

1988 May 21

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

COSTAKIS NICOLAOU AND ANOTHER,

Applicants,

v.

THE DISTRICT OFFICER OF NICOSIA, AS
CHAIRMAN OF THE IMPROVEMENT BOARD OF ENGOMI,

Respondents.

(Case No. 818/85).

5 *Streets and Buildings—Building permit—Erection of shops outside water supply area—Condition in the permit that shops should not be used for sale of building materials—The Streets and Buildings Regulation Law, Cap. 96, as amended, especially by Law 80/82, sections 9(4)(e)(ii) and 9(4)(e)(viii) and*
10 *Order 155/83 made by the Council of Ministers—Area in question a new development area of dwelling houses (οικιστική)—As sale of main building materials, such as lime, cement, gypsum, would definitely cause nuisance, the discretion was exercised in a lawful manner, notwithstanding that the sale of some other material which cannot be minutely specified, would not cause nuisance.*

15 The issues raised in this case are indicated in the hereinabove headnote. Having concluded that the respondent did not labour under any misconception of law or fact and that its discretion was exercised in a lawful manner and having observed that the development of an area is very much a corporate matter that concerns the community and the quality of life of everyone using the area as well as the amenities of all those residing therein, the Court dismissed the recourse.

Recourse dismissed.

No order as to costs.

Cases referred to:

Thymopoulos and Others v. The Municipal Committee of Nicosia (1967) 3 C.L.R. 588;

Sofroniou and Others v. Municipality of Nicosia and Others (1976) 3 C.L.R. 124;

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Simonis and Another v. Improvement Board of Latsia, (1984) 3 C.L.R. 109.

Recourse.

Recourse against the decision of the respondents to impose, on the building permit issued in respect of shops belonging to applicants, a condition that the shops will not be used for the sale of building materials.

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C. Loizou, for the applicants.

E. Odysseos, for the respondents.

Cur. adv. vult. 15

STYLIANIDES J. read the following judgment. The applicants - husband and wife - by this recourse seek the annulment of a condition, imposed by the respondents under The Streets and Buildings Regulation Law, Cap. 96, as amended, that the shops for which a building permit was issued should not be used for the sale of building materials.

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The applicants are the owners of a building site, Plot 3206, Sheet/Plan XXI/60. E.2, Block D, of Engomi. It is outside the area of the Water Supply of Engomi, as determined under the provisions of sections 9(3)(γ) and 4(d) of the Streets and Buildings Regulation Law, Cap. 96, as amended by Laws 13/74, 24/78 and 80/82.

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Regulation 700/55 prohibits the erection of a building for warehousing of goods and manufacture in that area.

5 The applicants submitted an application with the required attachments, including architectural drawings, for a building permit. Those plans were changed more than once, after advice from the appropriate Authority. The final drawings were for a building, consisting of shops and parking shed on the ground floor, and a dwelling flat on the first storey.

10 The respondents, as the appropriate Authority at the material time, having received the advice of the Director of Town Planning and Housing, granted the requested building permit, but imposed the challenged condition as to the use to which the shops may be put.

15 Council for the applicants submitted that this condition is tainted with misconception of fact and that the use of the shops for retail trade of building materials is not contrary to the Order made under Article 9(4) by the Council of Ministers, (Notification 155, Official Gazette, 1983, Supplement No. III, p. 453), as the area is under development, away from other premises.

20 That this restrictive condition was imposed in abuse and/or excess of power, as the sale of building materials does not contravene Law 80/82 and the aforesaid Order 155/83. On the contrary such retail sale is in harmony with the needs of the area.

25 Section 9(4)(b), as amended by the Streets and Buildings Regulation Law, 1982 (Law No. 80/82), provides that no building permit shall be issued by the appropriate Authority for the erection of any building outside the area of the Water Supply, except only in cases of certain buildings specified therein, unless the appropriate Authority, after receiving the advice of the Director, is
30 fully satisfied that in respect of the erection of the proposed building the following conditions are satisfied: -

- (i)

(ii) It will be put in such use as not to adversely affect public health, or the amenities of life of the inhabitants of the area (Να μην επηρεάζει δυσμενώς την δημοσίαν υγείαν ή την άνετον διαβίωσιν των κατοίκων της περιοχής).

The Council of Ministers was empowered to issue Order setting out the necessary or desirable directions concerning the aforesaid condition. The Council of Ministers issued Order 155/83, published in the Official Gazette, 8.7.83, Supplement No. III, p. 453.

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In paragraph 1 of the said Order we read: -

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"The buildingsshall be harmonized with the prevailing use in the area. not to cause nuisance, or pollution, not to harm public health, and not to create traffic and circulation problems."

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The respondents requested the advice of the Director, as provided by law.

On 19th April, 1985, the Director, having regard to Law 80/82, the directions of the Council of Ministers and the area, advised, inter alia, that the building should be used as shop and dwelling house and that the shops should not be put to industrial or warehousing use, nor should they be used for the sale of building materials.

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Under section 9(b)(viii) the appropriate Authority in granting a building permit, under the provisions of section 3 of the Law, has the power, subject to any Regulations in force, to impose a condition with regard to the use to which a building may be put.

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A misconception of fact is the taking into consideration of non-existing facts or the failure to take into consideration existing facts.

The area is mainly an area of dwelling houses (Οικιστική). It is a new developing area and the sale of certain building material - lime, gypsum, iron rods, shingle, sand, cement - and their loading and unloading will, definitely, cause or may cause nuisance, harm to public health and create traffic problems, due to dust, noise and the arrival and parking for the purpose of various motor-vehicles.

It is correct that the sale of certain building materials, such as oil-paint, various equipment for doors and windows, basins and accessories thereto, would not be excluded, either by the provision of section 9(4)(b)(2), or by Order 155/83. It is impossible to specify minutely the building materials which may be sold, as most of the building materials proper should be excluded. The Director advised and, consequentially, the appropriate Authority imposed the limitation as to use as they did.

In the present case the advice of the Director was given and the discretion of the respondents was exercised in a lawful manner for the carrying out the objectives of the law, having regard to all material before them and the proper considerations. The sub judice decision was not based on a misconception of fact or law.

It has to be remembered, always, that the orderly development of an area is very much a corporate matter that concerns the community. It affects the quality of life of everyone using the area, as well as the amenities of all those residing therein. No owner of immovable property has any vested right to use his property at his own option. Restrictions and limitations are necessary, and so long as they are imposed pursuant to the law and for the purpose intended by the law, they are legitimate for the interest of the inhabitants of the area and the general interest. After all, the growth and use of the buildings, especially in the new inhabited areas, must be made in an orderly manner and to take into consideration firstly and foremost the amenities of life of the inhabitants and the quality of life of the public in general - (see, inter alia, *Demetrios Thymopoulos and Others v. The Municipal Committee of Nicosia* (1967) 3 C.L.R. 588; *Neophytos Sofroniou and Others v. Mu-*

municipality of Nicosia and Others (1976) 3 C.L.R. 124 and *Simonis and Another v. Improvement Board of Latsia* (1984) 3 C.L.R. 109).

The sub judice decision was reasonably open to the respondents. It is not in any way faulty.

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For the foregoing, the recourse is dismissed, but in all the circumstances I make no order as to costs.

*Recourse dismissed.
No order as to costs.*