

(1988)

1988 April 25

[A. LOIZOU P. , MALACHTOS, SAVVIDES, STYLIANIDES, PIKIS, JJ.]

DORA HOURIDOU AND ANOTHER,

Appellants- Applicants,

THE IMPROVEMENT BOARD OF AYIOS DHOMETIOS,

Respondent.

(Revisional Jurisdiction Appeal No. 711).

Streets and Buildings—Division of land with buildings thereon into buildings sites—The Streets and Buildings Regulation Law, Cap. 96, as amended—The question is governed by section 3(1) (c) and not 3(1) (d)—Therefore, section 9 (1) (c) (vi) applies and, as a result, the Licensing Authority can impose a condition relating to the cession of part of the land for widening the street abutting on the plot in question. 5

The appellants are the co-owners of a three-storey building, which had been erected in virtue of a building permit and in respect of which a certificate of approval had been obtained. The appellants applied for a permit to divide the land into two sites, a process entailing the vertical division of the building too. The permit was granted, but on condition that part of the site 10
fronting the road should be ceded for street widening purposes. The condition was attacked by a recourse, and when the latter was dismissed, this appeal was lodged.

The appeal was finally dismissed by majority of three to two. Pikis, J. 15
with whom A. Loizou, P. concurred, and Savvides, J. delivered separate judgments dismissing the appeal. Stylianides, J. , with whom Malachtos, J. concurred, delivered a judgment allowing the appeal. The ratio decidendi of the judgments dismissing the appeal appears in the hereinabove headnote. Had the appellants applied for the horizontal division of the 20
buildings, section 3(1) (d) of Cap. 96 would have been applicable and, perhaps, they might have had a good case in attacking the condition.

*Appeal dismissed.
No order as to costs.*

Cases referred:

Houridou and Another v. Improvement Board of Ayios Dhometios (1979) 3 C.L.R. 219.

Appeal.

5 Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Kourris, J.) given on the 18th February, 1987 (Revisional Jurisdiction Case No.565/85)* whereby appellant's recourse against the decision of the respondents that a strip of land affected by the street widening scheme should be ceded to the
10 public road before issuing a division permit to the appellants was dismissed.

E. Efstathiou, for the appellants.

E. Odysseos, for the respondents.

Cur. adv. vult.

15 A. LOIZOU, P.: The first judgment will be delivered by Pikis, J.

PIKIS, J.: The appellants are the co-owners of a three-storey building. They applied to the respondents, the appropriate authority under the Streets and Buildings Regulation Law, Cap. 96, for a
20 permit to divide the land into two sites, a process entailing the vertical division of the building too. Each of the two co-owners would become the sole owner of one of the two parts into which the land and the buildings standing thereon would be divided. At the same time they applied for the issuance of separate titles for
25 each of the apartments of which the property was made up.

Respondents approved the application for division of the land into two sites and sequentially the division of the building, on condition that part of the site fronting the road should be ceded

* (Reported in (1987) 3 C.L.R. 245)

for street widening purposes. The appellants objected to the imposition of this term and challenged its validity by a recourse before the Supreme Court. Their action was premised on the proposition that the Streets and Buildings Regulation Law confers no power to the respondents to impose a condition relevant to street widening upon application for the sub-division of the land and buildings into separate plots. The learned trial Judge ruled against them holding that the law conferred power on the respondents to impose the relevant condition. He found this to be the combined effect of the provision of s. 3(1) (c) and s. 9(1) (c) (v) of the Streets and Buildings Regulation Law.

The appeal turns solely on the view taken by the trial Court of the powers vested in the appropriate authority under Cap. 96, upon application for the sub-division of land with buildings thereon into separate sites. Counsel renewed the submissions earlier raised before the trial Court and invited us to hold that an application for the sub-division of a building into two separate plots falls exclusively within the provisions of s. 3(1) (d) of the law, a proposition having as a necessary corollary the absence of any power on the part of the appropriate authority to impose any condition for street widening. Counsel argued that the provisions of s.3(1) (d) of the law apply in the case of an application for the sub-division of land into building sites. It has no application to cases involving the sub-division of a building, be it on a horizontal or vertical basis.

For the respondents it was argued that to construe the relevant provisions of Cap. 96 in the manner suggested by appellants would be flying in the face of the plain provisions of s. 3(1)(c) which reads:

"No person shall lay out or divide any land (irrespective of whether any buildings, other than buildings used solely for agriculture or forestry, exist thereon or not) into separate sites".

The applicability of s. 3(1)(d) is confined to the horizontal division of a building into separate tenements, a process involving

3 C.L.R. Houridou & Another v. Impr. Board Ay. Dhometlos Pikis J.
no division of the land. Section 3(1) (d) reads:

"No person shall divide any building (irrespective of whether any such division necessitates any construction or not) into separate tenements".

5 Section 3(1)(d) of Cap. 96 does not permit the division of the land into separate sites. No matter what gloss one may put upon its wording, the power of the appropriate authority is confined to a division of the tenements of which it consists.

The only provision that permits the division of the land into
10 building sites is s. 3(1) (c); and to avoid any ambiguity respecting the ambit and effect of its provisions, it is specified that the section finds application irrespective of whether buildings stand upon the land to be divided into separate sites. That being the effect of s. 3(1)(c), the application of the appellants for the sub-
15 division of the building into two separate plots had to be examined in the context of this provision of the law and the corresponding provisions of s.9(1)(c)(vi) that specifically empower the appropriate authority upon application for the sub-division of the land into separate sites, to impose a condition relevant to street
20 widening. Why such power should be conferred upon the appropriate authority upon application for the sub-division of a building into two parts, is a matter solely affecting the policy of the law. At issue before us is the effect of the law and the legality and propriety of the action of the Administration in invoking the provisions of s. 9(1)(c)(vi).
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In agreement with the learned trial Judge we rule that the appropriate authority examined the application in a correct legal perspective; the result of their action cannot be faulted either as illegal or improper.

30 In the result the appeal is dismissed.

A. LOIZOU P.: I agree with the judgment of Pikis, J., just delivered, and I have nothing to add.

SAVVIDES J.: This is an appeal against the judgment of a Judge of this Court sitting in the first instance whereby he dismissed the recourse of the appellants challenging the decision of the respondent Improvement Board by which it imposed a condition for the division of appellants' property under plot No. 31, sheet/plan XXI.45.V, registration No. A30, at Ayios Dhometios to the effect that a strip of land part of the plot affected by the street widening scheme should be ceded to the public road for the purpose of its being widened. 5

The appellants are registered owners in undivided shares of a building site at Ayios Dhometios on which they erected in 1963 "a two dwelling building intended to be used as two separate and self-contained independent residences". The building was erected in accordance with the terms of a permit in that respect issued to them by the respondent which is "the appropriate authority" under the Streets and Buildings Regulation Law, Cap. 96. The appellants having complied with the conditions stipulated in the permit applied to the respondent for a certificate of approval under s.10 (2) of the Law, Cap. 96, in respect of the buildings erected on their property. This was refused on the ground of non-compliance with a condition imposed by the respondent on an application made by the appellants on 3rd March, 1967 for a permit to divide that building into two dwellings with a view to the issue of separate certificates of registration - one to each owner - in severalty. 10
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As a result the appellants filed a recourse challenging the refusal of the respondent to issue a certificate of approval. The Court held in that recourse on which judgment was delivered on the 9th June, 1979 (See *Dora Houridou and Another v. The Improvement Board of Ayios Dhometios* (1979) 3 C.L.R. 219) that the refusal of the respondent to issue the certificate of approval was unwarranted in law and that the appellants were entitled to a declaration that the refusal in question was in abuse of the respondent's powers. 30

On the 26th March, 1984, the appellant applied for the division of the said plot in two separate plots which entailed the vertical di- 35

vision of the building too as well as for the issue of separate title deeds of the flats comprising the buildings which implied a horizontal division of the property.

5 The respondent having examined the application of the appellants communicated its decision by letter dated 8th December, 1984, informing them that their application was approved on the condition that the strip of land, part of the plot, affected by the street-widening scheme should be ceded to the public road for the purpose of its being widened. The appellants challenged the
10 above decision by recourse No. 565/85

The learned trial Judge in his judgment after making a detailed reference to the history of the case and after an exposition of the law relevant to the matter concluded that in view of the fact that the appellants by their application sought not only the issue of
15 separate titles for each plot but they also sought to divide the building site on which the said flats were standing into two separate plots the appropriate authority was authorized to impose such condition by virtue of s.9(1)(c) of the law read in conjunction with s. 3(1) (c) (see *Houridou and Another v. The Improvement*
20 *Board of Ayios Dhometios* (1987) 3 C.L.R., 245).

Counsel for appellants argued that once the building in question was erected under a permit issued for that purpose by the appropriate authority and once a certificate of approval had been issued, the respondent, in granting a permit for the division of the
25 property for the purpose of the issue of separate title deeds, was not entitled to impose any condition that part of the property should be ceded for street-widening scheme purposes. Such condition, counsel submitted, could have been imposed when an application for a building permit was issued but not when the division
30 of the property was to take place. It was his submission that the case falls exclusively within the provisions of s. 3(1)(d) of the law which does not empower the appropriate authority to impose any condition for street-widening scheme purposes. He further argued that the decision of the respondent was wrong in law and
35 was taken in excess of its powers and was based on a wrong in-

terpretation of the law.

I find the arguments advanced by counsel for the appellants as untenable. The building permit and the certificate of approval of the buildings erected thereon was properly granted by the respondent in exercise of its powers under the provisions of the law applicable for the grant of building permits. At the time when such permit was granted there was no application by the respondents for the division of the land into two separate tenements. Had the appellants applied for a horizontal division of the property not involving a division of the land they might have had a good case to argue. But in the present case what we are dealing with is a vertical division of property involving the division of the land into two separate building plots.

The present case clearly concerns division of the land into separate tenements and what is applicable is s.3(1)(c) which clearly provides for a permit to lay out and divide any land into separate sites irrespective of whether any buildings other than buildings used solely for agriculture or forestry existed thereon or not and s.9(1) (c) of the Law read in conjunction with s.3(1) (c) and that it is empowered to impose a condition similar to the one imposed in the present case in granting an application for division.

I fully agree with the learned trial Judge as to his findings that the respondent had power to impose such condition by virtue of s.9(1) (c) of the Law read in conjunction with s.3(1) (c) and that in the circumstances of the case the respondent properly exercised its discretion in imposing the condition challenged by this recourse. I agree that this appeal should be dismissed but with no costs.

STYLIANIDES J.: This appeal is directed against the Judgment of a Judge of this Court who, in the exercise of revisional jurisdiction, dismissed the recourse of the appellants, whereby they sought the annulment of a condition imposed by The Improvement Board of Ayios Dhometios, (the "Respondent"), in a division permit.

The Respondent was at all material times the Appropriate Authority, under the Streets and Buildings Regulation Law (Cap. 96, Law Nos. 14/59, 67/63, 6/64, 12/69, 38/69, 13/74, 28/74, 24/78, 25/79, 80/82, 15/83).

- 5 The appellants, being registered owners in undivided shares of a building site at Ayios Dhometios, shown on D.L.O. Map as plot No. 31, Sheet/Plan XXI/45.V, erected on it, on the ground floor, a two dwelling building intended to be used as two separate, self-contained and independent residences, two self-
- 10 contained flats on the first floor and one self-contained flat on the second floor on the one side with a store and a washing room on the same side on the third floor and a stair case at the front between the two sets of flats. These buildings covered the whole area of the building site. Actually the distance from the boundar-
- 15 ies is only 8-9 feet instead of the 10 feet provided by the relevant Regulation. At the two extreme ends of the rear on the ground, they erected auxiliary buildings (garage and washing room).

They obtained from the Respondent the necessary certificates of approval.

- 20 On 20th March, 1984, they applied for a division permit of building - (D462/84). They attached thereto a site plan and architectural drawings. The proposed division was: Two separate tenements on the ground floor including the narrow yard and the auxiliary buildings, two separate tenements - the two flats - on the
- 25 first storey, one tenement - the flat on the second floor including the store and the washing room on the third floor over it. The unbuilt terrace of the second floor would be included in the title of the corresponding ground floor residence and the unbuilt area of the terrace of the third floor next to the store and the washing
- 30 room, to which reference has been made, would be common to all owners. The stair case would be a separate sub-plot common to all.

The Respondent issued the division permit applied for, in which they imposed the following condition: -

"Το τμήμα του τεμαχίου που επηρεάζεται από τη ρυμοτομία που δείχνεται με πράσινη γραμμή στα τοπογραφικά σχέδια θα παραχωρηθεί για την διεύρυνση του δημόσιου δρόμου (Άρθρο 9(1) (γ) (vi) του Νόμου, Κεφ. 96). Οι υφιστάμενες πάνω σ' αυτό κατασκευές (περίφραγμα κ.λ.π.) μπορούν να παραμείνουν μέχρι που η Αρμόδια Αρχή να αναλάβει το έργο της διεύρυνσης του δρόμου."

The appellants, being aggrieved, filed a recourse seeking the annulment of the said condition.

The grounds for annulment are: - 10

(a) The matter was res judicata; and

(b) The condition was imposed in excess and abuse of the Respondent's power.

On 3rd March, 1967, when only two dwelling buildings on the ground floor were erected, the applicants applied to the Respondent for a permit to divide that building into two dwellings with a view to the issue of separate certificates of registration - one to each owner - in severalty. On the following August the Respondent issued that division permit and imposed a condition which reads: - 15 20

"(c) the strip, part of the plot, affected by the street-widening plan ('rymotomia') shall be ceded free of buildings to the public road for the purpose of its being widened."

The appellants, having complied with the conditions stipulated in the permit, other than the cession of the strip - the subject of condition (c) - applied to the Respondent for a certificate of approval under section 10(2) of the Law. This was refused on the ground of the non-compliance with the condition. The appellants thereupon, by Recourse No. 271/68, sought a declaration that, that refusal was null and void and without any legal effect whatsoever. 30

A Judge of this Court decided that, what the appellants sought was not a division of land and accordingly the Respondent had no power, under sections 9(1)(c) and 3(1) of the Law, to impose the condition in question, and declared the refusal to issue the certificate of approval as unwarranted in law and abuse of the Respondent's powers. The sub-judice decision was annulled - (see *Hou-
5 ridou & Another v. Improvement Board of Ay. Dhometios* (1979) 3 C.L.R. 219).

The first instance Judge, in the Judgment under appeal, held
10 that the ground of res judicata was untenable, as in 1967 the ap-
pellants applied for the division of a building, whereas by their
application in 1984 they sought the division of their building site
into two separate plots, as well as the issue of separate title deeds
for the various flats comprising the said building and, conse-
15 quently, the matter is not res judicata. He, also, held that the Ap-
propriate Authority, by virtue of section 9(1)(c) read in conjunc-
tion with section 3(1)(c) of the Law, had power to impose the
condition in question.

The question that falls for determination is whether the divi-
20 sion sought is a division of building or division of land for build-
ing purposes.

Section 3(1)(c) and (d) of the Law reads as follows: -

"3. (1) No person shall -

(a)

25 (b)

(c) lay out or divide any land (irrespective of whether any
buildings, other than buildings used solely for agriculture or fo-
restry, exist thereon or not) into separate sites;

(d) divide any building (irrespective of whether any such
30 division necessitates any construction or not) into separate
tenements;"

Section 9(1)(c) provides: -

"9.(1) In granting a permit under the provisions of section 3 of this Law, the appropriate authority shall have power, subject to any Regulations in force for the time being, to impose conditions as hereinafter, to be set out in the permit, that is to say -

(a) 5

(b)

(c) with regard to the laying out or division of any land for building purposes, conditions as to -

(i) the demarcation and size of boundary marks;

' (ii) την μεταφοράν, εγκατάστασιν και συνεχή παροχήν 10
καταλλήλου ύδατος το οποίον δέον να είναι επαρκές, ως και
την κατάλληλον και ικανοποιητικήν συντήρησιν και
λειτουργίαν της άνω εγκαταστάσεως και συστήματος
υδατοπρομηθείας.

Νοείται ότι, κατά την λήψιν αποφάσεως, εν οιαδήποτε 15
συγκεκριμένη περιπτώσει, ως προς την επάρκειαν ύδατος ως
προνοείται ανωτέρω, δέον να λαμβάνωνται υπ' όψιν αι
ανάγκαι της περιοχής ως συνόλου εκ της οποίας παρέχεται το
ύδωρ.

(iii) the diversion of natural and artificial water courses; 20

(iv) the levelling of the site;

(v) την κατασκευήν οδών, γεφυρών, μικρών γεφυριών,
παροδίων οχετών και πεξοδρομιών'.

(vi) the widening of any street upon which the land, to which
the application relates, abuts. 25

(vii) την εξασφάλισιν χώρων δι' υποσταθμούς εις
καταλλήλους περιπτώσεις.

(viii) την εξασφάλισιν δημοσίων χώρων πρασίνου.

(ix) την φύτευσιν δένδρων και θάμνων εις καταλλήλους περιπτώσεις.

(x) την κατασκευήν υπογείων αγωγών και την
5 εγκατάστασιν ηλεκτροφόρων καλωδίων εις καταλλήλους περιπτώσεις.

(xi) την εγκατάστασιν οδικού φωτισμού εις καταλλήλους περιπτώσεις."

10 The appellants applied on a printed Form E. Δ. 7 provided by the Respondent. It is a form of application for:-

(i) Construction of road,

(ii) division of land for building purposes and

(iii) division of building.

15 The first two were deleted and clearly the application was for a division of building. This however is not the sole criteria for the determination of the question posed.

Ten, out of the eleven permissible conditions set out in section 9(1) (c), can be applied only for the laying out or division of land on which buildings may be erected.

20 In the present case, there was no land "for building purposes" to be divided. The land was fully built upon.

25 By the ordinary meaning of the words and the purposive interpretation of the relevant provisions of the Law, read together, it is impossible for anyone even to argue that the division in question was a division of land "for building purposes". The buildings were already erected. The words in brackets in section 3(1) (c) do not affect the present case and

the subject matter of the division is not "land for building purposes".

An appropriate authority is empowered to impose any of the conditions set out in section 9(1) (c), if two prerequisites exist: Division of land and land which may be used for building purposes. "Building purposes" imparts the notion of erecting a building of the land - sites which result from the division. 5

The argument of counsel for the Respondent that the division of the narrow yard on the ground, round the two residences, which is not permissible by Law and the Regulations made thereunder to be used for any building purposes, attributes the characteristic of the division of "land for building purposes", is fallacious. The fallacy is shown by the following example. 10

Suppose on a site a building is erected, which covers the whole area of the ground and the total building constant permissible. If the owner, thereof, seeks to divide this building into separate tenements, including the unbuilt area on the ground, would this be a division of land for building purposes, or a division of building? Definitely it is not a division of land for building purposes in any sense. 15 20

In the present case there was no land for building purposes and the Respondent Appropriate Authority acted in excess and in abuse of power.

For the foregoing reasons I would allow the appeal.

MALACHTOS, J.: I agree with the judgment just delivered by Stylianides J. and I have nothing useful to add. 25

Appeal dismissed by majority.