.

(2) To the extent that this recourse challenges the decisions, whereby tax was imposed on the applicant, it is undoubtedly out of time.

(3) There was no justification in Law for the categorisation of the other properties situate in the same street as applicant's property as "inaccessible". Nevertheless only acts well founded in law can give rise to a claim of equality.

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Recourse dismissed.
No order as to costs.

Cases referred to:

Voyiazianos v. The Republic (1967) 3 C.L.R. 239;

Koratsitou v. The Republic (1985) 3 C.L.R. 594;

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Hellenic Bank Ltd. v. The Republic (1986) 3 C.L.R. 267.

Recourse.

Recourse against the refusal of the respondents to exempt applicant from taxation in respect of her immovable property which is very near the green line.

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Z. Montanios (Mrs.), for the applicant.

M. Photiou, for the respondents.

Cur. adv. vult.

PIKIS J. read the following judgment. After a degree of probing it became possible to identify with the necessary certainty the facts relevant to the case and define the issues in dispute. The facts are recounted below in a manner that hopefully does illuminate the issues calling for resolution.

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The applicant is the owner of immovable property on what was known upto 1974 as the "green line", that is, the line between the Greek and Turkish sector of Nicosia, or very near it. The property was requisitioned by the Republic with effect from 21.12.63 for the purposes of the National Guard. It has been in their occupation ever since.

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The Stricken Persons (Relief from Taxation) (Temporary Provisions) Law 1968, 34/68, provided for the exemption from taxation of properties made inaccessible by the events of 1963 or properties bordering thereto, to which the owners

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of the properties would otherwise be liable under the provisions of the Immovable Property (Towns) Tax Law. Exemption from taxation and matters associated therewith were regulated by Rules made under the provisions of section 5 of Law 34/68. Exemption was made dependent on application being made to that end, conditioned to be submitted the latest by 30.6.74¹ (for the years 1968-1973). It is undisputed that applicant omitted to claim exemption in accordance with the aforementioned Rules, though it is acknowledged that had she done so she might well be held qualified to relief.

Law 34/68 was repealed and replaced by the Stricken Persons (Relief from Taxation) (Temporary Provisions) Law 1975, 62/75. Section 5 of the latter enactment provided for the unqualified repeal of its predecessor. Evidently, the Turkish invasion and the magnitude of the calamity that followed, made necessary the reappraisal of the first law with a view to directing relief where most needed after the invasion. Exemption from taxation exactible under the Immovable Property (Towns) Tax Law was confined to areas made inaccessible by the Turkish invasion, certified as such by a committee set up by law, composed of representatives of the Lands Department, the District Administration and the Police Force, in each district. Unlike Law 34/68, neighbouring properties did not qualify for exemption. A suggestion to the contrary, made by counsel for the applicant, is irreconcilable with the plain provisions of section 2 of Law 62/75 defining the "area" in which properties had to be situate to qualify for exemption. The decision of the Authorities to treat the property as situate outside inaccessible areas was factually correct as we all had occasion to notice on a visit to the locus. In fact, the property is in the occupation of the National Guard.

Seemingly, the applicant was alerted to the existence of a possible right to exemption from taxation for her aforementioned property in 1983, as may be gathered from two letters addressed by the counsel of the applicant to the Au-

¹ See, Regulations made by Notifications 657 of 7.6.68, 10/54 of 30.12.73 and Regulatory Administrative Act 290/73

thorities (exhibits 1 and 2). An application was then made, for the first time, for exemption from taxation for the entire period ranging from 1968 to 1982. What appears to have prompted the applicant to seek exemption was the issuance of a writ of movables by a Court of competent jurisdiction for the recovery of the tax imposed, apparently after the initiation of proceedings directed to that purpose. That such a writ had been issued is also evidenced by Appendix A' to the opposition of counsel for the respondents.

The response to the request of applicant was negative, communicated by a letter dated 6.12.84, wherein it was stated the property was not exempt from taxation. Likewise negative was the decision following the request for re-examination, communicated on 13.2.85. The last mentioned decision is the subject matter of the recourse. The applicant was informed it was too late in the day to seek exemption from taxation respecting the period upto 1973, whereas for the period ensuing thereafter the law made no provision for exemption of her property from taxation. For the reasons earlier indicated, the decision is well founded in law. For the period upto 1973, exemption could only be granted if asked for in the manner provided for by the Regulations, whereas for the period following thereafter, the law did not exempt the property from taxation. Consequently, the recourse cannot but be dismissed. This is not, however, the sole reason that warrants the dismissal of the recourse.

It is evident from Appendix A' earlier referred to, as well as the letters addressed by the counsel of the applicant (exhibits 1 and 2), that the relevant decisions whereby tax was imposed on the applicant, were taken long before and never challenged. To the extent that the present recourse challenges those decisions, it is undoubtedly out of time and liable to be dismissed for that reason also.

Lastly, applicant complains of discriminatory treatment in that other immovable properties situate in the same street, equally accessible as her house, were classified as inaccessible. If that is so—and be it noted I have no reason to doubt the accuracy of the above statement—there was no justification for their categorisation as inaccessible, in view

of the definition of "area" in section 2 of Law 62/75. Nevertheless, only acts well founded in law can give rise to a claim for equality of treatment¹. Any other approach would perpetuate, instead of checking, a state of affairs
5 having no foundation in law.

The recourse is dismissed. Let there be no order as to costs.

Recourse dismissed.

No order as to costs.

¹ See, *Praxitelis Voyiazianos v The Republic* (1967) 3 C.L.R. 239
Koratsitou v Republic (1985) 3 C.L.R. 594 *Hellenic Bank Limited v The Republic* (1986) 3 C.L.R. 267