

CASES
DECIDED BY
THE SUPREME COURT OF CYPRUS
IN ITS ORIGINAL JURISDICTION AND ON APPEAL
FROM THE ASSIZE COURTS AND DISTRICT COURTS

1976
Jan. 2

MUNICIPALITY
OF NICOSIA
v.
NICOS PIERIDES

[TRIANTAFYLIDES, P., STAVRINIDES, A. LOIZOU, JJ.]

THE MUNICIPALITY OF NICOSIA,

Appellant,

v.

NICOS PIERIDES,

Respondent.

(Criminal Appeal No. 3673).

Building—Building without permit—Section 3(1)(b) of the Streets and Buildings Regulation Law, Cap. 96—Extending ground floor of a house and adding two further storeys—Sentence of fine—Appeal against inadequacy of—Gravity of offence—Refusal to make demolition order amounted, in effect, to permitting perpetuation of an illegality and also to exercising, without entitlement, the functions of the Town Planning Department—Discretion of trial Court exercised on wrong basis—Appeal allowed—Demolition order made in addition to the fine.

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10 *Demolition Order—Appeal against non-making of.*

Sentence—Appeal against inadequacy of—Building without permit.

The respondent pleaded guilty to erecting a building without a permit and was ordered to pay a fine of C£25 and C£9 costs of the prosecution.

15 The building in question consisted of the extension of the ground floor of a house (which had been built earlier with a permit) and of two further storeys; and was erected without a permit because one was applied for and refused.

20 The appellant Municipality appealed against the refusal of the trial Court to make a demolition order.

Held, (1) this is an instance of flagrant illegality and it cannot on any kind of approach, be treated as involving only a trivial, *bona fide*, infringement of the relevant Law and Regulations

1976
Jan. 2

MUNICIPALITY
OF NICOSIA
v.
NICOS PIERIDES

(see, *inter alia*, *Improvement Board of Kaimakli v. Sevastides* (1967) 2 C.L.R. 117, at pp. 122, 124).

(2) The refusal of the trial Court to make a demolition order amounted in effect, to permitting the perpetuation of an illegality, and also, to exercising, without entitlement, the function of the Town Planning Department, which is the only organ which could have relaxed the relevant regulations in a manner enabling a covering permit to be granted to the respondent (p. 3 *post*).

(3) It is clear, therefore, that the relevant discretion of the trial Judge was exercised on a wrong basis. A demolition order will be made in addition to the sentence of fine which was imposed on the respondent.

Appeal allowed.

Cases referred to:

The Improvement Board of Kaimakli v. Sevastides (1967) 2 C.L.R. 117, at pp. 122, 124;

Golden Sea-Side Estate Co.-Ltd. v. The Municipal Corporation of Famagusta (1973) 2 C.L.R. 58 at pp. 61-62.

Appeal against sentence.

Appeal by the Municipality of Nicosia against the sentence imposed on Nicos Pierides, by the District Court of Nicosia (Criminal Case No. 23426/75) when he was convicted on one count of the offence of erecting a building without a permit, contrary to section 3(1)(b) of the Streets and Buildings Regulation Law, Cap. 96 and he was fined C£25.- with C£9.- costs.

K. Michaelides, for the appellant.

T. Eliades, for the respondent.

The judgment of the Court was delivered by:-

TRIANTAFYLLIDES, P.: The Municipality of Nicosia has appealed (with the sanction of the Attorney-General, under section 137(1)(b) of the Criminal Procedure Law, Cap. 155) against the sentence imposed, by a Judge of the District Court of Nicosia, on the respondent, when he pleaded guilty to erecting a building without a permit, contrary to section 3(1)(b) of the Streets and Buildings Regulation Law, Cap. 96; the respondent was ordered to pay a fine of C£25 and C£9 costs of the prosecution.

The building in question was erected without a permit because one was applied for it but was not granted; it consists of the extension of the ground floor of a house (which had been built with a permit, earlier) and of two further storeys.

1976
Jan. 2

MUNICIPALITY
OF NICOSIA
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In the light of our relevant case-law, such as, in particular, *The Improvement Board of Kaimakli v. Sevastides*, (1967) 2 C.L.R. 117, 122, 124 and *Golden Sea-side Estate Co. Ltd., v. The Municipal Corporation of Famagusta*, (1973) 2 C.L.R. 58, 61, 62, we are of the view that the present case is, too, an instance of quite flagrant illegality; it cannot, on any kind of approach, be treated as involving only a trivial, *bona fide*, infringement of the relevant Law and Regulations.

The fact that the respondent, having applied for a building permit for the extension of his existing building, and having failed to obtain one, proceeded to build, without such permit, in open contravention of the law, is strongly indicative of the gravity of his offence; and, especially, so, when one takes into account the extent of the building operations carried out without a permit.

That he may not, now, be able to obtain a covering building permit because what he has built does not conform with the relevant Regulations, and that such non-conformity is due, allegedly, to errors of the architect employed by him, are considerations which, in view of the nature of the conduct of the respondent, could not, and should not, have been taken into account, as mitigating factors, by the trial Court; in our opinion the refusal of such Court to make a demolition order amounted, in effect, to permitting the perpetuation of an illegality, and, also, to exercising, without entitlement, the functions of the Town Planning Department, which is the only appropriate organ which could, on the present occasion, have relaxed the relevant Regulations in a manner enabling a covering building permit to be granted to the respondent.

It is clear, therefore, that the relevant discretion of the trial Judge was exercised on a wrong basis.

We have, consequently, no alternative but to make a demolition order in respect of the structures which have been erected without a permit; this order is to be complied with within two months from today, unless, in the meantime, a covering building permit is obtained. Such order is made in addition to the sentence of a fine which was imposed on the respondent.

The respondent is ordered to pay, also, C£15 costs for today, towards the costs of the appellant in this Appeal; and the order for costs made at the trial remains in force.

Appeal allowed. Order for costs as above.