

1988 July 22

(A LOIZOU, P., MALACHTOS & KOURRIS, JJ)

MAROULLA ANT. GREGORIOU,

Appellant.

v.

ANASTASIA KAKOURI AND OTHERS,

Respondents.

(Criminal Appeal No. 4953).

5 *Streets and buildings — Building without a permit contrary to sections 3, 20, 20(3)(A) of the Streets and Buildings Regulation Law, Cap. 96 — Construction of a room — Demolition order — Whether there exists discretion not to make an order — As such a construction is not an infringement of minor importance nor a non-compliance with a condition of a building permit (The Improvement Board of Kaimakli v. Sevastides (1967) 2 C.L.R. 117), there is no such discretion.*

The facts of this case sufficiently appear in the hereinabove headnote.

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*Appeal allowed.
Demolition order issued.*

Cases referred to:

Ttofinis v. Theocharides and Another (1983) 2 C.L.R. 363;

Kallia v. Lambrou & Another (1985) 2 C.L.R. 217;

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Vine Products Board v. Touttoula (1982) 2 C.L.R. 112;

The Improvement Board of Kaimakli v. Sevastides (1967) 2 C.L.R. 117.

Appeal against sentence.

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Appeal against sentence by Maroulla Ant. Gregoriou against that part of the judgment of the District Court of Famagusta in Criminal Case No. 4/87 dated 4th November, 1987 (Arestis, D.J.) whereby the Court failed to make a demolition order against the

accused after having found them guilty of the offence of unlawfully erecting without a permit, part of a room contrary to sections 3, 20 and 20(3)(A) of the Streets and Buildings Regulation Law, Cap 96

G Pittadjis for the appellant

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Z Mylonas, for the respondents.

A LOIZOU P gave the following judgment of the Court The respondents were found guilty of the offence of unlawfully building, without a building permit part of a room contrary to sections 3, 20 20(3)(A) of the Streets and Buildings Regulation Law, Cap 96

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The facts of this appeal are sufficiently set out in the judgment of the trial Judge which are briefly these

The respondents between the 27th and 30th December 1986, constructed part of a room on the land of the appellant under Plot 1571 sheet/plan 33/54 in the village of Paralimni, which is adjacent to Plot 1395/1/2 which belongs to respondent No 1 and on which stands also part of the unfinished room in question The extent of the building on the property of the appellant is 13x27 feet The building in question consists of the outer walls of the room constructed of cement blocks without as yet having been plastered, and its roof made of wooden beams and asbestos sheets All these have been constructed by the respondents without a building permit, first obtained, from the appropriate Authority though an application had been submitted and was at the time being examined by the said Authority It may further be stated that he had concluded that Plot 1571, sheet/plan 33/54 in Paralimni is the property of the appellant, but that there existed an old room standing more or less on the same part of the plot which had been demolished, and which was inhabited and occupied for several years by respondents 2

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The proceedings were instituted by the appellant and the learned trial Judge examined the question whether proceedings of this nature under the Streets and Buildings Regulation Law could be instituted by an individual and concluded that they could rely for that on the cases of *Ttofiris v Loizos Theochandes and Another* (1983) 2 C L R 363 and *Xenia Kallia v Stelios Lambrou and Another* (1985) 2 C L R 217

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In considering whether an order of demolition should be made

or not, the learned trial Judge referred to the case of *Vine Products Board v. Touttola* (1982) 2 C.L.R. 112 where a review of the Case law of this Court until that date is made and a relevant passage from the judgment in the case of *The Improvement Board of Kaimakli v. Sevastides*, (1967) 2 C.L.R. 117, was adopted and followed by the Court. The said passage reads:-

«...But this change (the 1963 amendment of section 20) cannot be understood or applied in a manner frustrating the very purpose for which the Law exists; and for which the provision about a demolition order is contained in the statute. There may be cases where a demolition order need not be made; where for instance some condition in the permit has not been complied with, or there occurred an infringement of minor importance.»

The learned trial Judge interpreted the said passage as showing that there are instances where the Court may not order demolition of an unlawfully constructed building, and that the Court in the *Sevastides* case, indicatively referred to the two instances where an order could not be made. That is so, but it is with the application of the principle, to the facts of this case, that we are concerned here.

He then proceeded to say that he had in mind the particular facts of the present case and the claims that existed regarding the ownership of the land on which the subject building was built without a building permit and that there was pending a court action in which difficult questions of prescription were raised, and concluded that these facts justified him in exercising his discretion against ordering the demolition of the premises erected without a building permit having been issued under the relevant Law. He did not also impose any sentence but only ordered the payment of £40 against costs.

Learned counsel for the appellant has not pressed the appeal against the non-imposition of a monetary or other sentence in respect of the offence to which the respondents were found guilty but argued on the question of the non-making by the learned trial Judge of a demolition order.

The case law of this Court is clear. The erection, however, of a room is not an infringement of minor importance nor a non-compliance with a condition of the building permit issued. Had this Court accepted the application of the principles by the learned

trial Judge to the facts of this case, this might have amounted to empowering trial Courts to dispense, by the exercise of their discretion, with the necessity of prospective builders of obtaining building permits.

We, therefore, allow the appeal and hereby make an order that the premises in question be demolished within two months from to-day, unless a building permit from the appropriate Authority is obtained in the meantime. 5

The respondents to pay also £30.- against the costs of this appeal 10

Appeal allowed with £30.- costs against respondents.