1987 February 25

[KOURRIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS IACOVOU,

Applicant.

v.

1. THE REPUBLIC OF CYPRUS,
2. THE DIRECTOR OF INLAND REVENUE, THROUGH THE ATTORNEY-GENERAL OF THE REPUBLIC,

Respondents

(Case No.829/85)

Natural Justice—Opportunity of being heard—Rule not applicable to purely administrative matters

Reasoning of an administrative act—Object of rule requiring that an administrative act should be duly reasoned.

Words and Phrases: «Resides» and «Area» in paragraph (f) of section 18 of the Immovable Property Tax Law, 1980 as amended by s.6(f) of Law 25/81.

The applicant is a farmer residing in the town of Paphos. He is the owner of agricultural land situated in the villages of Timi and Argaka in the District of Paphos, which are seven and thirty-one miles respectively away from the town of Paphos.

By means of this recourse the applicant challenges the validity of the decision, whereby his claims that his said lands be exempted from immovable property tax was rejected.

Held, dismissing the recourse:(1) It is well settled that the burden to prove an exemption or deduction in fiscal laws is on the applicant.

(2) The relevant provision of the law is s.18(f) of the Immovable Property Tax Law 1980 as amended by s.6(f) of Law 25/81.

It reads as follows. «No tax shall be levied or collected in respect of the following... (f) Agricultural immovable property (excluding any structure or other erections or works) belonging to an individual who carries on mainly agricultural or husbandry business and who resides in the area where the agricultural land is situate which is used by the owner exclusively for agricultural or animal husbandry purposes».

(3) The word «resides» in the above sub-section should be given its ordinary natural meaning, signifying a man's abode or dwelling as explained in *vene v I R C [1928] A C 217* (followed in *Razis and Another v The public (1979) 3 C L R 127)* and in *R v North Curry, 4B and C 959*

It follows that the word «resides» does not cover the temporary stay of the plicant at the villages of Timi and Argaka, where he used to go for the tivation of his lands

(4) The true construction to be placed in the word «area» should be such as denote the boundaries of a town, a municipality, an improvement board, illage or, where the residence of a farmer is situate in one area and the land another and the distance between the two is very short It follows that the cision that the applicant was residing in an area different from the area in ich the lands in question are situated must be upheld

(5) The contention that the sub judice decision is not duly reasoned is founded

(6) The contention that the respondent had an obligation to afford the plicant an opportunity of being heard is erroneous because the rules of ural justice are not applicable to cases such as the present one as the ocedure involved is not judicial or quasi judicial, but purely administrative

(7) Finally and as regards 1980, the contention that as for 1980 the plicant was in any event entitled to exemption under sub-section 18(f), cause he carried on mainly agricultural business, does not help the plicant because sub section 18(f) of the Law came into force on 23 4 81

Recourse dismissed
No order as to costs

ses referred to

Georghallides v The Republic, 23 C L R 249,

HadjiYiannis v The Republic (1966) 3 C L R 338,

Rainbow v The Republic (1984) 3 C L R 846,

Razis and Another v The Republic (1979) 3 C L R 127,

Levene v I R C [1928] A C 217,

R v North Curry, 4B and C 959,

Ionides v The Republic (1982) 3 C L R 1136,

Georghiades and Others v The Republic (1967) 3 C L R 653,

Kittides v The Republic (1973) 3 C L R 123

HadjiSavva v The Republic (1972) 3 C L R 174

Mouzoun v The Republic (1972) 3 C L R 43

Mikrommatis v The Republic, 2 R S C C 125

Kynakides v The Council for Registration of Architects and Civil Engineer (1965) 3 C L R 159

Riditis v Karayiorgis and others (1965) 3 C L R 230

HjiLouka v The Republic (1969) 3 C L R 570

Pantelidou v The Republic, 4 R S C C 100

Kontemeniotis v C B C (1982) 3 C L R 1027

Group of Five Bus Tour Ltd v The Republic (1983) 3 C L R 793

Kaizer v Committee of Missing Persons (1985) 3 C L R 2668

Recourse.

Recourse against the decision of the respondents to reject applicant's claim for exemption from immovable property tax in respect of his land in the villages of Timi and Argaka in Papho District

M Vassiliades, for the applicants

Y. Lazarou, for the respondents

Cur adv vult

KOURRIS J read the following judgment By this recourse the applicant challenges the validity of the decision of the responden Director of the Department of Inland Revenue dated 12/7/1985 t reject applicant's claim for exemption from immovable propert tax in respect of his land in the villages of Timi and Argaka in th district of Paphos

It is common ground that the applicant is a farmer residing in th town of Paphos and his land is agricultural land in the villages o Timi and Argaka which are seven and thirty-one miles away fron Paphos respectively

The only issue which the Court has to decide is whether th applicant «διαμένει εντός της περιοχής» where the agricultura

and is situate.

The sub judice decision which is attached to the application as Exhibit 1, is impugned on three grounds, the following:- a) the decision is based on a misinterpretation and misapplication of the relevant law b) it lacks due reasoning and c) it was reached under a misconception of the factual situation and without giving the applicant an opportunity to be heard.

Ground (a)

It is well established principle of Income Tax Law that where a taxpayer claims any exemption or deduction from tax, the onus is on him to support such claim for exemption or deduction. This principle was expounded by the Supreme Court in the case of *Charis Georghallides*, 23 C.L.R. 249 at p.256 which reads as follows:-

> «One dealing with fiscal legislation should carefully examine first whether the taxpayer is clearly within the words of the provisions by which he is charged with tax and, secondly, if he claims any exemption or deduction from tax - to which liability is either admitted or established - whether such claim is supported by the relevant provisions of the Law. In a disputed case the onus to satisfy the Court as to liability to pay tax is on the Tax Authorities and the onus to support a claim for exemption or deduction allowance is on the taxpayer».

Further, it was held in the cases of *Andreas HadjiYiannis v. The Republic* (1966) 3 C.L.R. 338 at pp. 350, 371 and *Nina Rainbow v. The Republic* (1984) 3 C.L.R. 846 that the burden to prove an exemption or deduction in fiscal laws is on the applicants.

The applicant in the case in hand is contending that he is exempted from the payment of immovable property tax by virtue of paragraph (f) s.18 of the Immovable Property Tax Law 1980 as amended by s.6 (Στ) of Law 25/81 which reads as follows:-

«Δεν επιβάλλεται ή εισπράττεται φόρος επί των ακολούθων:-

.....

(f) Γεωργικής ακινήτου ιδιοκτησίας (εξαιρουμένων οιωνδήποτε οικοδομημάτων ή ετέρων κτισμάτων ή έργων) ανηκούσης εις φυσικόν πρόσωπον το οποίον

ασκεί κατά κύριον λόγον γεωργικήν ή κτηνοτροφικήν επιχείρησιν και διαμένει εντός της περιοχής ένθα ευρίσκεται η γεωργική ιδιοκτησία η οποία χρησιμοποιείται υπό του ιδιοκτήτου αποκλειστικώς δια γεωργικούς ή κτηνοτροφικούς σκοπούς».

In English it reads as follows:-

«No tax shall be levied or collected in respect of the following:-

.....

(f) Agricultural immovable property (excluding any structures or other erections or works) belonging to an individual who carries on mainly agricultural or animal husbandry business and who resides in the area where the agricultural land is situate which is used by the owner exclusively for agricultural or animal husbandry purposes».

From the foregoing provisions it is clear that in order to qualify for the relief provided thereunder the immovable property must firstly be agricultural and secondly, such property must belong to an individual who carries on mainly agricultural or animal husbandry business *and* who «διαμένει εντός της περιοχής» where the agricultural land is situate. The expressions «διαμένει» and «περιοχή» are not defined in the Immovable Property Tax Law and also they are not defined in the Income Tax Laws. Therefore, the general principles of construction have to be applied which are to the effect that the words should be given their ordinary grammatical meaning.

As I have stated hereinabove it is common ground that the immovable property in question is agricultural land and that the applicant is a person who carries on mainly agricultural business. What remains to be decided is whether the applicant «διαμένει εντός της περιοχής» where the agricultural land is situate.

The Μεγάλο Λεξικό της Νεοελληνικής Γλώσσας states the meaning of «περιοχή» as follows:- Τόπος, χώρος, περιφέρεια δικαιοδοσίας κάποιου. Έκτασις γης μικρή ή μεγάλη and the meaning of the word «διαμονή» in the same dictionary is stated «διαβίωση σε κάποιο τόπον - Τόπος κατοικίας».

The Λεξικό Ορθογραφικό-Ερμηνευτικό, Εταιρείας

λληνικών Εκδόσεων, «περιοχή» ις stated as follows - Ιεριφέρεια, χωρος δικαιοδοσίας μιας Υπηρεσίας, εκτασις ης μικρης η μεγαλης In the same dictionary the meaning of the ord «διαμονή» is stated as follows - Διαβίωση σε ένα μέρος, ο οπος διαβιώσεως

In the Shorter Oxford Dictionary, Vol 1, the meaning of the ord «area» is stated to be «a particular extent of (esp the earth's rface, a region Also, in the same Dictionary, Vol II, the meaning f the word «residence» is stated as follows - To have one's usual welling place or abode, to reside

It appears from the meaning of the above words that the Greek ord «περιοχή» corresponds to the English word «area» and the reek word «διαμονή» with the English word «residence»

In the case of *Razis and another v The Republic* (1979) 3 C L R 27 the Court followed the English case of Levene v I R C [1928] C 217 where Viscount Care L C at p 222 said as follows -

> «My Lords the word 'reside' is a familiar English word and is defined in the Oxford English Dictionary as meaning to dwell permanently or for a considerable time, to have one's settled, or usual abode, to live in or at a particular place No doubt this definition must for present purposes be taken, subject to many modifications which may result from the terms of the Income Tax Act and Schedules but, subject to that observation, it may be accepted as an accurate indication of the meaning of the word 'reside' »

Similarly judicial pronouncement was made in the case of *R v orth Curry*, 4 B & C 959 where Barley J , stated -

> «What is the meaning of the word 'resides' I take it that that word, where there is nothing to show that it is used in a more extensive sense denotes the place where an individual eats, drinks and sleeps or where his family, his servants eat, drink, and sleep »

Counsel for the applicant contended that the Court should give very wide interpretation to the word «resides/διαμένει» to cover ie temporary stay of the appellant at the villages of Timi and rgaka where he used to go for the cultivation of his fields

On the other hand counsel for the respondents submitted that

the word «resides/διαμένει» as used in paragraph (f) of s 18 should be given its ordinary or natural meaning as signifying a man's abode or dwelling as explained in the cases above He contended that the applicant in the present case had his usual abode or was settled as from 1959 in the town of Paphos at No 8 Ellada Avenue

I have considered the arguments of both counsel and I have no difficulty in reaching the conclusion that the word «resides/ διαμένει» should be given its ordinary or natural meaning signifying a man's abode or dwelling as explained in the hereinabove cases Thus, I am of the view that the applicant resides in the town of Paphos and not as alleged by learned counsel for the applicant at the villages of Timi and Argaka

The next question is whether the residence of the applicant is in the «area/περιοχή», where the agricultural land is situate namely, at the villages of Timi and Argaka The answer to this question depends on the construction of the word «area»

It was contended on behalf of the applicant that the term «area/ περιοχή» which is not statutorily defined, should be construed widely as denoting a region consisting of groups of villages municipalities, such as the District of Nicosia or the territory over which the District Courts have jurisdiction

Counsel for the respondents submitted that the expression «area» used in paragraph f) of s 18 of the Law has a narrow meaning and denotes a town, a village a municipality or an Improvement Board and he submitted that the respondent's interpretation of the word «area» was a correct interpretation

In my view the true construction to be placed on the expression «area»/«περιοχή» should be such as to denote the boundaries of a town, a village, a municipality or an Improvement Board, or where the residence (house) of a farmer is situate in one area and the agricultural land is situate in another area and the distance between the two is very short If I place the construction of the expression «area»/«περιοχή» as contended by learned counsel for the applicant, such an interpretation will render the use of the term superflous and will defeat the object of the law in question I am of the opinion that the respondents' construction placed on the expression «area»/«περιοχή» as used in paragraph (f) of s 18 of the Law was a correct interpretation and it was reasonably open to

hem to place such an interpretation and their decision that the applicant resided in a different area viz. the town of Paphos to that where the agricultural land is situate i.e. the villages of Timi and Argaka must be upheld.

Ground (b)

I am of the view that applicant's allegation that the sub judice decision lacks due reasoning is totally without merit and should fail. It is apparent from the respondents' determination letter dated 12/7/1985, attached to the application as Exhibit 1 in which there are sufficient reasons for their decision to reject the applicant's claim for the relief granted under s.18(f) of the Law, which was made on 21st November, 1984 and attached to the opposition as Appendix (Ψ).

The object of the rule requiring reasons to be given for administrative decisions is to enable the person concerned as well as the Court on review to ascertain in each case whether the decision is well founded in fact and in law. The sub judice decision contains ample reasoning to satisfy the above principle (see cases *Phanos Ionides v. The Republic* (1982) 3 C.L.R. 1136 at pp. 1149-1150, *Athos Georghiades and others v. The Republic* (1967) 3 C.L.R.653 at p.666, Kittides v. The Republic (1973) 3 C.L.R. 123 at p.143, *Georghios HadjiSavva v. The Republic* (1972) 3 C.L.R. 174 at p.205, *Christos P. Mouzouri v. The Republic* (1972) 3 C.L.R. 43.

Ground (c)

The contention advanced by counsel for the applicant that the respondent was under an obligation to give him a hearing prior to reaching their decision is, in my view, erroneous because the principles of natural justice are not applicable to cases such as the present one as the procedure involved is not judicial or quasi judicial *(Mikrommatis v. The Republic*, 2 R.S.C.C. 125) but purely administrative.

It was pointed out by this Court that administrative bodies are under no obligation to act judicially with regard to purely administrative matters:

Kyriakides v. The Council for Registration of Architects and Civil Engineers (1965) 3 C.L.R. 159; *Riditis v. Karayiorgis and others* (1965) 3 C.L.R. 230; *HjiLouka v. The Republic* (1969) 3 C.L.R.

570;*Maro Pantelidou v. The Republic*, 4 R.S.C.C. 100; *Kontemeniotis v. C.B.C.* (1982) 3 C.L.R. 1027; *Group of Five Bus Tour Ltd., v. The Republic* (1983) 3 C.L.R 793; *Kaizer v. Committee of Missing Persons* (1985) 3 C.L.R. 2668.

However, irrespective of the above legal principles, in point of fact, the applicant as is apparent from paragraph 10 and Appendix (Ψ) to the opposition, was given the opportunity to express his views.

Year 1980

Counsel for the applicant contended that the applicant in 1980 carried on mainly agricultural business and therefore relief from taxation of his agricultural land should be granted under paragraph (f) Section 18 of the Law and that the respondents acted under a misconception of fact in not holding that in 1980 he carried on mainly agricultural business.

This allegation as to misconception of the factual situation whether the applicant carried on mainly agricultural or a car selling business in 1980 is irrelevant as paragraph (f) of s 18 of the Law had no application at that time. It came into force on 23/4/1981 Therefore this ground, also, fails.

In the circumstances of this case, in my judgment, it was reasonably open to the respondents to reject applicant's claim for exemption from immovable property tax under paragraph (f) of s.18 of the Law, their decision is duly reasoned and was reached after a due enquiry and a correct ascertainment of the relevant facts.

Therefore the recourse is dismissed but with no order for costs.

Recourse dismissed.
No order as to costs.