

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

LOULLA A. CHILIMINTRI,

*Applicant,*

*and*

THE MUNICIPAL CORPORATION OF FAMAGUSTA,

*Respondent.*

LOULLA A.  
CHILIMINTRI  
v.  
MUNICIPAL  
CORPORATION  
FAMAGUSTA

(Case No. 313/68).

*Buildings—Building permit—Renewal—Expired building permit—It can be renewed more than once—The Streets and Buildings Regulation Law, Cap. 96, section 5—Whether a renewal of a building permit is invariably necessary in all cases in which construction has duly commenced thereunder but has not been finished within the period of one year prescribed in section 5—Question left open—See also herebelow.*

*Statutes—Construction—Statutes restricting, such as section 5 of Cap. 96 (supra), fundamental rights and liberties, in this case the right to property, safeguarded under the Constitution, should, in case of doubt, be interpreted in favour of the citizen.*

*Administrative and Constitutional Law—Recourse under Article 146 of the Constitution—Claim for a declaration that Applicant is entitled to proceed and complete her buildings etc.—Fails in view of the wording of paragraph 4 of Article 146 of the Constitution.*

*Fundamental rights and liberties safeguarded by the constitution—Right to property—Article 23—Legislation restricting such rights has, in case of doubt, to be construed in favour of the citizen—See also above.*

The Respondent Municipality issued to the Applicant a building permit on the 12th April, 1966, for the erection of five more storeys on top of a lawfully constructed, earlier, three-storeyed building of hers. On the 26th May 1967, the said building permit was renewed for one year, until the 26th May 1968. As by May 1968, the aforesaid additional five storeys had not yet been completed, the Applicant applied, on

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the 20th May 1968 for a further renewal of the aforementioned building permit; such renewal, however, was refused by the Respondent Municipality on the 28th June on the ground that it was not possible under the provisions of the Streets and Buildings Regulation Law, Cap. 96, section 5, to renew twice any building permit. Section 5 of Cap. 96 is fully set out *post* in the judgment.

Annuling the refusal complained of the Court:—

*Held*, (1). I can find nothing in section 5 (*supra*) which supports the view taken by the Respondent to the effect that a building permit cannot be renewed more than once if there is, otherwise no legal obstacle to such a course.

(2) Moreover section 5 has to be construed bearing in mind that it is part of legislation restricting one of the fundamental rights and liberties safeguarded under our constitution—the right to property—and, therefore, it should in case of doubt be interpreted in favour of the citizen; so in the absence therein of any express prohibition of a second renewal of a building permit it must be taken that such a course is not excluded thereunder.

(3) In the circumstances, the refusal complained of has to be annulled; and the matter has now to be re-examined by the Respondent in the light of this judgment and in accordance with any relevant legal or factual considerations.

(4) Thus, the Applicant succeeds in her claims as per (a) and (c) of the motion for relief. But she cannot succeed in the light of Article 146.4 of the Constitution in obtaining a declaration in the form set out in her claim under (b) to the effect that she is entitled to proceed and complete her buildings.

*Decision complained of annulled.*

### **Recourse.**

Recourse against the refusal of the Respondent to renew a building permit.

*Chr. Mitsides*, for the Applicant.

*S. Marathovouniotis*, for the Respondent.

*Cur. adv. vult.*

The following judgment was delivered by:-

TRIANTAFYLIDIS, J.: In this case the Applicant had been issued by the Respondent Municipality of Famagusta with a building permit, No. 2951, on the 12th April, 1966, for the erection of five more storeys on top of a lawfully constructed, earlier, three-storeyed building of hers.

On the 26th May, 1967, the said building permit was renewed for one year, until the 26th May, 1968 (see *exhibit 1*).

As by May, 1968, the five additional storeys had not yet been completed, the Applicant applied, on the 20th May, 1968, for a further renewal of the relevant building permit (see *exhibit 2*); such renewal was, however, refused by the Respondent, on the 28th June, 1968 (see *exhibit 3*), on the ground that it was not possible, under the provisions of the Streets and Buildings Regulation Law, Cap. 96, to renew twice any building permit.

The relevant provision of Cap. 96 is section 5, which reads as follows:-

“5. A permit shall be valid for one year from the date of the issue thereof:

Provided that, if the work or other matter is not completed within that period, the permit shall be renewable at any subsequent time if not conflicting with any Regulations in force at the time of such renewal, upon payment of the fee prescribed for the original permit or of two pounds whichever is the less. The permit so renewed shall be valid for one year from the date of renewal”

I am leaving open in this case, as it has not been raised or argued, the question as to whether, on a proper construction of section 5 of Cap. 96, a renewal of a building permit is necessary invariably in all cases in which construction work has duly commenced thereunder but has not been finished within a period of a year; I realize that the phrase “is not completed”, in section 5, points to such a view; but on the other hand it could perhaps lead to absurd results if the construction of a building which due to its nature could not be finished in a year were to be embarked upon in due compliance with a building permit lawfully issued and then,

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due to a supervening change in the relevant Regulations, during the year of the validity of the building permit, no renewal thereof would be possible and the building could not be finished, as originally planned by its owner and sanctioned by the appropriate authority with full knowledge that it could not be finished in a year's time.

In any case, I can find nothing in section 5 which supports the view, taken by the Respondent, to the effect that a building permit cannot be renewed more than once, if there is, otherwise, no legal obstacle to such a course.

As a permit is renewable "at any subsequent time" under section 5, it would be unreasonable to hold that an expired permit can be renewed, once only, some years later, but it cannot be renewed on a yearly basis, more than once, for the purpose of enabling the completion of a building under construction.

Moreover, section 5 has to be construed bearing in mind that it is part of legislation restricting one of the fundamental rights and liberties safeguarded under our Constitution—the right to property—and, therefore, it should, in case of doubt, be interpreted in favour of the citizen; so, in the absence therein of any express prohibition of a second renewal of a building permit it must be taken that such a course is not excluded thereunder.

That being the position regarding the true effect, in my opinion, of the said section 5, I cannot but hold that the Respondent Municipality was not right in taking the view that in law a second renewal of the building permit in question was not possible at all, and that the Applicant had to apply afresh, submitting relevant plans all over again, for the purpose of obtaining an entirely new building permit in relation to her building already under construction.

In the circumstances I have no difficulty in declaring *null* and *void* and of no effect whatsoever the refusal—as decided upon—of the Respondent to renew the building permit of the Applicant; and the matter has now to be re-examined by the Respondent in the light of this judgment and in accordance with any relevant legal or factual considerations.

Thus, the Applicant succeeds in respect of her claims (a) and (c) in the motion for relief. But, she cannot, in the light

of Article 146.4 of the Constitution, succeed in obtaining a declaration in the form set out in her claim (b); and, consequently, such claim fails.

In all the circumstances of this case, and bearing in mind that the Applicant has not been successful in relation to all her claims put forward by means of the motion for relief, as well as that there is no reason to doubt the bona fides of the Respondent in taking the view which it has taken about section 5, I am not prepared to make any order for costs against the Respondent; but I think that it is only fair, too, not to allow the Applicant to be burdened, for any reason, with costs in these proceedings, and I, therefore, direct that the order for costs made on the 26th October, 1968, should be discharged.

*Sub judice decision referred to in claims (a) and (c) annulled; claim (b) dismissed; order for costs as aforesaid.*

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