

(1988)

1988 June 15

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

1. HOLY MONASTERY OF KYKKO,
2. AYIOS ANDRONIKOS DEVELOPMENT CO. LTD. .

*Applicants,*

v.

- THE REPUBLIC OF CYPRUS, THROUGH
1. THE COUNCIL OF MINISTERS,
  2. THE MINISTER OF INTERIOR,
  3. THE DIRECTOR OF THE DEPARTMENT OF LANDS AND SURVEYS,

*Respondents.*

(Case No.909/87).

*Acts or decisions in the sense of Art. 146.1 of the Constitution—Immovable property—Public roads—Alienation of—The Immovable Property (Tenure, Valuation and Registration) Law, Cap. 224, section 18, first proviso—An act in the domain of public law.*

*Immovable property—Public roads—They vest in the Government for the use of the public (Section 8 of Cap. 224)—A decision to alienate them (first proviso to section 18) affects the interest of the public—That is why it is in the domain of public law.* 5

*Immovable Property—Public Roads—The Immovable Property (Tenure Valuation and Registration) Law Cap. 224, first proviso to section 18—Whether Council of Ministers entitled to demand money consideration for the alienation of a public road—Question determined in the affirmative.* 10

*Words and phrases—"Alienation" in section 18 of the Immovable Property (Tenure, Valuation and Registration) Law, Cap. 224—Means any mode of passing immovable property by transfer from one person to another.* 15

The applicants 1 are the owners and applicants 2 the purchasers of immovable property. A permission to divide the property into building sites

was granted on condition of securing approval from the Council of Ministers for the abolition of public roads and footpaths situated within the lane. The Council of Ministers decided to transfer such roads and footpaths in the name of applicants 1, thereby abolishing their status as public roads and footpaths, but demanded £54,300.- in consideration therefor.

Hence this recourse.

The principles expounded and applied by the Court in this case appear sufficiently from the hereinabove headnote. In the light of such principle and of a further finding that, on the material before it, it was reasonable for the Council of Ministers to fix the price at £54,300, the Court dismissed the recourse.

*Recourse dismissed.*

*No order as to costs.*

*Cases referred to:*

*HjiKyriacou v. HjiApostolou and Others*, 3 R.S.C.C.89;

*Asproftas v. The Republic* (1973) 3 C.L.R. 366,;

*Valana v. The Republic*, 3 R.S.C.C.91;

*The Republic v. M.D. M. Estates Development Ltd.* (1982) 3 C.L.R. 642

*Charalambides v. The Republic* (1982) 3 C.L.R. 403;

*Chiratis v. The Republic* (1982) 3 C.L.R. 540;

*Tekkis v. The Republic* (1982) 3 C.L.R. 680,;

*Mahlouzarides v. The Republic* (1985) 3 C.L.R. 2342.

**Recourse.**

Recourse against the decision of the respondents demanding from applicants the payment of the amount of £54,300.- for the

grant and/or transfer to them of public roads and footpaths at K. Lakatamia and Engomi.

*G. Triantafyllides*, for the applicants.

*P. Clerides*, for the respondents.

*Cur. adv. vult.* 5

SAVVIDES J. read the following judgment. The present re-  
course is directed against the decision of the respondents con-  
tained in a letter dated 6th October, 1987, signed on behalf of the  
District Lands Officer, Nicosia, whereby the respondents have  
demanded from the applicants the payment of the amount of 10  
£54,300.- for the grant and/or transfer to them of public roads  
and footpaths at Kato Lakatamia and Engomi. The letter contain-  
ing the sub judice decision reads as follows:

"I refer to your application No.M.A.161/78 and wish to in-  
form you that the Council of Ministers approved the grant of 15  
the parts of public roads and footpaths marked in yellow, red  
and green on the attached plan, of a total extent of two decares  
(daa) and 393 sq. metres on payment of the sum of £54,300.-  
which represents the market value of the said parts of public  
roads and footpaths, on condition that they will be amalgamat- 20  
ed with the adjoining properties of the Monastery.

Therefore, you are requested, within sixty days from the  
date of posting of this letter, to deposit in the treasury of the  
District Lands Registry office the sum of £53,625.- (you have  
already deposited the sum of £675.- to the ex-Improvement 25  
Board of Lakatamia) as well as the sum of £3,397.50 for  
transfer fees, plans and survey."

It is the submission of the applicants that under the provisions  
of section 18 of Cap. 224 the respondents are not entitled to de- 30  
mand any money for the transfer of the said public roads and  
footpaths to the applicants.

The facts of the case are briefly as follows:

Applicants 1 are the registered owners of land at Kato Lakatamia and Engomi which is being divided into building sites pursuant to a division permit D386/73 issued by the appropriate authority.

Applicants 2 have purchased by contract of sale from applicants 1 the land in question. One of the conditions of the said permit for division requires the securing of the approval of the Council of Ministers for the abolition of public roads and footpaths situated within the land under division. The applicants in order to comply with the aforesaid condition applied to the Council of Ministers through the Director of Lands and Surveys for the cession to them of those parts of the public roads and footpaths which were situated within their land under division.

The Director of Lands and Surveys demanded certain amounts to be paid for the grant and/or transfer to the applicants of the said public roads and footpaths and as a result applicants filed recourse No. 191/82 challenging such decision. The Supreme Court decided in such recourse that because the decision of the Director of Lands & Surveys had not been ratified by the Council of Ministers the recourse was premature and dismissed it. (See, *Holy Monastery of Kykko v. The Republic* (1982) 3 C.L.R. 1080). Subsequently, the applicants by letter dated 6th December, 1982 directed to the Minister of Interior demanded from the Council of Ministers the abolition of the said public roads and footpaths. On the 8th March, 1983, respondent 3 informed the applicants by letter the contents of which read as follows:

"With reference to your application No.M.A. 161/78 for the abolition and grant to the Holy Monastery of Kykko of parts of public roads and footpaths at Kato Lakatamia, Engomi and Strovolos I am in the pleasant position to inform you that the valuation for the assessment of the value of the said public roads and footpaths has been completed.

2. Following a request from Mr. P. Manglis on behalf of Ayios Andronikos Development Co. Ltd. the question of grant of rights of use by the public over the pathway marked A-B and coloured red on the attached plan will be placed before the Ministry of Interior. The value of the rights of use by the public of this footpath amounts to £675.- This amount represents 10% of the value of the land which is assessed as a footpath at £1,064 mils per square foot. The extent of the footpath is one evlek and 2,745 sq. ft.

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3. You are requested within 60 days from the date of the posting of this letter to deposit with the treasury of the Improvement Board of Kato Lakatamia the aforesaid sum of £675.- and produce to this department the relevant receipt of payment.

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4. I wish to point out that the payment of the aforesaid amount does not in any way bind the government concerning the grant applied for or the amount of the market value of the rights of use by the public over the said footpath as the approval or rejection of your application as well as the approval of the amount of the market value are within the exclusive jurisdiction of the Council of Ministers."

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The applicants in compliance with the aforesaid request paid the amount of £675.- to the Improvement Board of Kato Lakatamia.

On 6th October, 1987 the respondent having finally decided on the applicants' request informed them by letter to the contents of which reference has already been made, that for the abolition of the said public roads and footpaths and their grant to the applicants, the amount of £54,300.- was claimed.

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Counsel for applicants by his written address based his argument mainly on two alternative grounds. It was his submission that the fate of this recourse depends solely on the interpretation of the provisions of s.18 of the Immovable Property (Tenure,

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Registration and Valuation) Law, Cap. 224. His contention was that no power is vested with the Council of Ministers under s.18 to alienate any public road or part thereof by sale of same but only for the purposes provided under s.18 which do not embody power of disposition by sale.

His alternative submission was that in any event the amount demanded by the respondents for the abolition of the public roads and footpaths in question is excessive and unreasonable and cannot be supported by the facts of the case.

10 Counsel for the respondents, on the other hand, both by his opposition and his written address, raised a preliminary objection that the sub judge decision does not fall within the domain of public law but within the domain of private law as it concerns the management of private property of the State. He further contended that the sub judge decision was properly taken and it was within the provisions of the law and that by reading s.18 as a whole nothing can be inferred to the effect that any restriction is imposed on the respondents preventing them from claiming any compensation for the grant of a road or part thereof to an individual.

20 I shall deal first with the preliminary objection raised by counsel for respondents.

Public roads vest in the Government for the use of the public by virtue of the provisions of s.8 of Cap. 224. They are not property in the nature of private ownership as it is a building or a plot of land registered in the name of the Republic, the dealing with which may bring it within the field of private law. Public roads are registered as such and there is a right vested in the public in general to make use and enjoyment of same.

30 The authorities cited by learned counsel for the respondent in his address and in particular *HadjiKyriacou v. Hadjiapostolou and Others*, 3 R.S.C.C. 89, *Asproftas v. The Republic* (1973) 3 C.L.R. 366, *Valana v. The Republic*, 3 R.S.C.C. 91, *The Re-*

*public v. M.D.M. Estates Development Ltd.* (1982) 3 C.L.R. 642; *Charalambides v. The Republic* (1982) 3 C.L.R. 403, *Chiratis v. The Republic* (1982) 3 C.L.R. 540, *Tekkis v. The Republic* (1982) 3 C.L.R. 680; *Mahlouzarides v. The Republic* (1985) 3 C.L.R. 2342, have no bearing in the present case as all those cases concern either boundary disputes as to private property, reserve price for the sale of private land under a compulsory sale by the Lands Office, lease of immovable property, encroachment of immovable property by the Republic, claims over hali-land. A common factor in all the above cases was that the preliminary purpose of such acts or decisions was that regulation of the private rights of the citizens were involved and the public had no interest in the said acts or decisions.

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In the present case we are not concerned with a regulation of private rights and disputes over private property but with public roads which though belonging to the Republic nevertheless their existence is for the benefit of the public, and the right of enjoyment of the public at large is affected by a decision of the Republic to alienate such public roads in addition to any right of any private individual. I therefore, have come to the conclusion that the present case falls within the domain of public law and as such is amenable by a recourse as it happened in the present case.

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Having dealt with the preliminary objection I come now to consider the legal grounds raised by counsel for the applicants.

In arguing his legal ground based on s.18 counsel for applicants submitted that s.18 of Cap. 224 empowers the Governor, now the Council of Ministers, to grant, lease, exchange or otherwise alienate any immovable property vested in the Republic for any purpose and on such terms and conditions as the Council of Ministers may deem fit. This general power of the Council of Ministers applies to all imovable property vested in the Republic with the exception of public roads and foreshore, for which there are special provisions in s.18 of Cap.224.

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Under the first proviso the Council of Ministers may exchange

or alienate any part of a public road, provided they are satisfied that other adequate public road has been provided in the place thereof or that such exchange or alienation will improve such public road. It was counsel's contention that for the alienation of any part of a public road one of these two conditions should be satisfied and the alienation should be made gratis as no power is vested in the Council of Ministers to impose any other term or condition such as the payment of money.

S. 18 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224 reads as follows:

"18. The Council of Ministers may grant, lease, exchange or otherwise alienate any Crown property or immovable property vested in the Crown by virtue of the provisions of this Law, other than a public road or the foreshore, for any purpose and on such terms and conditions as they may deem fit:

Provided that the Council of Ministers may exchange or alienate any part of any public road if satisfied that other adequate public road has been provided in the place thereof or that such exchange or alienation will improve such public road:

Provided also that the Council of Ministers may lease any part of the foreshore for the purposes of harbours, jetties, piers, wharves, fisheries and any other purpose of public utility subject to such conditions as he may think fit."

Having carefully perused the provisions of the above section I find myself unable to accept the submission of counsel for applicant concerning the interpretation of s.18. The proviso to s.18 does not in any way restrict the general power of the Republic to claim any monetary compensation for the grant of any immovable property vested in it by virtue of the provisions of the law. It clearly empowers the Council of Ministers to exchange or alienate any part of any public road subject, however, to the satisfaction of additional conditions in the interest of the public than in the case of alienation of any other immovable property, such addi-



tional conditions being that other adequate public road has been provided in the place thereof or that such exchange or alienation will improve such public road.

The word "alienation" of immovable property mentioned in the proviso means, according to its definition every mode of passing 5  
realty by transfer from one person to another whether effected by sale, gift, marriage settlement, or other transmission of property by the mutual consent of the parties (see, Blacks Law Dictionary, 6th ed., p.66, Words and Phrases Legally Defined, 2nd ed., vol. I, p.66, Strouds Judicial Dictionary, 4th ed., vol. 1, p.106). 10  
Therefore, I have come to the conclusion that it was within the powers of the Council of Ministers to proceed with the alienation of the said parts of the roads and footpaths having been satisfied that the prerequisites of the proviso to s.18 have been complied with and claim any money in respect of their value from the person in whose name such roads are being transferred. 15

I come next to the alternative submission of counsel for applicants in that the amount claimed by the respondents is excessive and unreasonable.

It was counsel's submission that by virtue of the letter dated 20  
8th March, 1983, of the Director of the Department of Lands & Surveys addressed to the applicants the value of the land should be assessed on the basis of the deprivation of its use by the public which according to the said letter represents 10% of the value of the land. 25

I find myself unable to agree with the submission of counsel for applicants. In the letter of the 8th March, 1983, a distinction is drawn between two factors: The one was the abandonment by the public of the right of use of the said path and the other was the value of the land corresponding to the pathway and it was made clear to the applicants under paragraph 2 that they had to pay compensation of 10% of the value of the land as representing the right of use by the public and in paragraph 4 it is clearly stated that this does not prejudice any decision of the Council of Minis- 30

ters as to the value of the land itself.

5 The respondents in taking their decision as to the value of the land relied on a valuation carried out by the Department of Lands & Surveys. The applicants have not called any evidence that the valuation of the Department of Lands & Surveys was wrong or excessive. In the absence of any evidence to the contrary I find that it was reasonably open to the Council of Ministers to take the sub judge decision.

10 In the result the recourse is hereby dismissed but in the circumstances I make no order as to costs.

*Recourse dismissed.  
No order as to costs.*