

1977

Aug. 1

[TRIANAFYLLIDES, P.]

ORPHANAGE
AND TRAINING
SCHOOL ETC.

v.

ATTORNEY—
GENERAL
OF THE
REPUBLIC

IN THE MATTER OF "THE ORPHANAGE AND
TRAINING SCHOOL, DEMETRAKIS G. DIANELLOS
OF LARNACA",

and

IN THE MATTER OF THE CHARITIES LAW, CAP. 41.

"THE ORPHANAGE AND TRAINING SCHOOL,
DEMETRAKIS G. DIANELLOS OF LARNACA",

Applicants,

and

THE ATTORNEY-GENERAL OF THE REPUBLIC,

Respondent.

(Charity Application No. 2/77).

-
- Charitable trusts—Charity governed by a special Law—The Orphanage and Training School (Demetrakis G. Dianellos of Larnaca) Law, Cap. 353—Application to amend the objects of the charity by adding thereto new objects—Section 13 of the Charities Law, Cap. 41—Impossibility to conform with the spirit of the charity and unsuitability and ineffectiveness, in the light of present realities, of the original purposes of such charity—"Cy-pres doctrine"—Amendment of objects approved by virtue of such doctrine subject to certain reservations.* 5
 - Orphanage and Training School (Demetrakis G. Dianellos of Larnaca) Law, Cap. 353—Orphanage and Training School provided thereunder—Even though section 8 of the law enables the Court to exercise in respect of the said school the same powers vested in it under the Charities Law, Cap. 41—Not open to the Court to abolish such school by means of an order under s. 13(b) of Cap. 41—Because a statute cannot be repealed by a judicial order and because such a course is excluded by the principle of separation of powers.* 10
15
 - Charities Law, Cap. 41—Powers vested in the Supreme Court under section 13(b) of the Law—Applicable to the charity governed by The Orphanage and Training School (Demetrakis G. Dia-* 20

nellos of Larnaca) Law, Cap. 353—Section 8 of the latter Law.

5 *Statutes—Construction—Two possible constructions—The more reasonable one is to be chosen—Construction of section 8 of the Orphanage and Training School (Demetrakis G. Dianellos of Larnaca) Law, Cap. 353.*

Separation of powers—Principle of.

“Cy-pres doctrine”—Principle of.

10 The applicants are a charity which is governed by a special Law, The Orphanage and Training School (Demetrakis G. Dianellos of Larnaca) Law, Cap. 353.

15 The objects of the Charity as stated in the preamble of the above Law were the establishment of an orphanage and training school for poor orphan children of the Greek-Orthodox Community.

20 Due to the small number of applicants for entry to the orphanage and training school, which has been established under the aforesaid Law, its functioning has been seriously affected and the Social Welfare Department no longer regarded as advisable the functioning of such an institution.

By means of this application the applicants sought an order, under section 13* of the Charities Law, Cap. 41, amending the objects of the above charity in order to enable its Board of Management -

- 25 (a) To support financially families of orphan children, who have lost one of their parents, for the purpose of meeting the needs of their education at schools of elementary or secondary education and/or
- 30 (b) To grant yearly a number of scholarships for technical or other education to orphan children, who have lost at least one of their parents and who, preferably but not necessarily, should be children born in Larnaca or residing in Larnaca, and/or
- 35 (c) To dispose the income of the charity or any part thereof in any other manner which may contribute to the education of orphan children, who have lost

* Quoted at pp. 309 - 310 *post.*

1977
Aug. 1

—
ORPHANAGE
AND TRAINING
SCHOOL ETC.
v.
ATTORNEY—
GENERAL
OF THE
REPUBLIC

at least one of their parents, or promote directly or indirectly such object.

ORPHANAGE
AND TRAINING
SCHOOL ETC.
v.
ATTORNEY—
GENERAL
OF THE
REPUBLIC

The amendments applied for were wider than they could be in view of the state of the Law as regards the definition of "orphan" in section 2 of Cap. 353 which runs as follows:

5

"'orphan' means a poor child belonging to the Greek-Orthodox community of the town and district of Larnaca who has lost both his parents:

Provided that the above definition may, by regulations made under this Law, be extended to include -

10

(a) any poor child of the said community who has lost his father only;

(b) any poor child of any other Greek-Orthodox community in the Republic who has lost either both his parents or his father only".

15

Section 13(b) of the Charities Law, Cap. 41 provides as follows:

"13(1) The Supreme Court shall have power and jurisdiction -

(b) to give all such directions and make all such orders as may appear to it necessary or expedient for the administration of any trust created for a charitable purpose";

20

and section 8 of Cap. 353 (*supra*) provides as follows:

"8. The Supreme Court and the Attorney-General shall have and exercise, in respect of the Orphanage and Training School, the same powers vested in and exercised by them respectively under the Charities Law, as if the Orphanage and Training School is a charity registered and incorporated under the provisions of the said Law and any Rules of Court made under the provisions of the said Laws shall apply to any proceedings taken in respect of any matter arising under this Law".

25

30

Held, (I) on the question whether the present application could be granted on the strength of the "cy-press doctrine" as it has evolved in equity and as has been provided for by means of the English Charities Act, 1960:*

35

* See pp. 311 - 313 *post*.

1977
Aug. 1

—
ORPHANAGE
AND TRAINING
SCHOOL ETC.

v.
ATTORNEY—
GENERAL
OF THE
REPUBLIC

5 That by virtue of the "cy-pres doctrine" and, particularly, on the grounds of impossibility to conform with the spirit of the charity concerned, as well as on the grounds of unsuitability and ineffectiveness in the light of present realities of the original purposes of such Charity, as such grounds are borne out by the material before this Court, there is no difficulty in approving the amendment of the objects of the Charity, subject, however, to the reservation that the word "orphan" shall be given the meaning ascribed to it in section 2 of Cap. 353.

10 *Held, (II) on the question whether the Court could approve the amendment of the objects of the Charity to the extent of substituting, in effect, the new objects in the place of the object which related to the running of an orphanage and training school:*

15 (1) That in relation to the implementation of the objects of the charity a special Law, Cap. 353, has been enacted and, though section 8 of such Law enables this Court to exercise, in respect of the orphanage and training school provided for under Cap. 353, the same powers vested in it under Cap. 41, including those under section 13(b) of Cap. 41, it is not open to this Court to make an order, under the said section 13(b) by virtue of which it will, in effect, abolish the said orphanage and training school, as this would, indeed, be an order repealing a Law, namely Cap. 353, and this course is not open to this Court, both because a statute cannot, in any event, be repealed by a judicial order made under another or the same statute, and because such course is excluded by the principle of "separation of powers" on which the Constitution of the Republic is founded.

30 (2) That not only unreasonable or artificial or anomalous constructions should be avoided but where two possible constructions present themselves the more reasonable one should be chosen (see *Maxwell on Interpretation of Statutes* 12th ed. p. 203); that the more reasonable construction of the provisions of section 8 of Cap. 353, when read in conjunction with section 13(b) of Cap. 41, is that it is not possible to make an order thereunder resulting in the abolition of the orphanage and training school to which Cap. 353 relates.

Order accordingly.

40 Cases referred to:

Bishop of Kitium and Others as trustees of the Dianellos Cha-

1977
Aug. 1

ORPHANAGE
AND TRAINING
SCHOOL ETC.
v.
ATTORNEY—
GENERAL—
OF THE
REPUBLIC

rity (No. 1) v. The Attorney-General of the Republic
(1971) 1 C.L.R. 92 at pp. 94 and 105;

Mitsis Lemythou Commercial School v. Attorney-General of
the Republic, 1964 C.L.R. 1 at p. 3;

Clarke-Jervoise v. Scutt [1920] 1 Ch. 382 at p. 388; 5

Victorian Chamber of Manufacturers and Others v. The Com-
monwealth and Others, 67 C.L.R. 335 at p. 346.

Charity Application.

Application by the Trustees of the Charity known as
“The Orphanage and Training School, Demetrakis G. Dia- 10
nellos”, under section 13 of the Charities Law, Cap. 41,
for an order amending the objects of the Charity in order
to enable the Board of Management of the Charity (a) to
support financially families of orphan children, who have 15
lost at least one of their parents, for the purpose of meet-
ing the needs of their education at schools of elementary
or secondary education (b) to grant yearly a number of
scholarships for technical and other education to orphan 20
children who have lost at least one of their parents and
who, preferably but not necessarily, should be children
born in Larnaca or residing in Larnaca and (c) to dispose
the income or any part thereof in any other manner which
may contribute to the education of orphan children, who
have lost at least one of their parents, or promote directly 25
or indirectly such object.

J. Kaniklides, for the applicants.

Gl. Michaelides, for the respondent Attorney-General
of the Republic.

Cur. adv. vult.

The following judgment was delivered by:- 30

TRIANTAFYLLIDES, P.: The applicants seek an order,
under section 13 of the Charities Law, Cap. 41, amending
the objects of a Charity, “The Orphanage and Training
School, Demetrakis G. Dianellos of Larnaca”, in order to
enable the Board of Management of such Charity - 35

- (a) To support financially families of orphan child-
ren, who have lost at least one of their parents,
for the purpose of meeting the needs of their

education at schools of elementary or secondary education and/or

1977
Aug. 1

—
ORPHANAGE
AND TRAINING
SCHOOL ETC.
v.
ATTORNEY—
GENERAL
OF THE
REPUBLIC

5 (b) To grant yearly a number of scholarships for technical or other education to orphan children, who have lost at least one of their parents and who, preferably but not necessarily, should be children born in Larnaca or residing in Larnaca, and/or

10 (c) To dispose the income of the charity or any part thereof in any other manner which may contribute to the education of orphan children, who have lost at least one of their parents, or promote directly or indirectly such object.

15 The applicants are a Charity which is governed by a special Law, The Orphanage and Training School (Demetrakis G. Dianellos of Larnaca) Law, Cap. 353. The long title of this Law reads as follows: "A Law to provide for the Incorporation of an Orphanage and Training School established by Demetrakis G. Dianellos of Larnaca". Also,
20 the preamble, in which are stated the objects of the Charity, reads as follows:-

25 "WHEREAS Demetrakis G. Dianellos of Larnaca (in this Law referred to as 'the settlor', which expression where the context so admits includes his heirs, executors, administrators and assigns), has, by trust deeds made on the 15th and 20th days of December, 1949, declared that he holds as a trustee the immovable properties described in the Schedule hereto together with a sum of fifty thousand pounds in cash
30 in trust for poor orphan children of the Greek-Orthodox community for the establishment of an orphanage and training school for such children:

35 AND WHEREAS it is expedient to provide by Law for the establishment of the orphanage and training school as aforesaid, and for the vesting of the said immovable property and money in such orphanage and training school and the management and control thereof:"

40 The trust deeds referred to in the said preamble have not been produced during the present proceedings because,

1977
Aug. 1

ORPHANAGE
AND TRAINING
SCHOOL ETC.
v.
ATTORNEY—
GENERAL
OF THE
REPUBLIC

according to an affidavit of the Secretary of the applicants, A. Mina, sworn on March 3, 1977, they have not been traced.

There has been produced, however, a copy of the will of the late Demetrakis G. Dianellos of Larnaca (see *exhibit A*), dated March 5, 1950. The said will was executed after the creation of the aforementioned Charity, and the testator died on April 1, 1950; the will was probated in the District Court of Larnaca on December 17, 1951, in Action No. 484/1950 (see *The Bishop of Kitium and others as Trustees of the Dianellos Charity (No. 1) v. The Attorney-General of the Republic*, (1971) 1 C.L.R. 92, 94). The will was drafted with the obvious intention of promoting the objects of the Charity.

The reasons which have led the applicants to institute the present proceedings are to be found in a copy of the minutes of a meeting of the Board of Management of the said Charity, which took place on October 12, 1976.

It appears therefrom that the functioning of the orphanage and training school has been seriously affected due to the small number of applicants for entry thereto and that the Social Welfare Department no longer regards as advisable the functioning of such an institution. It was, therefore, decided, at the said meeting, that there should be sought an amendment of the objects of the Charity so that the new objects set out hereinabove could be pursued instead of the functioning of the institution in question.

From the material before me, including the affidavit which was filed in support of the present application (and is dated January 24, 1977), the relevant minutes of the Board of Management of the Charity and the accountants' report dated March 1, 1977, I am satisfied that the present application is based, as counsel appearing for the respondent Attorney-General of the Republic has stated in writing, "on sound and logical grounds".

Counsel for the respondent went on to suggest that the amendments to be made to the objects of the Charity could be wider, so as to include, in relation to orphans who are the beneficiaries of the Charity, powers to make marriage grants, provide assistance for setting up small

businesses and pay medical expenses not otherwise provided; counsel for the applicants has stated that he does not object to such wider powers being granted; but, in the absence of any specific formal application to that effect, I have to limit myself to the amendments to which the present application refers.

Counsel for the respondent has pointed out that the said amendments are, in one respect, wider than they can be in view of the present state of the law, as regards the definition of "orphan" in section 2 of Cap. 353; such definition (as modified under Article 188 of the Constitution) reads as follows:-

"'orphan' means a poor child belonging to the Greek-Orthodox community of the town and district of Larnaca who has lost both his parents:

Provided that the above definition may, by regulations made under this Law, be extended to include -

- (a) any poor child of the said community who has lost his father only;
- (b) any poor child of any other Greek-Orthodox community in the Republic who has lost either both his parents or his father only".

It is common ground that, until now, no Regulations have been made extending the meaning of "orphan", as defined in section 2, and counsel for the applicants has agreed that any order to be made in the present application should relate, consequently, to orphans as defined in such section, namely orphans who are poor children belonging to the Greek-Orthodox community of the town and district of Larnaca and who have lost both their parents.

As already stated, the applicants are seeking an order for the amendment of the objects of the Charity in question on the strength of section 13 of Cap. 41, and, particularly, under paragraph (b) thereof; section 13 reads as follows:-

"13. The Supreme Court shall have power and jurisdiction -

ORPHANAGE
AND TRAINING
SCHOOL ETC.
v.
ATTORNEY—
GENERAL
OF THE
REPUBLIC

- (a) to enforce every trust created for a charitable purpose;
- (b) to give all such directions and make all such orders as may appear to it necessary or expedient for the administration of any trust created for a charitable purpose; 5
- (c) to sanction the sale or other disposition of any property subject to a charitable trust on being satisfied that such sale or disposition is for the benefit and advantage of the charity". 10

It is useful, also, to quote section 15 of Cap. 41, which reads as follows:-

"15. All proceedings under this Law shall be instituted, heard and determined by the Supreme Court in accordance with the law relating to charitable trusts for the time being in force in England". 15

In view of section 15, above, the English law relating to charitable trusts has been applied in cases such as *Mitsis Lemythou Commercial School v. Attorney-General of the Republic*, 1964 C.L.R. 1, 3 and *The Bishop of Kitium and others as Trustees of the Dianellos Charity (No. 1)*, *supra* (at p. 105); in the latter case there were applied provisions of the Charities Act, 1960, in England, to which reference will be made also later on in the present judgment. 25

In section 8 of Cap. 353, which is the special legislation applicable to the particular Charity involved in this case, there is express reference to the powers of the Supreme Court under Cap. 41; this section reads as follows:-

"8. The Supreme Court and the Attorney-General shall have and exercise, in respect of the Orphanage and Training School, the same powers vested in and exercised by them respectively under the Charities Law, as if the Orphanage and Training School is a charity registered and incorporated under the provisions of the said Law and any Rules of Court made under the provisions of the said Laws shall apply to any proceedings taken in respect of any matter arising under this Law". 30 35

It is to be noted that Cap. 41 was enacted on March 27, 1925, as Law 7/25, whereas Cap. 353 was enacted subsequently, on January 11, 1950, as Law 1/50.

1977
Aug. 1

ORPHANAGE
AND TRAINING
SCHOOL ETC.

v.
ATTORNEY—
GENERAL
OF THE
REPUBLIC

5 There is no doubt in my mind that the powers vested
in the Supreme Court, under section 13(b) of Cap. 41—
and exercisable in the first instance by a Judge of the
Court (see, for example, the case of *Mitsis Lemythou* —
Commercial School, supra)—are applicable in relation to
10 the Charity with which we are concerned in the present
proceedings. This is so because, first, of the fact that section
13(b) is applicable in relation to “the administration
of any trust”; in *Clarke-Jervoise v. Scutt*, [1920] 1 Ch.
382, Eve J. stated (at p. 388) that “Any’ is a word with a
very wide meaning, and *prima facie* the use of it excludes
15 limitation” (and see, also, *The Victorian Chamber of Ma-*
nufacturers and others v. The Commonwealth and others,
67 C.L.R. 335, at p. 346, per Williams J).

20 Secondly, section 8 of Cap. 353 which has been quoted
above, is formulated in a wide enough manner so as to
render applicable section 13(b) of Cap. 41 to the parti-
cular Charity to which Cap. 353 refers, and which is the
one involved in the present case.

25 I have been invited to grant, under section 13(b), the
present application on the strength of the “cy-pres doc-
trine”, as it has evolved in equity and as, also, has been
provided for by means of the Charities Act, 1960.

In relation to such doctrine the following are stated in
Snell’s Principles of Equity, 27th ed., pp. 160-162:-

30 “If a private trust is initially ineffective or subse-
quently fails, there is a resulting trust for the settlor.
But if a charitable trust is initially impossible or im-
practicable, or subsequently becomes so, in many
cases the trust will not fail, and the court will apply
the property cy-pres, *i.e.*, apply it to some other cha-
35 ritable purpose ‘as nearly as possible’ resembling the
original trust; and this will be achieved by means of a
scheme.

.....
The Charities Act, 1960, makes it unnecessary to

decide whether or not there is impossibility in the old sense. Instead, it suffices if the case can be brought under one of the following five heads -

- (1) IMPOSSIBILITY: the original purposes, in whole or in part, 5
 - (i) have been fulfilled 'as far as may be', or
 - (ii) cannot be carried out, either at all or 'according to the directions given and to the spirit of the gift'.
- (2) SURPLUS FUNDS: the original purposes 'provide a use for part only of the property available by virtue of the gift'. 10
- (3) BLENDING: the property available by virtue of the gift and other property applicable for similar purposes can be 'more effectively used in conjunction, and to that end can suitably, regard being had to the spirit of the gift, be made applicable to common purposes'. 15
- (4) UNSUITABILITY: 'the original purposes were laid down by reference to an area which then was but has since ceased to be a unit for some other purpose, or by reference to a class of persons or to an area which has for any reason since ceased to be suitable, regard being had to the spirit of the gift, or to be practical in administering the gift'. 20 25
- (5) INEFFECTIVENESS: 'the original purposes, in whole or in part, have, since they were laid down, -
 - (i) been adequately provided for by other means; or 30
 - (ii) ceased, as being useless or harmful to the community or for other reasons, to be in law charitable; or
 - (iii) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the 35

gift, regard being had to the spirit of the gift'.

1977
Aug. 1

ORPHANAGE
AND TRAINING
SCHOOL ETC.

v.

ATTORNEY—
GENERAL
OF THE
REPUBLIC

5 The 'original purposes' means the whole of the purposes, so that where a fixed part of the income was given to one purpose and the residue to another, and changes in the value of money had distorted the proportions, the court can adjust them".

The relevant provision of the Charities Act, 1960, on which the above passage from Snell is based, is section 13.

10 By virtue of the "cy-pres doctrine" and, particularly, on the grounds of impossibility to conform with the spirit of the Charity concerned, as well as on the grounds of unsuitability and ineffectiveness in the light of present realities of the original purposes of such Charity, as such
15 grounds are borne out by the material before me (including the affidavit in support of this application, the relevant minutes of the Board of Management of the Charity and the aforementioned accountants' report), I have no difficulty in approving the amendment of the objects of the
20 Charity, subject, however, to the reservation that the word "orphan" shall be given the meaning ascribed to it in section 2 of Cap. 353.

25 But there still remains the problem whether I can approve the amendment of the objects of the Charity to the extent of substituting, in effect, the new objects in the place of the object which relates to the running of an orphanage and training school.

30 In relation to the implementation of such object a special Law, Cap. 353, has been enacted and, though section 8 of such Law enables this Court to exercise, in respect of the orphanage and training school provided for under Cap. 353, the same powers vested in it under Cap. 41, including those under section 13(b) of Cap. 41, I do agree with
35 counsel for the respondent that it is not open to me to make an order, under the said section 13(b), by virtue of which I will, in effect, abolish the said orphanage and training school. This would, indeed, be an order repealing a Law, namely Cap. 353, and this course is not open to
40 this Court, both because a statute cannot, in any event, be repealed by a judicial order made under another or the same statute, and because such course is excluded by the

1977
Aug. 1

ORPHANAGE
AND TRAINING
SCHOOL ETC.
v.
ATTORNEY—
GENERAL
OF THE
REPUBLIC

principle of "separation of powers" on which our Constitution is founded.

If the orphanage and training school in question has to cease to function for the reasons put forward by the applicants, then, in my view, legislative action such as the repeal, or suitable drastic amendments, of Cap. 353, are needed.

5

As is pointed out in Maxwell on Interpretation of Statutes, 12th ed., p. 203, "Not only are unreasonable or artificial or anomalous constructions to be avoided; it appears to be an assumption (often unspoken) of the courts that where two possible constructions present themselves, the more reasonable one is to be chosen"; and, in my view, the more reasonable construction of the provisions of section 8 of Cap. 353, when they are read in conjunction with section 13(b) of Cap. 41, is that it is not possible to make an order thereunder resulting in the abolition of the orphanage and training school to which Cap. 353 relates.

10

15

In the light of all the foregoing it is hereby ordered that the objects of the Charity concerned should be amended by the addition thereto of the objects set out in the present application, subject to these objects being limited to orphans such as those defined in section 2 of Cap. 353, and that such new objects shall not be in substitution of the object of running an orphanage and training school.

20

25

There shall be no order as to the costs of these proceedings, other than that the Board of Management of the applicants are authorized to pay out of funds of the Charity the costs of counsel who has appeared for them in these proceedings.

30

Application granted.
Order for costs as above.