

1986 February 1

[TRIANTAFYLLODES, P.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ASBESTAS ESTATES LIMITED,

Applicants.

v.

THE MUNICIPAL COMMITTEE OF NICOSIA,

Respondents.

(Case No. 62/81).

Streets and Buildings—The Streets and Buildings Regulation Law, Cap. 96, section 4(1) and The Streets and Buildings Regulations as amended in 1978, Reg. 61—Application for the erection of a building—No provision for a parking space contrary to reg. 61—Applicants precluded from obtaining a permit for any building, except to the extent to which respondents were prepared to relax the said regulation. 5

Constitutional Law—Right of property—Deprivation of—Constitution, Article 23.4—Application for a building permit for the erection of a building of a height of 67 feet—Decision that building should not exceed a height of 47 feet—In the circumstances said decision does not amount to deprivation of applicants' right to property. 10

Constitutional Law—Equality—Principles applicable—Constitution, Article 28. 15

Applicants applied for a building permit for the erection of a building of a height of 67 feet. By letter dated 4.12.80 respondents informed the applicants that the building should not exceed 47 feet. By the same letter the applicants were informed that the respondents had granted a relaxation of reg. 61 of the Streets and Buildings 20

Regulations as amended by the Streets and Buildings (Amendment) Regulations 1978 regarding the requirement of parking space. As a result applicants filed the present recourse.*

5 *Held*, dismissing the recourse: (1) The applicants did not provide for a parking space as required by the said Regulation. It follows that in accordance with section 4(1) of Cap. 96 it was not possible for them to secure a building permit, unless the respondents would grant a relaxation of Regulation 61. The relaxation was granted
10 but in relation to a building of a height of 47 feet and not 67 feet. Once there had been no compliance with reg. 61 the applicants were precluded from obtaining a building permit, except to the extent to which the respondents were prepared to relax reg. 61.

15 (2) The sub judge decision does not entail such drastic consequences as to amount to a deprivation of property in the sense of Article 23.4 of the Constitution.

20 (3) As regards the principle of equality invoked by the applicants one has to observe that each case should be examined on the basis of its particular circumstances. In any event the applicants did not draw the attention of the Court to any comparable case in which the respondents had acted more favourably towards the owners of the property concerned than they did towards the applicants.
25 Moreover, if in a comparable situation the respondents had acted in a manner contrary to Cap. 96 and the Regulations, one has to bear in mind that there can be no claim for equal treatment on an illegal basis.

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

Cases referred to:

The Holy See of Kitium v. The Municipal Council of Limassol, 1 R.S.C.C. 15;

Manglis v. The Republic (1984) 3 C.L.R. 351;

* As regards the preliminary objections raised by the respondents, see (1986) 3 C.L.R. 1627.

The Municipality of Limassol v. Ayia Katholiki Church of Limassol (1984) 3 C.L.R. 1562;

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

Shamassian v. The Republic (1973) 3 C.L.R. 341;

Kampouris v. The Educational Service Committee (1983) 3 C.L.R. 1165. 5

Recourse.

Recourse against the refusal of the respondents to issue to the applicants a building permit for the erection of a five-storeyed building 67 feet high on a plot abutting Constantinos Paleologos avenue in Nicosia. 10

Ch. Ierides with *Chr. Clerides*, for the applicants.

K. Michaelides, for the respondents.

Cur. adv. vult.

TRIANTAFYLIDIS P. read the following judgment. By means of the present recourse the applicants challenge the refusal of the respondent Municipal Committee to issue to them a building permit for the erection of a five-storeyed building 67 feet high on a plot abutting on Constantinos Paleologos avenue in Nicosia. 15 20

The applicants applied for the building permit on the 30th July 1980 and on the 4th December 1980 the respondents replied that the proposed building should not exceed a height of 47 feet. The applicants were informed by the same letter that the respondents had granted a relaxation of regulation 61 of the Streets and Buildings Regulations, as amended by the Streets and Buildings (Amendment) Regulations, 1978 (see No. 207 in the Third Supplement, Part I, to the Official Gazette of the 27th October 1978) regarding the requirement for parking space. 25 30

Though the applicants had applied for a permit for a building which was planned to be 67 feet high they modified their plans so as to build only up to a height of 47 feet and were issued on the 26th June 1981 with a building permit allowing them to build only up to a height 35

of 47 feet. The applicants received the permit with reservation of their rights, as in the meantime they had filed, on the 11th February 1981, the present recourse against the refusal of the respondents to allow them to build up
5 to a height of 67 feet.

On the 22nd June 1985 I gave a decision dismissing two preliminary objections which had been raised by counsel for the respondents and I adopt fully for the purposes of this judgment the contents of such decision which
10 should be deemed to be incorporated herein.

I will now proceed to determine this case on its merits:

Section 4(1) of the Streets and Buildings Regulation Law, Cap. 96, provides that no permit is granted unless the appropriate authority is satisfied that the contemplated
15 work is in accordance with the provisions of such Law and the Regulations in force for the time being.

As the applicants had not made provision in their plans for parking space in accordance with the aforementioned regulation 61 it was not possible for them to secure a
20 building permit unless the respondents would grant a relaxation of regulation 61; and, actually, the respondents granted such a relaxation, but in relation to a building which would be 47 feet high, and not 67 feet high as intended by the applicants.

25 In my opinion the respondents were not bound to grant a relaxation of regulation 61 in relation to a building which would be 67 feet high and the applicants, once they had not complied with regulation 61 regarding parking space, were precluded, by section 4(1) of Cap. 96, from
30 obtaining a building permit for such a building, or for any other building, except to the extent to which the respondents were prepared to relax regulation 61; and, as already stated, the respondents had relaxed such regulation 61 in relation to a building which would be only 47 feet
35 high.

Counsel for the applicants has submitted that by means of the sub judice decision of the respondents there has resulted deprivation of the property of the applicants contrary to Article 23 of the Constitution. I cannot, however,

agree with this submission because the said decision does not entail such drastic consequences as to amount in effect to deprivation in the sense of Article 23.4 of the Constitution, but only restricts to a limited extent the right of the applicants to build on their property in question (see, inter alia, *The Holy See of Kitium v. The Municipal Council of Limassol*, 1 R.S.C.C. 15, 28, *Manglis v. The Republic*, (1984) 3 C.L.R. 351, 361, and *The Municipality of Limassol v. Ayia Katholiki Church of Limassol*, (1984) 3 C.L.R. 1562, 1565, 1566).

Regarding, next, the allegation of counsel for the applicants that the sub judge decision of the respondents has infringed the principle of equality which is safeguarded by Article 28 of the Constitution I have to observe that each case has to be viewed on the basis of its own particular circumstances and, in any event, my attention has not been drawn, by counsel for the applicants, to any specific case which is comparable to that of the applicants and in which the respondents have acted in a manner more favourable to the owners of the property concerned than the manner in which the respondents have acted in the present instance in relation to the property of the applicants. Moreover, it must be borne in mind that if the respondents had acted in a comparable situation in a manner which was contrary to the provisions of Cap. 96 and the Regulations made thereunder the applicants could not claim equal treatment on an illegal basis (see, inter alia, in this respect, *Voyiazianos v. The Republic*, (1967) 3 C.L.R. 239, 243, *Shamassian v. The Republic*, (1973) 3 C.L.R. 341, 352, 353 and *Kampouris v. The Educational Service Committee*, (1983) 3 C.L.R. 1165, 1171). I am, therefore, not satisfied that the applicants have established that because of the sub judge decision they are the victims of unequal treatment contrary to Article 28 of the Constitution.

In the light of all the foregoing this recourse fails and it is dismissed accordingly; but I will not make any order as to its costs.

*Recourse dismissed with
no order as to costs.*