

[TRIANTAFYLIDIS, P., L. LOIZOU, HADJIANASTASSIOU,
MALACHTOS, JJ.]

COSTAS S. MAVRIDES,

Appellant,

and

THE MUNICIPAL COMMITTEE OF NICOSIA,

Respondent.

1975
Sept. 22

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COSTA S.
MAVRIDES
v:
THE
MUNICIPAL
COMMITTEE
OF NICOSIA

(*Revisional Jurisdiction Appeal No. 134.*)

5. *Dedication and acceptance—Principle of—Not applicable in Cyprus in so far as the creation of a public road is concerned—Such application excluded by provisions of s. 4 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224 as re-enacted by s. 2 of Law 3 of 1960.*

10. *Building—Building permit—Refused on the ground that part of the land proposed to be built upon had become public road under principle of dedication and acceptance—Said principle not applicable in Cyprus—Essential legal basis on which refusal was based did not actually exist—Sub judice refusal annulled.*

Administrative Law—Administrative decision—Non-existence of essential legal basis on which it was based—Annulled—See, also, under “Building”.

15. The appellant was refused a building permit in relation to a plot of land of his at Pallouriotissa on the ground that there existed a “public road” across his said land; such “road” was being used by the public since 1953 and the respondent, in deciding to refuse the permit, took into account the “public interest” aspect of the matter.

20. The trial Judge found that the equitable principle of dedication is applicable in Cyprus and that as a result of its application there came into existence a “public road” across the property of the appellant.

25. *Held*, (1) The principle of dedication and acceptance has no application in Cyprus in so far as the creation of a public road is concerned, because such application appears to have been excluded by the provisions of section 4 of the Immovable Pro-

perty (Tenure, Registration and Valuation) Law, Cap. 224, as re-enacted by section 2 of Law No. 3 of 1960 (See, also, *Millington-Ward v. Roubina* (1970) 1 C.L.R. 88 at pp. 102, 103).

(2) It follows that the essential legal basis on which the respondent has acted, namely that there exists across the property of the appellant a "public road", created by operation of the principle of dedication, did not actually exist. 5

Appeal allowed.

Cases referred to:

Decisions of the Greek Council of State: Nos. 21/1934, 125/1935, 1710/1953, 935/1956 and 946/1956; 10

Millington-Ward v. Roubina (1970) 1 C.L.R. 88 at pp. 102,103.

Appeal.

Appeal from the judgment of a Judge of the Supreme Court of Cyprus (Stavrinides, J.) given on the 1st December, 1973 (Case No. 107/69) whereby applicant's recourse against a decision of the respondent refusing him a building permit in relation to a plot of land at Pallouriotissa, was dismissed. 15

G. Constantinides with T. Papadopoulos, for the applicant.

K. Michaelides, for the respondent. 20

Cur. adv. vult.

The facts sufficiently appear in the judgment delivered by:

TRIANTAFYLLOIDES, P.: This is an appeal against a first instance judgment* of a Judge of this Court by means of which there was dismissed a recourse of the appellant against a decision of the respondent refusing him a building permit in relation to a plot of land (plot 269) at Pallouriotissa. 25

The salient facts of this case are, briefly, as follows: On September 27, 1968, the appellant applied to the respondent for the said building permit; and he was informed by a letter of March 11, 1969, that the permit had been refused. 30

As it appears from the respondent's letter the refusal of the permit was based on legal advice concerning the existence of a "public road" across the appellant's property; such "road" was being used by the public since 1953 and the respondent, 35

* Reported in (1973) 3 C.L.R. 623.

in deciding to refuse the permit, took into account the “public interest” aspect of the matter.

5 A copy of the said legal advice (which was not given by counsel who has appeared in the present proceedings on behalf of the respondent, but by another advocate) was made available to us during the hearing of this appeal, though it was not produced at all before the trial Judge.

10 Counsel for the respondent has submitted that the contents of the legal advice in question point to the view that a “public road”, across the property concerned of the appellant, had been created by virtue of the “principle of dedication”.

15 The whole of the property of the appellant, including that part of it which allegedly has become a “public road”, is registered in his own name, and there has never been made any amendment or endorsement of the relevant title-deed of the appellant indicating that, for purposes of land registration, there exists a “public road” across his property.

20 The “public road” in question is, in effect, an extension of Ioanninon Street across the property of the appellant, so that Ioanninon Street joins up with Ekatis Street.

The learned trial Judge has found that the equitable principle of dedication is applicable in Cyprus and that as a result of its application there came into existence a “public road” across the property of the appellant.

25 It has been submitted on behalf of the appellant, by Mr. Papadopoulos, in arguing this appeal, that it was not open to the respondent to take into account the “existence” of a “public road” once such existence was not evidenced by any land registration record; he has contended, further, that the aforesaid principle of dedication has no application at all in Cyprus. According to the appellant, once the building permit had been applied for, on the basis of plans duly prepared in accordance with the relevant Law and Regulations, it was not open to the respondent to refuse to issue it; and we have been referred to, in this respect, to the Conclusions from the Case-Law of the Council of State in Greece, 1929-1959, pp. 174, 175, where there are mentioned, *inter alia*, the decisions of the Council in Cases 30 21/1934, 125/1935 and 1710/1953.

40 Counsel for the respondent, Mr. Michaelides, has, on the other hand, submitted that it was open to the respondent to

1975
Sept. 22
—
COSTA S.
MAVRIDES
v.
THE
MUNICIPAL
COMMITTEE
OF NICOSIA

take into account the existence of the aforesaid “road”, which was being used by members of the public, and to refuse to grant the permit on this ground; he referred us, in this connection, to the decisions of the Council of State in Greece in Cases 935/1956 and 946/1956, as supporting the view that the appropriate authority is entitled to examine whether the property on which it is proposed to build belongs to the person applying for the building permit, and that in case of any dispute as to the ownership of the property the permit may be refused and the dispute left to be dealt with by the civil Courts. Counsel for the respondent has endorsed, also, the proposition that the equitable principle of dedication is applicable in Cyprus and that its application has resulted, in the instant case, in the creation of a “public road” across the property of the appellant.

We do not think that in the present case we need to go so far as to decide whether the respondent was bound to issue the building permit applied for, if it was sought in compliance with the relevant Law and Regulations; nor do we have to pronounce to what extent the respondent might in a proper case, be entitled to refuse a building permit, for any reasons unconnected with the provisions of such Law and Regulations. In order to determine the outcome of the present case it suffices to say that we have reached the conclusion that the principle of dedication and acceptance has no application in Cyprus in so far as the creation of a public road is concerned, because such application appears to have been excluded by the provisions of section 4 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, as re-enacted by section 2 of the Immovable Property (Tenure, Registration and Valuation) (Amendment) Law, 1960 (Law 3/60); and useful reference, regarding the effect of section 4, above, may be made to the judgment of Josephides J. in *Millington-Ward v. Roubina* (1970) 1 C.L.R. 88, 102, 103.

It follows from the foregoing that the essential legal basis on which the respondent has acted in refusing the issue to the appellant of a building permit, and on which the recourse was dismissed by the trial Judge, namely that there exists across the property of the appellant a “public road”, created by operation of the principle of dedication, did not actually exist; therefore, we have to allow the appeal and annul the administrative decision complained of; the respondent has now to re-examine,

in the light of this judgment, the application of the appellant for a building permit.

5 We do not propose, however, to interfere with the decision of the trial Judge that there should be no order as regards the costs of the trial; and, taking into account all relevant considerations, we have decided that the respondent should pay only half of the costs of the present appeal.

Appeal allowed. Order for costs as above.

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