CASES

DECIDED BY

THE SUPREME COURT OF CYPRUS

IN ITS REVISIONAL JURISDICTION AND IN ITS REVISIONAL APPELLATE JURISDICTION

[A. LOIZOU, J.]

1974
Jan. 14

—

DR. PIERIS HJICOSTAS
v.
REPUBLIC (COUNCIL OF MINISTERS AND ANOTHER)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DR. PIERIS HJICOSTAS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
1. THE COUNCIL OF MINISTERS,

2. THE MUNICIPALITY OF NICOSIA, THROUGH THE MUNICIPAL COMMITTEE OF NICOSIA,

Respondents.

(*Case No.* 139/72).

Recourse under Article 146 *of the Constitution—Time within which to file a recourse—The* 75 *days period—Article* 146.3 *of the Constitution—Knowledge and publication of the* sub judice *decision—Decision to close a public street (and to block part thereof) to vehicular traffic—The Municipal Corporations Law, Cap.* 240, *section* 123 (1) (t)—*Cf. section* 17 *of the Streets and Buildings Regulation Law, Cap.* 96—*Applicant completely knowing of said decision and petitioning Administration by objecting thereto—Publication of decision in the Official Gazette of the Republic with sufficient particularity—Said publication proper and sufficient publication for the purposes of Article* 146.3 *of the Constitution—That being so, the present recourse is obviously out of time in*

that it was not filed within the 75 days required under said Article 146.3—Pissas (No. 1) *v.* The Electricity Authority of Cyprus (1966) 3 *C.L.R.* 634, distinguished.

Time within which to file a recourse—See supra.

Street—Closing and diverting a public street within the municipal limits—And blocking such street—Section 123 (1) (*t*) *of the Municipal Corporations Law, Cap.* 240—*Municipality empowered thereunder to close a street.*

Municipal Corporations Law, Cap. 240—*Section* 123 (1) (*t*)—*Powers of a municipality to close or divert (or block) a street—Construction of aforesaid paragraph* (*t*)—*See* supra—*Cf. also* infra.

Statutes—Construction of statutes—Marginal notes—Significance, if any—Such notes cannot be used as an aid to construction—Construction of the words "divert or close any street" in the aforesaid section 123 (1) (*t*) *of the Municipal Corporations Law, Cap.* 240—*Cf.* supra.

Administrative law—Discretionary powers—Proper exercise of—Proper and sufficient inquiry into all relevant facts—Moreover, decision complained of seems to constitute the less onerous method in the circumstances—Respondents have, therefore, properly exercised their discretionary powers in the public interest, particularly in the interest of public safety as well for the purpose of regulating traffic in congested streets—And the Court will not substitute its own discretion for that of the respondents.

Discretionary powers—Proper exercise—Proper inquiry carried out etc. etc.—See supra.

Administrative acts or decisions—Act done in execution of an already existing executory decision—Recourse under Article 146 *of the Constitution not maintainable against acts simply done in execution as aforesaid—Acts of execution as distinct from executory acts or decisions—Bollards placed at a street in execution of an already executory decision.*

Executory acts or decisions—As distinct from acts of execution i.e. *from acts simply done in execution of an already existing executory decision.*

Acts of execution as distinct from executory acts—See supra.

This is a recourse under Article 146 of the Constitution whereby the applicant seeks to challenge the decision of the respondents to close Larissa Street (and to block part thereof) to vehicular traffic to and from Grivas Dighenis Avenue, on the main grounds that the respondents have no power in law to act as they did and/or that they have reached the decisions complained of without a proper and sufficient inquiry into all relevant facts. The learned Judge of the Supreme Court, distinguishing this case from the case *Pissas (No. 1)* v. *The Electricity Authority of Cyprus* (1966) 3 C.L.R. 634, held that in the circumstances (*infra*) there has been a sufficient publication of the *sub judice* decisions in the Official Gazette of the Republic for the purposes of Article 146.3 of the Constitution; and that, therefore, the recourse has to be dismissed as having been obviously filed out of time *i.e.* not within the period of 75 days required under the provisions of the said Article 146.3. Moreover, the learned Judge thought fit to enter into the merits of the case and, rejecting the argument advanced on behalf of the applicant, held that the respondents have acted within their statutory powers (*infra*) and that they have taken their decisions after a proper and sufficient inquiry; and proceeded to dismiss the recourse on those grounds, too. The facts of the case are briefly as follows:

In 1969 the Municipal Committee of Nicosia (respondent 2), acting under section 17 of the Streets and Buildings Regulation Law, Cap. 96 decided to proceed to the proper construction, reconstruction and improvement of Larissa Street, Nicosia; and acting apparently under section 123 (1) (t) of the Municipal Corporations Law, Cap. 240, to close the said street to vehicular traffic to and from Grivas Dighenis Avenue. This decision was published in the Official Gazette of the Republic of October 24, 1969 under Notification No. 1784.

The applicant, who is a surgeon and owner of a block of buildings in the said Larissa Street, wrote to the Committee (respondent 2) a letter dated November 25, 1969, whereby, referring to the aforesaid Notification No. 1784, he was objecting to the decision of making the street in question a cul de sac for vehicular traffic as it would cause him immeasurable damage and stating that he would have to file a recourse to the Supreme Court for the protection of his rights.

On December 18, 1969, counsel for the applicant wrote another letter to the Municipal Committee of Nicosia (respond-

ent 2) protesting against their decision to close Larissa Street to vehicular traffic as it would appear from the relevant plans exhibited in the Town Hall. The letter concluded by saying that section 17 of Cap. 96 did not empower the Municipality to close Larissa Street in the way described; and counsel further asked to be informed before the 27th December, 1969, whether it intended to proceed as above or not, as immediately after that date his client would file a recourse.

The Municipal Committee at its meeting of January 9, 1970, examined the objection of the applicant and dismissed it having considered the views of the Director of the Department of Town Planning and Housing, the report of the Municipal Engineer and the advice of the Attorney-General and agreed with the view of the Director to proceed with the decision taken and reject applicant's objection thereto.

On January 15, 1970, the Municipal Committee (respondent 2) sought the required approval of the Council of Ministers for the decision which appeared as aforesaid in Notification 1784 in the Official Gazette of the Republic of October 24, 1969 (*supra*), by a letter attaching thereto copies of all relevant documents and correspondence, including the objections of the applicant and the minutes of their said meeting of the 9th of January, 1970 (*supra*). Thereafter, the Council of Ministers, adhering to the relevant submission by the Minister of Interior, dismissed the applicant's objections and approved the plans and, generally, the said actions of the Municipal Committee. The Council's decision just referred to, dated *October* 14, 1971, was published in Supplement 3 of the Official Gazette of the Republic of *October* 29, 1971 *under Notification No.* 866.

In execution of the aforesaid decision, Larissa Street was asphalted and reconstructed in accordance with the relevant plans; and access to it by vehicular traffic to and from Grivas Dighenis Avenue was blocked by the construction of bollards on April 10, 1972. The applicant protested to this construction and eventually filed the present recourse *on May* 13, 1972, whereby he prays for the following reliefs:

(A) The annulment of the aforesaid decisions of the Municipal Committee of Nicosia and the Council of Ministers published in the Official Gazette under *Notification* 1784 of October 24, 1969 and *Notification* 866 of October 1971, respectively (*supra*).

(B) The annulment of the act or decision of the Municipal Committee for the construction of bollards and the blocking of Larissa Street on or *about April*, 1972, (*supra*).

Section 123 (1) (t) of the Municipal Corporations Law, Cap. 240 provides:

"(1) Subject to the provisions of this Law and of any other Law in force for the time being, the Council (*viz.* the Municipal Council) shall within the municipal limits:–

.....

.....

(t) Keep all streets clean and in good repair and sufficiently drained, lightened and clear of obstructions, and control the construction or alteration of any street, and *divert or close any street* and prevent obstructions thereover by awnings or otherwise".

Section 123 is in Part III of the Law (Cap. 240 *supra*) which is headed "*Duties and Powers of Councils*"; but the marginal note to section 123 is "Duties of Councils" in contradistinction to the marginal note to section 124 which is "Powers of Councils".

On the other hand, paragraph 3 of Article 146 of the Constitution reads as follows:

"3. Such a recourse shall be made within seventy-five days of the date when the decision or act was published or, if not published and in the case of an omission when it came to the knowledge of the person making the recourse".

It was objected by counsel for the respondents that the recourse in so far as relief (A) (*supra*) is concerned is out of time. On behalf of the applicant it was argued, *inter alia*, that the respondents have no powers to take the decision complained of under the said section 123 (1) (t) of the Municipal Corporations Law, Cap. 240; and moreover that the decision to close Larissa Street (*supra*) was reached without proper inquiry and, in any event, that such decision was not the less onerous method which ought to have been adopted in the circumstances.

Dismissing the recourse, the learned Judge:-

Held, I: Regarding the preliminary point to the effect that the recourse was filed out of time (i.e. *not within the 75 days provided under Article* 146.3 *of the Constitution,* supra):

(1) Considering the facts and circumstances of this case (*supra*), I am of the opinion that the relevant publications in the Official Gazette of the Republic (*supra*) are proper publications within the provisions of Article 146.3 of the Constitution (*supra*) (*Pissas* (*No.* 1) v. *The Electricity Authority of Cyprus* (1966) 3 C.L.R. 634, *distinguished*).

(2) It follows, that, so far as Relief (A) is concerned (*supra*), the present recourse is out of time, as it was filed on May 13, 1972, evidently more than 75 days as from the relevant publication in the Official Gazette of the Republic, the construction of the bollards on April 10, 1972 (*supra*) being nothing else but an act done in execution of an already existing executory decision of which the applicant had full knowledge since December 1969 (*Pissas'* case, *supra, distinguished*); the petitioning also of the Administration in the circumstances of this case (*supra*) amounts to proof of full knowledge (see *Porismata Nomologias of the Greek Council of State* 1929–1959, p. 253 and its decisions Nos. 675/54 and 1553/57).

Note: Although these conclusions dispose of the present case, the learned Judge felt that he should, out of respect for the interesting arguments addressed upon him, deal also with the substance of the case.

Held, II: Regarding the merits of the case:

(1) It has been maintained that the respondent Municipality has no powers under section 123 (1) (t) of the Municipal Corporations Law, Cap. 240 to close (or block) the said Larissa Street. I do not agree. This paragraph (t) (*see supra*) has always been in Part III of the Law which is headed *Duties and Powers of Councils* and although the marginal note to section 123 refers to duties of the Municipal Councils in contradistinction to the marginal note to section 124 which is " Powers of Council", in my view, that makes no difference; the marginal note " Duties of Councils" to section 123 cannot restrict the meaning of the words of the section and should not be used as an aid to construction and give a different effect to the words of the section. The words " divert or close any street" in the

said paragraph (t) of section 123 (1) are wide enough to empower a Municipality to close a street by the placing of bollards and turning it in effect into a cul de sac for vehicles only, as in this instance. The distinction between duties and powers, in any event, has no bearing in this case, as a duty in the present circumstances, presupposes and includes a power. (See *Chandler* v. *D.P.P.* [1964] A.C. 763, at pp. 789, 790, per Lord Reid, to the effect that side notes cannot be used as an aid to construction).

(2) (A) Having gone through the material before me, I have come to the conclusion that sufficient and proper inquiry was carried out and also that respondent 2 examined a number of alternative solutions before arriving at the *sub judice* one, after proper evaluation of all material factors. It cannot be said that the decision reached was not the less onerous in the circumstances.

(B) It was really a decision which involved technical matters and within the discretionary powers of the respondent 2 Municipality; and once they took everything into consideration, the exercise of their discretion was properly made, as absolutely necessary in the interest of the public safety, for the protection of the rights of others and for the purpose of regulating traffic in congested streets; and this Court will not substitute its own discretion for that of the respondent 2. In the result, this recourse fails on these grounds also.

Held, III: Regarding Relief (B) hereabove:

The placing of bollards on April 10, 1972 at the north side of Larissa Street does not constitute an executory act, but simply an act done in execution of the already executory decision contained in Notification No. 866 of October 29, 1971 (*supra*); consequently a recourse is not maintainable against such act in execution of an already issued executory decision or act.

Recourse dismissed. No order as to costs.

Cases referred to:

Chrysochou Bros. v. *CYTA* (1966) 3 C.L.R. 482;

Pissas (No. 1) v. *The Electricity Authority of Cyprus* (1966) 3 *C.L.R.* 634;

Chandler v. *D.P.P.* [1964] A.C. 763, at pp. 789, 790;

Decisions of the Greek Council of State: Nos. 675/54 and 1553/57.

1974
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—
DR. PIERIS
HJICOSTAS
v.
REPUBLIC
(COUNCIL OF
MINISTERS
AND ANOTHER)

Recourse.

Recourse against the decision of respondent No. 1 whereby respondent's No. 2 decision for the construction of bollards and the blocking of the north end of Larissa Street was approved.

K. Talarides, for the applicant.

S. Georghiades, Senior Counsel of the Republic, for respondent No. 1.

K. Michaelides, for respondent No. 2.

Cur. adv. vult.

The following judgment was delivered by:-

A. LOIZOU, J.: Grivas Dighenis Avenue, a major thoroughfare in Nicosia, was constructed in the years 1958-1959. It cut across a number of streets. For reasons, it is claimed, of "public safety", in the sense of regulating traffic, access for vehicular traffic from and to the avenue from these streets was stopped. Larissa Street, the closing of which at its north end is the subject matter of the present recourse, is one of these streets.

On the 8th April, 1960, the then Acting Chief Planning Officer, wrote to the Municipal Committee of Nicosia (*exhibit 'F'*), and submitted plans with proposals for the rearrangement of the north end of the said street. These plans were providing for a widening scheme for its north part, and was recommended for immediate approval and publication under section 12 of the Streets and Buildings Regulation Law, Cap. 165, now Cap. 96. The south part of that street was already covered by a widening scheme since 1954. Detailed proposals for the north end of the street were made and since access by means of vehicles to and from Grivas Dighenis would be stopped, provision was made for a turning space for cars. The exact dimensions of the open space planned to be left there would depend on the construction of the bridge, which the Public Works Department were to erect on Pedieos river nearby.

In 1969 the Municipal Committee of Nicosia (hereinafter referred to as respondent 2) decided, together with their decision for the proper construction, reconstruction and improvement of Larissa Street under section 17 of the Streets and Buildings Regulation Law, Cap. 96, published in the official Gazette

of the Republic of the 24th October, 1969, Notification No. 1784, also to close the said street to vehicular traffic to and from Grivas Dighenis Avenue. The extent of construction being consequential to the decision to close the north end.

The applicant, who is a surgeon, purchased a building site in Larissa Street in 1967. He built thereon a two-storeyed building, consisting of shops on the ground floor, his clinic and his private residence on the 1st and 2nd floors respectively. On the 25th November, 1969 he wrote to respondent 2 *exhibit* '*A*'; he referred to the aforesaid Notification and the plans exhibited in the Town Hall and stated that he was not objecting to the asphalting of the said street, but as " he had the impression that there was a suggestion that the said street would become a cul de sac for vehicular traffic", he requested to be informed without delay if really a final decision had been reached for that purpose, and if so, he was objecting to such a decision as it would cause him immeasurable damage and that he would have to file a recourse to the Supreme Court for the protection of his rights.

This letter was passed on to the Municipal engineer who considered the question of the access of vehicular traffic from and to Larissa Street. The views of the Director of the Department of Town Planning and Housing were also sought by letter dated the 25th November, 1969 (*exhibit* '*G*') who replied on the 8th December, 1969 (copy attached to *exhibit* ('*D*')) that the views of his Department were the same as those expressed in previous correspondence. The Municipal engineer by letter (*exhibit* '*H*') informed the Chairman of respondent 2 that he had considered the objection of the applicant and he did not find that any solution was possible other than the one proposed in the plans published on the 24th October, 1969.

The applicant, through his counsel, on the 18th December, 1969, wrote another letter to respondent 2 to the effect that as from the plans exhibited it transpired that they intended to close the said street to vehicles coming from Grivas Dighenis Avenue, and consequently construct the said street in such a way as to prevent the free circulation of vehicles from the Avenue and render it a cul de sac, he thereby objected to such a decision for the reasons, legal and factual, set out therein. The letter concluded by saying that section 17 of Cap. 96 did not empower the Municipality to close Larissa Street in the way described and that their client intended before the lapse of 75

days from the publication of their decision to file a recourse in the Supreme Court. He further asked to be informed before the 27th of November whether they intended to proceed as above or not, as immediately after the said date their client would file a recourse.

The original of a letter dated the 19th December, 1969 intended to be the reply of respondent 2 to applicant's letter of the 25th November, 1969 was traced in the file of respondent 2, as it was never forwarded to the applicant.

Respondent 2 at its meeting of the 9th January, 1970 examined the objection of the applicant and dismissed it having considered the views of the Director of the Department of Town Planning and Housing of the 8th December, 1969, the report of the Municipal engineer dated the 9th January, 1970, and the advice of the Attorney-General of the Republic and agreed with the view of the Director.

On the 15th January, 1970, respondent 2 sought the approval of the Council of Ministers for the decision which appeared in Notification 1784 in the official Gazette of the 24th October 1969, by a letter addressed to the District Officer, Nicosia-Kyrenia (Schedule 'B' to exhibit 'D'), attaching thereto copies of all relevant documents and correspondence, including the objections of the applicant and the minutes of their meeting of the 9th January, 1970. Thereafter, the Minister of Interior by a submission in writing dated the 30th September, 1971, proposed to the Council of Ministers that it dismissed the objections and approved the plans without any condition, which the Council did and its decision dated the 14th October, 1971 (*exhibit 'D'*) was published in Supplement No. 3 to the official Gazette of the 29th October, 1971 under Notification No. 866.

In execution of the aforesaid decision Larissa Street was asphalted and reconstructed in accordance with the plans. Access to it by vehicular traffic to and from Grivas Dighenis Avenue was blocked by the construction of bollards on the 10th April, 1972. The applicant protested to this construction and eventually filed the present recourse on the 13th May, 1972, whereby he prays for the following reliefs:-

A. That the decision of the Council of Ministers by which it approved the plans of the Municipal Committee of Nicosia for the proper construction of Larissa Street as published in

the official Gazette of the Republic of the 24th October, 1969 under Notification 1784 and to the extent that they provide for the blocking of the said street at its north end and which was published in Supplement No. 3 to the official Gazette of the 29th October, 1971, Notification 866, be declared *null* and *void* and with no effect whatsoever.

B. That the decision and/or act of the Municipal Committee of Nicosia for the construction of bollards and the blocking of the north end of Larissa Street on or about the 10th April, 1972 be declared *null* and *void* and with no effect whatsoever.

The Council of Ministers (hereinafter referred to as respondent 1), and respondent 2—the Municipal Committee of Nicosia —have filed separate oppositions which, to a great extent, approach the issues under consideration from different angles.

The stand of respondent 1 is that their decision attacked by Relief A as contained in the Notification therein mentioned, was taken lawfully under the provisions of section 17 of the Streets and Buildings Regulation Law, Cap. 96, in the light of all relevant facts and circumstances and published under sub-section (7) thereof. The said street was reconstructed and asphalted in accordance with the plans and specifications as approved and the placing of bollards at its north end did not constitute an executory act, but simply an act in execution of the already issued administrative act contained in Notification 866 of the 29th October, 1971.

Respondent 2, on the other hand, maintained that their decision to place bollards along the north end of Larissa Street so as not to allow vehicular traffic to enter Larissa Street from Grivas Dighenis Avenue was properly reached after taking into consideration all relevant factors and after proper examination of all technical aspects. It was taken in the interest of traffic and public safety and that in accordance with section 123 (1) (t) of the Municipal Corporations Law, Cap. 240, as incorporated in section 8 (2) of the Municipalities Law, 1964 (Law No. 64 of 1964), respondent 2 was empowered to divert or close any street within the municipal limits.

Both respondents have, however, objected to the recourse, on the ground that it is out of time as they claim that the applicant was fully aware of the decision to close the said street at its north end, and this is apparent from the contents of his

letters of the 25th November, 1969 and that of his then advocates of the 18th December, 1969 (*exhibit* '*A*' and '*C*' respectively). Reference has already been made to these two letters, but it is worth pointing out in relation to this objection, that the letter of the 18th December, 1969 (*exhibit* '*C*') does not only show that he was aware that respondent 2 intended to close the said street at its north end to vehicles coming from and going to Grivas Dighenis Avenue, but extensive legal arguments were advanced thereby to the effect that the said decision was not warranted by law and was contrary to the Constitution. It was stated therein that section 17 of the Streets and Buildings Regulation Law, Cap. 96, did not give such a power as to prevent the free flow of vehicles or create a cul de sac; also, that the said decision was not justified under Article 23.3 of the Constitution and, therefore, it was unconstitutional. Alternatively, it was suggested, that even if the said decision was not contrary to Article 23.3 of the Constitution, it was contrary to the principles of Administrative Law, as set out in the judgment of this Court in the case of *Chrysochou Bros.* v. *CYTA* (1966) 3 C.L.R. 482, to the effect that respondents have not chosen the less onerous course of achieving the purpose for which the decision was taken, a principle equally applicable to the present case, as to the case of an order of compulsory acquisition of land. In any event, it was also claimed, that there was no absolute necessity for the closing of the said street and that there were other less onerous ways of achieving the purpose.

It is, in my view, clear from the aforesaid, that the applicant had complete knowledge of the decision and that the period of 75 days prescribed by Article 146.3 of the Constitution started running as from the time of such complete knowledge; this is deduced from the letter of the 18th December (*exhibit* '*C*') in which there is positive reference to the contents of the decision for the closing of the street; the petitioning also of the administration in such circumstances amounts to proof of full knowledge (see Porismata Nomologias of the Greek Council of State (1929–1959) p. 253 and its Decisions, Nos. 675/54 and 1553/57).

Its concluding paragraph supports this finding. It reads as follows:– " Given that in our opinion section 17 of Cap. 96 does not give you the right to proceed with the proposed closing and/or obstruction of Larissa Street from Grivas Dighenis Avenue, Nicosia, our client intends before the expiration of

75 days from the publication of the said decision, to file a recourse in the Supreme Court. If, therefore, you do not intend to proceed with the said cul de sac and/or closing of Larissa Street and/or obstruct in any way the free passage of traffic from Grivas Dighenis Avenue to Larissa Street, we request that you inform us before the 27th instant, as immediately after the said date our client intends to file a recourse".

In lodging this objection with the appropriate Authority through his then advocates, as supplementary to his own letter of the 25th November, 1969, the applicant was apparently acting under the provisions of section 17 (4) of Cap. 96. His objection with the comments of respondent 2 thereon, was forwarded to respondent 1, who, after considering same, under sub-section (6) of section 17, dismissed it and approved the plans under section 17 (7) of the law, such approval amounting to a confirmation or completion of the act of respondent 2.

In the case of *Charalambos Pissas (No. 1)* v. *The Electricity Authority of Cyprus* (1966) 3 C.L.R. p. 634, where in the Notice of aquisition the property of that applicant was identified by means of a description sufficient to identify such property in relation to Lands Office records and without mention of the name of the owner of the property, it was held that in the particular circumstances of that case it could not be accepted that the publication, out of the blue, of the relevant Order of acquisition, without stating therein—either directly or, at least, by reference to the Notice of acquisition—the name of the applicant, of the owner of the property acquired, amounts to such clear and full publication of the fact that it was applicant's land which was being compulsorily acquired as to be deemed to be sufficient publication for the purpose of Article 146.3.

Unlike, however, the facts in *Pissas* case (*supra*) in Notification No. 1784 published in the official Gazette of the 24th October, 1969, in pursuance of the provisions of section 17 (2) (3), the identification of the property affected by the decision of respondent 2 to construct properly the road, was made by reference not only to a description sufficient to identify such property in relation to Lands Office records, but also by reference to the name of the street, as well as the name of the applicant himself. By these means the decision of respondent 2 to construct properly the said road came to the knowledge of the applicant, who, as a result, filed his objections, after examining also the plans exhibited at the Town Hall. Furthermore, the

approval of the Council of Ministers was published under Notification 866 in Supplement No. 3 to the official Gazette of the 29th October, 1971 in which reference is made to Notification 1784 published in the official Gazette of the 24th October, 1969, the objections lodged and the name of the street affected by name. So, the said Notification on account of its very contents and by reference to the previous Notification amounts to clear and full publication of the decision reached under section 17 of Cap. 96 as to be sufficient publication for the purposes of Article 146.3 of the Constitution. So, in so far as Relief A is concerned, the present recourse is out of time, as it was filed on the 13th May, 1972, evidently more than 75 days from such publication.

In so far, however, as the present recourse attacks the validity of the decision of respondent 2 to close Larissa Street at its north end reached independently of section 17, I have already made a finding that the applicant had full knowledge of the contents of the said decision, by referring to the letters *exhibits* '*A*' and '*C*') and in particular to that of his then advocates of the 18th December, 1969 (*exhibit* '*C*'). As it appears from the said letter and as the concluding paragraph thereof was framed, the failure of the respondent to reply thereto, would convey to the applicant nothing else, but the insistence of respondent 2 to proceed with the execution of the decision reached regarding the closing of Larissa Street, the construction of the bollards on the 10th April, 1972 being nothing else but an act in execution of an already existing executory decision of which the applicant had full knowledge since December, 1969. This means that the recourse is out of time on this leg as well.

Although these conclusions dispose of the present case, I feel that I should, out of respect for the interesting arguments which have been addressed upon me, deal also with the substance of the case.

Since it has been maintained that the closing of the street in question was the subject of a decision of respondent 2 taken under the provisions of section 123 (1) (t) of the Municipal Corporations Law, Cap. 240, it has to be examined whether this section does really give such power to them. It reads as follows:–

"(1) Subject to the provisions of this Law and of any other

law in force for the time being, the Council shall within the municipal limits –

.....

.....

(t) keep all streets clean and in good repair and sufficiently drained, lightened and clear of obstructions, and control the construction or alteration of any street, and divert or close any street and prevent obstructions thereover by awnings or otherwise".

This paragraph, in its present form, was introduced by section 14 of the Municipal Corporations (Amendment) Law, 1942, (Law No. 23 of 1942). It substituted paragraph (x) of section 115 (1) of the Municipal Corporations Law, 1930 (Law No. 26 of 1930) which was identical but for the words "and divert or close any street" to be found in its present form immediately after the words "or alteration of any street" and which words did not exist in the previous enactment. This paragraph has always been in Part III of the Law which is headed *Duties and Powers of Councils* and although the marginal note to section 123 refers to duties of councils in contradistinction to the marginal note to section 124 which is "Powers of Council", in my view, that makes no difference; the marginal note "Duties of Councils" to section 123, cannot restrict the meaning of the words of the section and should not be used as an aid to construction and give a different effect to the words in the section. The words "divert or close any street" inserted by the 1942 amendment are wide enough to empower a Municipality to close a street lying within its limits and of which it has the control, by the placing of bollards and turning it in effect into a cul de sac for vehicles only, as in this instance. The distinction between duties and powers, in any event, has no bearing in this case, as a duty in the present circumstances, presupposes and includes a power.

As stated by Lord Reid in *Chandler* v. *D.P.P.* [1964] A.C. 763 at pp. 789, 790 –

"In my view, side notes cannot be used as an aid to construction. They are mere catchwords and I have never heard of it being supposed in recent times that an amendment to alter a side note could be proposed in either House of Parliament. Side notes in the original Bill are inserted by the draftsman. During the passage of the Bill through

its various stages amendments to it or other reasons may make it desirable to alter a side note. In that event I have reason to believe that alteration is made by the appropriate officer of the House—no doubt in consultation with the draftsman. So side notes cannot be said to be enacted in the same sense as the long title or any part of the body of the Act".

The other point raised by applicant is that no proper inquiry was carried out and the less onerous course was not adopted by respondents for the purpose of achieving their aims. In this respect, we have it from the municipal engineer that a number of alternative solutions were examined, including the making of this road into one-way traffic from Grivas Dighenis Avenue inwards, as well as the possibility of forbidding a right turn from this Avenue into Larissa Street, but it was found impossible to signalize against the movement from Byron Street, one of the streets constituting the present cross-road there towards Larissa Street across the Avenue. It was concluded, that it was impossible to solve the problem, as it could not be effectively achieved by any signalization. In fact, the representative of the Chief of the Police in the Committee advising the Municipality on traffic matters was in agreement with this solution.

Having gone through the material before me, I have come to the conclusion that sufficient and proper inquiry was carried out and also respondent 2 examined a number of alternative solutions before arriving at the *sub judice* one, after proper evaluation of all material factors. It cannot be said that the decision reached was not the less onerous in the circumstances. It was really a decision which involved technical matters and within the discretionary powers of respondent 2 and once they took everything into consideration, the exercise of their discretion was, in my opinion, properly made, as absolutely necessary in the interest of the public safety, for the protection of the rights of others and for the purpose of regulating traffic in congested streets, and this Court will not substitute its own discretion with that of respondent 2. In the result, the recourse should fail on these grounds also.

For all the above reasons, the present recourse is dismissed, but in the circumstances I make no order as to costs.

Application dismissed. No order as to costs.