

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

INEZ CULLEN,

Applicant,

and

—
INEZ
CULLEN
v.
REPUBLIC
(MINISTER OF
INTERIOR)

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF INTERIOR,

Respondent.

(Case No. 241/70).

Constitutional Law—Request or complaint under Article 29.1 of the Constitution—Omission to be attended to within the period of 30 days provided thereunder—Application for permission to effect transfer of land—Respondent not being in a position to refuse lawfully such permission chose not to reply to the application—Material detriment suffered by applicant—Omission to reply a wrongful one—Contrary to Article 29 of the Constitution.

Administrative Law—Defective administrative decision—Refusal to permit transfer of land—Allegedly reached in the exercise of discretion under the provisions of the Immovable Property (Temporary Provisions) Law, 1970 (Law 49/70)—No evidence available regarding the actual facts in the light of which the respondent had exercised his discretionary powers—Said refusal reached in a manner incompatible with proper administration and being, consequently defective, it should be annulled.

Administrative Law—Recourse under Article 146 of the Constitution—For omission to comply with Article 29 of the Constitution—Right of—Kyriakides and The Republic, 1 R.S.C.C. 66 at p. 77.

In October 1969 the applicant applied to the District Lands Office Famagusta to have a certain property transferred in the name of the purchaser to whom she had agreed to transfer it by a contract of sale dated October 14, 1963. As the said office refused to effect the transfer without the consent of the Minister of Interior, the applicant applied accordingly to the Minister on November 21, 1969. No reply was received, and two reminders had to be sent, on March 5, 1970 and May 30,

1970. A negative reply was, eventually, given on June 4, 1970. In the meantime, on May 29, 1970 the Immovable Property (Temporary Provisions) Law, 1970 (Law 49/70) was published, which gave powers to the respondent to refuse to allow the transfer in question whereas until the enactment of this Law there existed no such powers vested in the respondent.

Counsel for applicant contended that the delay in replying to applicant's application was unreasonable, being far in excess of the period of thirty days provided for under Article 29 of the Constitution, and that, therefore there had occurred a wrongful omission contrary to the said Article 29. (Quoted in full in the judgment post).

Regarding the negative answer of the respondent it was contended in the opposition by the respondent that the refusal to allow the transfer was a decision reached in the exercise of the Minister's discretion under the provisions of section 3 of Law 49/70 (*supra*) and that it was based on the ground that such transfer might endanger, or affect adversely public security. No evidence, however, was available to be produced regarding the actual facts in the light of which the respondent had exercised his discretionary powers as aforesaid.

Held, (1): With regard to the contention under Article 29 of the Constitution:

1. Once the District Lands Office Famagusta had refused to effect the transfer except with the permission of the respondent Minister, and the respondent not being in a position to refuse lawfully such permission, chose not to give any reply to the application of the applicant (apparently awaiting the anticipated enactment of Law 49/70), there arose clearly a situation where the respondent's continuing failure to reply was contrary to the provisions of Article 29 of the Constitution.

2. As the applicant must have suffered material detriment through the omission of the respondent to comply with Article 29.2 (in that she was prevented from using and investing the sale money) her recourse against such omission is maintainable. (See *Kyriakides and The Republic*, 1 R.S.C.C. 66 at p. 77).

3. There has been a wrongful omission by the respondent to deal with the application of the applicant and, that, as such omission must have resulted in material detriment to her, she is entitled to succeed, in this connection, in the present recourse.

(See *Loiziana Hotels Ltd. v. The Municipality of Famagusta* (1971) 3 C.L.R. 466).

Held, (II): With regard to the negative refusal:

In the circumstances the *sub judice* decision was reached in a manner incompatible with proper administration and that, being consequently, defective, it should be annulled.

Sub judice decision annulled.

Cases referred to:

Kyriakides and The Republic, 1 R.S.C.C. 66 at p. 77;

Loiziana Hotels Ltd. v. The Municipality of Famagusta (1971) 3 C.L.R. 466.

Recourse.

Recourse against the decision of the respondent Minister of Interior refusing to permit the transfer of applicant's property under registration No. 4720, at Tricomo, to one Salih M. Telale.

G. Michaelides, for the applicant.

S. Georghiades, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

The following judgment was delivered by:—

TRIANAFYLLIDES, P.: By this recourse the applicant seeks a declaration annulling the decision of the respondent—which was communicated to her by a letter dated June 4, 1970 (*exhibit 4*)—to the effect that it was not possible to permit the transfer of the applicant's property, under registration No. 4720, at Tricomo, to one Salih Moustafa Telale.

The applicant, who is a British subject, entered into a contract of sale by virtue of which she has undertaken to transfer the property in question to the said Salih Moustafa Telale. The said contract is dated October 14, 1963, and in October 1969 the applicant applied to the District Lands Office Famagusta to have the property transferred to the purchaser.

The District Lands Office refused to effect the transfer without the consent of the Minister of Interior, and the applicant

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applied accordingly to the Minister of Interior on November 21, 1969 (see *exhibit 2*).

No reply was received, and two reminders had to be sent, on March 5, 1970, and May 30, 1970, respectively (see *exhibit 3*). A negative reply was, eventually, given on June 4, 1970 (see *exhibit 4*).

In the meantime, on May 29, 1970, the Immovable Property (Temporary Provisions) Law, 1970 (Law 49/70), was published in the official Gazette; reference to such Law will be made, when necessary, later on in this judgment.

It has been submitted by counsel for applicant that the delay in replying to the applicant's application of November 21, 1969, was unreasonable, being far in excess of the period of thirty days provided for under Article 29 of the Constitution, and that, therefore, there had occurred a wrongful omission contrary to the said Article 29.

Once there was given, eventually, even though very belatedly, a reply, on June 4, 1970, to the said application of the applicant, and such reply is the subject matter of the present recourse, there could not arise the question of a continuing omission, on the part of the respondent, to permit the transfer of the applicant's property to its purchaser; but, to the extent to which the applicant alleges that she has suffered material detriment, through an omission to deal expeditiously with her application *prior* to June 4, 1970, I am of the view that her present recourse against such omission is maintainable.

It is quite clear that until the enactment of Law 49/70 there existed no powers vested in the respondent to refuse to allow the transfer to be effected.

I cannot accept that any provision in the Immovable Property (Transfer and Mortgage) Law, 1965 (Law 9/65), such as, in particular, sections 8 and 14 thereof when read either separately or together with each other, empowered the respondent to refuse to allow the transfer of the property concerned in a case such as the present one.

Once, however, the District Lands Office in Famagusta, which comes administratively under the respondent Minister of Interior, had refused to effect the transfer except with the permission of the respondent, and the respondent, not being

in a position to refuse lawfully such permission, chose not to give any reply to the application of the applicant (apparently awaiting the anticipated enactment of Law 49/70), there arose clearly a situation where the respondent's continuing failure to reply was contrary to the provisions of Article 29 of the Constitution, which reads as follows:-

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“ARTICLE 29

1. Every person has the right individually or jointly with others to address written requests or complaints to any competent public authority and to have them attended to and decided expeditiously; an immediate notice of any such decision taken duly reasoned shall be given to the person making the request or complaint and in any event within a period not exceeding thirty days.

2. Where any interested person is aggrieved by any such decision or where no such decision is notified to such person within the period specified in paragraph 1 of this Article, such person may have recourse to a competent Court in the matter of such request or complaint”.

In relation to the right to make a recourse, under Article 29.2, above, to this Court, under Article 146 of the Constitution, the following were stated in *Kyriakides* and *The Republic*, 1 R.S.C.C. 66 (at p. 77):-

“In the opinion of the Court paragraph 2 of Article 29 gives, *inter alia*, an aggrieved person a right of recourse to a competent court in respect of the failure to furnish him with a reply in accordance with paragraph 1 of such Article. It is clear that, where the competent public authority, which has failed to reply as above, is one of those referred to in paragraph 1 of Article 146, then this Court is the competent Court in question and proceedings lie before it under Article 146 in respect of such failure itself to reply.

Where, however, a person who has not received a reply as provided under Article 29, has proceeded under Article 146 in respect of the substance of the matter for which a reply had been sought then it cannot be said that such a person continues any longer to have ‘any existing legitimate interest’, as provided by paragraph 2 of Article 146, unless as a result of such failure itself he has suffered some material detriment which would entitle him to a claim for relief

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under paragraph 6 of Article 146 after obtaining a judgment of this Court under paragraph 4 of the same Article.

Therefore such a person cannot, as a rule, claim under Article 146 a distinct and separate decision of this Court in respect of the failure to comply with Article 29 when he has proceeded in respect of the substance of the matter for which a reply had been sought.”

It is true that in the present case there has been no evidence adduced to show exactly what material detriment has been suffered by the applicant because of the delay of the respondent to deal with her application. It is clear, however, that had the respondent replied within the time-limit laid down by Article 29, the transfer would have been effected much earlier—(and it must not be lost sight of, in this respect, that the respondent did not possess, at the time, the right to prohibit such transfer)—and the applicant would have received the balance of the sale price which was due and payable to her when the transfer of the property would be effected; and it cannot be reasonably disputed that a person who is deprived of the use of money does suffer material detriment, in the sense that he is prevented from investing it as capital yielding income by way of interest or otherwise.

In the light of the foregoing, as well as of relevant dicta in *Loiziana Hotels Ltd. v. The Municipality of Famagusta* (1971) 3 C.L.R. 466, I have no difficulty in holding that there has been a wrongful omission, by the respondent, to deal with the application of the applicant for permission to transfer her property to its aforementioned purchaser and, that, as such omission must have resulted in material detriment for her, she is entitled to succeed, in this connection, in the present recourse.

I shall deal, next, with the negative answer of the respondent, which was communicated to the applicant on June 4, 1970.

In the Opposition, which was filed in the present case on behalf of the respondent, it is stated that his refusal to allow the transfer of the property was a decision reached in the exercise of his discretion under the provisions of section 3 of Law 49/70, and that it was based on the ground that such transfer might endanger, or affect adversely, public security.

Subsequent to the filing of the Opposition it was ordered that particulars, regarding the actual facts in the light of which the

respondent had exercised his discretionary powers, as aforesaid, should be given; from these particulars, which were furnished on April 2, 1971, it seemed that the respondent had acted on the strength of a report prepared by the military authorities. Later on, however, when counsel for the respondent made available this report, on November 8, 1971—(on the clear understanding that its contents, in view of their nature, could come only to the knowledge of the Court and of counsel)—it transpired that it was dated February 20, 1971, that is it actually came into existence *after* the date of the *sub judice* decision of the respondent; so, it was obviously impossible for the respondent to have relied on it in reaching his said decision.

Then, counsel for the respondent stated that perhaps there had been, prior to the report in question, verbal communications to the same effect between the respondent and the military authorities, and that in such a case he would be adducing oral evidence in this connection.

Later on, counsel for the respondent informed the Court that no such evidence was available and that the, at the time, Minister of Interior had acted in the light of other information; such information was not, however, placed before this Court.

In the circumstances I have been forced to the conclusion that the *sub judice* decision was reached in a manner incompatible with proper administration and that, being consequently defective, it should be annulled.

In the circumstances this recourse succeeds; and the Republic should pay to the applicant £30 towards her costs.

*Sub judice decision annulled;
order for costs as above.*