IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

FRIXOS L. KYRIACIDES,

Applicant,

and

THE IMPROVEMENT BOARD OF EYLENJA,

Respondent.

(*Case No.* 6/76).

Streets and Buildings Regulation Law, Cap. 96—"Communication... in the area in which the intended work is to be carried out" in section 8(c) of the Law—Means communication within that area as well as with the outside world.

Statutes—Construction—Two possible alternative meanings—One leading to absurdity and one which would avoid it—Rule applicable—Construction of "communication... in the area in which the intended work is to be carried out" in section 8(c) of the Streets and Buildings Regulation Law, Cap. 96.

Building sites—Division of land into building sites—Land in question not abutting a public road—Application for division properly refused—Section 8(c) of the Streets and Buildings Regulation Law, Cap. 96.

The applicant with two other persons was the co-owner of an enclaved piece of land which had no access to any street or road. The respondent refused to grant a permit to the applicant for the division of his said land into building sites on the ground that it did not abut a public road. The refusal was based on section 8* of the Streets and Buildings Regulation Law, Cap. 96, which so far as relevant provides that before granting a permit the "appropriate authority may require the production of plans... Particularly (a)... (b)... (c) with the general object of securing proper conditions of health, sanitation, safety, communication, amenity and convenience in the area in which the intended work is to be carried out".

---

* Quoted in full at p. 201 *post.*

In challenging the validity of the refusal counsel for the applicant contended that there was no provision in Cap. 96 that any plot of land for which an application for division into building sites is made, has to have access to a road or abut a road; and that section 8(c), as regards communication, provides only for communication in the area in which the intended work is to be carried out, which means that it provides for communication within the area proposed to be divided into building sites.

Held, (after stating the principles governing construction of statutes with two possible alternative meanings) that the words "communication in the area in which the intended work is to be carried out", in section 8(c) of Cap. 96 should be construed so as to mean "communication within that area as well as with the outside world"; that if the interpretation submitted by applicant is given then certainly, this would lead to absurdity, (see Odgers Construction of Deeds and Statutes 5th ed., p. 263; Maxwell on Interpretation of Statutes, 12th ed., p. 199); and that, accordingly, the decision of the respondent was within the objects of Cap. 96 and it cannot be said that they acted contrary to law or in excess of powers.

Application dismissed.

Cases referred to:

Bishop v. *Deakin* [1936] Ch. 409;

Thompson v. *Thompson* [1956] P. 414;

Longford [1889] 14 P. D. 34.

Recourse.

Recourse against the refusal of the respondent to issue a division permit to applicant in respect of his property situated at "Plati" locality in the area of Eylenja.

Applicant in person.

A. Serghides, for the respondent.

The following judgment* was delivered by:-

MALACHTOS, J.: The applicant in this recourse under Article 146 of the Constitution, claims the following remedy: A declaration of the Court that the act or omission of the respondent dated 13th December, 1975, by which the application of the applicant for a division permit of

* For final judgment on appeal see (1978) 3 C.L.R. 86.

Plot No. 2433 Sheet Plan XXI/63 E.I., situated at locality "Plati" in the area of Eylenja, was refused, is *null* and *void* and of no legal effect whatsoever.

The facts of the case are as follows:

The applicant with two other persons, is co-owner of Plot 2433, Part B Sheet Plan XXI/63 under Registration No. B 2527, of an extent of seven donums and 1,500 sq. ft. situated within the Improvement Board of Eylenja, in the Nicosia District. This property is an enclaved piece of land and has no access to any street or road.

On the 18th April, 1975, the applicant, together with his two co-owners, applied to the Improvement Board of Eylenja, as the appropriate authority under the Streets and Buildings Regulation Law, Cap. 96, for a permit to divide the said property into building sites. The application was accompanied by the necessary plans and documents.

By letter dated 13th December, 1975, the District Officer of Nicosia, as Chairman of the Improvement Board of Eylenja, replied to the said application as follows:

> "With reference to your application dated 18th April, 1975, by which you applied for a sub-division permit of Plot 2433 Sheet Plan XXI/63, E.I., situated in Eylenja, you are hereby notified that it is not approved as the piece of land under subdivision does not abut a public road.
>
> 2. You may apply again when your property will acquire regular access".

The applicant being aggrieved by the above decision of the respondent, filed on the 13th January, 1976, the present recourse.

The application is based on a single ground of law *i.e.* that the act and/or omission of the respondent Authority to grant the permit applied for, is illegal, unconstitutional and amounts to abuse of powers as being contrary to the Streets and Buildings Regulation Law, Cap. 96. The applicant argued that there is no provision in the said Law that any plot of land for which an application for division

into building sites is made, has to have access to a road or abut a road. So the decision of the respondents is contrary to the said Law and was taken in abuse of power. He also argued that section 8(c) of the Law, Cap. 96, as regards communication, provides only for communication in the area in which the intended work is to be carried out, which means that it provides for communication within the area proposed to be divided into buildings sites. He also argued that all the proposed building sites according to the submitted plans will have access to public roads when the proposed work will be completed.

Section 8 of the Streets and Buildings Regulation Law, Cap. 96, is as follows:

"8. Before granting a permit under section 3 of this Law, the appropriate authority may require the production of such plans, drawings and calculations or may require to be given such description of the intended work as to it may seem necessary and desirable and may require the alteration of such plans, drawings and calculations so produced, particularly -

(a) with the object of securing proper conditions of health and safety in connection with the building to which such plans, drawings and calculations relate;

(b) with a view to preserving the uniform or proper character and style of buildings erected or to be erected in the area in which the plot is situated;

(c) with the general object of securing proper conditions of health, sanitation, safety, communication, amenity and convenience in the area in which the intended work is to be carried out".

I must say that I find myself in disagreement with the submission of the applicant that section 8(c) of Cap. 96, should be given that interpretation. It seems to me that the interpretation which should be given to the words "communication in the area in which the intended work is to be carried out", as provided by subsection (c) of section 8, means in addition to communication within the plot in which the intended work is to be carried out, com-

munication of the intended building sites with the outside world as well. If we give the interpretation which was submitted by the applicant, then, certainly, this would lead to absurdity.

In Odgers Construction of Deeds and Statutes 5th edition, at page 263 we read:

> "Statutes will be construed as far as possible to avoid absurdity. This is sometimes called the presumption against absurdity. As we shall see later, the courts have been accustomed to act on certain basic rules, which the textwriters call presumptions, in applying the canons of construction to statutes. We have noticed some of these already, *e.g.* that the courts will assume that the draftsmen of the Act used language in its precise and logical meaning; that words are used in their ordinary popular sense, and so on. The presumption against absurdity, or the leaning of the court against a construction which would produce such, is only a branch of the larger rule that a statute, like a deed, should be construed in manner to give it validity rather than invalidity—*ut res magis valeat quam pereat*".

Also in Maxwell on Interpretation of Statutes, 12th edition, at page 199 we read:

> "In determining either the general object of the legislature, or the meaning of its language in any particular passage, it is obvious that the intention which appears to be most in accord with convenience, reason, justice and legal principles should, in all cases of doubtful significance, be presumed to be the true one. 'An intention to produce an unreasonable result is not to be imputed to a statute if there is some other construction available'. Where to apply words literally would 'defeat the obvious intention of the legislation and produce a wholly unreasonable result' we must 'do some violence to the words' and so achieve that obvious intention and produce a rational construction. The question of inconvenience or unreasonableness must be looked at in the light of the state of affairs at the date of the passing of the statute, not in the light of subsequent events".

In the case of *Bishop* v. *Deakin* [1936] Ch. 409, the defendant had been convicted and sentenced to imprisonment for more than three months. An action was brought for a declaration that he was disqualified from acting as an elected member of a local authority under section 59 (1) of the Local Government Act 1933 "if he has within five years before the date of election or since he was elected been convicted of an offence and imprisoned for three months at least without the option of a fine". Clauson J., observing that the section provides for two disqualifications and two definitions, held that a conviction within five years before election disqualified from election and that conviction after election disqualified from continuance in office. He said: "If the section is to be read as provided that a person is disqualified from being a councillor if he was convicted within five years before his election, it may well be that he is so disqualified when he acts as a councillor at a date later than five years from the date of the conviction. In that case the effect of the disqualification operating would be that he would cease to be a councillor, but he would be eligible at once for re-election to the vacant office, the five years having expired before the new election. I cannot think that the legislature intended such a whimsical result".

In *Thompson* v. *Thompson* [1956] P. 414, a husband presented a petition for a decree of presumption of death and dissolution of marriage seven years and seven days from the date when his wife had last been seen or heard of. The Act provided that "In any such proceedings the fact that for a period of seven years or upwards the other party to the marriage has been continually absent from the petitioner, and *the petitioner has no reason to believe that the other party has been living within that time,* shall be evidence that he or she is dead until the contrary is proved".

It was pointed out that as it was reasonable to assume that the wife had been alive for at least some of the time within the seven years there was a problem of knowing at what stage after the wife had disappeared the seven years' period should run. "Such a result would produce inconvenience and hardship to a petitioner contrary to the apparent intention of the legislature and would indeed reduce (the section) to an absurdity". Therefore the sec-

tion was construed as if the words underlined had read "if nothing has happened within that time to give the petitioner reason to believe that the other party was then living". The petitioner thus obtained his decree.

In the *Longford* case [1889] 14 P.D. 34, a private Act provided that "no action should be brought against certain shipowners for damage unless a month's notice of action was given". It was held inapplicable to proceedings in rem in Admiralty, for, if such notice were necessary, the proceedings would be nullified by the departure of the ship to avoid seizure.

In the case of possible alternative meanings, one which would lead to an absurdity and one which would avoid it, the rule is clear:

> "It seems to us that on the language of (the section) neither the view of the (defendant) nor that of the plaintiff can be said to be obviously wrong. The court, then, when faced with two possible constructions of legislative language, is entitled to look at the results of adopting each of the alternatives respectively in its quest for the true intention of Parliament".

So, the words "communication in the area in which the intended work is to be carried out", should be construed so as to mean "communication within that area as well as with the outside world".

Therefore, the decision of the respondent Authority not to grant the permit applied for was within the objects of the Law and it cannot be said that they acted contrary to Law or in excess of power.

For these reason, this recourse fails.

As regards costs, the applicant to pay the costs of the respondent Authority to be assessed by the Registrar.

Application dismissed.
Order for costs as above.