

1987 October 30

[PIKIS J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

WESTPARK LTD ,

*Applicants,*

v

THE REPUBLIC OF CYPRUS, THROUGH  
THE DIRECTOR OF LANDS AND SURVEYS,

*Respondents*

*(Case No 430/87).*

5 *Acts or decisions in the sense of Art 146 1 of the Constitution — Immovable property, transfer of — Assessing its value in virtue of the power pursuant to s 3(iv) of the Schedule to s 3 of the Department of Lands and Surveys (Fees and Charges) Law, Cap 219, as amended by Laws 81/70, 61/73, 31/76, 66/79 and 15/80 — Outside ambit of Art 146 1*

*Acts or decisions in the sense of Art 146 1 of the Constitution — Test applicable for determining the justiciability of an act thereunder — It is substantive*

10 *Precedent, doctrine of — Decisions of Courts of co-ordinate jurisdiction — Not binding — This rule covers also decisions given by the same judge at first instance*

*Constitutionality of Statutes — In the absence of a specific motion of unconstitutionality, the Court must heed and give effect to the law applicable to the case*

15 The respondent Director rejected the price of sale of immovable property in question declared at £1,300,000 by the parties to the sale and proceeded to assess it at £2,000,000, reflecting the open market value of the land at the material time, and, as a result, the transfer fees were calculated on the basis of £2,000,000

20 Hence the present recourse The aforesaid decision was taken in virtue of s 3(iv) of the Schedule to s 3 of Cap 219, as amended by Laws 81/70, 61/73, 31/76, 66/79 and 15/80

The applicant filed an appeal to the District Court (Second proviso to the aforesaid section 3(iv)) He, also, filed this recourse

Held, *dismissing the recourse*: (1) Every enactment of the legislature is deemed to come within the framework of the Constitution unless the Court declares otherwise on a specific motion of unconstitutionality. In this case no challenge to the constitutionality of the relevant provisions of the Schedule was mounted; consequently I must heed the law and decline to assume jurisdiction to review the validity of the sub judge act.

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(2) Assuming that there is no constraint to examining the nature of the sub judge decision.

(a) The rule of precedent does not bind this Court to follow decisions of Courts of coordinate jurisdiction and that includes decisions given by the same Judge at first instance; provided the Court is satisfied they were wrongly decided.

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(b) Having reflected afresh upon the decision in *Ieropoulos v. District Land Officer L'ssol* (1987) 3 C.L.R. 830, the Court was not persuaded that it was wrongly decided.

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(c) The test followed in Cyprus for the classification of acts with a view to determining their justiciability under Art. 146.1 of the Constitution, is substantive.

(d) In this case the interest of the public in the decision of the Director cannot be identified except as limited. The decision has limited repercussions on the wider public. It affects primarily the financial obligations of the purchaser for the acquisition of the land.

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*Recourse dismissed.*  
*No order as to costs.*

*Cases referred to:*

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*Ieropoulos v. District Officer L'ssol* (1987) 3 C.L.R. 830;

*The Board for the Registration of Architects and Civil Engineers v. Kyriakides* (1966) 3 C.L.R. 640;

*Improvement Board of Eylendja v. Constantinou* (1967) 1 C.L.R. 167;

*Frangos and Others v. Republic* (1982) 3 C.L.R. 53;

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*Antonioni and Others v. Republic* (1984) 3 C.L.R. 623;

*Mahlouzarides v. Republic* (1985) 3 C.L.R. 2342;

*Hellenic Bank v. Republic* (1986) 3 C.L.R. 381;

*Republic v. M.D.M. Estate* (1982) 3 C.L.R. 642;

*Kalisperas v. Minister of Interior* (1982) 3 C.L.R. 509;

*Ayoub v. Republic* (1985) 3 C.L.R. 70.

### Recourse.

5 Recourse against the decision of the respondent whereby the sale price declared by the parties to the sale of a plot of land at Paphos was rejected by the respondent who proceeded to assess it at £2,000,000.-

A. *Dikigoropoulos*, for the applicant.

A. *Vladimirov*, for the respondents.

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*Cur. adv. vult.*

PIKIS J. read the following judgment. As in *Ieropoulos v. The District Lands Officer Limassol*\* I must decide on the justiciability of a decision of the Lands Department under the Lands and Surveys (Fees and Charges) Law, Cap. 219\*\*, in which the  
 15 Director in exercise of the power given him by s. 3(IV) of the Schedule to s. 3, rejected the sale price declared by the parties to the sale (£1,300,000.-) of a plot of land at Paphos as unrepresentative of the market value of the land and proceeded to assess it at £2,000,000.- reflecting the value of the land in the  
 20 open market at the material time. Thereupon the purchasers, applicants in these proceedings, were required to pay transfer fees corresponding to the market value of the land, a decision they seemingly contested not only before this Court in pursuant to the jurisdiction vested in the Court under Art. 146.1, but also before  
 25 the District Court of Paphos, presumably invoking the power specifically conferred on the District Court by the second proviso to s. 3 (IV) of the aforementioned Schedule. In *Ieropoulos* (supra) I decided, on a review of the nature of the power vested in the  
 30 Director under the pertinent provisions of the law, that the act is outside the domain of public law and as such inamenable to the jurisdiction of the District Court. I did express reservations in that case whether it was at all possible to take cognizance of the sub  
 justice decision in the absence of a submission that the relevant provisions of s. 3 of the Schedule, whereby jurisdiction to review

\* (1987) 3 C.L.R. 830.

\*\* Amended by Laws 81/70, 61/73, 31/76, 66/79 and 15/80.

the decision of the Director is specifically conferred upon the District Court, are unconstitutional. Upon further reflection on the implications of the absence of such a submission, I believe the dismissal of this recourse is a foregone conclusion.

Every enactment of the legislature is deemed to come within the framework of the Constitution unless the Court declares otherwise on a specific motion of unconstitutionality\*. Jurisdictional enactments, that is, statutes vesting competence in a Court of law to adjudicate upon a matter, are no exception. Those enactments too must be heeded and be given effect to as a valid exercise of the legislative power in the absence of a specific challenge to their constitutionality and a judicial pronouncement declaring them unconstitutional. In this case no challenge to the constitutionality of the relevant provisions of the Schedule was mounted; consequently I must heed the law and decline to assume jurisdiction to review the validity of the sub judice act. Supposing that the aforementioned fetter should not constrain me from examining the nature of the sub judice decision, the case of *Ieropoulos* decides that the legislative appreciation of the nature of the act is sound and for that reason jurisdiction was rightly assigned to the District Court to review the validity of the act. Learned counsel asked me to revise my appreciation of the implications of the act expressed in the case of *Ieropoulos* (*supra*) and invited me to depart from it as founded on an erroneous view of the nature of the act. The rule of precedent does not bind me to follow decisions of Courts of coordinate jurisdiction and that includes decisions given by myself at first instance\*\*; provided the Court is satisfied they were wrongly decide.

I reflected upon the decision in *Ieropoulos* afresh, a course that left me wholly unpersuaded that that case was wrongly decided. The decision of the Director under s. 3(iv) of the Schedule is interwoven with a fact finding process designed to elicit the value of land. There is no element of policy inherent in the decision nor is discretion vested in the Lands Department to promote any wider policy objective. Depending on the factual inquiry of the Director, fees are levied and collected that need not necessarily be higher than those that the declaration of the parties to the sale would

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\* *The Board for the Registration of Architects and Civil Engineers v Chr. Kynakides* (1966) 3 C.L.R. 640; *Improvement Board of Eylandja v. Constantinou* (1967) 1 C.L.R. 167.

\*\* See, *inter alia*, *Frangos and Others v Republic* (1982) 3 C.L.R. 53