

(1988)

1988 August 31

[A. LOIZOU, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GLAVKOS D. HADJIMITSIS,

Applicant,

v.

THE IMPROVEMENT BOARD OF YEROSKIPOU,

Respondents.

(Case No. 875/85).

Competency—Lack of—Ground for annulment.

Streets and Buildings—Building permit—The Streets and Buildings Regulation Law, Cap. 96, section 3(2)(b)—Power vested in the Board of an Improvement Board—Its Chairman (The District Officer), as such, has no competency in the matter—In the absence of provisions relating to delegation, the power could not be delegated to such chairman.

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Delegation—Of administrative statutory powers—In the absence of provision allowing it, it is not permissible.

The facts of this case appear sufficiently in the Judgment of the Court.

Sub judice decision annulled.

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No order as to costs.

Recourse.

Recourse against the refusal of the respondents to renew applicant's building permit No. 0875 dated 7th June, 1985.

K. Talarides, for the applicant.

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K. Chrysostomides with A. Taliadoros, for the respondents.

Cur. adv. vult.

A. LOIZOU P. read the following judgment. By the present recourse the applicant seeks the following reliefs:

5 (a) A declaration of the Court that the refusal of the respondent Board to renew his building permit No. 0875, dated the 7th June, 1985, is null and void and with no legal effect, and,

(b) A declaration of the Court that the omission of the respondent Board to renew the said building permit is null and void and
10 with no legal effect, and that what was omitted ought to be done.

I took over the hearing of this recourse on the 19th March 1988, in view of the impending retirement of the then learned President of this Court H. H. Triantafyllides, who until then was handling same.

15 The facts are briefly these: The applicant had secured on the 7th June 1984, the building permit in question which provided for "Extension of a registered house, (shop with a mezzanine and covered space on the ground floor and one flat of one bed-room in accordance with the approved plans and static calculations)".

20 According to the plans submitted by the applicant and approved by the respondent Board as the appropriate Authority for the area in question, under the Streets and Buildings Regulation Law, Cap. 96, the applicant could extend the existing approved building preserving the walls of the old building so that the extension
25 of the said building would be in accordance with the building permit issued. By the preservation of the walls of the old building there would not have been taken part of the property of the applicant and be ceded to the public road and that was according to the respondent Board the reason why the applicant wanted to pre-
30 serve the said walls.

During the period between the 15th November 1984 and 14th December 1984, a substantial part of the said walls estimated by the respondent Board to be 52% of the whole wall that was to be preserved or as accepted by the architect of the applicant 50% of it, was demolished, contrary to the permit and the approved plans. This was done in such a manner, it was claimed by the respondent Board, that there was necessary the submission of a new application on behalf of the applicant for the issue of a new building permit. 5

After the demolition of the said wall, the respondent Board by letter dated the 14th December 1984, asked the applicant and his building contractor to stop all building works as they were constructing a building contrary to the conditions of the permit. On the 15th December 1984, a Criminal case under No. 7738/84 was filed against the applicant and his contractor in the District Court of Paphos. 10 15

The applicant by letter dated the 19th December 1984, addressed to the respondent Board, informed them that the demolition of the wall was made without their knowledge by a third person engaged by the contractor of the applicant and attached thereto a statement of the said person that he had demolished it by mistake and that he was undertaking to rebuild same. 20

The respondent Board by letter dated the 5th February 1985, informed the applicant that the appropriate Authority decided:

(a) To dismiss the application for rebuilding of the demolished wall, and, 25

(b) The re-examination of the whole matter after the submission of a new application for securing a building permit for the specific building works which he intended to carry out in his plot. 30

On or about the 2nd June 1985, the applicant started the construction of the building on the said plot of land by digging pits

and filling them with concrete and placing pillars as a result of which Criminal case No. 2685/85 was filed against him and his contractor charging them (a) with the construction of a building without a permit and (b) with the construction of a building, contrary to the conditions of the building permit. (This case is still pending in the District Court of Paphos).

The applicant by letter dated the 4th June, 1984, asked the renewal of his building permit. On the 12th August 1985, the following letter was addressed to the applicant by the Chairman of the respondent Board signed obviously by the District Inspector on his behalf:

"I refer to your letter dated 4th June, 1985, by which you ask renewal of your building permit under No. 875, dated 7th June, 1984, and I inform you the following:

2. As it has already been mentioned in two previous letters with the same number as aforesaid and dated 14th December 1984, and 5th February 1985, respectively, after the demolition of the basic walls of the building which was not provided by the approved plans, the significance of the issued permit which provided for extension of the existing building stopped existing and consequently there is no question of renewal of your old permit, but of the issue of a new one and so there has started the study by the various Advisory Departments involved, to give you the appropriate advice as regards the plans which must be submitted together with a new application for the issue of a new permit."

It is the case for the applicant that the sub judice decision was taken by an organ having no competence in the matter, namely the District Officer, and not by the Improvement Board of Yeroskipou which, in accordance with Section 3 (2) (b) of the Streets and Buildings Regulation Law, Cap. 96, is the appropriate Authority for the purposes of the said Law. The relevant facts which appear in the file Exhibit "X", and are related extensively in the address of learned counsel for the applicant may be summed up as fol-

lows:

At the meeting of the respondent Board of the 2nd May, 1985, the study of the whole question of the building permit of the applicant, was postponed until the Lands and Surveys Department made a valuation of the property of the applicant for the purposes of compulsory acquisition. After the submission by the applicant of his application of the 4th June 1985 (blue 40 Exhibit "X"), for renewal of his building permit, the District Officer asked the views of the Department of Town Planning and Housing (Note 19, in Exhibit "X") for consideration at the "future meeting of the Council which was to take place on the 24th June 1985". The views of the said department were given as per minute, Note 20, in Exhibit "X", dated 24th June, 1985, but the respondent Board did not meet on that date. From Note 21, it appears that the District Officer, gave instructions to bring up the case at the next meeting of the respondent Board for a decision to be taken, provided the valuation of the District Lands Office was by then available. The said valuation, however, as it appears from K. 43, it was sent to the District Officer on the 9th September and the next meeting of the Board took place on the 7th October.

According to the minutes of the respondent Board of that meeting (Blue 44 Exhibit "X"), "the letter of the District Lands Officer (K. 43), was placed before the local members and in accordance with it the market value of the property of Mr. Hadjimitsis under plot No. 261/1 sheet/plan 51/12 village of Yeroskipou, amounts to the sum of £5,580.- For purposes of public interest, that is the widening of the public road for the creation of a parking space it was decided unanimously that the applicant be informed that his application for renewal of the issued building permit was refused and that at the same time there was taken a unanimous decision to move the procedure for compulsory acquisition of the aforesaid plot."

The said entry of the minutes is headed, Application of Glafkos Diofantou Hadjimitsi (B) 635/83 and 133/2/3. This is indeed the application of the applicant dated 4th June, 1985.

I have not been able to trace whether the said decision was communicated to the applicant but it is clear from the contents of the written address of his counsel filed on the 21st June 1986, that same came to the applicant's knowledge, at least, through his
5 counsel perusing the files of the respondent Board and preparing the said address some time prior to its filing on the 21st June 1986. It is also clear that the recourse was filed on the 10th October 1985, and challenges, as already seen, in the prayer for relief, the letter of the Chairman of the Board, dated 7th June, 1985,
10 which was not the result of any meeting of the respondent Board, at which it considered the applicant's application of the 4th June 1985, already referred to above. It was therefore a decision taken by an organ having no competence in the matter as the competence under the Streets and Buildings Regulation Law, Cap. 96,
15 section 3(2)(b), was vested in the Board as such and could not be transferred to its Chairman once there did not exist express legislative authorisation for such course.

Lack of competence constitutes a ground of annulment of the challenged act. The recourse therefore succeeds as regards prayer
20 (a) of the reliefs sought on this ground and I need not examine the remaining grounds. The sub judice decision of the 7th June, 1985, challenged is therefore annulled.

As regards relief (b), namely for a declaration of the Court that the omission of the respondent Board to renew the said building
25 permit of the applicant is null and void and with no legal effect, and that what was omitted ought to be done, same cannot be granted as any omission, if there was one, was remedied by the decision of the respondent Board of the 7th October 1985, referred to earlier in this recourse, whereby the application for such
30 renewal was refused indeed, even before the filing of the present recourse.

In the result the recourse succeeds as regards relief (a) but fails as regards relief (b). In the circumstances there will be no order as to costs.

35 *Sub judice decision partly annulled. No order as to costs.*