

1987 April 13

[PIKIS J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PANAYIOTIS KITSIS.

Applicant.

v

THE DISTRICT OFFICER PAPHOS

(Cases Nos 347/86 and 348/86)

Streets and buildings—Building permit—Renewal of—The Streets and Buildings Regulation Law Cap 96—The proviso to section 3—The limits of the discretion thereunder

Streets and buildings—Certificate of approval of a building partly completed—The Streets and Buildings Regulation Law Cap 96—Section 10(2)—The limits of the discretion thereunder

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The applicant, who had obtained from the custodians* of immovable property a lease or licence to occupy and develop it into a restaurant, obtained from the respondent a permit for the erection of a fixed structure for use as restaurant

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Building work began in accordance with the terms of the contract and a substantial part of the building was completed within the first year. In order to legalise work necessary for the completion of the building, the applicant applied for the renewal of the building permit. He also applied for a certificate of approval of the part already completed

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The application was refused and the applicant was advised to seek a new confirmation from the custodians of the property of the right to use it for tourist purposes and to modify the relevant plans and make provision for a dismantlable structure

Hence this recourse

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Held, annulling the sub-judice decisions (1) Respondent refused renewal for reasons unconnected with his powers in virtue of the proviso to section 5 of Cap 96. The discretion thereunder of the appropriate authority is confined to verifying (a) whether building work commenced and (b) whether renewal conflicts with any building regulation

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The Committee for the Administration of Turkish Cypriot Properties

(2) The same is true in relation to the proviso to section 10(2) of Cap 96 because the discretion given thereunder to issue a certificate of approval is limited to ascertaining whether the work done is in accordance with the plans approved and the terms and conditions of the permit

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Sub judice decisions annulled
No order as to costs

Cases referred to

Hadjilofit and Others v The Republic (1985) 3 C L R 171

Anthoupolis v The Republic (1985) 3 C L R 1967

10 **Recourse.**

Recourse against the refusal of the respondent to renew applicant's building permit for the erection of a restaurant

Chr M Georghiades for the applicant

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Chr Ioannides for the respondent

Cur adv vult

PIKIS J read the following judgment The applicant obtained a lease or licence from the custodians of immovable property to occupy and develop it into a restaurant The custodians of the property, namely, The Committee for the Administration of Turkish Cypriot Properties authorized the occupation and use of the property by the applicant as aforementioned in consideration of the fact that he had been displaced and on condition that he would vacate the property as soon as the owners returned or his displacement came to an end On the strength of the authorization of the owners he applied to the District Officer, Paphos, the appropriate authority for building development in the area, for a permit to build a restaurant The plans submitted envisaged the erection of a prefabricated building in view of lack of ownership on the part of the applicant The District Officer acting on the advice of the Town Planning Dept advised modification of the plans counselling the erection of a building attached to the land in order for the building to fit into plans for the tourstic development of the area Heeding the advice the applicant submitted new plans providing for the erection of a fixed structure for use as restaurant The application was duly approved and a permit was issued authorizing the implementation of the architectural plan An undertaking was given by the applicant that he would demolish the building and return vacant possession of the land to the custodians as soon as licence was withdrawn or revoked

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Building work began in accordance with the terms and conditions of the permit and a substantial part of the building was completed within the first year. In order to legalize work necessary to complete the building, application was made for renewal of the permit for one more year. Also applicant sought a certificate of approval of the part of the building already completed. Power to renew a building permit is conferred by the proviso to s 5 of the Streets and Building Law - Cap 96 - and power to approve a building partly completed by the proviso to subsection 2 of s 10 of the same law

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The application was refused, both parts, for the reasons indicated in the letter of the respondents to the applicant dated 20th March, 1986. No reasons as such are given for the refusal other than those that may be inferred from the advice given to the applicant as to what he should do in order to give effect to his plans to create a restaurant on the land. Firstly, he was advised to seek anew confirmation from the custodians of the property of the right to use the property for touristic purposes. Originally, it must be noted, the applicant had been licensed to use the property for agricultural purposes. Subsequently, the terms of the licence were modified allowing the applicant to develop the property for touristic purposes by establishing a restaurant thereon. Why this confirmation was sought is not explained in the letter, except to the extent that the reasons may be inferred from the second condition attached to the implementation of the plans of the applicant. He was advised to modify his plans once more and make provision for a dismantable structure. In effect the respondent sought to modify or revoke the terms of the building permit in exercise of the powers given him by the proviso to s 5 and subsection 2 of s 10 of Cap 96. And the foremost question that must be answered is whether either provisions of the law vested power in him to modify his original decision

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The answer is plainly in the negative, neither the proviso to s.5 nor that to s 10 (2) confers power on the appropriate authority to modify the terms of the permit or revoke it for that matter. The compass of the proviso to s 5 was the subject of review analysis in *Hadjiosif and Others v The Republic**. On examination of the unambiguous provisions of the law, it was emphasized that the discretion of the appropriate authority is confined to verifying (a) whether buildings work commenced, and (b) whether renewal conflicts with any building regulations

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*(1985) 3 C L R 171

Evidently respondent refused renewal for reasons unconnected with the powers given him by the proviso to s 5. Consequently he exceeded as well as abused the powers given him by the pertinent provisions of the law. And the same is true in relation to the proviso to s 10(2), the ambit of which was the subject of examination in *Anthoupolis v Republic**. The discretion given by s 10(2) is limited to ascertaining whether the work done is in accordance with the plans approved and the terms and conditions attached to the permit. The inescapable conclusion is that the District Officer refused renewal of the permit and approval of the part completed for reasons wholly extraneous to the powers given him by law. Perusal of the records relevant to the decisions of the respondent reveals that respondent changed his stand in the matter of this building permit after remarks of the Minister of the Interior doubting the soundness of the original decision of the District Officer to grant a permit for a permanent structure. As the answer of the District Officer to the Ministry suggests, this was not the only occasion that such course was sanctioned. Be that as it may, the present inquiry is confined to a review of the validity of the sub judice decisions questioned by two separate recourses tried together in the light of the fact that they were directed against two separate aspects of the same decisions.

In the result the sub judice decisions are wholly annulled and declared, pursuant to Art 146 4(b) to be wholly void and of no effect whatsoever. Let there be no order as to costs.

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

* (1985) 3 C.L.R. 1967