

(1988)

1988 August 8

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHRISTODOULOS G. GIORGALLIDES,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE IMPROVEMENT BOARD OF YERMASOYIA,

*Respondent.*

*(Case No. 152/84).*

*Executory act—Informative or advisory act—Opinion expressed by an administrative organ in response to a request by applicant—It is not of an executory nature.*

The present recourse was dismissed on the ground that it was not directed against an executory act, but only against an advisory act.

5

*Recourse dismissed.  
No order as to costs.*

*Cases referred to:*

*HadjiPanayi v. Municipal Committee of Nicosia* (1974) 3 C.L.R. 366;

*Florides v. The Republic* (1979) 3 C.L.R. 37;

10

*Yiangou v. The Republic* (1987) 3 C.L.R. 27.

**Recourse.**

Recourse against the decision of the respondent, whereby applicant was informed that Regulation 64 of the Streets and Buildings Regulations could not be applied in his case.

5 *E. Theodoulou*, for the applicant.

*G. Cacoyannis*, for the respondent

*Cur. adv. vult.*

10 DEMETRIADES J. read the following judgment. By his recourse the applicant challenges the decision of the Acting District Officer of Limassol, dated the 16th January, 1984, by which he was informed that Regulation 64 of the Streets and Buildings Regulations could not be applied in his case.

15 The applicant who is the owner of a plot of land situated at Yermassoyia, in the District of Limassol, addressed, on the 3rd April, 1981, through his advocate, a letter to the District Officer of Limassol, by which he requested his opinion as to whether his client could proceed with the development of his said property in view of the fact that the property's only access to a public road was a registered right of way of a width of only nine feet. To this  
20 letter the applicant's advocate appended draft plans of the intended development of his client's property.

25 By letter dated the 24th August, 1981, the District Officer informed the applicant's advocate that the right of way referred to in the title of the property could not be considered as a satisfactory access for a construction development of the size intended by the applicant.

30 On the 15th September, 1981, applicant's counsel addressed another letter to the District Officer, drawing his attention to Regulation 64, under the provisions of which the District Officer is given the right to dispense with the requirements of any Regula-

tion if he deems it fit in the circumstances of any particular case, and requested that the District Officer exercised his power under that Regulation in favour of the applicant.

The District Officer, after obtaining the opinion of the respondent's legal adviser and the views of the Department of Town Planning and Housing, replied by letter dated the 27th March, 1982, that he could not apply Regulation 64 in view of the provisions of Regulation 15B. 5

A number of letters were after that exchanged between the applicant's advocate and the District Officer on the subject of whether the District Officer should exercise his discretion under Regulation 64 in favour of the applicant. The District Officer, however, maintained his stand on the matter. 10

The applicant then filed the present recourse which was opposed by the respondents on the grounds, amongst others, that the sub judge decision is not an executory one and that the recourse in any event was filed out of the time limit provided by Article 146 of the Constitution. Their objections were heard as a preliminary point in view of the fact that they might dispose of the case. 15 20

On the preliminary point raised counsel for the respondents argued that the sub judge decision was of an advisory or informative character and that it was not, therefore, executory. He further argued that the decision of the respondents, which is challenged by this recourse, is out of time in that it is confirmatory of a previous one. 25

Counsel for the applicant in reply argued that the sub judge decision is an executory one as the interests of the applicant were affected through the wrong exercise of the discretion of the District Officer. 30

Having considered the contents of the file of the administration and the wording both of the letters addressed to the administration

by counsel for the applicant, as well as the letters addressed to applicant's counsel, I have come to the conclusion that what the applicant sought by his letters which he addressed to the District Officer was his views or the intention of the administration regarding the development of his property.

It has repeatedly been held by the Supreme Court that opinions expressed by an administrative body to a request submitted to it on a particular matter do not amount to executory acts but that any opinion expressed on such matter is only of an informatory or advisory nature. In this respect see *HadjiPanayi v. Municipal Committee of Nicosia*, (1974) 3 C.L.R. 366; *Florides v. The Republic*, (1979) 3 C.L.R. 37; *Yiangou v. The Republic*, (1987) 3 C.L.R. 27.

In the light of the above, I find that the alleged sub judge decision does not amount to an executory one but is of an informatory and/or an advisory nature and that it merely expressed the intention of the administration as regards the future submission by the applicant of an application for a building permit in the manner proposed by him. That the District Officer was expressing his own views is also in my mind strengthened by the fact that he did not sign the sub judge letter in his capacity as Chairman of the respondent Board, nor is there in the file of the administration a decision of the Board dismissing the applicant's application.

In the light of the above I find that the applicant's recourse was prematurely filed and must be dismissed with costs.

In views of my above finding, I consider that it is not necessary for me to deal with the issue of whether the recourse was filed out of the time envisaged by Article 146 of the Constitution.

Recourse dismissed with costs against the applicant. Costs to be assessed by the Registrar.

*Recourse dismissed  
with costs against applicant.*