

1970

June 5

[TRIANTAFYLIDIS, J.]

—  
WHITE HILLS  
LTD.  
AND OTHERS  
v.  
REPUBLIC  
(MINISTER OF  
INTERIOR  
AND ANOTHER)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

WHITE HILLS LTD., AND OTHERS,

*Applicants,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF INTERIOR

2. THE DISTRICT LANDS OFFICER, FAMAGUSTA,

*Respondents,*

(Case No. 147/70).

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*Recourse for annulment under Article 146 of the Constitution—Jurisdiction of the Court on such recourse—Decision to proceed with the sale of immovable property by way of execution of a judgment debt—Decision of the Respondents fixing the date of such sale by action—Recourse against such decision does not lie—Because the subject matter of the recourse being administrative action not having as its primary object the promotion of any public purpose but concerning only civil law rights (see Charalambides and The Republic, 4 R.S.C.C.24; Cyprus Industrial and Mining Co. Ltd. (No. 2) and The Republic (1966) 3 C.L.R. 474). Furthermore said sale being a matter so closely related to judicial proceedings, the Court is not vested with jurisdiction to entertain the recourse (see, inter alia, Xenophontos and The Republic, 2 R.S.C.C. 89).*

*Administrative acts or decisions—Within the ambit of Article 146.1 of the Constitution—And which only can be made the subject-matter of a recourse under that Article—Decision within the domain of private law—Also decision closely related to judicial proceedings—Those decisions cannot be challenged by the recourse—See also supra.*

*Private or civil law—Recourse under Article 146 of the Constitution—See supra.*

*Act or decision closely related to judicial proceedings—Recourse not maintainable against such act or decision—See supra.*

Cases referred to: *Charalambides and The Republic*, 4 R.S.C.C. 24;  
*Cyprus Industrial and Mining Co. Ltd. (No. 2) and The Republic*  
 (1966) 3 C.L.R. 474;  
*Xenophontos and The Republic*, 2 R.S.C.C. 89.

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The facts sufficiently appear in the decision of the Court dismissing an application for a provisional order postponing the sale of immovable property of the Applicant by way of execution in satisfaction of a judgment debt. The Court dismissed the said application on the sole ground that the subject-matter of the recourse is outside the ambit of Article 146 of the Constitution; and, consequently, a recourse is not maintainable in respect thereof.

**Application for a provisional order.**

Application for a provisional order postponing the sale of Applicants' property, by way of execution in satisfaction of a judgment debt pending the hearing of a recourse against the decision of the Respondent to proceed with the sale of such property.

- J. Kaniklides, for the Applicants.
- L. Loucaides, Senior Counsel of the Republic, for the Respondent.
- X. Clerides, for the Interested Party (the judgment creditor).

*Cur. adv. vult.*

The following decision was delivered by:

TRIANTAFYLLIDES, J.: In this case I am dealing at this stage with an application for a provisional order postponing the sale of immovable property of the Applicants by way of execution in satisfaction of a judgment debt arising out of a judgment given against the Applicants by the District Court of Famagusta in Civil Action No. 2131/1967 on the 22nd March, 1969; the said sale has been fixed to take place, by public auction, on the 21st June, 1970.

1970

June 5

—  
WHITE HILLS  
LTD.

AND OTHERS  
v.

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Before deciding whether or not I should make the provisional order applied for, I have had to decide whether I possess jurisdiction, under Article 146 of the Constitution, in relation to the subject-matter of this recourse, which is the decision of Respondent 2—who comes under Respondent 1—to proceed with the sale in question, under a writ of sale issued in execution of the said judgment.

On the material before me, and having paid due regard to all that learned counsel for the parties have submitted, I reached the conclusion that in a case of this nature I do not possess jurisdiction under Article 146, as the administrative action, which is the subject-matter of the present recourse, does not have as its primary object the promotion of any public purpose but concerns only civil law rights. (see *Charalambides* and *The Republic*, 4 R.S.C.C. 24; also, *Cyprus Industrial and Mining Co. Ltd. (No. 2)* and *The Republic* (1966) 3 C.L.R. 474).

Furthermore, as the sale in question is by way of execution of a judgment debt, it is a matter closely related to judicial proceedings, and for this reason, too, it is not within the ambit of Article 146 (see, *inter alia*, *Xenophontos* and *The Republic* 2 R.S.C.C. 89).

As, therefore, I do not possess competence regarding the subject-matter of the recourse, it follows that I cannot, in any event, make the provisional order applied for and the application of the Applicants for the purpose is hereby dismissed; the Applicants to pay £15.— costs to counsel for the Respondents and, also, £15.— costs to counsel for the Interested Party.

*Application for a provisional order dismissed. Order for costs as above.*