

1988 March 16

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SAVVAS TEKLOS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTRY OF FINANCE,
2. THE INLAND REVENUE DEPARTMENT,
3. THE IMMOVABLE PROPERTY TAX OFFICE
AND CAPITAL GAINS TAX OFFICE,

Respondents.

(Case No. 454/87).

Taxation—The Immovable Property Tax Law, 1980 (Law 24/80), as amended by Law 21/81—Payment by purchaser of land to the vendor of the sum, which the vendor had paid as tax on the subject property in respect of the period that elapsed between the contract of sale and the transfer of property to the purchaser—Section 7(3) of the aforesaid law—The three prerequisites thereunder for a refund of the tax to the transferee—The tax must have been added to the purchase price, the contract of sale must have been registered under Cap. 232, and proof that the tax paid exceeds the tax which the purchaser would have been liable to pay—Pattichis v. The Republic (1987) 3 C.L.R. 884 followed.

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The facts of this case appear sufficiently in the Judgment of the Court.

*Recourse dismissed.
No order as to costs.*

Cases referred to:

Pattichis v. The Republic (1987) 3 C.L.R. 884.

Recourse.

5 Recourse against the refusal of the respondents to refund to applicant tax or any part thereof paid by the predecessors in title of the applicant under the provisions of the Immovable Property Tax Law. (Law No. 24 of 1980) (as amended).

Chr. Adamou, for the applicant.

Y. Lazarou, for the respondent.

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Cur. adv. vult.

15 PIKIS J. read the following judgment. This is an application for review of the validity of the decision of the Director of the Department of Inland Revenue, refusing the refund of tax or any part thereof paid by the predecessors in title of the applicant under the provisions of the Immovable Property Tax Law. ((Law 24/80 (as amended)). The refusal was founded on the provisions of s. 7(3) of the law (introduced by Law 21/81); whereas the property had been purchased in 1978, evidenced by a contract in writing, it was not transferred until the 16th January, 1986, when he discharged the monetary obligations thereunder. In addition to the purchase price he paid over to the vendors a sum of £495.-- representing tax paid by the transferors for the period that elapsed between the sale and the conveyance of the property. Applicant assumed possession of the building site immediately after the purchase and, in fact, erected a house thereon. The amount representing tax and interest for delayed payment (£495.--) was not added to the purchase price but was paid directly to the Archdiocese of Cyprus, the vendors of the property.

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30 In order for the purchaser to qualify for a refund of immovable property tax he must satisfy the following three prerequisites

(s.7(3) of the law): -

(a) The tax must have been added to the purchase price;

(b) the contract of sale must have been registered under the provisions of s.2 of the Sale of Land (Specific Performance) Law - Cap. 232, and

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(c) proof that the tax paid, including the tax added to the purchase price, exceeds the amount of property tax to which he was liable under the law.

The object and interpretation of the law, as well as its constitutionality, were examined in *Pattichis v. Republic*, (1987) 3 C.L.R. 884, a copy of which was appended to the address of the respondents. We need not recite any part of the judgment, save to emphasize that to qualify for a refund the tax payer must satisfy each one of the three prerequisites stipulated by s.7(3) of the law.

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On his own admission, applicant had not registered the contract under the provision of Cap. 232, a fact in itself disqualifying the applicant from relief. Moreover, he does not appear to have satisfied any of the other two prerequisites. Seemingly, the amount of tax paid to the Archbishopric was not added to the purchase price; also it did not appear nor was this aspect of the claim of the applicant ever properly articulated that the tax paid was higher than the amount to which he would be personally liable. The application must necessarily be dismissed.

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The recourse is dismissed. Let there be no order as to costs.

*Recourse dismissed.
No order as to costs.*

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