1975
Sept. 20
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LAKIS CHRISTOU POYIADJIS
v.
REPUBLIC (MINISTRY OF INTERIOR AND OTHERS)

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

LAKIS CHRISTOU POYIADJIS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTRY OF INTERIOR,
2. THE DIRECTOR-GENERAL OF THE MINISTRY OF INTERIOR,
3. THE COUNCIL OF MINISTERS,

Respondents.

(*Case No.* 359/72).

Constitutional Law—"Act" or "decision" in the sense of Article 146.1 *of the Constitution—Refusal to grant application for transfer of interest in an encroachment on state land—Is, in the circumstances of this case, a decision within the domain of public law and can be made the subject of a recourse under the said Article.*

Administrative Law—Due inquiry—Misconception of fact and law—Discretionary powers—Decision refusing transfer of interest, in an encroachment on state land, deriving from a licence—Taken after a proper inquiry in the circumstances—Application of previously taken policy decision to the facts of this case does not mean that respondents have not exercised a discretion in the matter—And the fact that the said policy decision refers to "leases of state land" whereas applicant's rights were derived from a licence does not mean that the respondents acted under a misconception either of fact or law about the nature of the said decision and the legal nature of the licence.

"Act" or "decision"—In the sense of Article 146.1 *of the Constitution.*

Licence—State land—Licence to encroach on state land—Transfer or assignment of interest derived therefrom.

State land—Licence to encroach on.

The applicant in this recourse complains against the refusal of the respondents to approve the transfer or assignment to him of the interests of a certain Maroulla G. Platritou in Government land at Troodos, of which she was the holder, by virtue of a licence granted to her in 1948.

On the 23rd March, 1967 the Council of Ministers by its decision 6472, decided, *inter alia*, that "on principle agreements for the lease of state land at Troodos are not to be renewed for further period" and that "so long as this is legally possible, the Government will not permit the assignment to other persons of the rights of lessees of state land at Troodos".

When the Council of Ministers considered the application of Mrs. Platritou, for the transfer or assignment of her rights to the applicant it had before it a submission for the purpose, where a summary of the relevant facts and the contents of the 1948 agreement were given, and also the views of the Directors-General of the Ministries of Commerce and Industry, Agriculture and Natural Resources and of the District Officer Limassol and the Director of Town Planning and Housing who were of opinion that the application should be refused.

The decision of the Council of Ministers, taken after considering the aforesaid submission, reads as follows:

> " The Council considered the application of Mrs. Maroulla Platritou, of Nicosia, for the transfer to Mr. Lakis Christou, of Nicosia, of her rights deriving from the licence granted to her, by virtue of an agreement made in 1948 between her and the Government, for the use of one grocery, one restaurant and one hostel which were built by encroachment on state land at Troodos, and, in view of the decision of the Council under No. 6472 by which the Government policy on the subject of disposal/lease of/state land at Troodos was fixed, it decided not to grant the said application".

Counsel for the applicant contended:

(a) That the respondents failed to carry out to a proper inquiry in order to ascertain the real facts of the case.

(b) That the respondents never exercised a discretion in the matter, but merely mechanically applied to this case decision No. 6472 (quoted above) of the Council of Ministers.

(c) That the respondents acted under a misconception of fact or law in the sense that the said decision No. 6472 was referring to leases and not licences and it was applied to the case of the applicant, which was a

case of rights derived from a licence and not from a lease.

Before dealing with the contentions of Counsel the Court considered whether the *sub judice* decision amounts to an act or decision in the sense of Article 146.1 of the Constitution.

Held, (1) It is already settled by a series of decisions that an act or decision in the sense of Article 146.1 is an act or decision in the domain only of public law and not an act or decision of a public officer in the domain of private law (see *HadjiKyriacou and HadjiApostolou,* 3 R.S.C.C. 89 and *Valana* and *The Republic,* 3 R.S.C.C. 91).

(2) In view of the legal principles that may be deducted from the judgments of this Court (see *Charalambides* and *The Republic,* 4 R.S.C.C. 24, *Cyprus Industrial and Mining Co. Ltd., (No.* 1) v. *The Republic* (1966) 3 C.L.R. 467 at p. 473, *Eraclidou* and *The Hellenic Mining Co. Ltd.,* 3 R.S.C.C. 153 and the cases of *Valana* and *HadjiKyriacou, supra*), I have come to the conclusion that the decision complained of falls within the domain of public law and can be the subject of a recourse under Article 146 of the Constitution.

(3) Having gone through the material that was before the respondents, I have come to the conclusion that they carried out, in the circumstances, a proper inquiry.

(4) An examination of the *sub judice* decision and its reasoning, shows that the respondents did examine the individual merits of this case and the argument that the respondents never exercised their discretion in the matter, but merely mechanically applied to this case decision No. 6472 of the Council of Ministers cannot stand. The agreement of 1948 is properly described in the submission as a licence for the use of an already existing encroachment on government land and in taking their decision the respondents specifically referred to the application of the said Maroulla Platritou and applied to the facts of the case the decision of the Council, No. 6472, by which the Government policy on the question of "disposal/lease" of Government land was fixed.

(5) Both in the submission to the Council and the *sub judice* decision the rights of the said Maroulla Platritou are clearly described as derived from a licence granted to her in 1948. On the other hand decision No. 6472 is reproduced verbatim in

the submission, and it clearly speaks about "agreements of lease of state land" and when the respondents come to refer to it in the decision, they say, "in view of the decision of the Council No. 6472 by which the Government policy on the subject of disposal/lease of state land at Troodos", which, reference to "disposal/lease" indicates that the Council had no misconception either of fact or law about the nature of decision No. 6472 and legal nature of the Agreement of 1948.

Application dismissed.

Cases referred to:

HadjiKyriacou and *HadjiApostolou*, 3 R.S.C.C. 89;

Valana and *The Republic*, 3 R.S.C.C. 91;

Charalambides and *The Republic*, 4 R.S.C.C. 24;

Cyprus Industrial and Mining Co. Ltd. (No. 1) v. *The Republic* (1966) 3 C.L.R. 467 at p. 473;

Eraclidou and *The Hellenic Mining Co. Ltd.*, 3 R.S.C.C. 153.

Recourse.

Recourse against the decision of the respondents not to approve an application of a certain Maroulla G. Platritou for the transfer of her interest in encroachment No. "O" at Troodos, to the applicant.

K. Talarides, for the applicant.

N. Charalambous, Counsel of the Republic, for the respondents.

Cur. adv. vult.

The facts sufficiently appear in the judgment* of the Court delivered by:–

A. LOIZOU, J.: The applicant, by the present recourse, seeks from this Court, a declaration that the act and/or decision of the respondents not to approve an application of a certain Maroulla G. Platritou for the transfer of her interest in encroachment No. 'O' at Troodos, to the applicant, is *null* and *void* and of no effect whatsoever.

* An appeal has been lodged against this judgment. The appeal has been heard and judgment thereon has been reserved.

By virtue of an agreement entered into in 1948 between the Commissioner of Limassol for and on behalf of the Government of Cyprus (called therein "the licensor") and Maroulla G. Platritou, of Nicosia, (called therein "the licensee" which expression when the context of the agreement so admitted or required, included her executors and administrators), a licence was granted to her upon payment of £3.– (three pounds) per year, to maintain the buildings shown on a plan attached thereto, consisting of a bar, restaurant and dwelling house, built by way of encroachment on Government land, so long as the licence remained unrevoked. The payment of the £3.– per annum was by way of acknowledgment that the said licence existed by virtue of that agreement only and not by any other right or title whatsoever. It provided also therein, that the said licence could be terminated at any time by the licensor giving not less than seven days' notice, in writing, to the licensee, without the payment of any compensation or the return of any part of the said sum of £3 to the licensee and the licensee being obliged thereupon, at her own cost, to remove all the said buildings from the said piece of land and restore same to the condition in which it was before the erection of the said building on the said piece of land.

The said Maroulla G. Platritou and the applicant by letter dated the 5th September, 1967, informed the District Officer of Limassol, in his capacity as Chairman of the Improvement Board of Troodos, that she sold and the applicant bought the premises on the said encroachment, together with all her rights therein, and they requested that the licence in respect of it be transferred in the name of the applicant. The consideration for this so-called sale, was £3,000.– of which, £500.– were paid to Mrs. Platritou on the day of the agreement and the balance was payable to her when the final transfer of the premises would take place.

The applicant who was renting the said premises, remained in possession thereof and on the 1st February, 1968 (*Exhibit 'F'*) paid to Mrs. Platritou the balance due on the agreement of sale, on the condition, that, in case the Government of Cyprus did not accept and in any way the transfer of the said encroachment did not become effective, Mrs. Platritou would be obliged to return the sum of £3,000 to the applicant without interest.

On the 5th March, 1968 (*exhibit 'F(1)'*) the position was clarified, to the effect that any improvements or repairs made

by the applicant would remain with Mrs. Platritou in case of a refusal by the Government to approve the transfer of the said premises to him.

In January, 1967, as a result of an application to the Council of Ministers for the approval of the assignment of the interests in a lease in a house at Troodos, the council of Ministers, by its decision No. 6279, decided that thereafter and so long that was possible, the Government would not approve assignments of the interests of lessees in Government land at Troodos, to other persons (*exhibits* '*L*' & '*L*(1)').

On the 23rd March, 1967, the Council of Ministers by its decision 6472, cancelled its previous decision and decided that –

"(a) on principle agreements for the lease (ekmisthoseos) of state land at Troodos are not to be renewed for further period. All the cases in which the agreement of lease provides for compensation or the payment of the value of buildings erected thereon, should be referred to the Council of Ministers for examination;

(b) so long as this is legally possible, the Government will not permit the assignment to other persons of the rights of lessees of state land at Troodos; and

(c) in cases of assignment to other persons of the rights of lessees of state land at Troodos, the assignment may be made only for the remaining period of the lease contained in the agreement without the right of option on behalf of the lessees for its renewal".

The application of Mrs. Platritou for the transfer or assignment of her rights to the applicant, was considered by the Council of Ministers at its meeting of the 22nd June, 1972. A submission was made for the purpose (*exhibit* '*G*(1)'), where a summary of the relevant facts and the contents of the 1948 agreement were given. Then it is stated that, in the light of decision No. 6472—set out verbatim therein—"the Director-General of the Ministry of Commerce and Industry, the Director-General of Agriculture and Natural Resources, the District Officer of Limassol and the Director of Town Planning and Housing, are of the opinion that the application of Mrs. Platritou should be refused, as the space in question lies within the area which is affected by the carrying out of the plans of

touristic development of the area of Troodos under consideration".

On the aforesaid submission the decision of the Council of Ministers (*exhibit* '*G*'), reads as follows:-

> " The Council considered the application of Mrs. Maroulla Platritou, of Nicosia, for the transfer to Mr. Lakis Christou, of Nicosia, of her rights deriving from the licence granted to her, by virtue of an agreement made in 1948 between her and the Government, for the use of one grocery, one restaurant and one hostel which were built by encroachment on state land at Troodos, and, in view of the decision of the Council under No. 6472 by which the Government policy on the subject of disposal/lease of state land at Troodos was fixed, it decided not to grant the said application".

The applicant in support of his application relied on a number of grounds of law. Before, however, dealing with them, it has to be determined whether the *sub judice* decision amounts to an act or decision in the sense of paragraph 1 of Article 146 of the Constitution, that is to say, an act or decision in the domain of public law and not an act or decision of a public officer in the domain of private law.

It is already settled by a series of decisions that an act or decision in the sense of paragraph 1 of Article 146 is an act or decision in the domain only of public law and not an act or decision of a public officer in the domain of private law (see *HadjiKyriacou* and *HadjiApostolou*, 3 R.S.C.C., p. 89 and *Valana* and *The Republic*, 3 R.S.C.C., p. 91).

In the case of *Charalambides* and *The Republic*, 4 R.S.C.C. p. 24 a case of an application to the Supreme Court to grant a provisional order restraining the public sale of mortgaged property pending the determination of the recourse by which the decision of the District Lands Officer refusing to postpone the date of such sale was being challenged, the Court refused the provisional order applied for, on the ground that in the light of the case of *Valana* (*supra*), it had no competence to entertain a recourse. The reason given was that the refusal of the Director involved the exercise of power which did not have as its primary object the promotion of any public purpose, but it only concerned civil law rights, inasmuch as it was designed to ensure

that the sale of mortgaged property took place in a proper manner for the purpose of safeguarding the interest of the parties concerned. The said refusal, therefore, did not amount to an act or decision in the sense of paragraph 1 of Article 146 of the Constitution.

In the case of the *Cyprus Industrial and Mining Co. Ltd. (No. 1)* v. *The Republic* (1966) 3 C.L.R., p. 467 at p. 473, reference is made to the case of *Eraclidou* and *The Hellenic Mining Co. Ltd.* (3 R.S.C.C. p. 153) where it was held that –

> " The decision of the Compensation Officer to allow or disallow a claim under the Pneumoconiosis (Compensation) Law (Law 11/60) is the decision of a person exercising administrative authority in the sense of paragraph 1 of Article 146, because he is a 'public officer whose functions have as their primary object the promotion of a public purpose' and not merely the regulation of private rights. It was so held in view of the fact that the scheme for compensation of the victims of pneumoconiosis is 'an expression of governmental action and policy in a matter of vital importance' ".

Relying on the aforesaid proposition and the principles set out in *Valana* and *HadjiKyriacou* cases (*supra*), the trial Judge concluded by saying that the decision for fixing a reserve price in case of a public sale by auction under the Immovable Property (Restriction of Sales) Law, Cap. 223, was "an expression of governmental action and policy in a matter of vital public importance".

In view of the legal principles that may be deducted from the judgments of this Court, hereinabove set out, and the facts of this case, I have come to the conclusion that the decision complained of falls within the domain of public law and can be the subject of a recourse under Article 146 of the Constitution. It is clear that this is the decision of the Council of Ministers, an organ exercising administrative authority whose function had as its primary object the promotion of a public purpose; it referred to assignment, disposal or lease of state forest land, which, under section 7 of the Forests Law, 1967 (Law 14/67) may be done in the public interest and particularly the fact that, as it appears from the relevant minutes, the decision not to allow the assignment and/or transfer of the interest of Maroulla Platritou to the applicant, was not exa-

mined by the Council of Ministers as a matter of interpretation of private legal rights derived from an agreement, but as an expression of governmental action and policy in a matter of, what may be described as, vital public importance, namely, the future touristic development of Troodos and as such predominantly intended to serve a public purpose.

In view of the aforesaid conclusion, I shall proceed now to examine the recourse on its merits.

Extensive argument has been advanced regarding the legal nature of the licence in question and whether such licence was a contractual one, or a licence coupled with an equitable interest, an interest created by the fact that the licensee has a business there, and has undergone expenses, or a licence of a personal nature.

In the circumstances, however, of this case, I consider it unnecessary to embark on an analysis of the legal nature of licences in general. It is sufficient to say that from the wording of the said agreement, this licence was conferred upon the licensee, her executors and administrators and to no one else. It did not include successors in title, assignees or transferees. Term 2 thereof referred to the obligation of the licensee to pay the annual fee "so long as this licence remained unrevoked by way of acknowledgment that such licence exists by virtue of this agreement only and not by any other right or title whatsoever". Also, it could be determined at any time by the licensor giving not less than seven days notice in writing to the licensee. To say the least, the assignment or transfer of the interests of the lessee in the said encroachment is subject to the discretion of the licensor. In fact, the respondents refused to permit its assignment or transfer by relying on grounds of public policy rather than on the legal rights derived from the agreement itself or by shielding behind any of the terms of the agreement.

The first complain of the applicant is that the respondents failed to carry out a proper inquiry in order to ascertain the real facts of this case.

Having gone through the material that was before the respondents which, as already indicated, included the 1948 agreement, the previous decision of the Council, No. 6472, the application of Maroulla Platritou and the applicant, with all the facts that they themselves thought pertinent to include therein

and the views of the various administrative heads that by virtue of their office might have a say material to the issues under consideration, I have come to the conclusion that the respondents carried out, in the circumstances, a proper inquiry.

Furthermore, an examination of the *sub judice* decision and its reasoning, shows that the respondents did examine the individual merits of this case and the argument advanced on behalf of the applicant that the respondents never exercised their discretion in the matter, but merely mechanically applied to this case decision No. 6472, cannot stand. The agreement of 1948 is properly described in the submission as a licence for the use of an already existing encroachment on government land and in taking their decision the respondents specifically referred to the application of Maroulla Platritou and applied to the facts of the case the decision of the Council, No. 6472, by which the Government policy on the question of "disposal/lease" of Government land was fixed. The fact that the applicant had been renting the premises long before 1967, could not change the situation. It created no legal rights or any form of estoppel as against the respondents, as it was nothing more than an enjoyment of the licence granted to Maroulla Platritou; and in any event it did not constitute a misconception of fact, because its influence could not be material and it did not refer to factors which, according to law, would constitute prerequisites for the issue of the administrative act.

It has been further contended on behalf of the applicant that the respondents acted under a misconception of fact or law—depending on how one looks at it, as counsel put it—in the sense that decision No. 6472 of the Council of Ministers was referring to leases and not licences and they applied it to the case of Maroulla Platritou and the applicant, which was a case of rights derived from a licence and not from a lease.

Both in the submission to the Council (*exhibit* '*G*(1)') and the *sub judice* decision (*exhibit* '*G*'), the rights of Maroulla Platritou are clearly described as derived from a licence granted to her in 1948. On the other hand, decision No. 6472 is reproduced verbatim in the submission, it clearly speaks about "agreements of lease of state land" and when they come to refer to it in the decision, they say, "in view of the decision of the Council No. 6472 by which the Government policy on the subject of disposal/lease of state land at Troodos", which, reference to "disposal/lease" indicates that the Council had no

misconception either of fact or law about the nature of decision 6472 and the real nature of the agreement of 1948 with Maroulla Platritou. They obsiously applied that decision or extended its application to the cases of disposal, as well as to the cases of lease of state land, and this is understandable. The decision 6472 was taken in relation to an application for the transfer or assignment of rights under a lease, but the main object of that decision was obviously to limit private rights of whatever nature within the area of Troodos, so that they would not constitute an impediment to the future touristic development of the area, or, possibly, make such development more costly by having to pay, in proper cases, more compensation for their termination to the persons who recently became entitled to them.

So, the least that can be said is that by the *sub judice* decision the respondents have included in the Government policy on this occasion that the situation arose, also the disposal of rights in state land at Troodos, emanating from legal relationships other than those of leases, thus, having a uniform policy for all types of private rights in the Troodos area.

For all the above reasons, the present recourse fails and is hereby dismissed, without any order as to costs.

Application dismissed.
No order as to costs.