

1986 December 12

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ADAMOS IOANNOU AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE COUNCIL OF MINISTERS,

Respondents.

(Case No. 873/85.)

Legitimate interest—Acceptance of an administrative act—Deprives acceptor of his legitimate interest to challenge it at any stage subsequent thereto.

5 *Streets and Buildings—Building permit—Street Widening Scheme—Cession of part of property in accordance therewith as a condition of the permit pursuant to s. 9(1)(b) (xiii) of the Streets and Buildings Regulation Law, Cap. 90 (as amended by Law 24/78)—Land ceded becomes public property, notwithstanding failure to rectify Lands Register accordingly.*

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This recourse is directed against a notice of acquisition allegedly affecting property of the applicants. It emerged as an undisputed fact that the property over which the applicants claimed an interest had been ceded to the public for the purpose of street widening in consequence of the acceptance of specific conditions of the building permits previously obtained by the applicants.

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Held, dismissing the recourse: (1) Prejudice of an existing legitimate interest is, in accordance with Article 146.2 of the Constitution, a prerequisite to judicial review of an administrative action. Acceptance of an administrative

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tive act disentitles the acceptor from challenging it at any stage subsequent thereto.

(2) This recourse is a belated attempt to question the terms of the building permits, which the applicants had accepted. 5

(3) Land ceded for street widening pursuant to s.9 (1)(b) (xiii) of Cap. 96, as amended by Law 24/78 becomes public property, notwithstanding failure to rectify the Lands Register accordingly.

Recourse dismissed. 10

No order as to costs.

Cases referred to:

Ionides v. The Republic (1979) 3 C.L.R. 679;

Tomboli v. C.Y.T.A. (1982) 3 C.L.R. 148;

Zambakides v. The Republic (1982) 3 C.L.R. 1017; 15

PROVITA Ltd. v. Grain Commission (1986) 3 C.L.R. 740;

Demetriou v. The Republic (1986) 3 C.L.R. 920.

Recourse.

Recourse against a notice of acquisition affecting applicants' property at Ayia Napa. 20

A. Entafianos, for the applicants.

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

Cur. adv. vult.

PIKIS J. read the following judgment. The recourse is directed against a notice of acquisition allegedly affecting property of the applicants at Ayia Napa. They challenge it as illegal, taken in excess or abuse of the powers given them to acquire property for the purpose of street widening. Abuse stems, as may be gathered from the submissions of the applicants, from failure on the part of the respondents 25 30

to choose the least onerous course for the implementation of a street widening scheme. As a result of the scheme chosen, a wall fencing off a tourist complex of the applicants from the adjacent road will have to be demolished to their detriment; whereas, according to the testimony of Mr. Charalambos Georghiou, a civil engineer, a less onerous avenue was open to the respondents by the acquisition of nearby property (see Affidavit of 7.4.86).

Respondents disputed in their opposition and address every suggestion of abuse of power, maintaining the street widening scheme was perfectly reasonable, plotted along the path of a street widening scheme (see exhibit "Y"—Notification 1608). More importantly, they questioned the legitimacy of the interest of the applicants to pursue the present proceedings. Prejudice of an existing legitimate interest is, in accordance with para. 2 of Article 146 of the Constitution, a prerequisite to judicial review of administrative action. And applicants had none, in the contention of the respondents, for no property of theirs was affected by the notice of acquisition, subject matter of the proceedings. The property over which applicants asserted an interest in relation to the present proceedings, had been ceded to the public for street widening purposes in accordance with building permits acted upon by the applicants without objection or challenge. As the justiciability of a recourse is first and foremost dependent on the legitimacy of the interest of the pursuer, this question must be decided before attempting to answer any of the other questions raised in the case.

It emerged as an undisputed fact (see Clarifications of 4.12.86) that the land claimed by applicants no longer belongs to them. It was ceded to the public for the very purpose of street widening in consequence of the acceptance of specific conditions of the building permits. The attempt on the part of the applicants to litigate the question raised in this application amounts to nothing more than a belated attempt to question the terms of the building permits requiring cession of the land as a condition for the exercise of the rights given by the permits.

Acceptance of an administrative act, express or implied,

disentitles the acceptor from challenging it at any stage subsequent thereto. The principle is firmly embedded in our law and found expression in numerous judgments of the Supreme Court¹. Land ceded for street widening, the continuation or the construction of roads, pursuant to the provisions of s. 9(1)(b) (xiii) (as amended by Law 24/78) of the Streets and Buildings Regulation Law—Cap. 96, by acceptance of a building permit, becomes public property designated for the purpose for which it was ceded, notwithstanding failure or omission to rectify the Lands Register in a manner reflecting the cession. 5 10

Once it has been found that applicants lack the interest necessary to justify judicial review of the notice of acquisition, it becomes unnecessary to examine any other aspect of the case. 15

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

*Recourse dismissed.
No order as to costs.*

¹) (See, inter alia, N Ionides v Republic (1979) 3 CLR 679 (FB), Tombali v CY.T.A. (1982) 3 CLR 148; Zambakides v. Republic (1982) 3 CLR 1017, PROVITA LTD v Grain Commission (1986) 3 CLR 740; and Demetriou v Republic (Decided on 18 6 86 published in (1986) 3 CLR 920)