

1985 March 30

(TRIANIAFYLIDES P.)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GALATIANI LTD AND ANOTHER

Applicants,

- 1 THE MUNICIPALITY OF PAPHOS,
- 2 THE COUNCIL OF MINISTERS,

Respondents

(Cases Nos 348/81, 349/81, 350/81,
351/81, 352/81)

Streets and Buildings — Building zones — Changing in favour of applicants p.v. existing zones — Decisions in matters of technical nature — Judicial control — Principles applicable — Court cannot examine the merits of such decisions

Streets and Buildings — Building zones — Whether applicants should have been afforded opportunity to present their views — The Town and Country Planning Law 90/72, providing for such an opportunity, not applicable to the present case — Section 14(1) of the Streets and Buildings Regulation Law, Cap 96 does not envisage such an opportunity 5

Constitutional Law — Equality — Constitution, Art 28 — Building zones — Complaint of discriminatory treatment vis a vis owners not affected thereby — The principle of equality does not exclude reasonable distinctions or differentiations 10

Constitutional Law — Right to property — Constitution Art 23 3 — Building zones — Diminution of value of applicants' property — A matter for the competent Court 15

The facts of this case sufficiently appear in the Judgment of the Court

*Recourse dismissed
No order as to costs.*

*Cases referred to:**Eraclidou v. The Compensation Officer* (1968) 3 C L R 44.*Georghiou v. The Municipality of Nicosia* (1973) 3 C L R. 53.*Manglis v. The Republic* (1984) 3 C.L.R. 351:5 *Charalambides v. The Republic* (1986) 3 C L.R. 2681**Recourses.**

Recourses against the decision of the respondents regarding building zones affecting applicants' properties.

L. Kythreotis, for applicants.

10 *K. Chrysostomides*, for the respondent 1.

Cl. Antoniadis, Senior Counsel of the Republic, for respondent 2

Cur. adv. vult.

15 TRIANTAFYLLIDES P. read the following judgment. By means of the present recourse the applicants are challenging a decision of the respondent Municipality of Paphos regarding building zones, which was taken with the approval of the respondent Council of Ministers and was published in the Official Gazette of the Republic on 7 August 1981.

20 Prior to the sub judice building zones there were in force, affecting the properties of the applicants, building zones published in the Official Gazette of the Republic on 7 January 1977.

25 The new building zones of 1981 improved to a certain extent in favour of the applicants and other affected property owners the building zones of 1977.

Counsel for the applicants has complained that the improvements effected by means of the sub judice building zones of 1981 were insufficient.

30 As this Court, as an administrative Court, cannot go into the merits of administrative decisions in matters of technical nature (see, inter alia, in this respect, *Eraclidou v. The Compensation Officer*, (1968) 3 C.L.R. 44, *Georghiou v. The Municipality of Nicosia*, (1973) 3 C.L.R. 53, *Manglis v. The Republic*, (1984) 3 C.L.R. 351 and *Charalambides v. The Republic*, (1986) 3 C.L.R.

2681) and as it has not been shown to my satisfaction that the respondents have exceeded the limits of their discretionary powers I cannot interfere judicially with the building zones in question on the ground of anything which is related to their merits or demerits 5

It has been submitted, further, by counsel for the applicants that the sub judice decision was reached without affording to the applicants the opportunity to make representations as envisaged by the provisions of the Town and Country Planning Law 1972 (Law 90/72) The said legislative provisions were not, however 10 applicable to the present cases and, therefore, the respondents had no duty to afford to the applicants an opportunity to present their views, nor was such a duty envisaged by section 14(1) of the Streets and Buildings Regulation Law, Cap 96, under which the sub judice building zones were published 15

It has, also, been argued that the zones complained of were adopted in contravention of Article 28 of the Constitution in that there has resulted discriminatory treatment of the applicants as compared to owners of land not affected by the said zones and which is adjacent to the properties of the applicants 20

Reasonable distinctions or differentiations as between the properties of the applicants and those of other land owners are not excluded by the said Article 28 and the applicants have failed to convince me that they are the victims of unequal or unfair treatment due to the adoption of the sub judice building zones 25 (and, see in this respect, inter alia, the *Georgiou* case, supra, and the *Charalambides* case, supra)

In concluding I would like to stress that any restrictions or limitations which were imposed on the properties of the applicants by virtue of the building zones in question appear to come within 30 Article 23(3) of the Constitution and any alleged diminution of the value of the properties of the applicants is a matter to be considered by the competent Court (see, inter alia, the *Manglis* case, supra)

In the light of all the foregoing I have reached the conclusion 35 that the present recourses cannot succeed and are dismissed accordingly, but with no order as to their costs

Recourses dismissed
No order as to costs