1973
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GOLDEN
SEA-SIDE
ESTATE
CO. LTD.
v.
THE MUNICIPAL
CORPORATION
OF FAMAGUSTA

[STAVRINIDES, L. LOIZOU, A. LOIZOU, JJ.]

GOLDEN SEA-SIDE ESTATE CO. LTD.,

Appellants,

v.

THE MUNICIPAL CORPORATION OF FAMAGUSTA,

Respondent.

(*Criminal Appeal No.* 3400).

Buildings—Building without a permit—Adding 13 *flats to an existing block of flats—Sections* 3 (1) (*b*) *and* 20 (1) (*a*) *and* (3) *of the Streets and Buildings Regulation Law, Cap.* 96*—Demolition order—Appeal—Additions not a mere technicality and not made* bona fide*—Order of demolition affirmed notwithstanding the serious financial consequences of the demolition—Otherwise the Court would be putting a premium on the magnitude of the breach.*

Demolition Order—See supra.

The Appellant company was convicted on its own plea on a charge of adding 13 flats to an existing block of flats in Famagusta without a building permit, contrary to sections 3 (1) (b) and 20 (1) (a) and (3) of the Streets and Buildings Regulation Law, Cap. 96; it was sentenced to £30 fine and in addition an order for the demolition of the said flats was issued. The present appeal is directed solely against this order of demolition. It was argued by counsel for the Appellant company that it acted *bona fide* and that the consequences of the demolition order will be very serious; the demolition would be, therefore, disproportionate to the gravity of the offence.

Dismissing the appeal, the Supreme Court:-

Held, (1). The learned trial Judge found, and rightly in our view, that the additions (13 flats) were so substantial that they could not be treated as a matter of minor importance. We are unable to subscribe to counsel's argument that on the totality of the circumstances demolition would be disproportionate to the offence. In our view the unauthorized addition of 13 flats cannot be a mere technicality, nor was it carried out *bona fide.*

(2) Certainly, the financial consequences of the demolition order (if a permit is not eventually given) will be serious indeed;

but the Appellant company has only itself to blame for bringing itself into such predicament. For the Court to be dissuaded from making such an order in a case of this kind would be tantamount to putting a premium on the magnitude of the breach.

Appeal dismissed with £15 costs against the Appellant.

Cases referred to:

District Officer Nicosia and HajiYanni, 1 R.S.C.C. 79;

Improvement Board of Kaimakli v. *Sevastides* (1967) 2 C.L.R. 117, at p. 124.

Appeal against sentence.

Appeal against sentence by Golden Sea-Side Estate Co. Ltd. who were convicted on the 27th December, 1972, at the District Court of Famagusta (Criminal Case No. 8984/72) on three counts of the offence of making additions or alterations to buildings contrary to section 3 (1) (b) and 20 (1) (a) and (3) of the Streets and Buildings Regulation Law, Cap. 96 and were sentenced to pay £10.- fine on each count and they were further ordered to demolish the said additions or alterations within 2 months.

J. Kaniklides, for the Appellants.

M. Papas, for the Respondents.

STAVRINIDES, J.: The judgment of the Court will be delivered by A. Loizou, J.

A. LOIZOU, J.: The Appellant company has been found guilty on its own plea and convicted on three counts charging it with making additions or alterations to three storeys of a block of flats in Famagusta, contrary to section 3 (1) (b) and section 20 (1) (a) and (3) of the Streets and Buildings Regulation Law, Cap. 96.

The sentence imposed was one of £10.- fine on each count and in addition, an order for the demolition of the said parts of the building, as set out in the three counts, within two months from the date of the order, unless a permit was obtained in the meantime.

The present appeal directed, solely against the demolition order, is based on the ground that the trial Court wrongly exercised its discretion in the matter.

The facts of the case are as follows:-

The company is the owner of a block of flats in Stavros quarter, Famagusta, consisting of a basement, a ground floor and four other storeys. The ground floor and the first four floors above it were erected by virtue of building permits issued on the 6th July, 1966, while the 5th and 6th storeys were built under a permit which was renewed in March, 1972. The completed building consisted of 14 flats in all.

On the 29th March, 1972, the company submitted to the appropriate authority an application for alterations in, and additions to, the building, whereby the existing two flats on the second floor would he increased to five, and the single flats on the 2nd and 3rd floors respectively to five apiece. On the 13th April, 1972, the appropriate authority wrote to the company suggesting certain alterations to the plans submitted for the new building permit before its application was considered; and new plans were submitted by the 26th of that month. In June the company wrote to the mayor complaining of the delay in the issue of the permit and the mayor wrote to it a letter on the 12th July, 1972, informing it that its application was being considered. In July the company started the building work, the subject of the prosecution, without a permit.

On the 12th September, 1972, the company was informed that in view of the increased number of flats the parking space provided was insufficient. But by that date the company had completed the additions and alterations in question. The prosecution was instituted on the 24th October, 1972, together with an application for an interim order suspending the building work.

After some adjournments, the previous plea of not guilty was, by leave of the Court, changed to one of guilty to all counts. The application for an interim order thus lapsed and was withdrawn. An application by the company for postponement of the sentence was also withdrawn, and evidence was called on both sides for the pusposes of laying before the Court the material that each party considered would assist it in disposing

of the case and in particular in determining the question of whether a demolition order should be made.

In our view, the trial Court approached the case in its proper legal perspective. It referred to the provisions of section 20 of the Streets and Buildings Regulation Law, Cap. 96, as amended in 1963 by Law No. 67 of 1963 so as to bring it in conformity with the Constitution as interpreted by the Supreme Constitutional Court in the *District Officer Nicosia* and *Haji Yanni*, 1 R.S.C.C. 79.

As pointed out by Vassiliades, P. in delivering the judgment of the Court in *Improvement Board of Kaimakli* v. *Sevastides* (1967) 2 C.L.R. 117 at p. 124, a passage relied upon by the trial Judge:-

> " ... But this change (the 1963 amendment of section 20) cannot be understood or applied in a manner frustrating the very purpose for which the Law exists; and for which the provision about a demolition order is contained in the statute. There may be cases where a demolition order need not be made; where for instance, some condition in the permit has not been complied with, or there occurred an infringement of minor importance".

The learned trial Judge found, and rightly in our view, that the changes effected on the subject matter of the 3 counts were so substantial that they could not be treated as a matter of minor importance. It has been contended by the counsel for the company that in view, on the one hand, of the delay of the appropriate authority in answering its application and on the other hand of the practice followed by the appropriate authority till then of not requiring additional parking space when alterations to existing buildings were carried out, the company had acted *bona fide*. Accordingly, counsel went on, the contraventions of the permit having been committed *bona fide*, "were merely technical" as these words are used in the *Haji Yannis* case, and, therefore, having regard to the totality of the circumstances of this case, demolition would be disproportionate to the offences. We are unable to subscribe to that argument. The unauthorized addition of 13 flats cannot be a mere technicality, nor was it carried out *bona fide*. Certainly, the consequences of demolition order if a permit is not eventually given, will be serious but the Appellant has only itself to blame for bringing itself into such a predicament. For the Court to

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be dissuaded from making such an order in a case of this kind would be tantamount to putting a premium on the magnitude of the breach.

In the circumstances the appeal is dismissed with £15.– costs.

Appeal dismissed with £15 *costs.*