

1967
Feb 11

[TRIANTAFYLLOIDES, J]

NEMITSAS
INDUSTRIES LTD
1
MUNICIPAL
CORPORATION
OF LIMASSOL
AND ANOTHER

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NEMITSAS INDUSTRIES LTD,

Applicants,

and

THE MUNICIPAL CORPORATION OF LIMASSOL
AND ANOTHER

Respondents.

(Case No 141/65)

*Streets and Buildings—Building permit—Endorsement thereon—
Street-widening scheme—Alignment—Endorsement made by the
Respondents on a building permit granted to Applicants—
Purporting to implement thereby a street-widening scheme—
Particularly such endorsement being to the effect that part of
the Applicants' property as defined therein, will be taken out of
the Applicants' ownership and will form part of the public street
in accordance with the said street-widening scheme—Validity
of such endorsement—The Streets and Buildings Regulation
Law Cap 96 sections 9 12 and 13—Endorsement not a mere
note—But a condition sought to be put on the aforesaid
building permit—And thus, forming part of the executory act
i.e. the said building permit—Therefore such endorsement could
be made the subject-matter of a recourse under Article 146 of
the Constitution—However the said endorsement has to be
annulled—As made without legal authority and in excess and
abuse of the powers vested in the Respondents under Cap 96
(supra)—All that the Respondents could lawfully do in the matter
was to apply under section 13 of the said Law Cap 96 (supra)
for the necessary amendments of the relevant Lands Office
registrations to be made in completion and in implementation
of the street-widening scheme concerned—Street-widening scheme
which became final and binding in 1955—As such scheme is an
administrative act which became final before the coming into
operation on the 16th August 1960 of the Constitution, there
is no competence vested in this Court to decide its validity on a
recourse under Article 146 of the Constitution—Only if it were*

a legislative act could its invalidity have led to the invalidity of an administrative act based thereon, i.e. in the present case the endorsement on the said building permit complained of— In which case this Court could have to examine the validity of the said street-widening scheme—See also, below

Administrative and Constitutional Law—Recourse under Article 146 of the Constitution—Competence under that Article—Does not extend to acts or decisions which became final before the coming into operation of the Constitution on the 16th August, 1960—Executory act—Only an executory act can be made the subject-matter of a recourse under Article 146—Restrictions and limitations of the right of ownership—Article 23 3 of the Constitution—The issue of fact whether a constructive imposition of such restrictions or limitations has taken place is within the jurisdiction of a civil court under paragraph 11 of Article 23 of the Constitution—And not within the jurisdiction of this Court on a recourse under Article 146 of the Constitution—See also above and under Street-widening Schemes below

Recourse—Recourse under Article 146 of the Constitution—See above under Streets and Buildings Administrative and Constitutional Law

Street-widening Schemes—Alignment—The Streets and Buildings Regulation Law Cap 96, section 12 and 13—Such scheme is an administrative act and not a legislative act—Therefore the Court has no competence to examine the validity of such scheme which became final before the coming into operation on the 16th August, 1960 of the Constitution—Composite administrative action—A street-widening scheme and a building permit under Cap 96, (supra), do not form a composite administrative action—So that the invalidity of the former could necessarily lead to the invalidity of the latter—The scheme and the permit are acts separate and independent of each other—Street-widening scheme which has become final before the 16th August, 1960 supra—Such a scheme cannot when relied upon by the Municipal Administration after the coming into operation on the 16th August 1960 of the Constitution be held to amount to a direct or indirect compulsory acquisition taking place after the coming into operation of the Constitution so that Article 23 4 of the Constitution could be applied to it—See, also above under Streets and Buildings Administrative and Constitutional Law

Alignment—Street alignment—See above

Building Permits—Building permits under Cap 96 (supra)—Endorsements thereon—Conditions—See above under Streets and Buildings, Street-widening Schemes

Abuse and excess of powers—See above under Streets and Buildings

Administrative Act—Administrative act as distinct from a legislative one—See above under Streets and Buildings, Administrative and Constitutional Law, Street-widening Schemes

Administrative Act—Composite administrative act or composite administrative action—Executory act—See above under Streets and Buildings, Administrative and Constitutional Law, Street-widening Schemes

Composite Administrative Act—See under Street-widening Schemes, above

Excess of powers—See under Streets and Buildings above

Executory Administrative Act—See above, under Streets and Buildings Administrative and Constitutional Law

Limitations or Restrictions —Of the right of ownership—Article 23 3 of the Constitution—See under Administrative and Constitutional Law above

Compulsory Acquisition—Article 23 4 of the Constitution—See under Street-widening Schemes, above

In this case the Applicants challenge, by claim (a) in the motion for relief, the validity of an endorsement made by Respondents on a building permit, dated the 11th June, 1965, in connection with the erection of a factory on their (Applicants') property in Limassoi, to the effect that the southern part of the said property, shaded in red on the plan attached to the permit, will be taken out of the ownership of the Applicants and will form part of a public street, in accordance with a street-widening scheme published in the *Official Gazette* (under Not. 322) on the 31st March, 1955

The Applicants also, by claims (b) and (c) in the motion for relief challenge the validity of the aforesaid street-widening scheme itself

The street-widening scheme in question was published in 1955—and became binding in that year—under the provisions of section 12 of the Streets and Buildings Regulation Law,

(then Cap. 165, now Cap. 96). Under sub-section (3) of section 12 it is provided that when a street-widening scheme has become binding no building permit shall be issued by the appropriate authority save in accordance with such scheme. Section 13 of the said Law provides that where a permit is granted by the appropriate authority and such permit entails a new alignment for any street, in accordance with any scheme which has become binding under section 12 of the Law (*supra*), any space between such alignment and the old alignment, which is left over when a permit is granted, shall become part of the street. It is further provided that when such permit is granted the District Lands Office shall, upon application by any interested party, cause the necessary amendments to the relative registrations to be effected.

1967
Feb. 11
—
NEMITSAS
INDUSTRIES LTD.,
v.
MUNICIPAL
CORPORATION
OF LIMASSOL
AND ANOTHER

In granting the application as regards claim (a), and dismissing it as regards claims (b) and (c), *supra*, the Court:

Held, I. As regards claims (b) and (c) supra:

(1) A street-widening scheme is an administrative, and not a legislative act. (See *Malliotis and The Municipality of Nicosia*, (1965) 3 C.L.R. 75 at p. 84).

(2) It is not in dispute that the scheme in question became binding *viz.* a final administrative act long before the 16th August, 1960, when the Constitution of the Republic came into operation. As held in *Mustafa and The Republic* 1 R.S.C.C. 44, at p. 47 and in *Kaniklides and The Republic* 2 R.S.C.C. 49, at p. 53, the competence under Article 146 does not extend to acts or decisions which became final before the 16th August, 1960.

(3) It follows, therefore, that this Court in the present recourse has no competence to decide on the validity of the aforesaid street-widening scheme of 1955 as such. Claims (b) and (c) of the Applicants cannot, therefore succeed and are dismissed accordingly.

Held, II. As regards claim (a) in the motion for relief, supra:

(1) (A) In dealing with the validity of the said endorsement on the building permit in question I am not entitled to examine the validity of the street-widening scheme itself—as being a factor decisive for the validity of the endorsement—because:

(a) The said scheme is not a legislative act, but an

1967
Feb. 11

—
NEMITSAS
INDUSTRIES LTD.,
v.
MUNICIPAL
CORPORATION
OF LIMASSOL
AND ANOTHER

administrative one; only if it were a legislative act could its invalidity have led to the invalidity of an act based thereon (as in *Christodoulou and The Republic* 1 R.S.C.C. 1).

(b) Nor can it be said, in this respect, that the said scheme and the building permit in question form together a “composite administrative action” so that the invalidity of part of such action—such as the scheme—could lead to the invalidity of the culmination of such action *i.e.* the building permit. The scheme and the permit are acts separate and independent of each other; though a scheme is a factor which, when it exists, restricts the exercise of the power to grant a building permit, it is not a step taken in the administrative process of granting such a permit.

(B) The attempt made towards implementation of the 1955 street-widening scheme for the relevant area, by means of the endorsement complained of, cannot, in any sense, be said to amount to a compulsory acquisition made after the 16th August, 1960 (*i.e.* after the date of the coming into operation of the Constitution), so that Article 23.4 of the Constitution could be applicable to it,—because, as it is to be derived from *Anastassiadou and The Municipal Commission of Nicosia*, 3 R.S.C.C. 111, at p. 116, a scheme which came into force in 1955 cannot, when relied upon by a Municipal Authority after the coming into operation of the Constitution (*i.e.* after the 16th August, 1960), be held to amount to direct or indirect compulsory acquisition taking place after the coming into operation of the Constitution.

(2) (A) In attacking the validity of the said endorsement, counsel for Applicants submitted that, because of a supervening in the meantime basic change in the nature of the use of their affected property, such endorsement amounts to restrictions or limitations, in the sense of Article 23.3 of the Constitution, which were constructively imposed when the building permit of the 11th June, 1965 (*supra*), was issued; and, thus, such imposition may be made the subject-matter of this recourse. Reference in this respect has been made to the notion of constructive imposition of restrictions or limitations expounded in *Ramadan and The Electricity Authority*, 1 R.S.C.C. 49, at p. 57; reliance has also been placed on the *Anastassiadou* case (*supra*, at p. 116) as supporting the view that the implementation of the 1955 said street-widening scheme after the 16th August, 1960 (*supra*), may result in the constructive imposition of such restrictions or limitations of the right of ownership.

(B) But, as pointed out in the said case of *Ramadan (supra)* at p. 58) the issue of fact whether a constructive imposition of restrictions or limitations has taken place in a matter so closely related to the determination of the amount of any compensation payable in respect thereof, under Article 23 3 of the Constitution, that it is within the jurisdiction of the civil court, under paragraph 11 of this Article, and not within the jurisdiction of this Court on a recourse under Article 146 of the Constitution

(3) (a) I am of the opinion, however, that no Law or Regulation, enables the making of an endorsement, such as the one complained of in the present case

(b) The combined effect of sections 12 (3) and 13 of the Streets and Buildings Regulation Law, Cap 96 (*supra*) does not authorize at all an appropriate authority—in this case the Limassol Municipality—to make an endorsement on a building permit, as the one complained of. Nor is such endorsement among the possible conditions provided for, in relation to building permits, by section 9 of the said Law, Cap 96

(c) All that the Respondents could lawfully do, under section 13 (*supra*), if they were of the view that the requirements of the said section were satisfied, was to apply for the necessary amendments of the relevant Lands Office registrations, in completion and in implementation of the street-widening scheme concerned

(4) I have, therefore, reached the conclusion that the aforesaid endorsement has been made without legal authority, and in excess and abuse of the relevant powers of the Respondents, and it should therefore, be declared to be null and void and of no effect whatsoever.

(5) (a) In examining the validity of the endorsement, which has just been found to be invalid, I have considered the possibility that it might have been only a mere "note"—as it appears to be *prima facie*—not intended to produce a new legal situation affecting the Applicants. In such a case it would not have been an executory act and, thus, it could not be made the subject-matter of a recourse under Article 146 of the Constitution, because only executory acts can be made the subject-matter of such recourse (see *Kolocussides and The Republic* (1965) 3 C.L.R. 542)

1967
Feb. 11

NEMITSAS
INDUSTRIES LTD.,
v.
MUNICIPAL
CORPORATION
OF LIMASSOL
AND ANOTHER

(b) I have reached, however, the conclusion that the endorsement in question as made, in the context of the circumstances of this case was intended to be part of the executory act of the aforesaid building permit and to amount to a condition relating to the grant of such permit. It follows, therefore, that it could, properly, be made the subject-matter of the present recourse.

*Order in terms. No
order as to costs.*

Cases referred to:

Malliotis and The Municipality of Nicosia (1965) 3 C.L.R. 75
at p. 84, *applied*;

Mustafa and The Republic, 1 R.S.C.C. 44, at p. 47, *applied*;

Kaniklides and The Republic, 2 R.S.C.C. 49, at p. 53, *applied*;

Christodoulou and The Republic, 1 R.S.C.C. 1, *distinguished*;

Anastassiadou and The Municipal Commission of Nicosia,
3 R.S.C.C. 111, at p. 116, *applied*;

Ramadan and The Electricity Authority, 1 R.S.C.C. 49, at
p. 57, *considered*, and at p. 58, *applied*;

Kolocassides and The Republic, (1965) 3 C.L.R. 542, *applied*.

Recourse.

Recourse against the validity of an endorsement made by Respondents on a building permit granted to Applicants which was to the effect, *inter alia*, that a part of Applicants' property will be taken out of their ownership and form part of a public street in accordance with a street-widening scheme and against the validity of the said scheme itself.

G. Cacoyannis for Applicants.

J. Potamitis for the Respondents.

Cur. adv. vult.

The following Judgment was delivered by:

TRIANTAFYLIDIS, J.: In this Case the Applicants challenge, by claim (a) in the motion for relief, the validity of an endorsement made by Respondents on a building permit,

dated the 11th June, 1965, (see *exhibit 6*), and granted to Applicants in connection with the erection of a factory on their property in the Chiflikoudhia (or Chiftlikoudhia) area in Limassol (see plots 159/1 and 158 on the map, *exhibit 1*). The said endorsement is to the effect, *inter alia*, that the southern part of their property, which is shaded in red on a plan which was attached to the permit (see *exhibit 6 (a)*), will be taken out of the ownership of the Applicants and will form part of a public street, in accordance with a street-widening scheme published in the official *Gazette* (under Not. 322) on the 31st March, 1955, in respect of Chiflikoudhia road, which forms the southern boundary of the Applicants' said property.

The Applicants challenge, also, by claims (b) and (c) in the motion for relief, the validity of the said scheme itself.

A further claim — claim (d) — of the Applicants, for just and equitable compensation, has been abandoned by them, at the hearing of this Case, as not being within the competence of this Court under Article 146.

The history of relevant events appears, on the basis of the material before the Court, to be as follows:

When the street-widening scheme in question was published in 1955, under the provisions of section 12 of the Streets and Buildings Regulation Law (then Cap. 165, and now Cap. 96, of the Laws of Cyprus) the affected property of the Applicants did not belong to them, but it belonged to another owner, a certain Azat Voskeredjian, who on the 30th July, 1960, sold it to Nemitsas Ltd., a company which is an associate of the Applicants; then the said company gifted the property, in 1965, to the Applicants.

As it appears from the material before the Court, Nemitsas Ltd. had applied in 1964 for the building permit in question; in the meantime, however, the property was transferred to the Applicants and they adopted such application and pursued the matter themselves.

On the 20th May, 1965, the Managing Director of the Applicants addressed a letter to the Respondents (see *exhibit 2*) alleging that the Respondents could not insist on the aforementioned southern part of Applicants' property being ceded to the public street, and requesting that the building permit applied for be issued without any condition to that effect.

1967
Feb. 11
—
NEMITSAS
INDUSTRIES LTD.,
v.
MUNICIPAL
CORPORATION
OF LIMASSOL
AND ANOTHER

The Chairman of the Municipal Commission of Limassol replied by letter dated the 1st June, 1965 (see *exhibit 3*) rejecting the above request of the Applicants.

On the 11th June, 1965, the building permit in question, with the endorsement complained of by Applicants, in relation to the southern part of the property of the Applicants which is affected by the 1965 street-widening scheme for Chiflikoudhia road, was issued.

On the 12th June, 1965, the Applicants wrote to Respondents accepting the building permit, but reserving their right to challenge in Court the validity of the decision of Respondents to insist on the cession to the public street of the said part of the Applicants' property (see *exhibit 4*).

By letter dated the 12th July, 1965, the Respondents rejected the contentions of Applicants (*exhibit 5*).

This recourse was filed on the 5th August, 1965.

It is convenient to deal first with claims (b) and (c) of the Applicants, which, as already stated, are aimed at the validity of the 1955 street-widening scheme in respect of Chiflikoudhia road; the validity of such scheme is challenged to the extent to which it affects the southern part of the property of the Applicants.

A street-widening scheme is an administrative, and not a legislative, act. (See *Malliotis and the Municipality of Nicosia*, (1965) 3 C.L.R. 75 at p. 84).

It is not in dispute in the present Case that the scheme in question became a final administrative act long before the 16th August, 1960, when the Constitution of the Republic came into operation.

As held in *Mustafa and the Republic* (1 R.S.C.C. p. 44, at p. 47) and *Kaniklides and the Republic* (2 R.S.C.C. p. 49, at p. 53) the competence under Article 146 does not extend to acts or decisions which became final before the 16th August, 1960.

It follows, therefore, that this Court in the present recourse has no competence to decide on the validity of the aforesaid 1955 street-widening scheme as such.

Claims (b) and (c), of the Applicants cannot, therefore, succeed and are dismissed accordingly.

We come now to claim (a) of the Applicants which, as stated earlier, is aimed at the validity of the endorsement on the building permit dated 11th June, 1965, (*exhibit 6*) to the extent to which it refers to the street-widening scheme for Chiflikoudhia road.

I would like to make at this stage two preliminary observations:

First, I am of the opinion that in dealing with the validity of such endorsement I am not entitled to examine the validity of the scheme itself — as being a factor decisive for the validity of the endorsement — because the scheme is not a legislative act, but an administrative one; only if it were a legislative act could its invalidity have led to the invalidity of an act based thereon (as in *Christodoulou and The Republic*, 1 R.S.C.C. p. 1). Nor can it be said, in this respect, that the said scheme and the building permit in question form together a “composite administrative action” so that the invalidity of part of such action — such as the scheme — could lead to the invalidity of the culmination of such action — *i.e.* the building permit. The scheme and permit are acts separate and independent of each other; though a scheme is a factor which, when it exists, restricts the exercise of the power to grant a building permit, it is not a step taken in the administrative process of granting such a permit.

Secondly, the attempt made towards implementation of the 1955 street-widening scheme for Chiflikoudhia road, by means of the endorsement complained of, cannot, in any sense, be said to amount to a compulsory acquisition made after the 16th August, 1960 — so that Article 23.4 could be applicable to it — because as it is to be derived from *Anastassiadou and The Municipal Commission of Nicosia* (3 R.S.C.C. p. 111, at p. 116) a scheme which came into force in 1955 cannot, when relied upon by a Municipal Authority after the coming into operation of the Constitution on the 16th August, 1960, be held to amount to direct or indirect compulsory acquisition taking place after the coming into operation of the Constitution.

In attacking the validity of the endorsement complained of the Applicants have submitted that, because of a supervening in the meantime basic change in the nature of the use of their affected property, it amounts to restrictions or limitations

1967
Feb. 11
—
NEMITSAS
INDUSTRIES LTD.,
v.
MUNICIPAL
CORPORATION
OF LIMASSOL
AND ANOTHER

which were constructively imposed when the building permit in question was issued, and, thus, such imposition may properly be made the subject-matter of this recourse. Reference in this respect has been made to the notion of constructive imposition of restrictions or limitations expounded in *Ramadan and The Electricity Authority* (1 R.S.C.C. p. 49 at p. 57); reliance has also been placed on the *Anastassiadou* case (*supra*, at p. 116) as supporting the view that the implementation of the 1955 street-widening scheme after the 16th August, 1960, may result in the constructive imposition of restrictions or limitations.

As pointed out in the said case of *Ramadan* (*supra*, at p. 58) the issue of fact whether a constructive imposition of restrictions or limitations has taken place is a matter so closely related to the determination of the amount of any compensation payable in respect thereof, under paragraph 3 of Article 23, that it is within the jurisdiction of a civil court, under paragraph 11 of Article 23, and not of this Court, on a recourse under Article 146.

Nevertheless, during the hearing of this Case, considerable latitude was allowed to the parties in adducing their evidence, in relation to the issue of constructive imposition of restrictions or limitations on the property of the Applicants, so that the Court might have before it all factors possibly relevant to the determination of this recourse.

In the end, however, it was not found necessary to decide any issue of fact, because in examining the effect and validity of the endorsement complained of, as made on the building permit (*exhibit 6*), I have reached the conclusion that, in any case, it does not amount to administrative action which could bring about the constructive imposition, in 1965, of restrictions or limitations on the property of Applicants, simply because it does not amount to valid administrative action at all.

As at present advised, I am of the opinion that no Law, or Regulation, enables the making of an endorsement, such as the one complained of in this Case.

Under sub-section (3) of section 12 of Cap. 96 it is provided that when a street-widening scheme has come into force no permit shall be issued by an appropriate authority save in accordance with such scheme.

Section 13 of Cap. 96 provides that where a permit is granted by an appropriate authority and such permit entails a new alignment for any street, in accordance with any scheme which has become binding under section 12 of the Law, any space between such alignment and the old alignment, which is left over when a permit is granted, shall become part of the street. It is further provided that when such a permit is granted the District Lands Office shall, upon application by any interested party, cause the necessary amendments to the relative registrations to be effected.

The combined effect of sub-section (3) of section 12 and section 13 does not, in my opinion, authorize at all an appropriate authority — in this case the Limassol Municipality — to make an endorsement on a building permit, as complained of in this Case. Nor is such an endorsement among the possible conditions provided for, in relation to building permits, by means of section 9 of Cap. 96.

In the present Case (unlike the case of *Anastassiadou (supra)* in which a building permit, as applied for, was refused because of the existence in force of a street-widening scheme) the building permit applied for by the Applicants has been granted and, therefore, it may be assumed that the said permit, as applied for, was not incompatible with the Chiflikoudhia road street-widening scheme. Once this was so, and there was no provision of law enabling or requiring the making of the endorsement in question in the said building permit, it was not open to Respondents to endorse such permit as they did, in an effort to further the implementation of the street-widening scheme concerned, by way of a condition in the said permit, and in a manner other than as, and not provided for, by law. All that the Respondents could lawfully do, under section 13 of Cap. 96, if they were of the view that the requirements of the said section were satisfied, was to apply for the necessary amendments of the relevant Lands Office registrations, in completion of the implementation of the street-widening scheme concerned.

I have reached, therefore, the conclusion that the aforesaid endorsement has been made without legal authority, and in excess and abuse of the relevant powers of the Respondents, and it should, therefore, be declared to be null and void and of no effect whatsoever; and it is so declared accordingly.

1967
Feb. 11
—
NEMITSAS
INDUSTRIES LTD.,
v.
MUNICIPAL
CORPORATION
OF LIMASSOL
AND ANOTHER

In examining the validity of the endorsement, which has just been found to be invalid, I have considered the possibility that it may have been only a mere “note” — as it appears to be *prima facie* — not intended to produce a new legal situation affecting the Applicants; in such a case it would not be of an executory nature, and not only it would not be capable of contributing to the constructive imposition of restrictions or limitations, but also it could not be made the subject-matter of a recourse, because only executory acts can be made the subject-matter of recourses under Article 146 of the Constitution. (See *Kolocassides and The Republic*, (1965) 3 C.L.R. 542).

I have reached, however, the conclusion that the endorsement in question as made, in the context of the circumstances of this Case, was intended to be part of the executory act of the building permit (*exhibit 6*) and to amount to a condition relating to the grant of such building permit. I have, therefore, reached the conclusion that it could, properly, be made the subject-matter of the present recourse, and be annulled in the exercise of the competence under Article 146.

In the result this recourse succeeds as regards claim (a), to the extent stated in this Judgment, and it fails as regards the remaining claims of the Applicants.

I would like to conclude by pointing out that nothing in this Judgment may be taken as indicating that the Respondents are now any less entitled, than they would have been otherwise, to take such action as may be warranted under section 13 of Cap. 96, in view of the granting of the relevant building permit (*exhibit 6*). What the nature and legal consequences of such action may be under the legislation in force, including, of course, the Constitution of the Republic, is a matter which I leave entirely open.

Regarding costs I have decided, in view of the fact that the Applicants have succeeded only in part in this recourse, to make no order as to costs.

*Order in terms. No
order as to costs.*