

1986 September 22

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

1. PAVLOS APOSTOLOU,
2. STELIOS K. APOSTOLOU, THROUGH HIS
AUTHORISED REPRESENTATIVE PAVLOS
APOSTOLOU.
3. ELENI I. MATSIKAS, THROUGH HER
AUTHORISED REPRESENTATIVE PAVLOS
APOSTOLOU,

Applicants,

v.

- THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF FINANCE,
 2. THE DIRECTOR OF INLAND REVENUE
DEPARTMENT.

Respondents.

(Case No. 454/85).

*Capital gains—The Capital Gains Tax Law 52/80—Sub
judice decision assessing value of applicants' property as at
27.6.78—Whether duly reasoned—Whether a proper in-
quiry had been carried out—Whether relevant facts were
not taken into consideration—Whether discriminatory treat-
ment against applicants.*

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The applicants were co-owners of a plot of land at Pyrgchos of an extent of 7 donums. On 14.11.81 they sold the said plot for £210,000. In the return, which they submitted for the purposes of the Capital Gains Tax Law, they estimated the value of the plot on 27.6.78 to have been £180,000.- The respondent Director, however, did not accept the said estimate and assessed the value of the plot in June 1978 to have been £84,000, leaving a taxable profit of £35,000 in the hands of each applicant.

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The applicants objected, but as the respondent Director reaffirmed his assessment, they filed the present recourse.

5 It should be noted that respondent's said assessment was based on a valuation made by Mr. Mateas, Principal Assessor in the Department of Inland Revenue, a qualified Assessor and Valuer of Land. In the statement of facts accompanying the application the applicants stated the value of the land in June 1978 to have been £30,000 per donum. Support of this estimation derives from a valuation made on 21.5.79 by the firm of land valuers Mavroudis and Patrikios.

10 *Held, dismissing the recourse:* (1) Applicant's complaints that the respondent Director misconceived the law and that the sub judice decision is not duly reasoned are unfounded. The profit was determined by reference to the difference between the sale price and the estimated value of the land on the date fixed by the law, i.e. the 27.6.78. The reasoning stems from the comparison of the sale price and the estimated value on 27.6.78.

20 (2) The finding of Mr. Mateas of a dramatic increase in the prices of land in 1978 is supported to an extent by the opinion of Messrs. Mavroudis and Patrikios and coincides with the reactivation of the Cyprus economy following the depression caused by the tragic events of 25 1974. There is nothing before the Court to doubt the conclusion of Mr. Mateas that land values in the area rose by 80% in the year 1978. Further the three properties the value of which was used as a yardstick for comparison, were in many respects similar to the subject property and admitted of direct comparison. The adjustments made to ascertain the value of the land on 27.6.78 were an appropriate process to discern its value on that date.

35 (3) The next question is whether Mr. Mateas excluded from his sample of comparison sales of properties that were apt to shed light on the value of applicants' plot. The question should be answered in the negative. The properties used for comparison by the applicants' valuers were dissimilar to the property of the applicants. Notice

of such dissimilarities also disposes applicants' complaint for discriminatory treatment.

(4) In the light of the above the sub-judice decision was reasonably open to the respondent Director. An adequate inquiry was conducted into the facts relevant to the value of the land, the outcome of which supported the conclusion of the respondent.

Recourse dismissed.

No order as to costs.

Recourse.

Recourse against the assessment raised on applicants in respect of capital gains tax in respect their land situated at Pyrgos and which they sold in 1981.

M. Malachtou (Miss) for Chr. Pourgourides, for the applicants.

M. Photiou, for the respondents.

Cur. adv. vult.

PIKIS J. read the following judgment. The applicants were the co-owners in equal shares of a plot of seven donums of land at Pyrgos, situate outside Limassol not far from the sea. They sold the property on 14th November, 1981, for £210,000.- In accordance with the obligation cast by the Capital Gains Tax Law (52/80), they submitted a return of the sale and an estimate of its value on 27th June, 1978, with a view to enabling the respondent to ascertain the capital gains tax payable. They declared the market value of the property on 27th June, 1978 to have been £180,000.- On the basis of this valuation each applicant would be liable to pay £1,000.- capital gains tax, the chargeable income being £5,000.- after deduction of the amount of £5,000.- the lifetime exception permitted by the law.

The respondents rejected the estimated value of the property on 27th June, 1978, after a valuation made by Mr. Matcas Principal Assessor in the Department of Inland Revenue, a qualified Assessor and Valuer of Land.

5 According to this valuation the property was worth only £84,000.- in June 1978, leaving a taxable profit of £35,000 in the hands of each applicant. And an assessment was raised requiring each applicant to pay £7,400.- capital gains tax.

10 Applicants objected to the assessment detailing their objections in two letters addressed to the authorities by one of them, namely, Pavlos Apostolou (letters of 27th and 30th November, 1984). This time the applicants put the value of the share of each applicant in the property at £53,667.- as opposed to the sum of £60,000.- originally stated. In the statement of facts accompanying the applica-
15 tion, the applicants put yet another figure on the value of the property, that is, £30,000.- per donum, representing its value in June 1978, to have been no less than the amount realized from its sale in 1981. Support for this estimation of the value of the property derives from a valuation made on 21st May, 1979, by the firm of land va-
20 luers Mavroudis and Patrikios. Assuming this valuation is accepted as correct, the inference is that in 1978 the property had approximately the same value as in 1981 or that the property was sold in 1981 below its market value.

25 Following the protestations of the applicants, abortive negotiations were held with a view to reaching an understanding. Upon their failure the Director reaffirmed the assessment (30.1.1985) originally raised taking the view it was duly warranted by the facts of the case. It is this decision that is challenged and is the subject of review in these proceedings. The decision is questioned on four se-
30 parate grounds raised cumulatively and in the alternative. They are:

(a) Failure to hold a proper inquiry.

(b) Misconception of facts.

(c) Misconception of law.

35 (d) Disregard of relevant facts or consideration of facts extraneous to the purposes of the law and discretionary powers vested in the Director.

In the address of applicants two additional grounds are raised allegedly invalidating the decision, namely, lack of due reasoning and breach of the duty cast on the Administration under Article 28 to accord equal treatment to citizens similarly circumstanced. 5

The suggestion that respondent failed in his appreciation of the law or that he misconceived it in any way, is wholly unfounded. It is evident he applied the relevant provisions of the Capital Gains Tax providing for the imposition of capital gains tax in the manner specified therein for profits realized from the sale of land. The profits were determined by reference to the difference between the sale price of the land accepted by the respondent, and its estimated value on the date fixed by law, that is, 27th June, 1978. Likewise unfounded is the contention that the decision is not duly reasoned. The reasoning of the decision stems from the comparison of the sale price and its estimated value on 27.6.1978. 10 15

The issues that merit probing are: (a) the adequacy of the inquiry, (b) the interpretation of the facts taken into consideration with a view to determining whether the respondent misconceived them in any way, and (c) the relevance of the facts taken into consideration for the purpose of computing the chargeable profit, if any, from the transaction. 20 25

At the request of the applicants oral evidence was received at the trial from Mr. I. Ierides, Architect, and I. Pissas, a dealer in land (ex Land Clerk) intended to show that the irregular shape of the land left unaffected its development potential and its value in view of the zoning in the area that allowed the use of only a small portion of the land for the erection of buildings. Also we received oral testimony from Mr. Mateas, at the request of the respondents, who supported his valuation as duly warranted by the facts relevant to the value of the land in 1978. At the centre of the factual controversy is the increase in land values in 1978, estimated by Mr. Mateas at 80%. On the other hand the valuers of the applicants, though they agreed there was a rapid and steep increase in land values, nevertheless were of opinion that the value of the subject 30 35 40

property was much higher, on a review of relevant data, than that given by Mr. Mateas. In their view the estimated value of the property in question was equal to its sale price in 1981.

5 The finding of Mr. Mateas of a dramatic increase in
the values of land in 1978, supported to an extent by the
opinion of Messrs. Mavroudis and Patrikios indicating
rapid increases in land values at the time, coincides with
10 the reactivation and reflation of the Cyprus economy after
the year 1977 following the depression noticed in the
aftermath of the tragic events of 1974. There is nothing
before me to doubt the conclusion of Mr. Mateas that land
values in the area rose by 80% in the year 1978. Further
15 the three properties, the value of which was used as a yard-
stick for comparison, were in many respects similar to the
subject property and admitted of direct comparison. The
adjustments made to ascertain the value of the land at the
material date, that is 27.6.1978, were an appropriate pro-
20 cess to discern the value of the land at the time. The next
question is whether Mr. Mateas excluded from his sample
of comparison sales of property that were apt to shed light
on the value of the subject property, in particular the pro-
perties used for comparison by the valuers of the applicants.
These properties were dissimilar to the property of the ap-
25 plicants in two material respects, namely, (a) they fronted
the seashore, a factor that greatly enhances the value of
land, and (b) they had access to a road, whereas the sub-
ject property had none. *The acquisition of such right would*
not be free from complication.

30 The dissimilarities between the comparables of the valuers
of the applicants and the subject property were such as to
exclude comparison. Notice of these dissimilarities also
disposes of the complaint of the applicants that the autho-
rities were guilty of discriminatory treatment towards the
35 applicants.

In the end I conclude it was reasonably open to the
respondent to raise the sub judice assessment. An adequate
inquiry was conducted into the facts relevant to the value

of the land the outcome of which supported the conclusion reached by the respondent.

The recourse is dismissed. The assessment raised is, in accordance with Article 146.4 (a) of the Constitution, confirmed. Let there be no order as to costs.

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Recourse dismissed.

No order as to costs.