

[L. LOIZOU, J.]

1971
July 23

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NICOS VASILIOU,

Applicant,

and

NICOS
VASILIOU
v.
REPUBLIC
(MINISTER
OF FINANCE
AND ANOTHER)

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF FINANCE,

2. THE RENT ALLOWANCE APPEALS COMMITTEE,

Respondents.

(Case No. 70/70).

Public Officers—Rent allowance—Decision refusing payment of rent allowance under the relevant scheme on the ground that applicant's wife failed to take legal proceedings against her mother in order to pursue her rights under a contract of dowry by virtue of which her mother promised to have a house built for her—Decision annulled—Because of a misconception of both of the factual and legal position—Quite clearly such failure on the part of applicant's wife as well as all the other facts of the case cannot legally justify the decision reached—Paragraph 12 of the Instructions of the Rent Allowance Scheme.

Rent allowance—Public Officers—Paragraph 12 of the Instructions of the Rent Allowance Scheme.

By this recourse under Article 146 of the Constitution the applicant, a Senior Planning Officer, Planning Bureau, in the public service, seeks to challenge the validity of the decision of the respondent Rent Allowance Appeals Committee to the effect that he is not entitled to the payment of rent allowance under the relevant scheme. The decision complained of was reached by the said Committee on the ground that applicant's wife did not take legal proceedings against her mother in order to pursue her rights under a contract of dowry by virtue of which her mother undertook to have a house built for her.

The relevant part of the rent allowance scheme is paragraph 12 of the Instructions of the Rent Allowance Scheme, which provides :

“ 12. If an officer and/or his wife and/or his dependent children own the whole of a house or flat either in the officer's station or elsewhere in Cyprus from which rent is

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received, the officer will be regarded as paying rent equal to the excess of the rent he pays over the rent received from the said house”.

Annulling the subject decision of the respondent Committee, the Court :—

Held, (1). The argument in support of the Committee’s decision may be original but too far-fetched. Certainly neither the applicant nor his wife own a house and it has not been even suggested in this Court that they derived any benefit as a result of the non-fulfilment by the mother-in-law of her obligation under the contract of dowry.

(2) Quite clearly the respondents entirely misconceived both the factual and legal position ; and in my view the facts of this case cannot justify the decision taken ; which, therefore, is hereby annulled. The respondents to pay £20 towards applicant’s costs.

*Decision complained of annulled.
Order for costs as aforesaid.*

Recourse.

Recourse against the decision of respondent No. 2 to the effect that applicant is not entitled to the payment of rent allowance.

A. Triantafyllides, for the applicant.

S. Georghiades, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

The following judgment was delivered by :—

L. LOIZOU, J. : The relief claimed by the applicant in these proceedings is a declaration that the decision of the Rent Allowance Appeals Committee to the effect that the applicant is not entitled to the payment of rent allowance and or the decision of the said Committee to uphold the dismissal of applicant’s application for payment of rent allowance is null and void and of no effect whatsoever.

The decision in question is attached to the application and has been marked *exhibit* 1.

The applicant, at the relevant time, held the post of Senior Planning Officer, Planning Bureau, and his right

to rent allowance has not been disputed or challenged on any ground other than that set out in the decision of the Rent Allowance Appeals Committee (which will hereinafter be referred to as the Committee).

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It appears from the Opposition that the applicant first applied for rent allowance in June, 1968. His application was refused and he appealed to the Committee which dismissed his appeal on the 28th January, 1969. "For procedural reasons", as stated at paragraph 5 of the Opposition, the decision of the 28th January, 1969, was revoked and the whole matter was reconsidered by the Committee and a new decision taken on the 18th November, 1969. This latter decision is the one challenged by this recourse.

Applicant's grounds of appeal to the Committee against the decision of the Director of the Personnel Department, who decided his application in the first instance, are set out in *exhibit 3*.

It is convenient, at this stage, to set out the reasons upon which the Committee based their decision. They are the following :

" 1. The appellant's mother-in-law was at the material period the owner of a house consisting of 2 complete flats and one incomplete.

2. By virtue of a dowry contract duly signed by the aforesaid mother-in-law of appellant she promised to have a house built for her daughter, appellant's wife.

3. Bearing in mind the findings as in 1 above stated we find that she could provide the house promised to appellant's wife, her daughter, which we feel she was bound to do under the aforementioned dowry contract.

4. Furthermore, the Committee finds that at the material time the wife of the appellant enjoyed the income or rent of the house promised to her by her mother in one form or another. This is based on the investigation carried out by the District Administration at the request of the Department of Personnel."

Paragraphs 1 and 2 above are not disputed ; to complete the picture it can be added that the contract of dowry was signed on the 6th October, 1967, and the flats referred to in paragraph 1 were at the time in existence. It is also

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not in dispute that applicant's mother-in law never discharged her obligation under the contract of dowry and that his wife did not take any legal steps against her mother.

In a very short address counsel for applicant submitted that none of the reasons in *exhibit* 1 disentitles applicant from his claim to rent allowance under the Rent Allowance Scheme in force and that paragraph 4 of this *exhibit* was not based on any proper or cogent evidence ; that the Committee did not hear the applicant on this point although he had already denied such allegation in his appeal (*exhibit* 3).

The case for the respondents clearly appears from the address of counsel appearing for them and I cannot do better than quote some passages from his address :

“ The whole case ” he said “ turns on a very short point : Whether the respondents were entitled to take into consideration an obligation undertaken by the mother-in-law of the applicant by a contract of dowry to provide a house for applicant's wife. There is no dispute that if she had in fact provided a house for applicant's wife then the applicant would not have been entitled to rent allowance. In fact, however, no house has been provided inspite of the legally binding obligation. Applicant's mother-in-law did not discharge her obligation under the contract of dowry and though she could have been compelled to do so by legal steps taken by applicant's wife yet that has not been done.”

and further down

“ Therefore, the sole question is whether the respondents were entitled to consider that obligation of applicant's mother-in-law as having been carried out because if the Court takes the view that the respondents were not entitled to do so that will mean that it will be easy for anybody to go round the scheme. Of course I cannot say if in this case the applicant's mother-in-law has deliberately not given the house so that the applicant might be entitled to rent allowance. My argument is that since there is a legally binding obligation on the mother-in-law to give a house to her daughter why should the applicant be allowed to show generosity to his mother-in-law by not forcing her to carry out her obligation and then claim rent allowance from the Government.”

Learned counsel, quite fairly, did not support the finding of the Committee at paragraph 4 of the reasons for their

decision to the effect that applicant's wife "enjoyed the income or rent of the house, promised to her by her mother in one form or another". This is what he had to say with regard to this: "Applicant's mother-in-law deals in furniture and I understand that a flat she could have given to her daughter as a dowry is used by her as a store for the furniture. We have no means of knowing if she pays any money to applicant's wife; all we know is that applicant's wife has a legal right which she could enforce."

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The whole case then in a nutshell boils down to this: That the applicant was found not to be entitled to the payment of rent allowance because his wife did not take legal proceedings against her mother in order to pursue her rights under the contract of dowry.

I find this argument original but too far-fetched. The relevant part of the rent allowance scheme is paragraph 12 of the Instructions which reads as follows:

"(12). If an officer and/or his wife and/or his dependent children own the whole of a house or flat either in the officer's station or elsewhere in Cyprus from which a rent is received, the officer will be regarded as paying rent equal to the excess of the rent he pays over the rent received from the said house."

Certainly neither the applicant nor his wife own a house and it has not been even suggested in this Court that they derived any benefit as a result of the non-fulfilment by the mother-in-law of her obligation under the contract of dowry.

Quite clearly the respondents entirely misconceived both the factual and legal position; and in my view the facts of this case cannot legally justify the decisions taken.

In the result the recourse must succeed and the decision complained of be annulled. The respondents to pay £20 towards applicant's costs.

*Decision complained of
declared null and void.
Order for costs as afore-
said.*