

(1988)

1988 February 12

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NICOS GEORGHIOU KASSOS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE DISTRICT OFFICER NICOSIA,

Respondent.

(Case No. 172/85).

Wells—The Wells Law, Cap. 351, as amended, section 3—Permit to sink a well—Discretion should be exercised in a way designated to protect water supply—Water conservation area—Consent to the issuing of the permit of the Director of the Water Development Department necessary—Even if it is not necessary, there is nothing wrong to seek and obtain it.

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Reasoning of an administrative act—It may be supplemented from the material in the file.

The applicant sank a well within a water conservation area without permit. The District Officer, however, decided, with the approval of the Director of Water Development Department to grant the applicant a covering permit.

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This recourse is directed against the conditions attached to the permit, namely that (a) The quantity of water to be pumped shall not exceed 10 cubic meters in every 24 hours, and (b) there will be no deepening or widening of the well in question.

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Held, dismissing the recourse: (1) Section 3 of the Wells Law, Cap. 351, as amended, empowers the District Officer to impose conditions and

restrictions in granting a permit. As the well lies within a water conservation area, the consent of the Director of the Water Development was necessary for issuing the permit. Even assuming that it was not necessary, there was nothing wrong to seek and obtain his consent.

5 (2) Applicant failed to substantiate his complaints for discrimination.

(3) The respondent acted for the protection of the water supply in the area, a matter of public interest of the greatest importance. The discretionary power of the administration must be exercised in such a way as to protect water supply.

10 (4) The reasoning emerges from the administrative file.

*Recourse dismissed.
No order as to costs.*

Cases referred to:

Yiannaki v. Republic (1965) 3 C.L.R. 561;

15 *HadjiSavva v. Republic* (1972) 3 C.L.R. 174.

Recourse.

Recourse against the imposition of conditions in granting to applicant a covering permit for the sinking of a well in his field at Nikitari village.

20 *G. Yiangou*, for the applicant.

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

Cur. adv. vult.

25 LORIS J. read the following judgment. The applicant by means of the present recourse, challenges that part of the decision of the respondent District Officer, whereby conditions were imposed by the respondent in granting to the applicant a covering

permit dated 28.11.1984, for the sinking of the well in his field under Registration No. 3542 at Nikitari Village, Nicosia District, covered by plot 17 of Sheet/Plan XXVIII/56.

The uncontested facts of this case are briefly as follows:

The applicant was at all material times the owner (by virtue of Registration No. 3542) of a field situated at Nikitari village, Nicosia District, covered by plot 17 of Sheet/Plan XXVIII/56. 5

The applicant applied to the respondent District Officer on 9.9.82 (vide blue 2 in the Administrative file marked "X" before me) seeking a permit for the sinking of a well in his aforesaid property, which is within the area defined by virtue of s. 4 (1) of Cap.351 as a water conservation area. 10

The aforesaid applicant was turned down by the respondent on 22.3.83 (vide blue 5 in file marked 'X'). The applicant proceeded some time in June 1983 to sink a well in his aforesaid property without a permit; as a result criminal proceedings were instituted by the respondent against him by virtue of Nicosia Criminal Case No. 12941/83 (blue 12). 15

On 4.7.83 a recourse was filed by the applicant (Case No. 284/83) challenging the said refusal of the respondent to grant a permit to him for the sinking of the well in question (vide blue 15); the said recourse was withdrawn on 18.2.84. 20

On 25.2.84 the applicant applied to the respondent for re-examination of this case and the granting of a relevant permit (vide blue 27). 25

On 14.5.84 the applicant was convicted and sentenced in the aforesaid criminal case No. 12041/83; thereafter the respondent having re-examined the case of the applicant decided on 28.11.84 with the approval of the Director of Water Development Department to grant to the applicant a covering permit for the sinking of the well in question, imposing at the same time two conditions as follows: 30

1. The quantity of water to be pumped shall not exceed 10 cubic meters in every 24 hours.

2. There will be no deepening or widening of the well in question (the dimensions) of which are now 1.70 meters depth and the diameter 2.55 meters).

The complaints of the applicant are directed against the aforesaid two conditions imposed by the respondent in granting the aforesaid covering permit on 28.11.84

I have examined the complaints of the applicant in the light of the written addresses and the material before me; in particular I have gone through the administrative file, which is Exhibit "X" before me, and I have come to the conclusion that there is no merit in the present recourse. The allegations of the applicant are contradicted by the material in the Administrative file which strengthen the view that the conditions imposed, in granting the sub-judice covering permit, by the respondent District Officer, were reasonably open to him.

In the first place the respondent District Officer, who is the appropriate authority in this case pursuant to the provisions of s. 3 of the Wells Law, Cap. 351 as amended is empowered to impose conditions and restrictions in granting a permit under the provisions of s. 3(1) of the Law.

Furthermore it is common ground that the well in question was sunk in an area which is, and was at all material times, a water conservation area, for the purposes of section 4(1) of Cap. 351; this clearly transpires from the administrative files Ex. "X", and it is also admitted by the applicant himself in recourse No. 284/83; thus, for the issuing of a permit for the sinking or construction of a well or for the variation or modification of any condition or restriction imposed in any such permit the concurrence of the Director of Water Development Department was essential.

And it is clear in the instant case that the Respondent District

Officer after carrying out due inquiry, has obtained the concurrence of the Director of the Water Development Department, before granting the covering permit in question and imposing the conditions therein stated.

Even assuming "that the concurrence of the Director of Water Development was not required under section 4(1), I am of the view that the course adopted by the District Officer, in seeking such a concurrence, has not resulted in the exercise of his eventual discretion in such a manner as to lead to the annulment of his sub-judice decision.

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In any case, there is nothing wrong in taking into account the views of the Director of Water Development in case where his concurrence is not necessary."

(Vide *Paraskevi Yiannaki v. The Republic* (1965) 3 C.L.R. 561 at p. 569).

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Amongst the complaints of the applicant is discrimination; I was unable to trace anything whatever pointing to that direction; on the contrary it is evident from the material before me, that the respondent thoroughly inquired into the allegations of the applicant and treated the applicant in the same way as the owner of the adjacent plot under survey reference XXVIII/56 plot 7; in the circumstances the respondent acted as the applicant himself has asked him to act, in his letter of 25.2.84 (vide Blue 27).

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It is apparent from the material before me that the respondent District Officer in imposing the conditions aforesaid, in granting the covering permit in question, acted for the protection of the water supply in the area, a matter of public interest of the greatest importance. As stated by Triantafyllides J, as he then was, in the case of *Yiannaki v. The Republic* (supra) at p. 571 of the report "The protection of water supplies in any area, whether private or public, constitutes, in my opinion, a matter of public interest of

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the greatest importance, because water, in whatever manner it is brought to the surface, is a commodity vital to the life of the country."

5 In this connection I am inclined to agree with learned counsel appearing for the respondent to the effect that the discretionary power of the administration must be exercised in such a way as to protect water supply, which is as already stated, a matter of public interest of the greatest importance.

10 With regard to the complaint as to reasoning, it is well settled that the reasoning behind an administrative decision may be found either in the decision itself or in the official records related thereto *HadjiSavva v. The Republic* (1972) 3 C.L.R. 174, 205. In the instant case the imposition of conditions finds support from the material contained in the administrative file.

15 For the reasons I have endeavoured to explain above, the present recourse fails and is accordingly dismissed; in the circumstances I shall not make any order as to costs.

Recourse dismissed.
No order as to costs.