

1968
May 4

[TRIANTAFYLLIDES, J.]

ANDREAS
HADJIYIANNIS
AND OTHERS
v.
THE MAYOR ETC.
FAMAGUSTA

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

ANDREAS HADJIYIANNIS AND OTHERS,

Applicants,

and

THE MAYOR, DEPUTY MAYOR,
MUNICIPAL COUNCILLORS AND TOWNSMEN
OF FAMAGUSTA,

Respondents.

(Case No. 26/67).

Town Planning—Building sites—Division of land into Building sites—Permit for such division—Permit refused by the Respondent Municipality, unless Applicants would agree to cede to the Municipality for the purposes of creating a public square, of a part of their land totally unconnected with the part of the area sought to be divided into building sites (four in number)—This course was totally alien to the one envisaged by the relevant Law—And the sub judice decision has, therefore, to be annulled in that it has been taken in excess and abuse of powers—The Streets and Buildings Regulation Law, Cap. 96, sections 3(1)(c), 8 and 9(1)(c)(2).

Buildings—Building sites—See above.

Building sites—Division into—See above.

Municipalities—Town planning—Building sites—Division into—Condition alien to the Law—See above.

The Applicants complain by this recourse against the decision of the Respondent whereby they were refused a permit under section 3(1)(c) of the Streets and Buildings Regulation Law, Cap. 96 to divide part of their land into four building sites unless they would agree to cede to the Respondent Municipality another part of their land for the purposes of creating thereon a public square. The part of the Applicants land sought to be divided into the said four building sites was totally unconnected with the part suggested to be ceded for the envisaged public square. The Respondent was relying on sections 8 and 9 of the

aforesaid Law Cap. 96 with special emphasis on section 9(1)(c) and 9(2).

Sections 8 and 9 of the Streets and Buildings Regulation Law, Cap. 96 provide.

“8. Before granting a permit under section 3 of this Law, the appropriate authority may require the production of such plans, drawings and calculations or may require to be given such description of the intended work as to it may seem necessary and desirable and may require the alteration of such plans, drawings and calculations so produced, particularly—

- (a) with the object of securing proper conditions of health and safety in connection with the building to which such plans, drawings and calculations relate;
- (b) with a view to preserving the uniform or proper character and style of buildings erected or to be erected in the area in which the plot is situated;
- (c) with the general object of securing proper conditions of health, sanitation, safety, communication, amenity and convenience in the area in which the intended work is to be carried out”.

“9. (1) In granting a permit under the provisions of section 3 of this Law, the appropriate authority shall have power, subject to any Regulations in force for the time being, to impose conditions as hereinafter, to be set out in the permit, that is to say—

- (a) with regard to the laying out or the construction of a street, conditions as to—
 - (i) its width, length and position;
 - (ii) its level, inclination and drainage;
 - (iii) the materials of which and the manner in which it shall be constructed;
 - (iv) the construction of bridges, culverts and side ditches;
 - (v) the widening of any street which adjoins the street to which the application relates.

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(b) with regard to the erection of any new building or addition, alteration or repair to any existing building, conditions as to—

- (i) the materials of which any external wall, foundation, roof, chimney or other external portion of a building shall be constructed and the size and thickness thereof;
- (ii) the materials of which any internal portion of a building, so far as it affects the stability of the building, shall be constructed;
- (iii) the provision to be made for drainage and sewerage;
- (iv) the provision to be made for the prevention or the spreading of any fire in any building;
- (v) the width of any balcony or erection projecting over a street upon which such building abuts;
- (vi) wells, waterclosets, earthclosets, privies, pits, septic tanks, soakaways and cesspools in or in connection with any building;
- (vii) the ventilation, lighting and sanitation of any building in regard to its occupation as a dwelling house or for any other purpose for which it may be erected or intended;
- (viii) the use to which the building may be put;
- (ix) the safety of persons employed for the purpose;
- (x) the construction of suitable pavement in connection with any new building.

(c) with regard to the laying out or division of any land for building purposes, conditions as to—

- (i) the demarcation and size of boundary marks;
- (ii) the installation of adequate water supply;
- (iii) the diversion of natural and artificial water courses;
- (iv) the levelling of the site;

- (v) the construction of streets, ditches, bridges and culverts;
- (vi) the widening of any street upon which the land, to which the application relates, abuts.

(2) Where an application is made under section 3(1)(c) of this Law in respect of any land having a frontage on an existing road, the appropriate authority may refuse to grant a permit to divide that land unless the application includes the laying out of sites not fronting on to the existing road; and the number of such sites shall be in such proportion to the number of sites fronting on the existing road as the appropriate authority may at its discretion deem desirable”.

In annulling the decision complained of, the Court:-

Held, (1). In my opinion, section 3 (1)(c) of Cap. 96 clearly entitles the owner of an area of land to apply for a permit for the division of the area or part thereof into building sites; this is what the Applicants have done in the present case, and they were entitled to have their relevant application decided on its own merits.

(2) The provisions of sections 8 and 9 Cap. 96 (*supra*)—in so far as they were pertinent to the matter—could be relied upon by the Respondent Municipality for the purpose of requiring any alteration (under section 8), or of imposing any conditions (under section 9(1)(c)) directly relating to the division of the four building sites described in the application submitted by the Applicants but it could not impose a condition for the ceding, for the purposes of a public square, of a part of the Applicant’s land totally unconnected, from any point of view, with the part sought to be divided into four building sites.

(3) Nowhere in the material before me does there appear that the Respondent Municipality laid down a condition under section 9(2) of the Law, Cap. 96, for the division of a specified greater number of building sites than the four applied for. If this was the approach of the Municipality to the matter, it ought to have been stated clearly and with due reasons therefor. Consequently, the contention of the Respondent based on section 9(2) is untenable.

(4) In my opinion, what has really happened was that the Municipality, having perused the plan for the future

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division into building sites of the whole remaining part of the Applicants' land, decided to secure, by way of concession, from them, part of such land (equal to a building site) for the purpose of creating a public square in return for granting to the Applicants a permit for the division of four building sites, as applied for by them. Such a course was entirely alien to the one envisaged under section 9(2) of Cap. 96.

(5) I have, therefore, reached the conclusion that the Respondent Municipality has acted in excess and abuse of powers, and that its *sub judice* decision has to be annulled. It is now up to the Municipality to reconsider the matter of the application of the Applicants in its proper context and in the light of this Judgment.

*Sub judice decision annulled,
with costs in favour of Ap-
plicants.*

Recourse:

Recourse against two decisions of the Respondent Famagusta Municipality regarding an application for division of land of Applicants into building sites.

Chr. Mitsides with Ph. Poetis, for the Applicants.

Fr. Saveriades and M. Papas, for the Respondent.

Cur. adv. vult.

The following Judgment was delivered by:-

TRIANTAFYLIDIS, J.: The Applicants complain, by this recourse, against two "decisions" of the Respondent Famagusta Municipality — regarding an application for division of land of theirs into building sites — communicated to them by letters dated, respectively, the 2nd December, 1966 (see *exhibit 1*) and the 12th January, 1967 (see *exhibit 2*).

It is clear from the contents of the letter of the 2nd December, 1966 (*exhibit 1*) that it does not communicate a final decision in the matter, but it requests further information with a view to reaching such a decision; therefore, the Applicants cannot, really, obtain any relief, under Article 146 of the Constitution, in respect thereof; they describe

it as a “decision”, when in fact it is not a decision (or act or omission, either) in the sense of such Article.

What has to be determined in this recourse is the validity of the decision of the Municipality communicated by the letter of the 12th January, 1967 (*exhibit 2*).

The salient facts of the matter are as follows:

The Applicants applied on the 10th November, 1966, (see *exhibit 4A*) for a permit — under section 3(1) (c) of the Streets and Buildings Regulation Law, Cap. 96 — to divide land of theirs, at the Ayia Zoni area of Famagusta, into four building sites. This application concerned part, only, of a large area of land belonging to the Applicants; the proposed building sites are numbered 1, 2, 3 and 4 on the map (see *exhibit 4B*) which accompanied the application of the Applicants for a permit.

The said application was submitted, by the appropriate official of the Respondent Municipality, to the Building Committee of the Municipal Commission of Famagusta; and, as it appears from the relevant file of the Municipality (see *exhibit 6*), it was decided, on the 29th November, 1966, to request from the Applicants to submit a plan showing the envisaged future division into sites of the whole of their land in question.

As a result, the letter of the 2nd December, 1966, (*exhibit 1*) was sent to the Applicants.

The Applicants complied with the request of the Municipality and submitted the relevant plan (see *exhibit 3*) showing how, eventually, the whole of the land of the Applicants would be divided into 15 building sites, including the four for which a permit was being sought by means of the application of the 10th November, 1966 (*exhibit 4A*).

Then the matter was placed, again, before the Building Committee; the appropriate official reporting that there was no difficulty in the way of the proposed division.

On the 9th January, 1967, the Building Committee took a decision in which it is stated, *inter alia*, that the division of an area of land into 15 building sites justified the course of requiring the Applicants to cede one of such sites (No. 13 on *exhibit 3*) for the purpose of creating a public square.

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Thus, the letter of the 12th January, 1967, was written to the Applicants (*exhibit 2*); the development study mentioned in such letter has been produced (see *exhibit 5*), and the envisaged public square is coloured green thereon, and marked with an 'X'.

So, in effect, the Applicants, who were not, at the material time, applying for a permit for the division of the total area of their land into building sites — but only for a permit for the division of four building sites — were refused the relevant permit, unless they agreed to cede part of their land to the Respondent Municipality; and it is clear from the map, *exhibit 3*, that the part of the land of the Applicants, which was sought to be divided into four building sites (Nos. 1, 2, 3 and 4), was a totally different one than the part of Applicants' land wherefrom the Respondent Municipality was asking to be ceded a building site (No. 13), for the purposes of the envisaged public square.

It has, also, been established, beyond dispute, that the creation of the said public square was not decided upon by the Respondent Municipality until *after* the Applicants applied for the permit in respect of the division of the four building sites, and *after* the Building Committee of the Municipality had had a look at the plan of the Applicants for the future division of the whole remaining part of their land into building sites.

At the hearing before this Court counsel for both sides opened their case; then the Applicants called evidence, whilst the Respondents chose not to do so; eventually, after the final addresses of counsel, an adjournment for mention was applied for, and granted, by consent, with a view to an out-of-Court arrangement.

When the Case came up for mention on the 23rd of September, 1967, counsel for Respondents applied for leave to call "further evidence" — i.e. evidence further to that called already by the Applicants. The Ruling of the Court was that it was rather late to call evidence at this stage, but counsel could apply accordingly, in writing, by summons, within three weeks, stating the reasons for which evidence was sought to be adduced, and attaching thereto summaries of such evidence; otherwise, if no such application were to be made, the proceedings would be deemed to have come to an end and judgment to have been reserved. Till today no such

application has been made by Respondents' side, and, therefore, I have decided to proceed to give judgment in this Case.

In my opinion, section 3(1) (c) of Cap. 96 clearly entitles the owner of an area of land to apply for a permit for the division of, only, part of such area into building sites; this is what the Applicants have done in the present Case, and they were entitled to have their relevant application (*exhibit 4A*) decided on its own merits. .

I am prepared to assume — without deciding it — that the Respondent Municipality was entitled to ask for the plan of the Applicants in respect of the eventual division of the whole of the remaining part of their land into building sites so as to have in mind the complete picture regarding future development in the area; but I have no difficulty in holding that sections 8 and 9 of Cap. 96 — which were relied upon by counsel for the Respondent Municipality — did not empower the Municipality, in the circumstances, at any rate, of this particular Case, to refuse the permit applied for (as, in effect, it has done) unless the Applicants were to agree to cede part of their land for the purpose of creating a square, in accordance with the development plan, *exhibit 5*.

The provisions of sections 8 and 9 of Cap. 96 — in so far as they were pertinent to the matter — could be relied upon by the Respondent Municipality for the purpose of requiring any alteration (under section 8), or of imposing any conditions (under section 9(1) (c)), directly relating to the division of the four building sites described in the application, *exhibit 4A*; but it could not impose a condition for the ceding, for the purposes of a public square, of a part of the land of the Applicants totally unconnected, from any point of view, with the part to be divided into four building sites.

It has been alleged by counsel for the Respondent Municipality that the action complained of was taken on the strength of the provisions of section 9(2) of Cap. 96. But, in my view, such a contention is untenable, in the light of what actually has happened in this Case; nowhere on the material before me (and particularly in the relevant file, *exhibit 6*) does there appear that the Municipality laid down a condition, under section 9(2) of Cap. 96, for the division of a specified number of more building sites than the four such sites shown on the map *exhibit 4B*. If this was the approach of the Municipality to the matter, it ought to have been stated clearly and

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with due reasons therefor.

In my opinion, what has really happened was that the Municipality, having perused the plan (*exhibit 3*) for the future division into building sites of the whole remaining part of the land of the Applicants, decided—with, no doubt worthwhile motives—to secure, by way of concession, from the Applicants, part of such land (equal to a building site) for the purpose of creating a public square, in return for granting to the Applicants a permit for the division of four building sites, as applied for by *exhibit 4A*. Such a course was entirely alien to the one envisaged under section 9(2) of Cap. 96.

I have, therefore, reached the conclusion that the Respondent Municipality has acted in excess and abuse of powers, and that its *sub judice* decision has to be declared to be *null* and *void* and of no effect whatsoever. It is now up to the said Municipality to reconsider the matter of the application of the Applicants (*exhibit 4A*) in its proper context, and in the light of this judgment.

Regarding costs I have decided to make an order for £15 costs in favour of the Applicants.

Sub judice decision annulled.
Order for costs as aforesaid.