

1972
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[MALACHTOS, J.]

ANTONAKIS
IOAKIM
PHILIPPOU

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

v.
THE MUNICIPAL
CORPORATION
OF NICOSIA

ANTONAKIS IOAKIM PHILIPPOU,

Applicant,

and

THE MUNICIPAL CORPORATION OF NICOSIA,

Respondents.

(Case No. 303/71).

Administrative acts or decisions—Validity—Material time—The validity of an administrative act is determined, as a rule, on the basis of the legal status existing at the time of its issue (see futher infra).

Building permit—Fees payable for the issue thereof—Applicant failing to pay the prescribed fees when called upon to do so by the respondents—Fees increased thereafter by amending regulations published more than five months after the said letter—Applicant offering to pay after said amendment increasing the fees—Fees payable in the instant case governed by the aforesaid amending regulations—Consequently, applicant has to pay the fees so increased.

On June 27, 1969, the applicant applied to the respondent Committee for a building permit under the relevant Law (The Streets and Buildings Regulation Law, Cap. 96). By letter dated April 2, 1970 the respondent Committee called upon the applicant to proceed the sooner possible and pay the relative fees for the issue of the permit applied for. The applicant did not attend the office of the Committee to pay the aforesaid fees until January 9, 1971, when he offered to pay the fees asked for by the respondents' aforesaid letter of April 2, 1970. In the meantime, namely on April 13, 1970, amending Regulations were enacted increasing substantially the fees payable for the issue of building permits. It was argued on behalf of the applicant that the

fees which he was liable to pay were those prescribed before the amending Regulations.

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Rejecting applicant's said submission and dismissing the recourse, the Court, after reviewing the facts,—

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Held. (1) In decision No. 1477/1956 of the Greek Council of State the exposition of the law on this point is stated as follows :

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“In accordance with established principles of administrative law the validity of an administrative act is determined on the basis of the legal status existing at the time of its issue, unless same is issued so that the administration may conform with an omission to act which had already occurred prior to the alteration of the legal status or unless the law otherwise expressly provides.”

This case has been cited with approval by this Court in the case of *Lordou and Others v. The Republic* (1968) 3 C.L.R. 427.

(2) Applying the above principles, I hold the view that the fees payable in the present case should be governed by the amended Regulations of October 13, 1970, since the first time that the applicant offered to pay the relative fees for the issue to him of the building permit in question was on January 9, 1971.

*Recourse dismissed
with costs.*

The facts sufficiently appear in the judgment of the learned Judge.

Cases referred to :

Andriani G. Lordou and Others v. The Republic
(1968) 3 C.L.R. 427;

Decision of the Greek Council of State No. 1477/1956.

Recourse.

Recourse against the decision of the respondent to

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increase the fees payable by the applicant in respect of a building permit.

E. Lemonaris, for the applicant.

K. Michaelides, for the respondents.

Cur. adv. vult.

The following judgment was delivered by :-

MALACHTOS, J. : By this recourse, which is made under Article 146 of the Constitution, the applicant seeks a declaration that the respondents' decision, which was communicated to the applicant's counsel by letter of the Chairman of the respondent committee, No. TA 432/69, dated 2nd June, 1971, is null and void and of no effect whatsoever.

The applicant is the owner of immovable property situate at Pallouriotissa in the area of Nicosia, under Plot 378, S/P XXI.47, I, III & IV. On the 27th June, 1969, he applied to the respondent committee for the issue of a building permit to erect a dwelling house on his said immovable property. By letter dated 2.4.70, signed by the town clerk (*exhibit 1*) the respondent committee informed the applicant that the plans, conditions, etc., were checked by their technical services and called on him to proceed the sooner possible and pay the relative fees for the issue of the permit applied for. The relative fees in the said letter were specified as follows :

- (i) £24.- building permit;
- (ii) £10.- deposit for any probable damage to the asphalt road;
- (iii) 250 mils stamps.

The applicant did not attend the office of the respondent committee to pay the said fees. On the 13th October, 1970 the Streets and Buildings (amended) Regulations came into force and were published in Gazette No. 829 under Notification No. 831. Under these Regulations the

fees payable for the issue of a building permit were increased. By letter dated 29.12.1970 (*exhibit 6*), the applicant was informed again that the plans, conditions, etc., were checked by the technical services of the Municipality and he was again asked to attend their office and pay the relative fees for the issue of the building permit applied for. This time the fees were fixed as follows :

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- (i) Fees of building permit £61.500 mils;
- (ii) deposit for any probable damage to the street £10.-;
- (iii) value of stamp 250 mils.

By letter dated 9th January, 1971, (*exhibit 2*), addressed by the applicant's advocate to the respondent committee, reference was made to the letter of the respondent committee, dated 2.4.1970 (*exhibit 1*), and a cheque for the sum of £35.- was enclosed therein for the issue of the relative building permit.

The respondent committee by letter dated 22nd January, 1971, (*exhibit 3*), informed the applicant that the relative fees for the issue of the building permit in question were assessed as per their letter dated 29.12.1970 under the amended Regulations and the cheque for the sum of £35.- was returned to him.

By letter dated 25.1.1971, (*exhibit 4*), again through his advocate, the applicant wrote to the respondent committee and alleged that in his case the old regulations were applicable as to the fees payable for the issue of the building permit and not the new ones. The respondent committee by letter dated 2nd June, 1971, (*exhibit 5*), informed the applicant that the fees payable in his case were those prescribed by the amended Regulations, and that if he failed to pay the said fees within ten days legal proceedings would be taken against him. Against this decision the applicant filed the present recourse.

It is common ground that when this case came on for hearing before the Court the house of the applicant had

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already been completed.

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The only issue for the Court to decide in this case is whether the fees payable by the applicant for the issue of the building permit in question are those prescribed by the Regulations in force as on 2.4.1970 or those prescribed by the amended Regulations that came into force on 13.10.1970.

Able arguments were advanced by both counsel on this issue.

In Decision No. 1477/1956 of the Greek Council of State the exposition of the law on this point is stated as follows :

“In accordance with established principles of administrative law the validity of an administrative act is determined on the basis of the legal status existing at the time of its issue unless same is issued so that the administration may conform with an omission to act which had already occurred prior to the alteration of the legal status or unless the law otherwise expressly provides.”

This case has been cited with approval by Triantafyllides, J., as he then was, in the case of *Andriani G. Lordou and Others v. The Republic* (1968) 3 C.L.R. 427.

It must be borne in mind that once an application for a building permit is made the grant thereof is not automatic even if the necessary plans are ready and in compliance with the legislation in force at the time. The matter is still to be considered by the appropriate authority so that if need be, proper conditions may be imposed by it such as those prescribed by section 9 of the Law, Cap. 96. Furthermore, a condition which should always be present is that the prescribed fees must be paid.

Applying the above principles to the facts and circumstances of the present case, I hold the view that the fees payable should be governed by the amended Regulations that came into force on the 13th October, 1970, since the first time that the applicant offered to pay the relative

fees for the issue of the building permit in question was on the 9th January, 1971, when he wrote *exhibit 2* and this after he received the letter of the respondent committee dated 29.12.1970.

In conclusion I must say that had the applicant complied within reasonable time with the letter of the respondent committee, dated 2.4.1970, (*exhibit 1*), the present state of affairs would have never arisen. It is, therefore, the unjustifiable delay on his part that brought about the present situation.

For the reasons stated above this recourse fails with costs in favour of the respondent committee.

*Application dismissed
with costs.*

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