

1987 June 22

{ TRIANTAFYLIDIS P DEMETRIADES SAWIDES JJ }

MARINA PANTAZI,

Appellant-Plaintiff,

v

BATA (CYPRUS) LTD ,

Respondent-Defendant

(Civil Appeal No 7083)

Rent Control — The Rent Control Law, 23/83, section 2 — Aliens and companies controlled by aliens — Do not have the protection of that Law — Any benefits that might have accrued under pre-existing legislation to tenants in general, expressly taken away by section 2 of Law 23/83 in so far as aliens and companies controlled by them are concerned

5

Vested rights — The Interpretation Law, Cap 1 — Section 10(2)(c) — Repealing law presumed to leave unaffected rights accrued under repealed law — The presumption is rebuttable

Constitutional Law — Equality — Constitution, Art 28 1 — The Rent Control Law 23/83, section 2 differentiating between citizens of the Republic on the one hand and aliens and companies controlled by aliens on the other hand — Not contrary to Art 28 1 of the Constitution

10

By a contract dated 21 4 80 the appellant let to the respondent, a shoe manufacturing company registered in Cyprus under the Companies Law, Cap 113 and wholly owned by foreign shareholders, her premises until 30 4 85. As upon expiration of the said contractual tenancy the respondent failed to vacate the premises, the appellant brought an action before the District Court of Nicosia for recovery of possession and also for arrears of rent and mesne profits as from 1 5 85 till recovery of the possession

15

The trial Court held that the respondent (defendant) was a statutory tenant and, consequently, dismissed the action for lack of jurisdiction

20

Hence the present appeal by the plaintiff in the action

Held, allowing the appeal (1) The provision of section 2 of Law 23/83 confining the benefits of the Law to citizens of the Republic, was inserted purposely with the aim to confine the benefits of the law to the class of persons

25

worst hit by the catastrophic consequences of the Turkish invasion. The Law was not intended to apply to foreign controlled companies or aliens (*Vamasia Estates Ltd v. Singer Sewing Machine Co.* (1985) 1 C.L.R. 707 adopted)*

5 (2) Any benefits which might have accrued under the Rent Control Laws in force prior to the enactment of Law 23/83 to tenants in general, was expressly taken away by section 2 of Law 23/83 so far as non-citizens and legal persons controlled by aliens are concerned. The need to sustain vested rights found expression in the Interpretation Law, Cap. 1, section 10(2)(c) in form of a presumption that subsequent laws are presumed to leave unaffected rights, privileges, obligations or liabilities acquired, accrued or incurred under 10 the repealed law. The presumption is, however, rebuttable. (*Vamasia case, supra, and The Republic v. Menelaou* (1982) 3 C.L.R. 419 at p. 429 adopted as regards the approach on the construction of vested rights) In this case the presumption has been rebutted

15 (3) The notion of equality depends upon the realities prevailing at any one time and the need to treat equally those in substantially the same position. In the light of the principles enunciated in our case law and the case law of Greece and the United States as reviewed in *The Republic v. Nishan Arakian and Others* (1972) 3 C.L.R. 294, this Court reached the conclusion that the differentiation made by Law 23/83 between citizens of the Republic on the 20 one hand and aliens and foreign controlled companies on the other hand does not contravene Art. 28 I of the Constitution.

Appeal allowed with costs

Cases referred to:

Vamasia Estate Ltd. v. Singer Sewing Machine Co. (1985) 1 C.L.R. 707.

25 *Republic v. Menelaou* (1982) 3 C.L.R. 419;

Mikrommatis v. The Republic, 2 R.S.C.C. 125.

Republic v. Arakian and Others (1972) 3 C.L.R. 294.

Appeal.

30 Appeal by plaintiff against the judgment of the District Court of Nicosia (Hji Constantinou, S.D.J.) dated the 2nd December, 1985 (Action No. 7076/85) whereby the preliminary objection raised by respondent-defendant in an application to set aside the service of the writ of summons on the ground that the District Court had no 35 jurisdiction to adjudicate on the matter was accepted and therefore jurisdiction vested in the Rent Control Court.

* The Court, however, expressed reservation as to that part of the judgment in that case, which refers to Cypriots who are not residing in Cyprus.

N Neocleous with M Georghiou for the appellant-applicant

K Talarides, for the respondent-defendant

Cur adv vult

TRIANTAFYLLIDES P The judgment of the Court will be delivered by Mr Justice Savvides 5

SAVVIDES J This is an appeal against the judgment of a Senior Judge of the District Court of Nicosia whereby he accepted a preliminary objection raised by the respondent-defendant on an application to set aside the service of the writ of summons on the ground that the District Court had no jurisdiction to adjudicate on the matter, as the respondent-defendant was a statutory tenant under the Rent Control Laws and, therefore jurisdiction vested in the Rent Control Court established under the provisions of the Rent Control Laws 10

The facts of the case are briefly as follows 15

The respondent-defendant is a shoe manufacturing company registered in Cyprus under the Companies Law since 1952. It is a common ground that it is owned wholly by foreign shareholders. Appellant's claim against the respondent before the District Court of Nicosia was for recovery of possession of premises let to the respondent under a contract dated 21st April, 1980, which expired on 30 4 1985 and also for arrears of rent and mesne profits as from 1st May, 1985, till the recovery of the premises 20

The respondent entered a conditional appearance and applied for an order setting aside the service of the writ of summons on the ground that the District Court of Nicosia had no jurisdiction in the matter 25

The learned trial Judge after hearing lengthy argument on both sides came to the conclusion that the respondent-defendant was a statutory tenant under the Rent Control Laws and that he continued to remain in occupation of the premises as such after the expiration of the contractual tenancy and, therefore, the District Court had no jurisdiction to adjudicate on the matter and that the competent court was the Rent Control Court set out under the relevant Laws 30

The grounds of appeal raised by appellant are the following 35

(1) The trial Court in holding that defendant-respondent was a statutory tenant under the provisions of Law 23/83 misconceived

and wrongly applied the provisions of Law 23/83 and especially section 2 thereof

5 (2) The trial Court wrongly found that defendant-respondent was a statutory tenant and consequently wrongly decided that it had no jurisdiction to try action

10 *In expounding on his grounds of appeal, counsel for appellant contended that bearing in mind the fact that the contractual tenancy of the respondent expired on 30 4 1985, he could not become a statutory tenant in view of the provisions of Law 23/83 and in particular the definition of the word «tenant» in section 2 which excludes legal persons controlled by aliens. He contended that assuming that the respondent had become a statutory tenant under the provisions of Law 36/75, he did not acquire a vested right which could not be suspended by express provision in a subsequent repealing enactment*

20 *In dealing with the constitutionality of section 2 of Law 23/83, he submitted that the exclusion of aliens or legal persons controlled by aliens from the protection of the Rent Control Law is not unconstitutional and that in the light of the principles emanating from our case law, such distinction is a reasonable one and cannot in any way be treated as violating Article 28 of the Constitution*

25 *Counsel for the respondent supported the decision of the trial Judge and submitted that the respondent was a statutory tenant before the enactment of Law 23/83 as a result of the provisions of the Rent Control Laws in force prior to 1983. The defendant company was a company registered in Cyprus since 1952 operating in the same way as any company having Cypriot shareholders, it was not an offshore company and it should be treated in all respects as an ordinary company carrying on business in Cyprus, irrespective of the shareholding of such company. He also submitted that the provisions of section 2 of Law 23/83 should be interpreted as applying only to offshore companies, but not to local companies resident and operating in Cyprus. He further submitted that if the Court reaches the conclusion that the respondent-defendant cannot be considered as a statutory tenant by virtue of the provisions of section 2 of Law 23/83, such provision should be treated as operating in a discriminatory manner against the respondent. A Cypriot company operating in the same way as any company having Cypriot shareholders, and*

as such, violating Article 28 of the Constitution.

The first question which poses for consideration arises out of the definition of «tenant» appearing in the Rent Control Law 1983 (Law No. 23/83). The definition of «tenant» is given under section 2 as follows:

5

«'ενοικιαστής' σημαίνει παν φυσικόν ή νομικόν πρόσωπον το οποίον συνήθως διαμένει ή έχει την έδραν αυτού εν Κύπρω και το οποίον είναι ενοικιαστής ακινήτου, εν σχέσει προς το οποίον υφίσταται ενοικίασις αλλά δεν περιλαμβάνει μη πολίτην της Δημοκρατίας ή νομικόν πρόσωπον ελεγχόμενον υπό αλλοδαπών.»

10

The English translation reads:-

(«'tenant' means every natural or legal person which usually resides or has his principal place of operation in Cyprus and which is a tenant of premises, in respect of which a tenancy exists but it does not include a non-citizen of the Republic or a legal person controlled by aliens.»

15

The interpretation of this section came up for consideration before the Court of Appeal in *Vamasia Estates Ltd. v. Singer Sewing Machine Co.* (1985) 1 C.L.R. 707, in which at page 711, we read the following:-

20

«Nevertheless we are invited by counsel for respondents to uphold the decision in view of the absurdity inherent in giving the definition of 'tenant', in particular the proviso thereto purporting to exclude 'aliens', the meaning imported by the grammatical construction of the words used. In the suggestion of counsel the proviso was inserted in the wrong place because of an obvious mistake in view of the definition of statutory tenant, encompassing statutory tenants under the repealed legislation, supplied by the same section of the law. Therefore, we were asked to ignore the proviso to the definition of tenant, allegedly wrongly inserted thereat because of a misarrangement, as so to do would lead to an absurdity. Only in the clearest of cases will the Court disregard the grammatical implications of a statutory provision or ignore the arrangement of sections of the law made by the legislature. Grammatical construction must be adhered to unless unavoidably absurd results will ensue therefrom.

25

30

35

5 Anomalies as such resulting from the natural construction of an enactment are no reason either for limiting the meaning of the words chosen or departing from the will of the legislature as expressed in the law - *Stock v. Frank Jones (Tipton) Ltd.* [1978] 1 All E.R. 948 (H.L.).

10 It appears to me that only where the provisions of the law make no sense in the context of the law as a whole and further conflict with the avowed objects of the law can the Court ignore a legislative provision or its position in the scheme of the law. Far from being persuaded that the proviso to the definition of tenant was inadvertently appended thereto, I regard its insertion at the particular part of s.2 purposeful, consistent with the aim of the legislature to confine the benefits of the law to the class of persons who were worst hit by the catastrophic consequences of the Turkish invasion. Not only aliens and foreign controlled companies are excluded from the definition of 'tenant', but Cypriots too who are not ordinarily residing in Cyprus. Consequently, there is no room whatever for departing from the tenor of the law as expressed by the legislature respecting the class of persons who qualify as tenants under s. 2 of Law 23/83.»

25 We agree with the view expressed in the above case to the extent that the provision of section 2 confining the benefits of the law to citizens of the Republic was inserted purposely with the aim to confine the benefits of the law to the class of persons who were worst hit by the catastrophic consequences of the Turkish invasion and that it was not intended to apply to foreign controlled companies or aliens. We have our reservation as to the part of the above judgment which refers to Cypriots who are not residing in Cyprus, as this was not in issue neither in the *Vamasia* case nor in the present case. In the *Vamasia* case (supra) the Court further dealt with the question as to whether vested rights by virtue of previous legislation could be taken away. It was held at p. 710 of the above case that:

35 «All that s. 10(2)(c) aims to achieve and in fact creates is a legal presumption that rights accrued under the law in force at any particular period of time are not liable to be disturbed or taken away by a subsequent repeal or amendment of the Law in the absence of express provision to that end

40 No right accrues under section 10(2)(c) for the indefinite enjoyment of rights vested by law. They can be taken away by

the statute, subject to constitutional constraints, in the same way that they are given in the first place.»

The concept of vested rights was also considered by the Full Bench in the case of *The Republic v. Menelaou* (1982) 3 C.L.R. 419 in which at page 429, we read:

«The need to sustain vested rights found expression in the Interpretation Law in the form of a presumption that subsequent laws are presumed, but not deemed, to leave unaffected vested rights. Section 10(2)(c) of the Interpretation Law, Cap. 1, provides that it shall be presumed that the repeal of a law leaves unaffected rights, privileges, obligations or liabilities that were acquired, accrued or incurred under the repealed law. However, the presumption is a rebuttable one and may be displaced whenever a clear intention to the contrary is evinced by the repealing law.»

We agree with the above approach on the construction of the concept of vested rights.

In the present case any benefit which might have accrued under the provisions of the Rent Control Laws in force prior to the enactment of Law 23/83 to tenants in general, was expressly taken away by section 2 of Law 23/83 in so far as non-citizens and legal persons controlled by aliens are concerned.

Lastly, we come to consider the question of the unconstitutionality of section 2 of Law 23/83.

The application of the principle of equality has been considered in *Mikrommatis* case, 2 R.S.C.C. 125 in which it is stated, at p. 131, that:

«..... 'equal before the law' in paragraph 1 of Article 28 does not convey the notion of exact arithmetical equality but it safeguards only against arbitrary differentiations and does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things».

Mikrommatis case has been constantly followed by our Supreme Court and the principles underlying the notion of equality have been explicitly expounded in the case of *Republic v. Nishan Arakian and Others* (1972) 3 C.L.R. 294, where the President of the Supreme Court made a lucid review of the case law on this matter both in Cyprus, as well as in Greece and the United States. The notion of equality depends upon the realities prevailing at any one time and the need to treat equally those in

substantially the same position. The object of the Rent Control Law 23/83 was, as mentioned in the Vamasia case, to confine the benefits of the law to citizens of the Republic and not to aliens or alien controlled companies, an entirely different class of persons
5 the first consisting of citizens of the Republic and the other consisting of non-citizens of the Republic or legal persons controlled by aliens.

Bearing in mind all the authorities before us and the principles enunciated in our case law and the case law in Greece and the
10 United States as reviewed in *Arakian* case (supra) we have come to the conclusion that the differentiation does not in any way contravene the provisions of Article 28.1 of the Constitution.

In the result the appeal succeeds and is allowed with costs. The case will be remitted back with directions to be determined on the
15 remaining issues in the light of this judgment.

Appeal allowed with costs.