

1986 March 28

[TRIANTAFYLIDES, P]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

HOLY BISHOPRIC OF PAPHOS,

Applicant,

v

THE REPUBLIC OF CYPRUS, THROUGH
1 THE MINISTER OF FINANCE,
2 THE COMMISSIONER OF INCOME TAX,

Respondents

(Case No 106/85)

5 *Constitutional law — Right to property — Constitution, Art 23 7 and Art 23 9 — Property belonging to any See — The See cannot be deprived of money without its consent, even for the purpose of levying execution in respect of a tax — Money, which ought to have been refunded to the See by the Commissioner of Income Tax, retained and set off against alleged indebtedness of the See for special contribution — Such set off violates Art 23 9*

10 *Legitimate interest — Assessment of income tax operating to the benefit of the applicant — Applicant does not possess a legitimate interest to challenge it*
Income tax — Absence of liability to pay income tax for a particular year — Assessment crediting to the applicant certain sums collected at source during such year — As applicant was not liable to pay any income tax, it was not open to the Commissioner to raise such assessment

15 *The applicant is one of the Sees of the Greek-Orthodox Church of Cyprus. In 1984 it became entitled to gross dividends from the Hellenic Bank Ltd and the Cyprus Popular Bank amounting to C£4,852 32, which were paid to it after a deduction at source of C£2062 25 as income tax*

It is common ground that the applicant did not have to pay any income tax in respect of the said dividends

20 *On 21 December 1984 respondent 2 raised an assessment which stated that the aforementioned amount of C£2,062 25 was credited to the applicant*

The applicant requested the refund of the amount of C£2 062 25 but eventually respondent 2 refused to refund it and on 21 December 1984 decided to set it off against special contribution payable by the applicant for rents received by it from 1974 to 1983

Hence this recourse challenging the said assessment of income tax as well as the decision to appropriate the said amount against the said special contributions

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Held, *annulling the sub judice decision* (1) As applicant was not liable to pay any income tax for 1984, it was not open to respondent 2 to raise the sub judice assessment. As however the assessment operated to the benefit of the applicant, latter does not possess a legitimate interest to challenge it

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(2) From the provisions of paragraph (9) of Article 23 of the Constitution there emerges clearly that the applicant could not be deprived of money which is movable property without its written consent and that in view of the provisions of paragraph (7) of Article 23 such deprivation could not take place without the written consent of the applicant, even for the purpose of levying execution in respect of a tax by way of special contribution

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Sub judice decision annulled
No order as to costs

Recourse.

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Recourse against the refusal of the respondents to return to applicant an amount of £2062 25 cent which was deducted as income tax from company dividends paid to the applicant

G Trantafyllides, for the applicant

Y Lazarou, for the respondents

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Cur adv vult

TRIANTAFYLLIDES P read the following judgment: By means of the present recourse the applicant challenges the refusal of respondent 2 - who comes under respondent 1 - to return to the applicant an amount of C£2062 25 cent, which was deducted as income tax at source from company dividends paid to the applicant, and to appropriate the said sum against special contribution allegedly due and payable by the applicant

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The applicant challenges, also, by way of ancillary relief, a notice of income tax assessment (No 84/85/01/010) in respect of

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the year of assessment 1984 which was raised in circumstances referred to hereinafter.

5 The applicant is one of the Sees of the Greek-Orthodox Church of Cyprus and derives income from, inter alia, rents and dividends of companies.

In 1984 it became entitled to gross dividends from the Hellenic Bank Ltd. and the Cyprus Popular Bank amounting to C£4,852.32 which were paid to it after a deduction at source of C£2062.25 as income tax.

10 It is common ground that the applicant did not have to pay any income tax in respect of the said dividends.

On 21 December 1984 respondent 2 raised an assessment which stated that the aforementioned amount of C£2,062.25 which was deducted at source as income tax from the dividends of
15 the applicant was credited to the applicant.

The applicant objected on 25 January 1985 to the assessment in question on the ground that since it was not liable to pay income tax such assessment should not have been raised at all.

20 The applicant requested the refund of the amount of C£2062.25 but eventually respondent 2 refused to refund it and on 21 December 1984 decided to set it off against special contribution payable by the applicant for rents received by it from 1974 to 1983.

I am of the view that inasmuch as the applicant was exempted
25 from paying income tax it was not, strictly speaking, open to respondent 2 to treat the applicant as a taxpayer by raising the assessment dated 21 December 1984, even for the purpose of crediting the applicant with the amount of C£2062.25 which had been deducted as income tax from the amount of dividends due to
30 the applicant. As, however, the challenged by the applicant assessment operated to the benefit, and not to the detriment of any legitimate interest, of the applicant I do not think that the applicant was entitled, under Article 146(2) of the Constitution, to file the present recourse against such assessment and, consequently, to
35 this extent this recourse has to be dismissed.

Regarding, next, the refusal by respondent 2 to refund to the applicant the amount of C£2,062.25 counsel for the applicant has submitted that respondent 2 was bound to refund the said amount

and was not entitled to set it off against any alleged liability of the applicant for special contribution.

On the other hand counsel for the respondents submitted that the right to set off is implied in section 38(1) of the Assessment and Collection of Taxes Law, 1978 (Law 4/78) and that, in any event, respondent 2 was entitled under the equitable doctrine of set off to appropriate the amount of C£2,062.25 to the indebtedness of the applicant for special contribution. 5

It is useful to refer, at this stage, to paragraphs (7) and (9) of Article 23 of the Constitution, which read as follows: 10

«7. Nothing in paragraphs 3 and 4 of this Article contained shall affect the provisions of any law made for the purpose of levying execution in respect of any tax or penalty, executing any judgment, enforcing any contractual obligation or for the prevention of danger to life or property. 15

«9. Notwithstanding anything contained in this Article no deprivation, restriction or limitation of the right provided in paragraph 1 of this Article in respect of any movable or immovable property belonging to any See, monastery, church or any other ecclesiastical corporation or any right over it or interest therein shall be made except with the written consent of the appropriate ecclesiastical authority being in control of such property and the provisions of paragraphs 3, 4, 7 and 8 of this Article shall be subject to the provisions of this paragraph: 20 25

Provided that restrictions or limitations for the purposes of town and country planning under the provisions of paragraph 3 of this Article are exempted from the provisions of this paragraph.»

From the provisions of paragraph (9) of Article 23 there emerges clearly that the applicant could not be deprived of money, which is movable property, without its written consent and that, in view of the provisions of paragraph (7) of Article 23, such deprivation could not take place, without the written consent of the applicant, even for the purpose of levying execution in respect of a tax by way of special contribution. 30 35

It follows, therefore, that in the circumstances of the present case respondent 2 could not invoke either section 38(1) of Law 4/

3 C.L.R. Holy Bishoprip Paphos v. Republic Triantafyllides P.

78 or the equitable principle of set off in a manner enabling him, even indirectly, to levy execution against the applicant by appropriating the aforementioned amount of C£2,062.25 to the alleged indebtedness of the applicant for special contribution.

- 5 In the result the sub judice refusal of respondent 2 to refund the said amount to the applicant has to be annulled.

In the light of the particular facts of this case I shall not make any order as to its costs.

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*Sub judice decision
annulled. No order
as to costs.*