1972
Febr. 14

NINA SIMAN
(No. 1)

v.

THE MUNICIPALITY OF FAMAGUSTA

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NINA SIMAN (No. 1),

Applicant,

and

THE MUNICIPALITY OF FAMAGUSTA,

Respondents.

(Case No. 380/71).

Building permit—Renewal—No building permit can be renewed after its expiration unless the work or other matter for which the permit was issued has started—Proviso to section 5 of the Streets and Buildings Regulation Law, Cap. 96—Recourse dismissed without costs.

Statutes—Construction of statutes—General principles applicable—Proviso to section 5 of Cap. 96 (supra)*—Construction of.*

The Court dismissing this recourse, held that on the true construction of the proviso to section 5 of the Streets and Buildings Regulation Law, Cap. 96 a building permit cannot be renewed after its expiration save when the work or matter for which the permit was issued has started.

Cases referred to :

Chilimindri v. The Municipal Corporation of Famagusta (1969) 3 C.L.R. 159, at pp. 161-162;

In Re A. Debtor [1948] 2 All E.R. 533 at p. 536, per Lord Greene, M.R.;

Becke v. Smith (1836) 2 M. & W. 191 at p. 195.

Recourse.

Recourse against the decision of the respondent refusing the renewal of applicant's building permit.

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

M. Papas, 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 decision of the respondents communicated to her advocate by letter dated 17/7/71, *exhibit* 1, not to renew her building permit No. 526 issued on 9/7/70, in accordance with her application, is null and void and of no effect whatsoever.

The following are the salient facts which gave rise to the present recourse. Applicant is the owner of immovable property situated at Ayios Nicolaos, Famagusta town, being Plot 167 S/P No. 33/13.I.IV Block C. On the said property of the applicant there are standing buildings which are let out to a tenant and are used as business premises. Applicant originally intended to build a thirteen storey building on the said property and applied to the respondents for a building permit. It appears that the issue of that building permit became the subject of a recourse to this Court under No. 121/69, which was finally settled by the respondents granting to her on 9/7/70 a building permit No. 526 for a ten storey building. After obtaining the said permit the applicant on 1/8/70 sent to her tenant, who was holding the premises standing on her said property as a statutory tenant, the three months' notice provided by Law 17/61, asking him to evacuate the property in view of her intention to demolish the old buildings and erect the new ones. As the said statutory tenant did not comply with such notice applicant filed on 16/11/70 in the District Court of Famagusta, Action No. 3335/70 against him, for ejectment on the strength of such building permit. After the closing of the pleadings the said action was fixed

* For final judgment on appeal see p. 329 in this Part *post*.

before that Court for mention on 25/2/71 and upon reaching no settlement on that day the case was fixed for hearing on 17/6/71. Due to the Famagusta Assizes, the hearing of the case was adjourned to 2/12/71, as it could not be fixed by the Court before the expiration of the building permit in question, that is, 9/7/71. Under these circumstances the applicant applied to the respondents for renewal of the building permit in question through her advocate by letter dated 2/7/71, *exhibit* 2.

By letter dated 17/7/71, *exhibit* 1, addressed to the applicant's advocate the respondents informed the applicant that they could not renew her building permit for the reason that such a renewal was contrary to the provisions of section 5 of the Streets and Buildings Regulation Law, Cap. 96, as no building work was started up to 9.7.71, the date of the expiration of the said building permit.

Against this decision of the respondents the applicant filed the present recourse.

It has been argued on behalf of the applicant that —

1. The interpretation given by respondents to section 5 of the Streets and Buildings Regulation Law, Cap. 96, is wrong and, consequently, respondents acted contrary to and/or under a misapprehension of the said law in refusing to renew the building permit of the applicant.

2. As section 5 of the above law constitutes part of a law restricting the basic rights of a citizen, which rights are protected by Article 23 of the Constitution, the said section must be interpreted in case of doubt, in favour of the citizen.

3. If the steps provided by law 17 of 1961 in order to eject a statutory tenant, on the strength of a valid building permit, and in order to proceed to build after such ejectment, are not completed within the period of the original vilidity of such permit, such non completion amounts in law to non completion of the work or matter contemplated by the permit and so according to the provisions of section 5 of Cap. 96, the respondents are

bound to renew same. The taking of the above steps under Law 17 of 1961, is a condition precedent to the starting of the actual building work for which the permit is given and, therefore, such steps are part and parcel of the work or matter covered by the said permit. Any other interpretation of section 5 of Cap. 96, would be in direct contradiction to the provisions of Law 17 of 1961, and would nullify same or would lead to absurdity as it will, as a rule, prevent the holder of a building permit to use same, if he has first to take the steps provided by Law 17/61 in similar cases. Furthermore, any other interpretation would also lead to a discrimination contrary to Article 28 of the Constitution against holders of building permits which have first to eject a statutory tenant as compared with those who have not.

On the other hand, counsel for the respondents submitted that the wording of section 5 of Cap. 96 is clear and unambiguous and the respondents were bound to refuse the renewal of the permit applied for by the applicant, and that Law 17/61 has no relevancy to section 5 of the Streets and Buildings Regulation Law, Cap. 96. The only issue for the Court to decide in this case is the interpretation of section 5 of the Streets and Buildings Regulation Law, Cap. 96, and in particular the proviso thereto. This section 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."

The fundamental principle in the construction of a statute is that words must be given their literal meaning. If language is clear and explicit, the Court must give effect to it for in that case the words of a statute speak the intention of the legislature. In *Re A Debtor* [1948]

2 All E.R. 533 at page 536, Lord Greene, M.R., said that "if there is one rule of construction for statutes and other documents, it is that you must not imply anything in them which is inconsistent with the words expressly used." The so-called "golden rule" is really a modification of the literal rule. It was stated in this way by Parke, B. in *Becke* v. *Smith* (1836) 2 M. & W. 191 at page 195: "It is a very useful rule in the construction of a statute, to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified, so as to avoid such inconvenience but no further."

Where a statute itself unequivocally gives rise to an unnatural state of affairs it should be given working effect without extending the operation of inference or imagination further than it is necessary for this purpose. But inconvenience is not always a safe guide to construction. However difficult it may be to believe that Parliament ever really intended the consequences of a literal interpretation, "we can only take the intention of Parliament from the words which they have used in the Act, and therefore the question is whether these words are capable of a more limited construction. If not, then we must apply them as they stand, however unreasonable or unjust the consequences, and however strongly we may suspect that this was not the real intention of Parliament" (Maxwell on Interpretation of Statutes, twelfth edition at p. 205). The same general rule applies where the result of one or two interpretations would be to lead to an absurdity. The absurdity, like inconvenience or unreasonableness, is not a uniformally safe argument. It may be that the Court will not agree that the words give rise to an absurdity and even if they do give rise to admittedly incongruous state of affairs, they may still be plain, in which case the Court will have no option but to place on them their natural meaning (Maxwell on Interpretation of Statutes, 12th ed. p. 210—212).

Now, applying the above principles in construing the proviso to section 5 of the Law, Cap. 96, I hold the

view that the word "completed" means that the work or other matter in respect of which the permit was granted, has to start before expiration of the said permit. Furthermore, the words "other matter" in no way can cover cases of legal proceedings taken against a statutory tenant. "Other matter", in my view, means matters in respect of which the permit is issued and nothing else. This is clear from the wording of section 4(1) of the Law which reads as follows :

"No permit shall be granted under section 3 of this Law unless the appropriate authority is satisfied that the contemplated work or other matter in respect of which the permit is sought, is in accordance with the provisions of this Law and the Regulations in force for the time being."

From a glance at the background of the Law, Cap. 96, it is clear that the intention of the legislative authority in enacting section 5 of the Law and its proviso, was to provide a time limit for the validity of the building permit.

The Streets and Buildings Regulation Law, Cap. 96. was enacted in 1946 as Law 12/46 and came into operation on the 15th July, 1946. The following enactments were repealed by this Law :

"The Construction of Buildings, Streets and Wells on Arazi Mirie Laws, 1927 to 1938.	The Whole.
The Construction of Buildings, Streets and Wells on Arazi Mirie (Special Provisions) Law, 1938.	The Whole.
The Municipal Corporations Laws, 1930 to 1945.	(a) section 115(1), paragraph (e); (b) sections 131 to 136, both inclusive; (c) sections 138 to 145, both inclusive; (d) section 199(1) paragraph (d).

The Summer Resorts (Development) Law, 1938.	(a) section 24(1) paragraph (i), except in so far as it relates to tents; (b) section 24(1) paragraph (u), the words 'and 15 control the construction or alteration of any street'; (c) sections 39 to 43, both inclusive."

As far as I could trace I found no specific section in the enactments repealed by this Law where there is an express provision as to the time limit for the duration of a building permit.

On the 17th March, 1945, a Bill was published in the Cyprus Gazette as a Law to provide for town planning and to consolidate and amend the laws relating to the construction of Streets and Buildings.

This Bill consisted of two parts. The first part was dealing with town planning and the second part with the construction of streets and the erection of buildings. Section 28 of this Bill deals specifically with the duration of a permit and reads as follows :-

"Any permit granted under section 26 of the Law shall be valid and effective for a period of 3 years from the date thereof and no longer." However, this bill was never enacted as a law and as far as its second part is concerned, i.e. the construction of Streets and Buildings, a bill was published about 9 months later, on the 11th December, 1945. This bill was enacted as Law 12 of 1946 on the 15th July, 1946. It is significant to note that the duration of a permit proposed by section 5 of the said bill was further limited to one year and this section was enacted as part of Law 12/46 together with its proviso without any alterations. So, it can safely be inferred that the intention of the legislative authority in fixing the duration of a permit was to put an end to cases where a person obtained a permit and his ultimate

object was to have this permit in hand in anticipation of any alteration of the law or Regulations. It is clear from the wording of this section that no permit can be renewed, after its expiration, unless it falls within the proviso thereof which presupposes that the work or other matter for which the permit was issued must start. If the work has not started within a year from the issue of such permit, then the person to whom such permit was issued must apply for a new one. There may be a lot of reasons as to why the person to whom a permit was issued could not start within the time limit. In certain cases, like the present one, there may be good justification, but as the law stands this is immaterial in my view as the wording of the section under consideration is clear and unambiguous. It is not for the Court to make or amend Laws, but for the Legislative Authority.

It may be argued as to what happens in cases where construction work has duly commenced under a permit properly issued, but has not been finished within a period of one year, and in the meantime the law changes. I must say that since this point is not under consideration in the present case, there is no need to deal with it. This question was left open by Mr. Justice Triantafyllides, as he then was, in *Loula A. Chilimindri* v. *The Municipal Corporation of Famagusta* (1969) 3 C.L.R. 159. At pages 161—162 it is stated :

> "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, 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."

As to the argument of counsel for applicant that the case of the applicant is a classic example of unequal treatment based not on any rational or reasonable criteria but on forces entirely beyond her control and consequently contrary to Article 28 of the Constitution, I am of the view that it cannot stand as the applicant knew that her premises were occupied by a statutory tenant, and she was in a position to foresee all possible consequences, and act accordingly.

For all the above reasons, this recourse fails.

In view of the novelty of the point I make no order as to costs.

Application dismissed; no order as to costs.