1988 November 30

[CHRYSOSTOMIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MELOUNDA DEVELOPMENT LTD AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE IMPROVEMENT BOARD OF PISSOURI,
2. THE COUNCIL OF MINISTERS,

Respondents.

(Cases Nos. 404/86, 405/86, 406/86).

Legitimate interest—The Streets and Buildings Regulation Law, Cap. 96—Zones imposed under section 14(1) increased the building ratio permitted under the replaced zones, but imposed other building restrictions—In the absence of expert evidence that such restrictions are neutralized by the increase in the building ratio, the Court cannot make a finding that the applicants will not benefit from the annulment.

Legitimate interest—The applicants have no such interest, if the annulment will not benefit them—Savvides v. P.S.C. (1983) 3 C.L.R. 1749.

Constitutional Law—Right to property—Constitution, Art. 23.2 and Art. 23.3—Deprivation, restrictions—The Streets and Buildings Regulation Law, Cap. 96, section 14(1)—Zones—In the circumstances of this case they amounted to mere restrictions of the right to property—Preference to caselaw of this Court.

Natural Justice—Right to be heard—Whether it exists in case and prior to the imposition of a zone under section 14(1) of the Streets and Buildings Regulation Law, Cap. 96—Question determined in the negative.

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

Recourses dismissed.
No order as to costs.

Case referred to:

Savvides v. P.S.C. (1985) 3 C.L.R. 1749;

Manglis and Others v. The Republic (1984) 3 C.L.R. 351;

Simonis & Another v. The Improvement Board of Latsia (1984) 3 C.L.R. 109;

Bluewave Projects Ltd. v. The Republic (1985) 3 C.L.R. 2522;

Demetriou and Another v. District Officer Paphos (1985) 3 C.L.R. 2530;

HadjiLouca v. The Republic (1969) 3 C.L.R. 570;

Constantinou v. The Republic (1972) 3 C.L.R. 116;

The Cooperative Store Famagusta Ltd. v. The Republic (1974) 3 C.L.R. 295;

Papoutsos v. The Municipality of Limassol (1982) 3 C.L.R. 893.

Recourses.

Recourses against the decision of the respondents to amend the zones defined in 1980 in respect of Pissouri village.

Th. Ioannides, for the applicants.

Y. Potamitis, for respondent 1.

N. Charalambous, Senior Counsel of the Republic, for respondent 2.

Cur. adv. vult.

CHRYSOSTOMIS J. read the following judgment. The applicants by means of the present recourses, which were heard to-

gether as they present common questions of Law and fact and they attack the same administrative act, seek a declaration that Notification No. 89/86 published in supplement III (I) to the Official Gazette No. 2133 of 11th April 1986, under Section 14 (1) of the Streets and Buildings Regulation Law Cap. 96 (as amended by Laws 14/59, 67/63, 6/64, 65/64, 12/69, 38/69, 13/74, 28/74, 24/78, 25/79, 80/82 and 15/83), is null and void and of no legal effect whatsoever.

The applicants are the owners and/or co-owners and/or the persons entitled to be registered as owners, of various plots of land of a total extent of more than 150 donums situated at Pissouri village within the area of the Improvement Board of Pissouri, respondents 1. More details as regards these plots of land are referred to in the opposition of every case, as well as in the certificates of search attached thereto (schedule C).

Respondents 1 were appointed pursuant to the second proviso of Section 3(2) (b) of the Streets and Buildings Regulation Law Cap. 96 (as amended), as the appropriate authority authorised under Section 14(1) to define planning zones within the area of the Improvement Board of Pissouri. Such zones were initially defined in 1980 and the said property of the applicants was included in those zones.

Following the said zoning, respondents 1, in exercising their powers, granted to them by Section 14, sub-section (1) of the Streets and Buildings Regulation Law, on 21.1.86, decided the amendment of the said zones, pursuant to the relevant plans of the Town Planning and Housing Department and authorised the chairman of the Board to send the relevant plans for approval by the Council of Ministers and subsequent publication of the sub judice Notification in the Official Gazette.

The reasons for such an amendment were the protection of the environment, the preservation of the character and colour of the village and of the scenery, the regulation of future development and the promotion of tourism.

It is further stated in the opposition, that respondents 1, with their sub judice decision, improved the building ratio of the previous zones Γ(1) and Z from 0.15:1 and 0.05:1, respectively, to 0.20:1 as regards the new zone Γ(2) and to 0.08:1 as regards the zone Z(1), respectively. They also increased the building ratio of zones Δ(1) and Δ(2) from 0.05:1 to 0.08:1.

It is pertinent to say at this stage, that the property of the petitioners in Recourse No. 704/86 was previously within zone Z whereas now within zone Γ(1). The property of the applicants in Recourse No. 405/86 was previously within zone Z whereas now within zone Z(1). As regards the property of the applicants in Recourse No. 406/86, only two plots are affected, that is, plots 6/1 and 468, which were previously within zone Z whereas now they are within zone Z(1). The other three plots remain in zone Δ(2).

As a result of the sub judice notification, the applicants filed the present recourses and they complain that the restrictions imposed by the new zones amount to a deprivation of their right of property, contrary to Article 23.2 of the Constitution and that the value of their property has substantially diminished. They, further, complain that the respondents failed to take into consideration the said property as a whole and that the applicants intended to develop it as a whole for tourist and housing purposes and thus they included same in different zones.

The grounds of Law, on which these recourses are based, can be summarised as follows:

(1) The sub judice notification is not the act of respondents 1 and at any rate the relevant decision was taken in the absence and with no knowledge of the Board.

(2) The respondents acted in contravention of the rules of natural justice, in that they failed to call the applicants to be heard or to give them the chance to defend their rights.

(3) The respondents acted under a misconception of fact.

(4) The sub judice notification contravenes and it is ultra vires Article 23 of the Constitution.

(5) The sub judice notification is based on a defective reasoning.

(6) The respondents exercised their discretion wrongly.

On behalf of the respondents, a preliminary objection was raised to the effect that the applicants have no legitimate interest in that if they succeed and the sub judice notification is annulled, they will not be benefited from such an annulment as, in such a case, the previous zones will come into force, which provide for a lower building ratio than that of the new zones. Relevant on this issue is the case of *Savvides v. P.S.C.* (1985) 3 C.L.R. 1749, where at p. 1754 the following was said:

> "In the conclusions from the Case Law of the Greek Council of State (1929-1959) it is stated, at p. 260 (e) that there is no legitimate interest if the annulment of the act in question will not benefit the applicant. The same view is also adopted by Dactoglou 'General Administrative Law', vol. C, p. 228, where it is stated that an applicant has no legitimate interest in cases where the matters in issue are only of theoretical significance, that is, where, even if the claim of the applicant is accepted, the interest which he is relying on cannot be satisfied, or his position will not be improved."

Learned counsel for the applicants, on the other hand, argued, inter alia, that as regards zone F(1), although the building ratio was increased, nevertheless other building restrictions were imposed which relate to the area to be covered and the number of storeys, the net result being that the value of their land in view of these restrictions, has substantially increased in value. He also argued that the sub judice decision is unconstitutional.

I had the opportunity to compare the restrictions imposed by

the previous zones and those by the new zones and it is a fact that although the new zone Γ(1) increases the building ratio, nevertheless it imposes other restrcictions, among which those cited by learned counsel for the applicants, which were not imposed by the previous zone Γ. The same can be said for the new zone Z(1) compared with the previous zone Z. Plots 291, 74/2 and 74/3 of the applicants, in Recourse No. 406/86, remained in the same zone Δ(2).

In the light of the aforementioned diffentiation in building restrictions imposed by the new zones, I find myself unable, in the absence of expert evidence, to make a finding that the increased building ratio introduced by the new zones, is a sufficient factor neutralizing the other restrictions imposed and that the applicants will not be benefited from such an annulment. For these reasons, I have arrived at the conclusion that the preliminary objection of the respondents cannot stand.

Proceeding to the substance of the cases and having considered all the contentions of learned counsel for the applicants, I find no merit in any of them. As I have already stated, respondents 1, pursuant to the provisions of Section 3(2) (b) of Cap.96, as amended, are the appropriate authority having the powers provided by Section 14(1) of the same Law. Thus with the approval of the Council of Ministers they are empowered to define zones within which to impose building restrictions specified by the said Law. The restrictions imposed by the said zones as above described, are, therefore, permissible by the said Law and Article 23.3 of the Constitution and they did not deprive the applicants of their property, contrary to Article 23.2 of the Constitution.

The Full Bench of this Court had the opportunity to deal with the building restrictions imposed by the definition of zones by appropriate authorities under Section 14(1) of the Law in the case of *Manglis* and *Others v. The Republic* (1984) 3 C.L.R. 351. Triantafyllides P., delivered the judgment of the Court, Hadjianastassiou J. dissenting, and he had this to say at pp. 360-361:

"As regards the issue of the constitutionality of Notices 116 and 117, which were published under section 14, above, there should be stressed, mainly, the following:-

(a) They involve restrictions or limitations of the execrise of the right of property, imposed by law, in the interest of town and country planning and for the development and utilization of properties to the promotion of the public benefit, in the sense of Article 23.3 of the Constitution (see, also, the *Loiziana* case, supra)

(b) They make detailed provisions for putting into effect restrictions or limitations of the right of property within the framework laid down by a Law - in this instance section 14 of Cap. 96 - and they are, therefore, within the requirements of constitutionality which were expounded in *Police v. Hondrou*, 3 R.S.C.C. 82, 85 - 86.

(c) The restrictions or limitations imposed by means of the two Notices in question are not so patently unreasonable or arbitrary as to be treated as having exceeded the limits of the relevant discretionary powers; and, once this is so, it is not within the competence of this Court to embark on an evaluation of the correctness of such Notices from the scientific point of view.

(d) The sanctity of the right of property, to the extent to which such right is constitutionally protected by means of Article 23 of the Constitution, is not violated by the said Notices because:-

(i) In any individual case in which the restrictions or limitations imposed by them materially decrease the economic value of the affected property the owner of such property is entitled to compensation under Article 23.3.

(ii) In any individual case in which the said restrictions or limitations entail such drastic consequences that they amount in

effect to 'deprivation', in the sense of paragraphs (2) and (4) of Article 23, then the operation, to that extent, of the sub judice Notices 116 and 117 has to be treated as being unconstitutional (see, inter alia, in this connection, the case of *The Holy See of Kitium v. The Municipal Council of Limassol,* 1 R.S.C.C. 15, 28)."

The matter of restrictions and limitations was also analysed by Pikis J. , in the case of *Simonis & Another v. The Improvement Board of Latsia* (1984) 3 C.L.R. 109, where it was found that it was within the powers of the appropriate authority to suggest alterations for the creation of a satisfactory net-work of roads, when the owners applied for a permit for the division of their land into building sites. Furthermore, the appropriate authority was found to be entilted to condition the grant of such a permit on the cession of part of the land to the public for environmental purposes. In both cases the act of the appropriate authority was considered not to be an act of deprivation and that it amounted to imposition of conditions for the development of the land. At pp. 115 and 116, Pikis J. , had this to say:

"... To deprive means to take away a right or thing, whereas to limit means to curtail or cut down a right or thing. If the curtailment is so extensive as to virtually obliterate the right or thing, it can properly be regarded as an act of deprivation; otherwise it is a limitation. The two concepts were seen in this light by the Supreme Constitutional Court in the case of *Holy See of Kitium v The Municipal Council of Limassol*, 1 R.S.C.C.15. Whether a given restriction or limitation to the use of property is so extensive as to amount to an act of deprivation is a matter of fact and degree.

If it constitutes an act of deprivation it cannot be imposed in any way other than by compulsorily acquiring the property. Equally clear is that limitations may be imposed to the use and enjoyment of property without resort to compulsory acquisition. In the case of limitation of rights the remedy of the owner, provided he suffers loss, is one for damages.

.....

In my judgment the imposition of conditions for the development of land involving cession of land to the public for environmental purposes is not an act of deprivation. It could only be regarded as an act of deprivation if the owner of land had an unrestricted vested right for its use in any manner he chose, taking the form in this case, of a right to develop it into the biggest possible number of building sites. No such right vests in the owners of land. If that were the case, the creation of proper environmental conditions would be left to the discretion of the owners of land. So far as I know, this is not the case in any civilized country. And Article 23.3 specifically envisages restrictions or limitations in the interests of town and country planning. The development of an area, urban as well as rural, is very much a corporate matter that concerns the community as a whole. It affects the quality of life of everyone using the area as well as the amenity of all those residing therein. Acknowledgement of a vested right to developing immovable property at the option of the owner would be catastrophic for town and country planning. The matter of restrictions and limitations was approached in a similar vein as in Kirzis in two subsequent decisions of the Supreme Court, namely, *Thymopoullos and Others v. Municipal Committee of Nicosia,* (1967) 3 C.L.R. 588, and *Sofroniou and Others v. Municipality of Nicosia and Others*, (1976) 3 C.L.R. 124."

The same course was followed by A. Loizou J. as he then was, in the case of *Bluewave Projects Ltd v. The Republic* (1985) 3 C.L.R. 2522 and in *Demetriou and Another v. District Officer Paphos* (1985) 3 C.L.R. 2530.

In those cases zone restrictions were imposed such as those limiting the number of storeys up to two, the building ratio to 0.05:1 or 0.08:1, the height to 27 feet and even further they excluded the erection of certain kinds of buildings. Such restrictions were found not to amount to the deprivation of the applicants' right to property, contrary to Article 23.2 of the Constitution and

that the said restrictions were justified under Article 23.3.

In the light of the above decisions, which I adopt, I have considered the restrictions imposed by the new zones and the facts and circumstances of the cases under consideration and I have arrived at the conclusion that these restrictions are similar to those that were considered in the aforementioned cases. I have, therefore, no difficulty in arriving at the conclusion that, as regards the present recourses, the restrictions imposed do not amount to deprivation but to a limitation or restriction within the ambit of Article 23.3.

The applicants have also failed to establish misconception of fact. The respondents in arriving at their decision to define new zones, have taken into consideration the factors aforementioned which are specified by the said Law, Cap. 96, as amended. Furthermore, it is stated in the opposition that respondents 1, deemed proper to expand the housing zone so as to offer to more inhabitans of their community, the possibility to solve their personal and family housing problems. At the same time they deemed proper to improve the possibilities of use of additional land for investment purposes and to improve the building ratio of existing zones. Therefore, the respondents have considered all relevant factors and their decision and the subsequent sub judice notification is the result of a proper exercise of their discretion. Obviously, the plans for the development of an area, urban as well as rural, that concerns the community as a whole, cannot be altered at the instance of an owner for the purpose of safeguarding his interest. Therefore, the contentions of the applicants that their future plans for development should have been taken into consideration cannot stand.

Also the contention of the applicants to the effect that the sub judice notification is not the result of the decision of respondents 1 is untenable, as from the material before me, to which I have already referred, it is abundantly clear that respondents 1, as the appropriate authority and nobody else, decided to define the new zones and to proceed with the publication of the sub judice notifi-

cation. (Vide in particular appendix A to the opposition of every case.)

Lastly, the complaint of the applicants, that the respondents acted in contravention of the rules of natural justice, as they failed to call them to be heard before taking their decision, again it is untenable, as in view of the nature of the decision taken and the subsequent sub judice notification, such a course in the absence of any legislative provision for the purpose, was not necessary to be followed. (Vide *HadjiLouca v. The Republic* (1969) 3 C.L.R. 570 at pp. 574, 575; *Constantinou v. The Republic* (1972) 3 C.L.R. 116 at pp. 125, 126; *The Cooperative Store Famagusta Ltd v. The Republic* (1974) 3 C.L.R. 295 at p. 302; *Papoutsos v. The Municipality of Limassol* (1982) 3 C.L.R. 893 at p. 903).

For all the above reasons I find that the decision of respondents 1 and the consequent sub judice notification are valid and in accordance with the Constitution. The recourses, therefore, fail and are hereby dismissed. There will be no order as to costs.

Recourses dismissed.
No order as to costs.