

1986 November 8

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

LAMI GROVES LTD..

*Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE DISTRICT OFFICER, NICOSIA,

*Respondents.*

(Case No. 143/86).

*Taxation—Distinction between tax and fee—The Public Health (Villages) Law, Cap. 259, as amended by Laws 81/63 and 85/83—Section 9(1)(c)—The “annual rate” provided therein is tax in the wide sense of the term—No quid pro quo necessary.*

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*Villages—The Public Health (Villages) Law, Cap. 259 as amended by Laws 81/63 and 85/83—Section 9—The term “village” comprises the whole area within the boundaries of a village and cannot be restricted to the built-up area of the village—Therefore, the “annual rate” under s. 9(1)(c)-which is a tax and not a fee-should be imposed upon every “occupier” of property situated within the boundaries of the village—Meaning of “occupier” (Section 9(2)).*

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The applicants are owners and occupiers of immovable property within the area of the village of Peristerona. They were assessed by the Village Health Commission of Peristerona to pay occupiers' rate in respect of 1985. The applicants appealed to the District Officer, who finally reduced the rate from £30 to £18.50.

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Feeling aggrieved, the applicants filed the present recourse directed against the validity of the said assessment,

contending that the relevant law\* and regulations made thereunder\*\* do not empower the Village Health Commission to impose an annual rate on an occupier of immovable property situated outside the inhabited part of the village and that they are not liable to pay the rate because none of the services or benefits set out in Section 7 of the relevant law is rendered to the applicants by the Village Health Commission.

*Held, dismissing the recourse:* (1) The distinction between a fee and a tax is plain. The "annual rate" in section 9(1)(c) of the Public Health (Villages) Law is a contribution towards the village burdens, and, therefore, no specific public service need be rendered directly in return therefor to the contributors. The "annual rate" is tax in the wide sense of this term. It is clearly distinguishable from "fees and charges", provided in section 9(j)(b), which are not "tax".

(2) A village is an administrative unit. Its boundaries are as shown on D.L.O. maps and may be fixed or altered by proclamation of the Council of Ministers under s. 20 of the Village Authorities Law, Cap. 244. The term "village" in section 9 of the Public Health (Villages) Law is used as comprising the whole area within the boundaries of a village and not the built up area of it. The intention of the legislator as gathered from the definition of "occupier" in s. 9(2) is that an annual rate should be imposed upon every occupier, who is either in actual occupation or is entitled to occupation of property situated within the boundaries of the village.

*Recourse dismissed.  
No order as to costs.*

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\* The Public Health (Villages) Law, Cap 259, as amended by Laws 81/63 and 85/83.

\*\* The Public Health (Villages of the District of Nicosia) Rules, 1970 (Notification 262), as amended by Notifications 65/78, 232/84 and 92/85.

## Cases referred to:

*Mathews v. Chickory Marketing Board*, 60 C.L.R. 263;

*Shirur Mutt Case—Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* (1954) S.C.R. 1005 (54) A.S.C. 282; 5

*Constantinides v. Electricity Authority of Cyprus* (1982) 3 C.L.R. 798;

*Apostolou and Others v. The Republic* (1984) 3 C.L.R. 509. 10

## Recourse.

Recourse against the validity of the decision of the respondent whereby the applicants were assessed to pay the sum of £18.50 as annual rate to the Village Health Commission of Peristerona. 15

*M. Christodoulou*, for the applicants.

*Cl. Theodoulou (Mrs.)*, Senior Counsel of the Republic, for the respondents.

*Cur. adv. vult.*

STYLIANIDES J. read the following judgment. This recourse is directed against the decision of the District Officer of Nicosia in the appeal of the applicants against the assessment on them by the Village Health Commission of Peristerona of occupiers' rate in respect of the year 1985. 20

The applicants are a registered company. They are the owners and occupiers of citrus groves consisting of a number of plots situated within the area of Peristerona village. On one of these plots the applicants, pursuant to a building permit issued in 1983, erected a two-storey building consisting of stores on the ground floor and a flat on the first storey. This building is used, as it was conceded by counsel for the applicants, in connection with the business of the said citrus plantations mainly as a store. This immovable property is more than a mile away from 25 30

the built-up area of the village. It is within the distressed area that is exempted from payment of immovable property tax under the Immovable Property Tax Laws, 1980-1984.

5 The Public Health (Villages) Law, Cap. 259, as amended by Laws 81/63 and 85/83 is applicable to Peristerona village. Rules were made under Section 9(1) of the Law—  
(See the Public Health (Villages of the District of Nicosia) Rules, 1970, Supplement No. 3 to the Official Gazette, Notification No. 262, as amended by Notification No. 65,  
10 78, Supplement No. 3, 1978, p. 207, Notification No. 232/84, Supplement No. 3, 1984, p. 819, and Notification No. 92/85, Supplement No. 3(1), p. 267).

15 The Public Health Commission of Peristerona imposed on the applicants an annual rate of £30.- in respect of the year 1985. As the applicants are not residents—occupiers, a special notice of the amount so assessed was forwarded to them in compliance with Section 9(3)(a) of the Law.

20 The applicants on 29.10.85, within the 20 days' period prescribed by the same section, appealed to the District Officer against the said assessment. By their said appeal—Appendix "F" to the opposition—it was contended that the assessment was unjust and unacceptable. By letter dated 27.11.85 they alleged that no service was rendered to them by the Public Health Commission. The District Of-  
25 ficer reduced the assessment to £25.- and notified the applicants, but after further examination, as it was found out that the applicants' property was not 27 donums but only 20 donums in extent, the assessment was reduced to £18.50 and the applicants were informed accordingly.

30 The applicants challenge the validity of the assessment in question, as determined by the District Officer, and seek by the motion for relief a declaration that it is contrary to Law and made in excess and abuse of power. As succinctly  
35 put by learned counsel for the applicants in his final address, they do not contest the amount but they allege that the imposition of the rate is in excess of power and contrary to Law in the sense that the Law and the relevant rule do not empower the Village Health Commission to impose an annual rate on an occupier of immovable pro-  
40 perty outside the inhabited part of the village.

The relevant part of Section 9 reads:-

“9. (1) A Village Health Commission may make rules to be published in the Gazette for all or any of the following purposes -

(a) 5

(b)

(c) to provide -

(i) for the imposition of an annual rate not exceeding £30.- (now hundred pounds) upon every occupier in the village to be assessed by the Village Health Commission according to the means within the village area of each such occupier; 10

(ii) for the time at which and the manner in which such annual rate shall be paid and recovered;

(iii) for the exemption of occupiers from payment of such annual rate on the ground of poverty. 15

(2) For the purposes of this section, ‘occupier’ means -

(a) any person in actual occupation of any immovable property in the village without regard to the title under which he occupies such property or, in the case of an unoccupied immovable property, the person entitled to the occupation thereof; 20 25

(b) the owner of any movable property in the village”.

Rule 105 provides:-

«105. Υφ’ εκάστου κατόχου εν τω χωρίω θα πληρώνηται κατ’ έτος φόρος μη υπερβαίνων το ποσόν των τριάκοντα λιοών όστις θα επιβάλληται υπό της Επιτροπείας συμφώνως προς την οικονομικήν κατάστασιν του 30

τοιούτου κατόχου όσον αφορά την περιουσίαν και τους πόρους αυτού εντός της περιοχής του χωριού.

5 (“105. Every occupier in the village shall pay annually a tax not exceeding £30.-, which shall be imposed by the Commission according to the financial situation of such occupier in respect of his property and resources within the area of the village”).

Counsel for the applicants submitted that -

10 (a) the applicants are not liable to pay an annual rate as none of the services or benefits set out in Section 7 of the Law is rendered to the applicants by the Village Public Health Commission of Peristerona, and,

15 (b) they are not “occupiers” in the sense of the Law as their immovables are not situated within the built-up area of the village but within the area of the village. The phrase “immovable in the village” properly interpreted means only immovable within the built-up area of the village and not within the area of the village in general as “village” is only the inhabited area.

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Counsel for the respondents submitted that the annual rate is a tax and not fee for services and that “in the village” should be construed to mean in the whole area of a village and not only within the built-up area.

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The distinction between a fee for services and tax is plain. Latham, C. J., in *Mathews v. Chickory Marketing Board*, 60 C.L.R. 263, 276, said:-

30 “A tax is a compulsory exaction of money by public authority for public purposes enforceable by law and is not a payment for services rendered”.

In *Shirur Mutt. Case—Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, (1954) S.C.R. 1005, (54) A. SC. 282, Mukherjea, J., referring to taxation, said:-

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“The second characteristic is that it is a public

impost without any reference to services rendered, which is expressed by saying that a tax is imposed for the purpose of general revenue, and its object is not to confer any special benefit upon any particular individual and consequently there is no element of quid pro quo between the taxpayer and the public authority. A fee is generally defined to be a charge for a special service rendered to individuals by some governmental agency and is supposed to be based on the expenses incurred in rendering the service, though in many cases, the costs are arbitrarily assessed".

With regard to the nature of taxation in its wide sense, useful reference may be made to *Constantinides v. Electricity Authority of Cyprus*, (1982) 3 C.L.R. 798, and *Apostolou and Others v. The Republic*, (1984) 3 C.L.R. 509.

The "annual rate" provided for in Section 9(1)(c) of the Public Health (Villages) Law is tax in the wide sense of this term. It does not matter that those who pay the tax do not receive the benefit which another paying the same tax receives, the purpose of the imposition being to help or finance the fund of the Village Health Commission to perform its duties under the Law. The "fees and charges" provided in s. 9(1)(b) of the same Law are clearly distinguished from the "annual rate" provided in s. 9(1)(c). Those fees and charges are not tax. The "annual rate" is a contribution towards the village burdens and, therefore, without any specific public service being rendered *directly* in return therefor to the contributors.

It is irrelevant whether any services or benefits are given to the applicants by the Public Health Commission of Peristerona. The element of quid pro quo between the taxpayer and the public authority is unnecessary.

A village is an administrative unit. Its boundaries are as shown on the D.L.O. maps. They may be fixed or altered by proclamation by the Council of Ministers under s. 20 of the Village Authorities Law, Cap. 244. "Village" is used in s. 9 as comprising the whole area within the boundaries of a village and not the built-up area of it. The intention of the legislator is gathered from the whole definition of

the word "occupier" in s. 9(2). The narrow interpretation suggested by counsel for the applicants would lead to absurdity and would reduce legislation to futility as the immovable property within the built-up area of the villages, both today and in 1937 when this Law was enacted, was a negligible part compared with the whole area of a village. The intention of the legislator is that annual rates should be imposed upon every occupier of immovable property who is either in actual occupation or is entitled to the occupation thereof, situated within the boundaries of a village. The word "village" must be given its ordinary meaning, without any restriction.

In the light of what has been stated, the Court has not been satisfied that the assessment on the applicants was wrongly made as to be invalidated by this Court. Therefore, the assessment, as determined by the District Officer, should be confirmed.

For the foregoing this recourse fails and is hereby dismissed.

Let there be no order as to costs.

*Recourse dismissed.  
No order as to costs.*