

1974  
April 10

[A. LOIZOU, J.]

PAVLIS COSTA  
MALLOUROS  
AND ANOTHER  
v.  
THE ELECTRICITY  
AUTHORITY  
OF CYPRUS  
AND ANOTHER

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PAVLIS COSTA MALLOUROS AND ANOTHER,

*Applicants,*

*and*

THE ELECTRICITY AUTHORITY OF CYPRUS  
AND ANOTHER,

*Respondents.*

(Case No. 215/73).

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*Electricity Law, Cap. 170—Placing of electric lines, by virtue of section 31 of the Law, above ground and across private property—Does not offend against Article 23 of the Constitution in the sense that it amounts to deprivation of property—Such placing nothing more than a restriction falling within the ambit of paragraph 3 of the said Article 23.*

*Constitutional Law—Deprivation of property—Restrictions on the right of property—Placing electric lines above ground and across private property—Merely a restriction under Article 23.3 of the Constitution—See further supra.*

*Restrictions or limitations on the right of property—Article 23.3 of the Constitution—See supra.*

*Discretionary powers—Decision reached under a misconception of fact—Or even, where there is probability of such misconception—Presumption of correctness of findings made by the Administration—Rebutted— Hji Michael v. The Republic (1972) 3 C.L.R. 246, at p. 252, followed.*

*Misconception of fact—Even probability of such misconception—Vitiates the administrative decision involved—In the present case there has been no such misconception or probability thereof—Recourse dismissed.*

Cases referred to:

*Hji Michael v. The Republic (1972) 3 C.L.R. 246, at p. 252;*

*Ramadan and The Electricity Authority of Cyprus*, 1 R.S.C.C. 49, at p. 55;

*Chrysochou Bros. v. The Cyprus Telecommunications Authority* (1966) 3 C.L.R. 482;

*The Holy See of Kitium and The Municipality of Limassol*, 1 R.S.C.C. 15, at p. 26.

The facts of the case sufficiently appear in the judgment of the learned Judge whereby he dismissed the recourse holding that the placing of electric lines above ground and across the applicant's field by virtue of section 31 of the Electricity Law, Cap. 170, amounts to a mere restriction upon, and not a deprivation of, the said property within the ambit of paragraph 3 of Article 23 of the Constitution; and holding further that the *sub judice* decision was duly and properly taken by the respondents after due inquiry into, and consideration of, all the material factors, and not under a misconception of the factual position.

#### Recourse.

Recourse for a declaration that the decision of respondent No. 1, dated the 5th April, 1973 and the consent of respondent No. 2, of the same date whereby they decided to place electric lines above applicants' properties at Aradhippou is *null and void*.

R. *Constantinides*, for the applicants.

A. *Dikigoropoulos*, for respondent No. 1.

C. *Kypridemos*, Counsel of the Republic, for respondent No. 2.

*Cur. adv. vult.*

The following judgment was delivered by:-

A. LOIZOU, J.: By the present recourse the applicants seek a declaration of the Court that the decision of the Electricity Authority of Cyprus, respondent No. 1, dated the 5th April, 1973 and the consent of the District Officer of Larnaca, respondent 2, of the same date, by which they decided to place electric lines above applicants' properties at Aradhippou is *null and void* and of no legal effect.

Applicant No. 1 is the registered owner of plot No. 457, sheet plan XL.55.E.1 and applicant No. 2 is the registered owner

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of plots 562 and 454, sheet plan No. XL.55.E.1, all at locality Ayios Georghios in the village of Aradhippou.

Respondent 1 in exercise of their powers and authorities under the Electricity Law, Cap. 170, and the Electricity Development Law, Cap. 171, and in furtherance of their obligations therein, decided that it was necessary, after a technical study was carried out, to construct a transmission line—double circuit—from Dhekelia power station to Larnaca, in order to reinforce supplies in the area. It was part of an overall plan for expansion and development, the plans and schemes for which were submitted to the Government for approval and financed, by means of a loan, from the International Monetary Fund. The route of the line was chosen, according to the evidence of Demetrios Papayiorghis, the Deputy Chief Engineer of respondent 1, after a careful consideration of the area in question. For that purpose, they kept in contact with the Town Planning and Housing Department which had reservations in having the lines too close to the main Larnaca-Famagusta road and also too close to the seashore. The lines had to be brought from the north of Livadhia village to the substation of Larnaca which was a fixed point in itself and the line had to follow a certain direction towards it. It had to be at right angle and there was not much flexibility in moving the line between the last two towers, namely, towers 55 and 56, as shown on *exhibit 2*. Detailed plans of the proposed line with maps of the area in question and all other necessary particulars were circulated to the appropriate Government Departments for their views which are to be found in *exhibit 8*.

Respondent 1 before placing their line across, *inter alia*, the land of the applicants, served on them, in compliance with section 31 (1) of the Electricity Law, Cap. 170, a notice of their intention to do so, together with a description of the lines proposed to be placed. Both applicants by letter dated the 12th June, 1972, objected to the placing of an electric line above their property, as described in the said notice of respondent 1 on the ground that the said property was ripe for development into building sites and they were negotiating the sale of same. They suggested that the electric line should be placed across the boundary, either above or below the ground and they asked that a representative of respondent 1 visited the locus in quo for an examination of the situation.

In view of the failure of the applicants to give their consent, respondent 1 proceeded further and by letter dated the 5th

April, 1973, informed respondent 2 of the applicants' refusal and requested him to give his consent, without any conditions, for the carrying out of the said scheme. Respondent 2 detailed one of his field officers to carry out an inquiry into the matter in respect of all properties, including those of the applicants and this officer prepared a report (*exhibit 12*); it may be seen therein that the properties in question are described as being near the boundaries of the town in an area capable of being developed into building sites and that the placing of the said electric lines would adversely affect such development and consequently cause damage to the owners.

On the 17th May, 1973 the consent of respondent 2 was given unconditionally, but as far as the properties of the applicants were concerned, respondent 2 reiterated the observations to be found in *exhibit 12*, hereinabove set out and asked to have from respondent 1 any views on the subject, so that he would be able to re-examine the whole matter. One of the engineers of respondent 1 visited then respondent 2 and supplied him orally with all information and necessary explanations, subsequently set out in a letter dated the 29th May, 1973 (*exhibit 10*).

The question of the properties being adversely affected in respect of the future building of premises was considered and it was pointed out that buildings of any height could be built at a distance of 30 ft. from the centre of the line and that they took care that the height of the lines between the two towers 55 and 56 would be more than the 20 ft. minimum required by law—*i.e.* 29 ft. in the middle raising to 47 ft. at either end—so that buildings could also be built thereunder. They also referred to the possibility of the applicants claiming compensation in the light of the decision in *Ramadan and The Electricity Authority of Cyprus*, 1 R.S.C.C. page 49 at page 55.

Respondent 2 gave then his unconditional consent.

The aforesaid is an outline of all relevant facts and circumstances that were before the two respondents and upon which they based their respective decisions. The material in the file constitutes the reasoning of the decision. One can find therein all the preparatory technical studies, the objections of the applicants and the consideration of the possibility of alternative routes. In fact, both applicants were afforded an opportunity to be heard and their views were duly considered.

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It has been argued that the respondents were under a misconception of fact, in that they did not examine or did not take into consideration that the properties were ripe for development into building sites. In this respect, I was referred to the case of *Hji Michael v. The Republic* (1972) 3 C.L.R. 246, at p. 252, where it is stated—"According to the principles of administrative law there exists a presumption that an administrative decision is reached after a correct ascertainment of relevant facts; but such presumption can be rebutted if a litigant succeeds in establishing that there exists at least a probability that a misconception has led to the taking of the decision complained of (see, *inter alia*, Stassinopoulos on The Law of Administrative Acts, p. 304 et seq.)". No one disputes the validity of this principle. It is, however, not correct to say that the decisions of the two respondents were based on such a misconception. The applicants had mentioned this aspect of the case in their objection; and that this was duly considered by both respondents is apparent from the fact that the lines are to be placed at a higher height than the minimum provided by law so that it would allow more space for building underneath. This ground of law, therefore, fails.

What remains to consider is the ground of law by which the applicants contend that section 31 of the Electricity Law, Cap. 170 is unconstitutional, as offending Article 23 of the Constitution, in the sense that the placing of these lines amounts to deprivation of their ownership and consequently, the proper procedure to be resorted to is the one provided by the Compulsory Acquisition of Property Law, 1962, Law No. 15 of 1962. For the determination of this issue, one has to ascertain the character of the interference with the ownership of property complained of. There is no doubt that in the present case the proposed placing of the lines above the ground and across the property of the applicants, is nothing more than a restriction falling within the ambit of paragraph 3 of Article 23 of the Constitution, whereby "restrictions or limitations which are absolutely necessary in the interest of ..... the development and utilization of any property to the promotion of public benefit ..... may be imposed by law on the exercise of such right". (Cf. *Ramadan and The Electricity Authority*, 1 R.S.C.C. p. 49). Far from being unconstitutional such course is consistent with the approach of this Court on the issue that a compulsory acquisition should not be ordered if its object can be achieved in any less onerous manner, such as the acquisition

of a servitude on the property concerned, without taking away the ownership. (See Decision 300/1936 of the Greek Council of State, cited with approval in *Chrysochou Bros. v. The Cyprus Telecommunication Authority etc.* (1966) 3 C.L.R. p. 482).

For all the above reasons, the present recourse fails. However, the issue whether this restriction gives rise to the right to compensation under paragraph 3 of Article 23 of the Constitution, is a matter within the jurisdiction of a civil court, in accordance with the interpretation given to paragraph 11 of the said Article of the Constitution in *The Holy See of Kitium and The Municipality of Limassol*, 1 R.S.C.C. 15, letter D. page 26 cited also in *Ramadan's case (supra)* at p. 58.

In the result, this case is dismissed with no order as to costs.

*Application dismissed; no order as to costs.*

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