

CHRYSANTHOS AVRAAM,

Appellant,

v.

THE MUNICIPALITY OF MORPHOU,

Respondent.

CHRYSANTHOS
AVRAAM
v.
MUNICIPALITY
OF MORPHOU

(*Criminal Appeal No. 3203*).

Municipal Corporations—Bye-Laws made by—Validity—Whether or not ultra vires—Invalidity of bye-laws for unreasonableness—Principles applicable—Sale of meat outside meat market—Bye-laws 18 and 23 of the Morphou Municipal Bye-laws, 1941 to 1960—Intra vires the municipal council—Sections 123, 124 and 125 of the Municipal Corporations Law, Cap. 240, as re-enacted by Law No. 64 of 1964—Moreover, said bye-laws are not invalid for unreasonableness.

Bye-laws—Made by municipal councils—Validity—Invalidity for unreasonableness, etc.—Principles applicable in determining validity—Courts should be slow to hold that a bye-law is void for unreasonableness—A bye-law ought to be supported unless it is manifestly partial and unequal in its operation between different classes—Or unjust, or made in bad faith, or clearly involving an unjustifiable interference with the liberty of those subject to it.

Statutes—Construction of—“Regulate” in sections 123 and 124 (2) (e) of the Municipal Corporations Law, Cap. 240 (supra)—Meaning and effect of the word “regulate” therein.

Words and Phrases—“Regulate” within sections 123 and 124 (2) (e) of the Municipal Corporations Law, Cap. 240 (supra).

Meat—Sale of meat outside meat market—Morphou Municipal Council Bye-laws, 1941 to 1960, bye-laws 18 and 23—See supra.

Morphou—Bye-laws—Sale of meat, etc. etc.—See supra.

Trial in criminal cases—At the trial after a plea of not guilty entered, certain admissions of fact were allowed to be made—Whereupon with the agreement of counsel on both sides the trial Judge heard argument and determined the question of the validity of the aforesaid bye-laws (supra) on the basis of those admis-

1970
Nov. 12
—
CHRYSANTHOS
AVRAAM
v.
MUNICIPALITY
OF MORPHOU

sions—No doubt this is an irregularity considering sections 67, 68 and 74 of the Criminal Procedure Law, Cap. 155—Which sections lay down the procedure to be followed at the trial of a criminal case.

The appellant was convicted by the District Court of: (a) selling meat; and (b) selling pork meat, outside the meat market and the pork meat market, respectively, established by the Morphou Municipal Council, contrary to bye-laws 18 and 23 respectively of the Morphou Municipal Bye-laws 1941 to 1960.

The ground of appeal is that the aforesaid bye-laws under which the appellant was convicted were *ultra vires* the municipal council and, in any case, invalid as being unreasonable. It was argued by counsel for the appellant: (a) that neither section 123 nor section 124 of the Municipal Corporations Law, Cap. 240, as re-enacted by Law No. 64 of 1964 empower the Municipal Council of Morphou to prevent the sale of meat, etc. outside the aforesaid respective municipal markets; (b) that bye-law 18 (*supra*) (read with bye-law 17) and bye-law 23 (*supra*) (read with bye-law 22) were unreasonable and should, therefore, be held invalid.

The aforesaid four bye-laws are set out *post* in the judgment of the Court. On the other hand, section 124 (2) (d) of the statute (Cap. 240, *supra*) empowers a municipal council to provide for the establishment and regulation of municipal markets and to regulate the fees, etc. etc., to be paid for the use of such markets; and section 124 (2) (e) empowers a council to provide for the allotment of special places for the sale of animals and of perishable goods and to regulate the manner in which such animals and perishable goods shall be sold and the fees, etc. . . , for the use of such special places.

Section 123 (1) (w) of the same statute empowers a council to regulate any trade or business which may be injurious to public health, or a source of public danger or which otherwise it is in the public interest expedient to regulate; and section 123 (4) empowers a municipal council generally, to do such other acts and provide for such other measures as may be necessary for the conservancy and cleanliness of the town, the preservation of public health therein and the safety and comfort of the inhabitants thereof.

1970
Nov. 12

CHRYSANTHOS
AVRAAM
v.
MUNICIPALITY
OF MORPHOU

Finally, section 125 (1) empowers a council to make bye-laws, *inter alia*, for the following purposes—

- (a) to enable or assist a council to perform any of the duties assigned to it by section 123 (*supra*); and
- (b) to enable or assist a council to carry out any of the provisions of section 124 of the Law (*supra*).

The bye-laws challenged in the present case were made under the provisions of the aforesaid section of Cap. 240.

In arguing the point that the bye-laws in question were *ultra vires* the Municipal Council of Morphou, counsel for the appellant relied partly on Article 25 of the Constitution, paragraphs 1 and 2, which read as follows :

“ 25.1 Every person has the right to practise any profession or to carry on any occupation, trade or business.

2. The exercise of this right may be subject to such formalities, conditions or restrictions as are prescribed by law and relate exclusively to the qualifications usually required for the exercise of any profession or are necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the rights and liberties guaranteed by this Constitution to any person or in the public interest :

Provided that no such formalities, conditions or restrictions purporting to be in the public interest shall be prescribed by a law if such formality, condition or restriction is contrary to the interests of either Community.”

Dismissing the appeal, the Court :—

Held, (1)—(a). Counsel for the appellant, relying on the Privy Council case of *Municipal Corporation of Toronto v. Virgo* [1896] A.C. 88 argued that the expression “ regulate ” in several sub-sections in section 123 and in section 124 (2) (e) of Cap. 240 (*supra*) did not empower the council to prevent the exercise of a lawful trade.

We are of the view that the reasoning of Chief Justice Stronge in the case *The Mayor of Nicosia v. Tatourian* (1935)

1970
Nov. 12
—
CHRYSANTHOS
AVRAAM
v.
MUNICIPALITY
OF MORPHOU

15 C.L.R. 5, at p. 8, provides the answer to that argument. The learned Chief Justice said : “ ” (see this passage *post* in the judgment of the Court) ; and he continued :

“ In our opinion a power to allot special or determinate places for sale of perishable goods involves inferentially the notion of such sale there and nowhere else.”

(b) We would agree with that reasoning and we would construe the expression “ regulate ” to import also the power to prevent the sale elsewhere.

(2) Regarding the argument based on the provisions of Article 25 of the Constitution (*supra*), we think that the question has been determined by the Supreme Constitutional Court in the case of the *District Officer, Nicosia and Demosthenis Michael* (1963) 4 R.S.C.C. 126, particularly at p. 128 (see passages *post* in the judgment of the Court).

(3)—(a) With regard to the point raised by counsel for the appellant to the effect that the bye-laws in question should be held *void* for unreasonableness having regard to the expansion of the township of Morphou over the past ten years, we are of the view that once it has been held that the municipal council had power to make them under the provisions of Cap. 240 (*supra*), on the material on record it has not been shown that the said bye-laws are unreasonable.

(b) In determining the validity of the said Morphou bye-laws, we are of the view that the Courts ought to be slow to hold that a bye-law is *void* for unreasonableness. In this respect we adopt the principles laid down by Lord Russell, C.J., in the case of *Kruse v. Johnson* [1898] 2 Q.B. 91, and having looked at the bye-laws challenged (see these bye-laws *post* in the judgment), we are of the view that they are neither manifestly partial nor unequal in their operation between different classes, nor are they unjust or made in bad faith, nor do they involve an unjustifiable interference with the liberty of those subject to them.

Appeal dismissed.

Per curiam : We would like to refer to an irregularity which appears on the record before the trial Court but which did not form part of the appeal. It is this : It would appear that certain admissions were made on behalf of the appellant by his counsel to the effect that the appellant admitted in

1970
Nov. 12

—
CHRYSANTHOS
AVRAAM
v.
MUNICIPALITY
OF MORPHOU

Court selling meat outside the municipal market and, thereupon it was agreed by counsel on both sides that the question of the validity of the bye-laws in question should be argued and determined by the trial Judge on the basis of these admissions. This course was approved by the Judge. There is no doubt that this was an irregularity, considering the express provisions of sections 67, 68 and 74 of the Criminal Procedure Law, Cap. 155, which lay down the procedure to be followed at the trial of a criminal case.

Cases referred to :

The Mayor of Nicosia v. Tatourian (1935) 15 C.L.R. 5, at p. 8, per Stronge, C.J., applied ;

The Municipal Corporation of Toronto v. Virgo [1896] A.C. 88 ;

The District Officer, Nicosia and Demosthenis Michael (1963) 4 R.S.C.C. 126, at p. 128 applied ;

Kruse v. Johnson [1898] 2 Q.B. 91, principles laid down as regards the invalidity and unreasonableness of bye-laws made by Local Authorities applied.

Appeal against conviction.

Appeal against conviction by Chrysanthos Avraam who was convicted on the 28th September, 1970, at the District Court of Nicosia (sitting at Morphou) (Criminal Case No. 1244/70) on two counts of the offences of selling fresh meat and pork meat outside the meat market and its pork meat market, respectively, established by the Morphou Municipal Council, contrary to bye-laws 18 and 23, respectively, of the Morphou Municipal Bye-Laws, 1941 to 1960, and was sentenced by HjiConstantinou, D.J., to pay a fine of £1 on each count.

K. Michaelides, for the appellant.

E. Odysseos, for the respondent.

VASSILIADES, P. : We find it unnecessary to call upon you Mr. Odysseos. Mr. Justice Josephides will deliver the judgment of the Court.

JOSEPHIDES, J. : In this case the appellant was convicted of: (a) selling fresh meat; and (b) selling pork meat, outside the meat market and the pork meat market, respectively, established by the Morphou Municipal Council. As has been very aptly observed by Chief Justice Stronge in the case of *The Mayor of Nicosia v. Tatourian* (1935) 15 C.L.R. 5, " a gay galaxy of sections of laws and bye-laws figures

at the close of the summons intended, no doubt, to inform the accused of the legal fences through which he has crashed, but, to our minds, confusing and unnecessary". The net result is that the appellant was charged with contravening bye-laws 18 and 23 of the Morphou Municipal Bye-laws, 1941 to 1960.

The ground of appeal on which we heard argument to-day was that the trial Judge erred in holding that the aforesaid bye-laws were *intra vires* the municipal council and valid.

Mr. K. Michaelides on behalf of the appellant argued the appeal on two points : (a) that neither section 123 nor section 124 of the Municipal Corporations Law, Cap. 240, as re-enacted by Law 64 of 1964, empower the Municipal Council of Morphou to prevent the sale of pork outside the meat market or pork market ; and (b) that bye-law 18 (read with bye-law 17) and bye-law 23 (read with bye-law 22) were unreasonable and that they should, consequently, be held to be invalid. These bye-laws read as follows :

" 18. No person shall sell or expose for sale within the municipal limits any meat, except at the meat market :

Provided . . . (as regards frozen meat).

17. The shops situated in the municipal market under numbers 16 to 19 and 23 to 27, inclusive, are hereby provided and shall henceforth be used as a public meat market :

Provided that the Council may, for such period and on such terms and conditions as the Council may from time to time determine, let on hire the shops situated in the meat market.

23. No person shall sell or expose for sale within the municipal limits any pork except at the pork market:

Provided . . . (as regards frozen meat).

22. The shop situated in the municipal market under number 20 is hereby provided and shall henceforth be used as a public pork market :

Provided that the sheds, stalls and stands situated in the pork market may be let on hire by the Council for such period and on such terms and conditions as the Council may from time to time determine :

Provided further that no other goods or meat except pork shall be exposed for sale in the pork market."

Section 124 (2) (d) empowers a municipal council to provide for the establishment and regulation of municipal markets and to regulate the fees, etc., to be paid for the use of such markets ; and section 124 (2) (e) empowers a council to provide for the allotment of special places for the sale of animals and of perishable goods and to regulate the manner in which such animals and perishable goods shall be sold and the fees, etc., for the use of such special places.

Section 123 (1) (w) empowers a council to regulate any trade or business which may be injurious to public health, or a source of public danger or which otherwise it is in the public interest expedient to regulate ; and section 123 (4) empowers the council generally, to do such other acts and provide for such other measures as may be necessary for the conservancy and cleanliness of the town, the preservation of public health therein and the safety and comfort of the inhabitants thereof.

Finally, section 125 (1) empowers a council to make bye-laws, *inter alia*, for the following purposes—

- (a) to enable or assist a council to perform any of the duties assigned to it by section 123 ; and
- (b) to enable or assist a council to carry out any of the provisions of section 124 of the Law.

The bye-laws challenged in the present case were made under the provisions of the aforesaid section of Cap. 240.

With regard to the first point, Mr. Michaelides relying on the Privy Council case of *Municipal Corporation of Toronto v. Virgo* [1896] A.C. 88, argued that the expression “ regulate ” in several sub-sections in section 123 and in section 124 (2) (e) of Cap. 240, did not empower the council to prevent the exercise of a lawful trade. We are of the view that the reasoning of Chief Justice Stronge in the *Tatourian* case, referred to above, provides the answer to that argument. The learned Chief Justice said (at page 8) :—

“ One of the objects aimed at in conferring such a power would undoubtedly appear to be the welfare and protection of the public by gathering into one or more specified localities all the dealers in perishable goods so as to facilitate the supervision and inspection of their wares and thereby ensure as far as possible that they are in a fit state for human consumption.

This object would clearly be much more difficult of achievement were the vendors of such goods free to sell anywhere and everywhere within the municipal limits. Such, then, being one of the objects where-with this power is conferred, it does not require any great power of discernment to see that it would be almost wholly, if not altogether, defeated if after the allotment of such special places and the imposition of a fee for their use the dealers in perishable goods were nevertheless still free, as contended (in that case), to dodge such inspection and supervision by selling anywhere they chose within the city limits”;

and he continued :

“ In our opinion a power to allot special or determinate places for sale of perishable goods involves inferentially the notion of such sale there and nowhere else.”

We would, with respect, agree with that reasoning and we would construe the expression “ regulate ” to import also the power to prevent the sale elsewhere.

As we understood Mr. Michaelides, in arguing his first point he also partly relied on Article 25 of the Constitution, but we think that that question has been determined by the Supreme Constitutional Court in the case of *The District Officer, Nicosia and Demosthenis Michael* (1963) 4 R.S.C.C. 126, in which it was held that the prohibition to sell or expose for sale fresh meat within the area of a village, except at the meat market, was necessary in the interests of the “ public health ” and the “ public interest ”, generally, in the sense of Article 25.2. The “ public health ” and the “ public interest ” generally might well suffer, it was stated in the judgment, but for the existence of such restriction, “ because otherwise it would have been difficult to exercise effective control before sale over the suitability for human consumption of fresh meat and to prevent all possible dangers of infection of such meat whilst being exposed for sale ” (at page 128 of the report).

With regard to the second point raised by Mr. Michaelides, to the effect that the bye-laws in question, which were made in 1960, should be held to be void for unreasonableness having regard to the expansion of the township of Morphou over the past ten years, we are of the view that once it has been held that the municipal council had power to make them under the provisions of Cap. 240, on the material on record it has not been shown that the said bye-laws are unreasonable.

In *Kruse v. Johnson* [1898] 2 Q.B. 91, the view was expressed by Lord Russell, C.J., that in determining the validity of bye-laws made by county councils, the Court ought to be slow to hold that a bye-law is void for unreasonableness. A bye-law so made ought to be supported unless it is manifestly partial and unequal in its operation between different classes, or unjust, or made in bad faith, or clearly involving an unjustifiable interference with the liberty of those subject to it. In determining the validity of the Morphou Bye-laws we adopt these principles and, having looked at the bye-laws challenged, we are of the view that they are neither manifestly partial nor unequal in their operation between different classes, nor are they unjust or made in bad faith, nor do they involve an unjustifiable interference with the liberty of those subject to it.

We, therefore, reach the conclusion that bye-laws 18 and 23 are *intra vires* the municipal council and valid, and for these reasons the appeal fails.

It may well be that the appellant may have some legitimate complaint with regard to the regulation of the sale of meat at Morphou, but this Court is not the appropriate authority to decide this matter, and he might possibly consider seeking the help of the municipal council of his town in this connection.

Before concluding our judgment, however, we would like to refer to an irregularity which appears on the record before the trial Court, but which did not form part of the appeal. It is this : It would appear that certain admissions were made on behalf of the appellant by his counsel to the effect that the appellant admitted selling meat outside the municipal market and, thereupon, it was agreed by counsel on both sides that the question of the validity of the bye-laws in question should be argued and determined by the trial Judge on the basis of those admissions. This course was approved by the Judge. There is no doubt that this was an irregularity, considering the express provisions of sections 67, 68 and 74 of the Criminal Procedure Law, Cap. 155, which lay down the procedure to be followed at the trial of a criminal case. However, as this did not form part of the appeal and the irregularity did not go to the root of the trial in the present case, we did not consider it necessary to make any order in the matter. But we should not be taken as approving such a course and this should not serve as a precedent in the future.

In the result the appeal is dismissed.

Appeal dismissed.