

1987 May 25

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION,

DOROS A. IEROPOULOS,

*Applicant,*

v.

THE DISTRICT LANDS OFFICER OF LIMASSOL, AND/OR  
THE DIRECTOR OF LANDS OFFICE OF LIMASSOL,

*Respondent.*

*(Case No. 292/86).*

*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 under The Department of Lands and Surveys (Fees and Charges) Law, Cap. 219, as amended by Laws 81/70, 61/73, 31/76 and 66/79 for the purpose of determining the relevant transfer fees — Outside ambit of Art. 146.1.*

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*Revisional Jurisdiction under Art. 146.1 — Recourse seeking a declaration that the value of the subject immovable property was equal to its purchase price, i.e. £34,000 — This Court has no power to issue such a declaration under Cap. 219 or any other law.*

Applicant purchased a building at Limassol for £34,000 but in exercise of his powers under Cap. 219, as amended, the respondent Director assessed the value of the property at £50,000 and, as a result, the transfer fees were levied on the basis of such value.

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As a result the applicant filed this recourse, seeking: (a) A declaration that the value of the property on the date of its purchase was £35,000, and (b) A declaration that the decision, whereby it was valued at £50,000 for purposes of collection of transfer fees is wrong, in excess of power and unreasonable.

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Held, *dismissing the recourse*: (1) The first prayer does not raise for review an executory decision nor is it in the power of this Court to make declarations concerning the value of immovable property under Cap. 219 or any other law. Examined in conjunction with the second prayer, the first prayer becomes superfluous.

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(2) The determination of the value of immovable property for the purpose of assessment of transfer fees is of little interest to the general public. The

5 primary purpose is the determination of applicant's obligation by way of transfer fees and not the promotion of an objective of public interest. In recognition of this approach the law confers a civil remedy, i.e. an appeal under s. 80 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224 (First proviso to section 3(b)(iv) of The Table to section 3 of Cap. 219, as amended by s. 2 of Law 66/79).

10 (3) Assuming that this Court is free, in the absence of a submission of unconstitutionality of the aforesaid provision, to decide the jurisdictional aspect, this Court unhesitatingly rules that the sub judice decision is outside the ambit of Art. 146.1

*Recourse dismissed. No order as to costs.*

*Cases referred to:*

15 *Republic v. M.D M. Estate* (1982) 3 C.L.R. 642;  
*Kalisperas v. Ministry of Interior* (1982) 3 C.L.R. 509.

### Recourse.

Recourse against the decision of the respondent whereby the value of a building at Limassol was fixed at an amount of £50,000.= for the purposes of collection of transfer fees.

20 *I. Kaminara (Mrs.)*, for the applicant.

*Ch. Kyriakides, Counsel of the Republic*, for the respondent.

*Cur. adv. vult.*

25 PIKIS J. read the following judgment. Recitation of the relief prayed for reveals that the decision sought to be reviewed is outside the jurisdiction of this Court and for that reason it cannot be heeded. The declarations sought are: (a) a declaration that the value of a building at Limassol on the date of its purchase was equivalent to its purchase price, namely, £34,000.-, and (b) declaration that the decision of the respondents whereby it was  
30 valued at an amount of £50,000.- for purposes of collection of transfer fees is wrong, in excess of power and unreasonable.

The facts leading to the dispute are the following:

35 Applicant purchased a building at Limassol for £34,000.- In exercise of the powers vested in him by the Department of Lands

and Surveys (Fees and Charges) Law - Cap. 219 (as amended)\*, the Director rejected the purchase price as unrepresentative of the market value of the land and proceeded to assess its value fixing it provisionally at £60,000. When the inquiry into the market value of the land was completed, the property was assessed at £50,000.- and corresponding transfer fees were levied. The present proceedings are designed to challenge that decision embodied in a notice to the applicant dated 11.2.1986. The decision of the Director was primarily founded on the sale of comparable properties duly adjusted to reflect market trends at the material date. The objection to the assessment is also based on the valuation of the land made by a firm of Chartered Surveyors and Property Consultants.

Although the justiciability of the subject matter of the recourse is not raised by the respondents as an issue in the proceedings it is, nonetheless, necessary for the Court to examine it on its own initiative as it affects the competence of the Court. Article 146.1 does not confer unlimited jurisdiction on the Supreme Court to review administrative action but limits its competence to the review of administrative action in the domain of public law. That domain is primarily charted by the interest of the public in the particular area of administrative action. Two fairly recent decisions of the Supreme Court, namely, *Republic v. M.D.M. Estate\*\** and *Kalisperas v. Ministry of Interior\*\*\** provide a guide where the line should be drawn. They decided that decisions of the Lands Department fixing the reserved price for purposes of the Immovable Property, Cap. 223 (as amended)\*\*\*\*, are inamenable to review under Art. 146.1 because they primarily affect the civil rights of the parties immediately affected thereby. The interest of the general public in the soundness of administrative action, in the particular area, was of limited purport while the conferment of civil law remedies to the parties immediately affected offered institutional protection to the interest of the public in ensuring that the Administration operates within the limits of the law. To qualify for review under Art. 146.1, administrative action must affect the interest of the public in a wider perspective and reflect the policy of the administration in the area under review.

\* By Laws 81/70, 61/73, 31/76 and 66/79.

\*\* (1982) 3 C.L.R. 642 (F.B.)

\*\*\* (1982) 3 C.L.R. 509.

\*\*\*\* Section 8, Law 60/66.

As far as the first prayer is concerned, it does not of itself raise for review an executory decision nor is it in the power of this Court to make declarations about the value of immovable property under Cap. 219 or as far as I am aware, any other law. Examined in  
 5 conjunction with the second prayer, the first prayer becomes superfluous as the proper market value of the immovable property in question is at the core of the administrative decision sought to be set aside under prayer 'B'. The determination of the value of the  
 10 immovable property for the purposes of assessment of transfer fees is of little interest to the general public. The primary purpose sought to be served by the decision is the determination of the financial obligations of the applicant by way of transfer fees; a matter par excellence referable to the obligations of the applicant and not to the promotion of an objective of wider public interest.  
 15 In recognition of this juristic appreciation of the matter, the law confers a civil remedy to the party affected thereby, an appeal to the District Court under the provisions of s. 80 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224\*. There is no suggestion that the first proviso to s. 3(b)(iv) of the  
 20 Table to s. 3 providing for an appeal to the L.R.O. is unconstitutional for breach of the provisions of Art. 146.1. Assuming I am free to decide the jurisdictional aspect in the absence of a submission of unconstitutionality in view of the positive provisions of Art. 146.1 defining its jurisdiction I would,  
 25 for the reasons indicated in this judgment, unhesitatingly rule that the sub judge decision is outside the revisional jurisdiction of the Supreme Court.

In view of my decision, it would be unwise to probe the merits of the assessment, a course that might affect proceedings before  
 30 another judicial body assuming leave is granted to appeal out of time\*\*.

In the result the recourse is dismissed with no order as to costs.

*Recourse dismissed.*

*No order as to costs.*

\* Table to s. 3, Cap. 219, as amended by s. 2 of Law 66/79.

\*\* See *Immovable Property (Tenure, Registration and Valuation) Rules 1956 - Official Gazette. Supplement No 3, No. 622, p. 555.*