1966
April 18,
May 14.

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CYPRUS INDUSTRIAL AND MINING CO. LTD., (No.1),

Applicants,

and

THE REPUBLIC OF CYPRUS THROUGH

1. THE MINISTER OF INTERIOR,
2. THE PRINCIPAL LAND REGISTRY,

Respondent.

(Case No. 223/65).

Immovable Property—Sale of mortgaged property by public auction—Recourse against part of decision fixing a reserve price for applicants' immovable property under sections 4 and 6 of the Immovable Property (Restriction of Sales) Law, Cap. 223—Preliminary legal issue as to whether or not recourse is within the competence of Court under Article 146 of the Constitution.

Administrative Law—Constitution of Cyprus, Article 146—"Act" or "decision" in the sense of Article 146.1—Fixing a reserve price under sections 4 and 6 of Cap. 223 (supra)*—An action which is primarily intended to serve a public purpose and, therefore, an "act" or "decision" in the realm of public law and within the ambit of Article 146 of the Constitution.*

In this recourse against the decision of the Respondent whereby there has been fixed as a reserve price for applicants' property the sum of £6,000.- under sections 4 and 6 of the Immovable Property (Restriction of Sales) Law, Cap. 223, the parties were heard on a preliminary legal issue regarding the competence of the Court to entertain the recourse under Article 146 of the Constitution. Respondent's contention was that the decision fixing the reserve price at £6,000.— is a matter of Civil Law and that therefore, it cannot be brought before this Court by means of a recourse under Article 146 of the Constitution whereas applicants held the opposite view.

After referring to and distinguishing the cases of *Valana* and *The Republic*, 3 R.S.C.C. 91 and *HadjiKyriakou* and *Hadji-Apostolou*, 3 R.S.C.C. 89 and citing with approval the case of *Eraclidou* and *The Hellenic Mining Co. Ltd.*, 3 R.S.C.C. 153, the Court :—

Held,(1) as the fixing of the reserve price in the present Case has, no doubt, been made by an organ of administration, it follows that it should be looked upon, to begin with, as an " act " or " decision " within Article 146, unless it is established that it only amounts to action in the domain of private law, thus being outside the sphere of administration and consequently outside also the ambit of Article 146.

(2) Looking at the provisions of Cap. 223 as a whole—and particularly at its long title which reads " A law to restrict forced sales of immovable property in certain cases ", and at the provisions of section 11, thereof, which renders the Law applicable to rural areas—it does appear that the fixing of a reserve price in cases of a public sale by auction of mortgaged property is intended to ensure that rural properties shall not be allowed to be so sold at prices below their proper values. It is thus a measure intended to protect the rural community of Cyprus, by way of public policy ; it is noteworthy in this respect that under Cap. 223 (see sections 4 and 7 thereof) a reserve price may be fixed even where a sale of immovable property has been ordered by a Court and such Court has not proceeded to fix itself a reserve price (as under section 40 of the Civil Procedure Law, Cap. 6).

(3) I am, thus, of the opinion that the fixing of a reserve price under Cap. 223 is action which is primarily intended to serve a public purpose and, therefore, an " act " or " decision " in the realm of public law, and within the ambit of Article 146 of the Constitution.

(4) For the above reasons I have reached the conclusion that the preliminary objection fails and that this recourse should proceed to hearing on its merits. The costs of the hearing, to-date, of this Case are made costs in cause, in any event not against applicants.

Order, and order as to costs, as aforesaid.

Cases referred to :

Valana and the Republic, 3 R.S.C.C. 91;
HadjiKyriakou and HadjiApostolou, 3 R.S.C.C. 89;
Charalambides and the Republic, 4 R.S.C.C. 24;
Eraclidou and the Hellenic Mining Co. Ltd., 3 R.S.C.C. 153.

Preliminary legal issue.

Ruling on a preliminary legal issue, regarding the competence of the Court to entertain a recourse against the decision of the Respondent to fix the sum of £6.000 as a reserve price for applicants' property, under Registration No. 23932, at Kato Polemidhia, raised in the course of the hearing of an application for a provisional order postponing the sale of Applicants' said property pending the hearing of the recourse.

J. Potamitis with *A. Triantafyllides,* for the Applicants.

K. Talarides, Counsel of the Republic, for the Respondent.

Cur. adv. vult

The following Decision was delivered by:-

TRIANTAFYLLIDES, J.: This is a recourse by which the Applicants seek a declaration that the decision, contained in a notice of sale by public auction (which was published on the 20th October, 1965) whereby there has been fixed as a reserve price for Applicants' property—under registration No. 23932 at Kato Polemidhia— the sum of £6.000, is void and of no effect whatsoever.

When this Case came up for hearing arguments were heard on the preliminary legal issue regarding the competence of this Court to entertain this recourse under Article 146 of the Constitution, and the Decision thereon has been reserved until to-day.

The relevant undisputed facts of this Case are as follows:-

The aforesaid property of Applicants is mortgaged to the Cooperative Central Bank and steps were taken by the Bank to have this property sold by public auction in satisfaction of the mortgage debt.

Pursuant to the provisions of section 4 of the Immovable Property (Restriction of Sales) Law, Cap. 223, a reserve price of £2,500 was fixed for the purposes of the said sale; on application of the Applicants, under section 6 of such Law, such reserve price was reviewed and increased to £6,000. Applicants contend that the said price is still too low, that it should be at least £15,000 or over, and that in fixing it the proper criteria have not been duly taken into account.

They have, accordingly, filed this recourse on the 22nd November, 1965.

It has been the contention of counsel for Respondent that the decision fixing the reserve price at £6,000, which is the subject-matter of this recourse, is a matter of civil law and that, therefore, it cannot be brought before this Court by means of a recourse under Article 146 of the Constitution. Counsel for Applicants have taken the opposite view.

Both sides have relied in the above respect on the case of *Valana and The Republic* (3 R.S.C.C. p.91); each one has argued that the relevant principle expounded therein should be applied in favour of his own submission.

The said case of *Valana* has followed after the case of *HadjiKyriakou and HadjiApostolou* (3 R.S.C.C. p.89), to which I shall first refer:

In that case the then Supreme Constitutional Court had to decide whether the determination of a dispute as to boundaries of immovable properties, as made by the Director of Lands and Surveys, under section 58 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, is an "act" or "decision" in the sense of paragraph 1 of Article 146. The Court proceeded to state that an "act" or "decision" in the sense of the said paragraph is an act or decision of a public officer in the domain of public law; it held that:- "The determination of disputes as to boundaries of immovable property is a matter in the domain of private law. In so far as a public officer, i.e. the Director in a case of this nature, is vested with competence to take action in connection with the determination of such disputes as to boundaries, with the primary purpose of regulating private rights, then such action is a matter in the domain of private law and not in the domain of public law; consequently this is not a matter within the ambit of Article 146".

When the case of *Valana* (supra) came later before the same Court, the aforesaid case of *HadjiKyriakou* was confirmed.

The case of *Valana* involved the validity of a decision of the Director of Lands & Surveys, under section 61 of Cap. 224, in relation to correcting an error in the description of the boundaries contained in a title-deed.

The Court held that such action was not an "act" or "decision" within the ambit of Article 146 stating that:- "Civil law rights in immovable property are, as a rule, matters in the domain of private law. In so far as a public officer, in this case the Director, is vested with competence to take action in connection with civil law rights in immovable property, and the primary object of such action is not the promotion of a public purpose, but the regulation of the aforesaid civil law rights, then such action is a matter within the domain of private law and does not amount to an "act" or "decision" in the sense of paragraph 1 of Article 146"; the Court proceeded to add:- "The mere fact that as a result of the decision in question of the Director an area which Applicant alleges to be part of his yard would constitute part of a road does not affect the true character of the said decision because the primary object thereof still appears to be the regulation of Applicant's civil law proprietary rights i.e. the exact boundaries of his property and not the promotion of a public purpose i.e. the widening of a road..... It should be observed that there may be other cases under section 61 of Cap. 224 where the primary object of the action taken is the promotion of a public purpose and in all such cases this Court would have competence under Article 146".

As stated already, both parties rely on the *Valana* case; the Applicants contend that the fixing of the reserve price, in the present Case, is an act intended primarily to serve a public purpose, and the Respondent contends the contrary.

Before proceeding to resolve the sub judice issue it is, I think, necessary to refer to still another decided case, to which neither of the parties has referred the Court, but which, nevertheless, concerns, as this Case does, a recourse made against action taken in relation to a sale by public auction of mortgaged property; it is the case of *Charalambides and The Republic* (4 R.S.C.C. p.24).

In that case an application had been made to the Supreme Constitutional Court to grant a provisional order restraining the public sale of mortgaged property, pending the determination of the recourse, by which the decision of the District Lands Officer refusing to postpone the date of such sale was being challenged. The Court refused the provisional order applied for, on the ground that in the light of the case of *Valana* (supra) it had no competence to entertain the

recourse, stating:- "the refusal of the Director involves the exercise of a power which does not have as its primary object 'the promotion of any public purpose' but it only concerns civil law rights inasmuch as it is designed to ensure that the sale of mortgaged property takes place in a proper manner for the purpose of safeguarding the interests of the parties concerned. The said refusal, therefore, does not amount to an "act" or "decision" in the sense of paragraph 1 of Article 146".

It is, thus, necessary in the present Case, to decide whether the fixing of a reserve price, under sections 4 and 6 of Cap. 223, is action intended to serve primarily a public purpose, or action intended primarily to regulate civil law rights and to ensure the carrying out of the sale by auction of the mortgaged property of Applicants in a proper manner; only in the former case it would be an "act" or "decision" in the sense of paragraph 1 of Article 146 and against which this recourse would lie.

It is, first of all, necessary to bear in mind that once an act or decision emanates from an organ of administration then, as a rule, it is an "act" or "decision" within the ambit of a revisional jurisdiction such as the one laid down under Article 146 (vide Conclusions from the Jurisprudence of the Greek Council of State 1929–1959 p.228).

As the fixing of the reserve price in the present Case has, no doubt, been made by an organ of administration, it follows that it should be looked upon, to begin with, as an "act" or "decision" within Article 146, unless it is established that it only amounts to action in the domain of private law, thus being outside the sphere of administration and consequently outside also the ambit of Article 146.

Looking at the provisions of Cap. 223 as a whole—and particularly at its long title which reads "A law to restrict forced sales of immovable property in certain cases", and at the provisions of section 11 thereof, which renders the Law applicable to rural areas— it does appear that the fixing of a reserve price in cases of a public sale by auction of mortgaged property is intended to ensure that rural properties shall not be allowed to be so sold at prices below their proper values. It is thus a measure intended to protect the rural community of Cyprus, by way of public policy; it is noteworthy in this respect that under Cap. 223 (see sections 4

and 7 thereof) a reserve price may be fixed even where a sale of immovable property has been ordered by a Court and such Court has not proceeded to fix itself a reserve price (as under section 40 of the Civil Procedure Law, Cap. 6).

I am, thus, of the opinion that the fixing of a reserve price under Cap. 223 is action which is primarily intended to serve a public purpose and, therefore, an "act" or "decision" in the realm of public law, and within the ambit of Article 146 of the Constitution.

An analogous case which may be usefully referred to is the case of *Eraclidou and The Hellenic Mining Co., Ltd.* (3 R.S.C.C. p.153) where it was held that the decision of the Compensation Officer to allow or disallow a claim under the Pneumoconiosis (Compensation) Law (Law 11/60) is the decision of a person exercising administrative authority in the sense of paragraph 1 of Article 146, because he is a "public officer whose functions have as their primary object the promotion of a public purpose" and not merely the regulation of private rights. It was so held in view of the fact that the scheme for compensation of the victims of pneumoconiosis is "an expression of governmental action and policy in a matter of vital public importance". I likewise regard the existence of provisions, such as the relevant provisions of Cap. 223, as an expression of governmental action and policy in a matter of vital public importance viz. the protection of rural debtors against possible exploitation by their creditors.

For the above reasons I have reached the conclusion that the preliminary objection fails and that this recourse should proceed to hearing on its merits. The costs of the hearing, to-date, of this Case are made costs in cause, in any event not against Applicants.

Order, and order as to costs, as aforesaid.