1988 March 11

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ALEXANDRA CHR. CHARALAMBIDES,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF INTERIOR,
2. THE DISTRICT OFFICER LIMASSOL,

Respondents

(Case No. 181/87)

Streets and Buildings—Building lying outside Water Supply Area—Application for its extension—The Streets and Buildings Regulation Law, Cap. 96 as amended—Whether section 9(4) thereof (introduced by Law 80/82) applicable—In the light of the definition of "building" in section 2 and the need for a permit for every structure or building covered by the provisions of section 3(1)(e), the question is determined in the affirmative

Streets and Buildings—Building—Permit for—Does not prejudge the fate of an application for a permit concerning its extension

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

Recourse dismissed
No order as to costs

Recourse.

Recourse against the decision to reject applicant's application for a permit to make extensions to an existing pig-sty near the villages of Erini and Kolossi.

Chr. Pourgourides, for the applicant.

Cl. Theodoulou (Mrs.), Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

PIKIS J. read the following judgment. In 1976 the applicant or her predecessor in title built a pig-sty in an area not far from the villages of Erimi and Kolossi. In 1983 she applied for a permit to make extensions to the farm, designed to improve its capacity and facilities. Her application was turned down. A rejection she challenged by raising Application 487/85 for judicial review of the disputed administrative action. In the course of the proceedings the recourse was discontinued and dismissed (in 1986) on the undertaking of the appropriate Authority to re-examine her application supplemented by any additional facts that might be submitted to the Administration.

A thorough re-examination of the application followed, as can be gathered from the material in the file of the case. The views of various departments of government were solicited anew and fresh consideration was given to the merits and demerits of the application. Once more it was decided to reject the application. The reasons were indicated in a letter addressed to the respondents on 2.1.87. The basic reasons for refusal of the application were -

(a) Absence of valid reasons for departing from the provisions of s. 9(4) (a) of the Streets and Buildings Regulation Law (as) amended by s. 2 of Law 80/82) and Regulations or Directives issued thereunder (see A.R.A. 155/83, published on 8.7.83 under 18/73 at p. 453).

(b) Proximity to a newly created major road artery, the Limassol - Erimi by-pass, and habitations of the villages of Kolossi and Erimi.

Section 9(4)(a) of the law prohibits the licensing of buildings outside the water supply area (the property of the applicant lies

outside such area), unless justified in the interest of unification or improvement of existing habitations or the completion of the road network in the area, or the appropriate touristic or other unified development. Regulations made pursuant to express authorisation conferred by the aforementioned law, explain and clarify the kind of unification and development necessary to justify departure from the framework of the law.

The applicant questioned once more the validity of the administrative action and sought its judicial review by the present proceedings. The decision is challenged as defective for misconception of the law, particularly the applicability of s.9(4)(a), misconception of the facts, especially those bearing on the compatibility of the extension with the natural and architectural surroundings and, for discriminatory treatment deriving from the unequal treatment accorded to the applicant compared to other owners whose farms lied in the vicinity. For their part respondents supported the decision as warranted in law and founded on a thorough inquiry into the facts.

The submission of counsel for the applicant that the provisions of s.9(4) (a) were inapplicable in the case of the applicant, is untenable. As counsel for the respondents pointed out the provisions of s. 9(4) (a) are applicable to every application for a permit to erect a building, in view of the definition of "building", furnished by s.2 of the law, and the need for a permit for every building or structure covered by the provisions of s. 3(1) (b) of Cap. 96.

Counsel argued that if this is the effect of the law, it may be very difficult, if not impossible, to license farm development outside water supply areas. That may be the case but it is not for the Court, we may remind, to review or query the policy of the law as laid down in the Statute Book.

Next, we shall examine the case of the applicant for misconception of the facts or failure to attach to them the importance due by their intrinsic merits.

Emphasis was laid on the existence of other farms in the area, including a government farm for live-stock breeding, equally

proximate to the new road: This fact was before the Authorities and we cannot but presume that it was duly pondered in the course of examination of the case, as well as the fact that other farms existed in the area. The establishment of a new road artery was a significant factor that the Administration was justified to take into account in discerning whether exceptional circumstances existed justifying departure from the provisions of s. 9(4) (a). None of the facts cited in support of the application put it beyond the discretion of the appropriate authority, that is, respondent No. 2 to reject the application for the reasons indicated in the letter of 2.1.87. Nor can I sustain the suggestion that the Administration omitted to take into consideration any facts shedding light on the merits of the application.

On the other hand, allegations to disciminatory treatment remained factually unsubstantiated and legally inarticulated. I shall concern myself no further with this aspect of the case.

The fact that the establishment of the farm of the applicant was authorised, in the first place, could not, in any way prejudge the fate of any application for the extension of it. Plans for the development of an area, as well as the concept of development, change over the years. The concept of development, cannot ever be static.

Having given careful consideration to the totality of the material before me, I conclude that the application must be dismissed. The decision must be sustained. The sub judice decision is confirmed pursuant to the provisions of article 146.4(a) of the Constitution. Let there be no order as to costs.

Recourse dismissed.
No order as to costs.