IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PELOPIDAS SEVASTIDES,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE COUNCIL OF MINISTERS

Respondent.

(Case No. 100/67).

Buildings—Industrial buildings—Building permit—Zone within which industrial buildings cannot be erected save under very strict conditions and limitations—The Streets and Buildings Regulation Law, Cap. 96, section 14(1)(2)—Notice published on the 10th November, 1955, in Supplement No. 3 to the Official Gazette (under Not. 700) by virtue of section 14(1) —Refusal by the Council of Ministers to grant to Applicant a building permit under the second proviso to the said section 14(2) in connection with an industrial building within such zone—Decision complained of not taken in abuse or excess of powers—All relevant factors duly considered—See, also, below.

Industrial buildings—Zones—See above.

Administrative Law—Administrative decisions—Need for due reasoning—Reasons not appearing in the decision itself as communicated to the Applicant—But the decision has to be treated as being duly reasoned in view of the fact that quite clearly such decision was taken for the reasons set out in the written submission on the basis of which the Respondent Council of Ministers acted in the matter—See, also, herebelow.

Reasoning—Due reasoning of administrative decisions—See above and herebelow.

Constitutional Law—Article 29 of the Constitution—Council of Ministers turning down a petition in writing of the Applicant— No reasons appearing in their said reply to the Applicant— This is a contravention of Article 29—But the Applicant having proceeded by the present recourse in respect of the

substance of the matter to which the aforesaid reply relates, cannot pursue a claim complaining against such contravention—And he has not established that he has suffered any material detriment through such reply not being duly reasoned—Thus no legitimate interest of the Applicant has been affected in the sense of Article 146.2 *of the Constitution.*

Legitimate interest—Article 146.2 *of the Constitution—See immediately above.*

Administrative Law—Administrative decisions—Executory decisions subject to recourse under Article 146 *of the Constitution—Decision of the Improvement Board of K. not to recommend to the Council of Minister the grant of building permit to the Applicant under the first proviso to section* 14(2) *of Cap.* 96, *supra—Such recommendation being a prerequisite under the said first proviso for a decision of the Council of Ministers to grant such permit, it follows that the said refusal to recommend such grant can be challenged by recourse under Article* 146—*On the other hand, such recommendation of the Board is not a prerequisite for a decision of the Council of Ministers under the second proviso to the said sub-section (2)—Consequently, the negative decision of the Board cannot be said to form a composite administrative action with the negative decision of the Council of Ministers, complained of by this recourse, which was taken under the aforesaid second proviso.*

Executory act or decision—See above.

Composite administrative action—See above.

Petition—Right to petition—Duty of the public authorities concerned—Reasoned reply—Article 29 *of the Constitution—See above under Constitutional Law.*

Abuse and excess of powers—See above under Buildings.

By this recourse under Article 146 of the Constitution the Applicant complains against a decision of the Respondent Council of Ministers dated the 26th January, 1967 *(Exhibit 4)* whereby the Council, turning down Applicant's application of the 5th January, 1966 *(Exhibit 2)*, refused to grant him a building permit by virtue of its powers under the second proviso to sub-section (2) of section 14 of the Streets and Buildings Regulation Law, Cap. 96, as amended, in this respect, by the Streets and Buildings

Regulation (Amendment) Law, 1959 (Law No. 14 of 1959). The said section (as amended) is quoted in full in the Judgment of the Court, *post*. The decision complained of was communicated to the Applicant by a letter dated the 13th April, 1967, *Exhibit* 1.

In the year 1955, the Applicant erected at Kaimakli a mosaics factory. Subsequent to this, on November 10, 1955, a Notice was published in the Official Gazette (Supplement No. 3 under Not. 700) by virtue of which the area in which the said factory was erected was declared, under the provisions of section 14(1) of the Streets and Buildings Regulation Law, Cap. 96 (then Cap. 165 in the 1949 edition), to be a zone within which industrial buildings, such as the Applicant's factory, could no longer be erected; there was, however, a provision in the said Notice for the possibility of granting building permits for additions or alterations to already existing such industrial buildings subject to certain conditions and restrictions.

In 1964 the Applicant proceeded, without first obtaining the necessary building permit, to build the parts of his factory which are coloured red on the map produced in Court (*Exhibit* 3). In view of their extent such parts could not possibly come within the provisions in the aforesaid Notice enabling additions to a building such as the factory of the Applicant. Obviously the appropriate authority (the Improvement Board of Kaimakli) could not have granted him a building permit by virtue of the provisions of the said Notice and such a permit could only have been granted to the Applicant under either of the two provisos to sub-section (2) of section 14 of Cap. 96 (see *post*). The Applicant was prosecuted in 1965 by the Improvement Board of Kaimakli in relation to these unauthorised structures and on the 5th January 1966, while the criminal proceedings were still pending, the Applicant applied to the Council of Ministers by *Exhibit* 2 requesting, in effect, the Council to exercise its powers under the second proviso to sub-section (2) of section 14 of Cap. 96. The Applicant, as stated above, was informed by *Exhibit* 1, the letter of the 13th April, 1967 addressed to him by the District Officer, Nicosia, as Chairman of the Kaimakli Improvement Board, that his request has been turned down on the 26th January, 1967, by decision No. 6273 of the Council of Ministers. This decision

(which was later produced in Court together with the relevant submission by the Minister of Interior, as *Exhibit* 4 *supra)* is the subject of the present recourse.

It was argued, *inter alia*, by counsel for the Applicant first that the subject decision is not duly reasoned and that in any event it offends against Article 29 of the Constitution.* Counsel has, next, submitted that this decision was reached in abuse and excess of powers, in that material factors—set out in the particulars delivered for the purpose —were not taken into consideration by the Respondent.

Dismissing the recourse, the Court:-

Held, (1). It is correct that such decision, as communicated to the Applicant by the letter of the 13th April, 1967 *(Exhibit* 1*)* does not appear to be reasoned; but the decision itself (see *Exhibit* 4*)* has to be treated as being, indeed, duly reasoned, because it has to be read together with the submission on the basis of which it has been taken (and which has been produced as part of the said *Exhibit* 4); and it is quite clear that it was taken for the sum total of the reasons set out in paragraph 3 of the said submission. (See in this respect *Papaleontiou and the Republic,* (1967) 3 C.L.R. 624).

(2)*(a)*. Of course, it might be argued that the reply given to the Applicant on the 13th April, 1967 (v. said *Exhibit* 1) offends against Article 29 of the Constitution because it is not, nevertheless, duly reasoned, too. But, in my opinion, the Applicant, in the circumstances of this case, as established before the Court, cannot pursue a claim complaining against a contravention of Article 29; he has, already, proceeded by means of this recourse in respect of the *substance of the matter*, to which the afore-

*Article 29 of the Constitution reads as follows:

1. "Every person has the right individually or jointly with others to address written requests or complaints to any competent public authority and to have them attended to and decided expeditiously; an immediate notice of any such decision taken duly reasoned shall be given to the person making the request or complaint and in any event within a period not exceeding thirty days.

2. Where any interested person is aggrieved by any such decision or where no such decision is notified to such person within the period specified in paragraph 1 of this Article, such person may have recourse to a competent court in the matter of such request or complaint".

said reply of the 13th April, 1967, *(Exhibit 1)* relates, and he has not established that he has suffered any material detriment through such reply not being duly reasoned; *thus no legitimate interest of his* has been affected in the sense of Article 146.2* by any non compliance of the said reply with the provisions of Article 29; the position is clearly analogous to that in *Kyriakides and The Republic*, 1 R.S.C.C. 72, at p. 77.

(b) And, anyhow, contravention of Article 29 by means of *Exhibit* 1, *(supra)* would not entail the invalidity of the *sub judice* decision, *Exhibit* 4, *(supra)*.

(3) With regard to the submission that the material factors enumerated in the particulars were not taken into consideration by the Respondent, it is quite clear from the evidence before me, that all the factors in question were properly placed before the Council of Ministers for due consideration by them.

(4)*(a)* Counsel for the Applicant has, also, submitted that the decision of the Kaimakli Improvement Board, dated the 12th July, 1966, *(Exhibit* 4A*)*, refusing to recommend the grant of a building permit to the Applicant, (see the first proviso to sub-section (2) of section 14 of Cap. 96, post), was taken without due inquiry and it is not duly reasoned. But it is quite clear that there has been a proper inquiry and cogent reasons for their refusal are given.

(b) In any case, as it appears from the record of the criminal proceedings (see *Exhibit* 11) the Applicant had notice since January 13th, 1967, of the aforesaid decision of the Board, and he could have proceeded by recourse against such decision, if he had so wished as depriving him of the possibility of obtaining a permit under the first proviso to section 14(2) of Cap. 96 (post); but he has not done so at all, not even by the motion of relief in this present recourse.

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*Paragraph 2 of Article 146 of the Constitution reads as follows:

"2. Such a recourse may be made by a person whose any existing legitimate interest, which he has either as a person or by virtue of being a member of a Community, is adversely and directly affected by such decision or act or omission".

(c) Moreover, it cannot be said that the decision of the Board forms with the *sub judice* decision of the Council of Ministers a composite administrative action because a favourable recommendation of the Board was not a pre-requisite for a decision of the Council to grant a permit under the *second proviso* to sub-section (2) of section 14 of Cap. 96 (post).

Recourse dismissed. No order as to costs.

Cases referred to:

Papaleontiou and the Republic, (1967) 3 C.L.R. 624;

Kyriakides and the Republic, 1 R.S.C.C. 66, at p. 77.

Recourse.

Recourse against the decision of the Respondent Council of Ministers, refusing to grant to Applicant a building permit by virtue of its powers under the second proviso to sub-section (2) of section 14 of the Streets and Buildings Regulation Law, Cap. 96 (as amended).

G. Tornaritis, for the Applicant.

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

Cur. adv. vult.

The following Judgment was delivered by:-

TRIANTAFYLLIDES, J.: By this recourse the Applicant complains, in effect, against a decision of the Respondent Council of Ministers, (No. 6273 of the 26th January, 1967, see *exhibit 4*) by means of which the Council refused to grant him a building permit by virtue of its powers under the second proviso to sub-section (2) of section 14 of the Streets and Buildings Regulation Law, Cap. 96, as amended, in this respect, by the Streets and Buildings Regulation (Amendment) Law 1959 (Law 14/59).

The said section 14, as in force at the material time, reads as follows:-

"14. (1) The appropriate authority may, with the approval of the Governor, by notice to be published in the Gazette, define zones-

(a) within which buildings for special trades or industries may or may not be erected or which shall be reserved exclusively for residential or other purposes;

(b) within which buildings of a lesser value than that specified in the notice shall not be erected.

(2) Notwithstanding anything in this Law contained, from and after the publication of a notice under sub-section (1), no permit shall be issued by the appropriate authority save in accordance with such notice:

Provided that if the appropriate authority declares itself to be satisfied that the public interest requires the issue of a permit, the Governor, after receiving and considering such declaration, may, in his absolute discretion, authorise the appropriate authority to issue a permit otherwise than in accordance with such notice.

Provided further, and without prejudice to the operation of the first proviso to this sub-section, if the Governor-in-Council is satisfied that the public interest requires the issue of a permit he may direct the Director of Planning and Housing to issue such a permit otherwise than in accordance with such notice and the Director shall comply with such direction and in relation to such a permit shall be deemed to be and have the powers of an appropriate authority under this Law and any permit so issued shall have effect for all the purposes of this Law as though issued by the appropriate authority".

In view of Article 188.3 of the Constitution we have to read, in section 14 above, "the Council of Ministers" wherever mention is being made therein of "the Governor" or "the Governor-in-Council".

The circumstances in which the Applicant came to apply for the building permit in question are shortly as follows:-

In 1955 he erected at Kaimakli a mosaics factory. It consisted then of the buildings coloured blue and marked with the figure '1' on a plan which is *exhibit 3* in these proceedings.

Subsequent to this, on the 10th November, 1955, a Notice was published in Supplement No. 3 to the Official Gazette (see Not. 700) by virtue of which the area in which the said

factory is to be found was declared, under the provisions of section 14(1) above of Cap. 96—(Cap. 96 being then Cap. 165 of the at the time in force codification of the Cyprus Statutes) — to be a zone within which industrial buildings, such as the factory of the Applicant, could no longer be erected; there was made provision in such Notice for the possibility of granting building permits for additions or alterations to already existing non-conforming buildings, subject to certain conditions and restrictions.

Pursuant to the provisions of such Notice the Applicant was allowed in 1957 to effect additions to his factory.

In 1964 the Applicant proceeded, without obtaining first the necessary building permit, to build the parts of his factory which are coloured red on the map, *exhibit 3*; it appears that in 1963 the Applicant had applied to the Improvement Board of Kaimakli for a building permit in respect of the said parts but having received no formal reply to his application for some time — due apparently to the anomalous situation in the Island — he proceeded to build without a permit.

In view of their extent such parts could not possibly have come within the provisions in the aforesaid Notice enabling additions to a building such as the factory of the Applicant; so the Improvement Board of Kaimakli could not have granted him a building permit by virtue of the provisions of such Notice and such a permit could only have been granted to the Applicant under either of the two provisos to subsection (2) of section 14 of Cap. 96.

The Applicant was prosecuted in 1965 by the Improvement Board of Kaimakli in relation to these unauthorised structures and the relevant criminal proceedings eventually culminated in Criminal Appeal No. 2885 which was determined on the 7th April, 1967;* he was ordered to demolish such structures (see *exhibit 11*). We are not, really, concerned in this Case with the criminal proceedings aspect of the matter.

On the 5th January, 1966, while the criminal proceedings against him were pending, the Applicant petitioned, through his lawyer, the Council of Ministers; the relevant document is *exhibit 2* in these proceedings, and though it was not stated

*Note: Vide (1967) 2 C.L.R. 117.

clearly therein what the Applicant was seeking thereby, he was, in effect, requesting the Council to exercise its powers under the second proviso to sub-section (2) of section 14 of Cap. 96.

Applicant could not have been seeking from the Council of Ministers a building permit under the first proviso to sub-section (2), because he was not relying on a recommedation for the purpose of the appropriate authority, the Kaimakli Improvement Board; on the contrary — as stated also in his said petition — the said Board had instituted proceedings seeking the demolition of the structures concerned.

The Applicant was informed by letter dated the 13th April, 1967, and addressed to him by the Nicosia District Officer, as Chairman of the Improvement Board of Kaimakli (see *exhibit 1*), that his request has been turned down on the 26th January, 1967, by decision No. 6273 of the Council of Ministers, i.e. the *sub judice* decision of the Council.

This recourse was filed on the 10th May, 1967.

The said decision of the Council of Ministers has been produced, together with the submission of the Ministry of Interior on the basis of which it was reached (see *exhibit 4*). There has also been produced a decision of the Improvement Board of Kaimakli, taken on the 12th July, 1966, and which was before the Council of Ministers at the material time (see *exhibit 4A*); by means of such decision the Board had decided not to recommend to the Council of Ministers the issue of a building permit to the Applicant.

There have also been produced the following documents which were before the Council at the time: A letter of the Nicosia District Officer addressed to the Director-General of the Ministry of Interior and dated the 5th February, 1966 (see *exhibit 8*); a letter of the Director-General of the Ministry of Commerce and Industry addressed to the Director-General of the Ministry of Interior and dated the 29th June, 1966 (see *exhibit 5*); a letter of the Nicosia District Officer, as Chairman of the Improvement Board of Kaimakli, addressed to the Director-General of the Ministry of Interior and dated the 10th October, 1966 (see *exhibit 6*); and a letter of the Director of the Department of Planning and Housing addressed to the Director-General of the Ministry of Interior and dated the 21st November, 1966 (see *exhibit 7*).

In the relevant submission to the Council of Ministers the history of the matter was set out, first; then, it was stated therein that — for reasons which were set out in extenso in such submission — the Director of the Department of Planning and Housing was against the grant to the Applicant of a building permit in respect of the structures in question, and that of the same view were, too, the Improvement Board of Kaimakli and the Nicosia District Officer; on the other hand, it was stated in the submission that the Director-General of the Ministry of Commerce and Industry was of the view that a permit should be granted to the Applicant, both for reasons of public interest in relation to the economy of the country and in order to avoid adverse financial consequences for the Applicant.

The Council, as already stated, decided to turn down the application of the Applicant for a building permit.

It is mainly complained of, first, by the Applicant that the relevant decision of the Council of Ministers is not duly reasoned.

It is correct that such decision, *as communicated* to the Applicant by means of the letter of the 13th April, 1967 *(exhibit 1)* does not appear to be reasoned; but the decision *itself* (see *exhibit 4)* has to be treated as being, indeed, duly reasoned, because it has to be read together with the submission on the basis of which it has been taken; and it is quite clear that it was taken for the sum total of the reasons set out in paragraph 3 of the submission. (See in this respect *Papaleontiou and The Republic*, (1967) 3 C.L.R. 624.

Of course, it might be argued that the reply given to the Applicant on the 13th April, 1967 *(exhibit 1)* offends against Article 29 of the Constitution because it is not, nevertheless, duly reasoned, too. But, in my opinion, the Applicant, in the circumstances of this Case, as established before the Court, cannot pursue a claim complaining of contravention of Article 29; he has, already, proceeded by means of this recourse in respect of the *substance of the matter*, to which the reply of the 13th April, 1967 *(exhibit 1)* relates, and he has not established that he has suffered any material detriment through such reply not being duly reasoned; thus, no legitimate interest of his has been affected in the sense of Article 146.2 by any non-compliance of the said reply with the provisions of Article 29; the position is clearly analogous

to that in *Kyriakides and The Republic*, 1 R.S.C.C. 66, at p. 77. And, anyhow, contravention of Article 29 by means of *exhibit 1* would not entail the invalidity of the *sub judice* decision, *exhibit 4*.

The Applicant has, next, complained by this recourse that the *sub judice* decision was reached in abuse of powers, in that material factors were not taken into consideration; particulars of such factors have been given by Applicant on the 14th September, 1967.

I need not go into this matter in great detail, as it suffices to say that when one compares the said particulars with paragraph 4 of the relevant submission to the Council of Ministers and with the contents of the letter of the Director-General of the Ministry of Commerce and Industry (see *exhibit 5*), it becomes clear that all the factors in question were properly placed before the Council of Ministers for due consideration by it.

Counsel for the Applicant has, also, submitted that the decision of the Improvement Board of Kaimakli refusing to recommend the grant of a building permit to the Applicant, in respect of the unauthorized structures, was taken without due inquiry and it is not duly reasoned.

In the first place, I cannot agree with this submission, because it is clear from such decision (see *exhibit 4A*) that the Board went on the spot in order to examine fully the matter and decided to refuse to recommend the grant of a permit on the ground — which is stated in the said decision — that in view of shortage of space the structures in question were prejudicial for the particular area.

But, be that as it may, I do fail to see how the issue of the validity of the decision in question of the Board can have really, any material bearing on the outcome of this recourse: Had the Board recommended the grant of a permit then the Council of Ministers would, again, have to decide whether or not to authorize the issue of such a permit in the public interest, under the first proviso to section 14(2) of Cap. 96; as no such recommendation was made by the Board the Council of Ministers has had to consider whether or not, nevertheless, the public interest required the issue of the permit applied for, under the second proviso to section 14(2) of Cap. 96; but it is clear, in my opinion, that the Council

would have refused the permit, even if the Board had recommended the grant thereof, because it is quite obvious that the Council decided that it was against the public interest to grant the permit, in view of what had been stated in relation to this matter by the Director of the Department of Planning and Housing; and it was reasonably open to the Council so to decide.

In any case, as it appears from the record of the relevant criminal proceedings (see *exhibit 11*) the Applicant had notice, since the 13th January, 1967, of the decision of the Improvement Board of Kaimakli not to recommend the issue to him of a building permit, and he could have proceeded by recourse against such decision, if he had so wished, as depriving him of the possibility of obtaining a permit under the first proviso to section 14(2) of Cap. 96; but he has not done so at all, not even by the motion of relief in this present recourse.

Moreover, it cannot be said that the decision of the Board forms with the *sub judice* decision of the Council of Ministers a composite administrative action because a favourable recommendation of the Board was not a prerequisite for a decision by the Council to grant a permit under the second proviso to section 14(2) of Cap. 96.

For all the foregoing reasons, I take the view that the Applicant cannot succeed in this recourse and it is dismissed accordingly.

I do sympathize with the difficulties of the Applicant who, having applied for a permit in 1963 and having not been given any formal reply in due time, decided in 1964 that he had to proceed and build without a permit. But this is not a sufficient or proper ground for which he can succeed in this recourse. Applicant should and could have taken at the time, and before proceeding to build, all necessary steps in order to obtain a formal reply to his application for a building permit.

I would conclude by observing that, though I did not have to decide this aspect of the matter in this Judgment, I would be inclined to doubt very much whether a building permit, of such an extraordinary nature as one granted under the second proviso to section 14(2) of Cap. 96 by the Council of Ministers, is one which could ever be properly granted after a building has been erected unlawfully; I am inclined

to the view that such a permit would have, always, to be applied for, and be obtained, in advance.

I am making no order as to costs, in view of the fact that, no doubt, the Applicant is bound to suffer a lot financially through the refusal to him of the building permit in question.

Application dismissed. No order as to costs.