[TRIANTAFYLLIDES, P., L. LOIZOU, HADJIANASTASSIOU, A. LOIZOU, JJ.]

1972
June 29

NINA SIMAN (No. 2)

Appellant,

and

THE MUNICIPALITY OF FAMAGUSTA

Respondent.

NINA SIMAN (No 2)

v.

THE MUNICIPALITY OF FAMAGUSTA

(Revisional Jurisdiction Appeal No. 96).

Building permits—Validity—Renewal—Matter governed by the proviso to section 5 of the Streets and Buildings Regulation Law, Cap. 96—A building permit (valid only during the statutory period of one year from its issue) is not renewable under the said proviso, unless the authorized work or other matter to which it relates has started, but is not completed, before its expiry—Nor is inability to start building, because of presence of a statutory tenant on the property concerned, during the said one year's period of the validity of the permit, a ground of renewal under the said proviso—Moreover, said proviso, correctly interpreted and applied as aforesaid, does not offend against the principle of equality safeguarded by Article 28.1 of the Constitution—Because no question of discrimination can be said to arise merely because it may happen in a particular case, such as the present one, that a landlord does not manage to evict the statutory tenant before the expiry of the relevant building permit.

Renewal of building permits—Proviso to section 5 of Cap. 96—Correct construction and application thereof—See supra.

Statutes—Construction—Principles applicable—Object of interpretation of statutes—To discover the intention of the legislator—Such intention must be deduced from the

*language used—And where the language is plain and admits of but one meaning, the question of interpretation can hardly be said to arise—Work "not completed" within one year etc.—Proviso to section 5 of the Streets and Buildings Regulation Law, Cap. 96—But the verb "to complete" means "to bring to an end, to finish"—Therefore, the words "not completed" necessarily imply work which has already started—Consequently, no work having been started at all in the present case during the statutory period of one year (*supra*), the proviso is not applicable and no renewal of the building permit concerned is in law possible—Cf.* supra.

Equality—Principle of equality—Article 28.1 of the Constitution—Proviso to section 5 of the Streets and Buildings Regulation Law, Cap. 96—Does not offend against the principle of equality by discriminating against landlords who are unable to start building during the whole one year's period prescribed under said proviso, due to their inability to evict statutory tenants in occupation of their property concerned.

Words and Phrases—"Not completed" in proviso to section 5 of the Streets and Buildings Regulation Law, Cap. 96.

This is an appeal by the applicant against the decision in the first instance of a Judge of this Court dismissing her recourse under Article 146 of the Constitution against the refusal of the respondent Municipality to renew a building permit granted to her on July 9, 1970 for the erection of a block of flats in Famagusta. The renewal of the said permit was refused on the ground that since, in accordance with the relevant statute (*infra*) the permit has ceased to be in force one year after it had been issued, and no work pursuant to the permit had started within such year, it was not in law possible to renew it.

The relevant provision is section 5 of the Streets and Buildings Regulation Law, Cap. 96, the relevant parts of which provide :

"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 ...."

The learned trial Judge held that in view of the wording of the proviso to section 5 *(supra),* a building permit can be renewed only if the work authorized by it has started before its expiry; and having been conceded that no work whatsoever has started within the said period, he found for the Municipality and dismissed the recourse.

Dismissing the appeal and affirming the decision of the learned Judge (reported in this Part at p. 78 *ante*), the Supreme Court :-

Held, (1) The verb "to complete" means to "bring to an end, to finish" (see, *inter alia,* the Oxford Universal Dictionary); therefore, in their ordinary meaning the words "not completed" in the proviso to section 5 of the statute Cap. 96 (*supra*) are not applicable to any work other than work which has already started.

(2) Not only there is nothing in the said proviso which can be taken as modifying, altering or qualifying the ordinary and natural meaning of the words "not completed", but, on the contrary, if it were intended to allow the renewal of a building permit even if the work authorized by it had not yet started before such permit had ceased to be in force, it would have been sufficient to provide only "that a permit shall be renewable at any subsequent time", without it having been necessary to insert between the words "that" and "a permit" the sentence "if the work or other matter is not completed within that period" (*supra*).

(3) (a) The object of the interpretation of a statutory provision is to discover the intention of the legislator and such intention "must be deduced from the language used" (see *Capper* v. *Baldwin* [1965] 2 Q.B. 53, at p. 61); see also Maxwell on Interpretation of Statutes, 12th edition, p. 29.

(b) Now, the wording of the proviso to section 5

(*supra*) is capable of only one meaning, namely that a building permit is not renewable thereunder unless the work or other matter to which it relates has started, but is not completed, before its expiry.

(4) Counsel for the appellant submitted that the permit in the present case ought to have been renewed because during the one year's period of the validity of the permit the appellant was not able to start building in view of the fact that her property was in the possession of a statutory tenant and the Court proceedings for his eviction therefrom were not completed within the said period.

But "the consideration of the particular circumstances in each case, or a regard to a greater or less degree of convenience" cannot lead to interpreting a statutory provision in a manner not warranted "by words written or necessarily implied and therefore virtually written" (see *Gwynne* v. *Burnell* [1840] 7 Cl. and Fin. 572, at p. 607; 7 E.R. 1188, at p. 1201); and to hold that in the present case the permit granted to the applicant (now appellant) was renewable under the said proviso (*supra*) would amount to construing such proviso so as to embrace a situation not covered by its plain wording (see *Whitehead* v. *James Stott and Co.* [1949] 1 K.B. 358).

(5) In concluding, we are of the view that no question of discrimination can be said to arise merely because it may happen in a particular case, such as the present one, that a landlord does not manage to evict the statutory tenant before the expiry of the relevant building permit.

Appeal dismissed. No order as to costs in view of the novelty of the point in issue.

Cases referred to:

Capper v. *Baldwin* [1965] 2 Q.B. 53, at p. 61;

Gwynne v. *Burnell* [1840] 7 Cl. and Fin. 572, at p. 607; 7 E.R. 1188, at p. 1201;

Whitehead v. *James Stott and Co.* [1949] 1 K.B. 358.

Appeal.

Appeal from the judgment of a Judge of the Supreme Court of Cyprus (Malachtos, J.) given on the 14th February, 1972, (Case No. 380/71) whereby applicant's recourse against the refusal of the respondent to renew a building permit in respect of the erection of a block of flats, was dismissed.

Chr. Demetriades with *A. Triantafyllides*, for the appellant.

M. Papas, for the respondent.

The judgment of the Court was delivered by :-

TRIANTAFYLLIDES, P.: This is an appeal against the first instance decision * of a judge of this Court determining a recourse which was made by the appellant —the applicant in the recourse—against the refusal of the respondent Municipality to renew a building permit which had been granted to the appellant on the 9th July, 1970, in respect of the erection of a block of flats in Famagusta; the renewal of the permit was refused on the ground that since, in accordance with the law, the permit had ceased to be in force one year after it had been issued, and no work pursuant to the permit had started within such year, it was not legally possible to renew it.

The relevant provision is section 5 of the Streets and Buildings Regulation Law, Cap. 96, which reads as follows :

"A permit shall be valid for one year from the date of the issue thereof :

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* Reported in this Part at p. 78 *ante*.

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."

The learned trial judge held that in view of the wording of the proviso to section 5, above, a building permit can be renewed only if the work authorized by it has started before its expiry; he, therefore, found in favour of the Municipality and dismissed the recourse of the appellant.

It has been submitted by counsel for the appellant that, though they do not disagree with the proposition that a situation of non-completion appears to presuppose the event of starting, the phrase "if the work or other matter is not completed within that period" does not necessarily exclude in all cases a situation where there has been non-completion because the relevant work has not yet started.

The object of the interpretation of a statutory provision is to discover the intention of the legislator and such intention "must be deduced from the language used" (*Capper* v. *Baldwin* [1965] 2 Q.B. 53, per Lord Parker, C.J. at p. 61); also, as pointed out in Maxwell on Interpretation of Statutes, 12th ed., p. 29, where the language is plain and admits of but one meaning, the task of interpretation can hardly be said to arise.

The verb "to complete" means to "bring to an end, to finish" (see, *inter alia*, the Oxford Universal Dictionary); therefore, in their ordinary meaning the words "not completed" in the proviso to section 5 are not applicable to any work other than work which has alrealy started.

Not only there is nothing in the said proviso which can be taken as modifying, altering or qualifying the ordinary and natural meaning of the words "not completed", but, on the contrary, if it were intended to

allow the renewal of a building permit even if the work authorized by it had not yet started before such permit had ceased to be in force, it would have been sufficient to provide only "that a permit shall be renewable at any subsequent time", without it having been necessary to insert between the words "that" and "a permit" the sentence "if the work or other matter is not completed within that period".

So, in our opinion, the wording of the proviso to section 5 is capable of only one meaning, namely that a building permit is not renewable thereunder unless the work or other matter to which it relates has started, but is not completed, before its expiry.

Counsel for the appellant have submitted that the appellant's building permit ought to have been renewed, under the proviso to section 5, because during the one year's period of the validity of the permit the appellant was not able to start building, in view of the fact that her property concerned was in the possession of a statutory tenant and the Court proceedings for his eviction therefrom were not completed during the said period. But "the consideration of particular circumstances in each case, or a regard to a greater or less degree of convenience" cannot lead to interpreting a statutory provision in a manner not warranted "by words written or words necessarily implied and therefore virtually written" (see *Gwynne* v. *Burnell* [1840] 7 Cl. & Fin. 572, per Coleridge, J at p. 607; 7 E.R. 1188, at p. 1201); and to hold that in the present case the permit granted to the appellant was renewable under the proviso to section 5 would amount to construing such proviso so as to embrace a situation not covered by its plain wording (see, *inter alia*, *Whitehead* v. *James Stott & Co.* [1949] 1 K.B. 358).

It has, also, been contended by appellant's counsel that the proviso to section 5 offends against the principle of equality, because it discriminates against landlords, such as the appellant, who at the time of obtaining a building permit are in the disadvantageous position of not being able to start building, due to the presence on their properties of statutory tenants. We are of the view that no question of discrimination can be said to arise

merely because it may happen, in a particular case, such as the present one, that a landlord does not manage to evict the statutory tenant before the expiry of the relevant building permit.

For all the foregoing reasons this appeal fails and is dismissed accordingly; but, like the trial judge, we are making no order as to costs because of the novelty of a point which had to be determined.

Appeal dismissed.
No order as to costs.