

1980 September 2

[A. Loizou, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DEMETRAKIS GEORGHIADES,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF INTERIOR AND ANOTHER

*Respondents.*

(Case No. 192/80).

*Immovable property—Transfer—Factors rendering it likely to endanger or affect public safety within section 3 of the Immovable Property (Temporary Provisions) Law, 1970 (Law 49/1970)—Not recorded in the relevant file—Absence of such record prevents the Court from controlling the exercise of discretion by the respondent— And renders his refusal to transfer defective for lack of due reasoning.* 5

*Administrative Law—Administrative acts or decisions—Reasoning— Due reasoning—Material on which respondent relied in reaching sub judice decision not recorded—Absence of such record prevents Court from controlling exercise of discretion by the administration —And renders sub judice decision defective for lack of due reasoning.* 10

By means of a contract dated the 30th December, 1977 the applicant purchased from Brikent Estates Co. Limited a plot of land and the contract in question was deposited with the Land Registry Office for specific performance purposes. 15

When the applicant and the representatives of the vendor company visited the District Lands Office Larnaca and asked for the transfer and registration of the land in question in the name of the applicant, the District Lands Officer refused to accept the transfer and hinted that the reason was because the vendor company was controlled by a Turkish Cypriot. Hence this recourse. 20

The decision of the District Lands Officer refusing the transfer was recorded to be as follows:

5           “The transfer was refused on the strength of the provisions of the Immovable Property (Temporary Provisions) Law No. 1970 (Law No. 49 of 1970) and particularly under section 3\* thereof”.

10           *Held*, that under section 3 of Law 49/1970 the District Lands Officer has to form his opinion and exercise his discretion on the basis of factors or material given to him by the Minister and which would show that the proposed acquisition by the intended transferee of the subject property is likely to endanger or in any way affect the public safety; that it is then that if so satisfied he will not permit the acceptance of such declaration of transfer; that there does not exist any record of the factors or material which the Minister gave to the Director in the present case; that the absence of such records prevents this Court to perform its duties for the judicial control of the administrative discretion of the Director in this instance; that, in fact, the absence of such records renders the *sub judice* decision defective inasmuch as it lacks due reasoning; that such reasoning, if it existed, would reveal the factors on account of which the administration came to the *sub judice* decision, which in this way is easier to be judged by the public opinion and for its control by an Administrative Court (see Tsatsos on the Recourse for Annulment before the Council of State 3rd edition p. 233); and that, accordingly, the *sub judice* decision must be annulled.

*Sub judice decision annulled.*

#### Recourse.

30           Recourse against the refusal of the respondents to transfer and register in applicant's name a plot of land.

*A. Triantafyllides* with *N. Kleanthous* and *G. Triantafyllides*,  
for the applicant.

*M. Papas*, for the respondents.

*Cur. adv. vult.*

35           A. LOIZOU J. read the following judgment. By the present recourse the applicant seeks a declaration of the Court that the act and or decision of the respondents of the 30th April 1980, not

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\* Quoted at pp. 489-90 *post*.

to transfer and register in his name a plot of land under Registration Number J. 217, plot 209 sheet/Plan No. L.A./1.W1.II is null and void and of no effect whatsoever.

The facts of the case are not in dispute. The applicant by contract dated the 30th December 1977, purchased from Brikent Estates Co. Limited the aforesaid plot of land and the contract in question was deposited with the Land Registry for specific performance purposes under the Specific Performance Law, Cap. 232 as amended by Laws No. 50 of 1970 and No. 96 of 1972. 5

On the 30th April 1980, the applicant along with the representative of the vendor company and other purchasers of similar plots visited the District Lands Office Larnaca and asked for the transfer and registration of same in the name of the applicant, having submitted all necessary documents and having offered to pay all necessary fees as provided by the relevant legislation in force at the time. The District Lands Officer at Larnaca refused to accept the transfer and hinted that the reason was because the vendor company is controlled by a Turkish Cypriot. In fact the vendor company is owned as to 99% by a company called Island Beach Development Limited, which is a Cypriot company, and the remaining one per-cent by a Greek Cypriot; the shareholding of the latter company belongs by 51% to a Turkish Cypriot who has been residing in London before 1974 and by 49% by British interests. 10 15 20

On the 7th May 1980, the managing director of the vendor company addressed the following letter to the officer in charge of the District Lands Office at Larnaca: 25

“Dear Sir,

Re: *Brikent Estates Co. Ltd.*

Further to our visit to your offices on the 30th of April 1980, present Messrs I.Y. Taskent Chairman & Managing Director of above Company, S. Panayiotou Director/Secretary, Nicos Cleanthous, Director, Demetrakis Georgiades, Sotiris Maziris and Takis Michael, Buyers, to transfer the deed No. J217 Plot 209 to Mr. Demetrakis Georgiades as per our contract of sale dated the 30.12.77 and registered with you, with all forms ready for the transfer, both yourself and your assistant Mr. Papaefthymiou you called us to your office and you said the following: ‘Sorry 30 35

5 we do not allow any transfer of deeds from Brikent Estates Co. Ltd to any buyer, as per instructions from our head office in Nicosia'. You also said to the buyers that our company is willing and is fully prepared to transfer the deeds and in no way our Company or its Directors or their representatives are to be blamed for the none transfer taking place.

10 Sir, our Company is strongly protesting to the refusal or your office to deal with the affairs of our Company and issue deeds to the name of our buyers. This is against the principles of the Constitution in Cyprus and the rights of the Cypriots Greeks and Turks.

15 Please take notice that if within two weeks you do not give us a positive answer that you are prepared to deal with the transfer of Deeds, we shall issue a Court procedure in the Supreme Court according to our rights and constitution in Cyprus."

The decision of the District Lands Officer, to refuse the transfer is recorded to be as follows:

20 "The transfer was refused on the strength of the provisions of the Immovable Property (Temporary Provisions) Law No. 1970, (Law No. 49 of 1970) and particularly under section 3 thereof."

25 Counsel for the respondents further stated that there was no record of particulars as to what were the data or factors which the Minister gave to this officer regarding this case. The aforesaid section reads as follows:-

30 "Ανεξαρτήτως παντός διαλαμβανομένου εν τῷ περί Μεταβιβάσεως και Ὑποθηκείσεως Ἀκινήτων Νόμῳ τοῦ 1965, ὡςάκις ἐπὶ τῇ προσαγωγῇ εἰς Ἐπαρχιακόν Κτηματολογικόν Γραφεῖον ἢ παραρτήμα, δηλώσεως σκοπούμενης μεταβιβάσεως ἀκινήτου ἰδιοκτησίας ὁ Διευθυντής κρίνη, βάσει δεδομένων παρασχεθέντων αὐτῷ ὑπὸ τοῦ Ὑπουργοῦ, ὅτι ἡ σκοπούμενη κτῆσις τῆς τοιαύτης ἀκινήτου ἰδιοκτησίας ὑπὸ τοῦ προτιθεμένου δικαιοδόχου ἐνδέχεται νὰ θέσῃ εἰς κίνδυνον ἢ καθ' οἰουδήποτε τρόπον νὰ ἐπηρεάσῃ τὴν δημοσίαν ἀσφάλειαν, ὁ Διευθυντής δὲν ἐπιτρέπει τὴν παρὰ τοῦ ἀρμοδίου λειτουργοῦ τοῦ εἰρημένου Γραφείου ἢ παραρτήματος ἀποδοχὴν τῆς

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τοιαύτης δηλώσεως, εκτός εάν και άφου ό Υπουργός, εις τόν όποιον τό θέμα υποβάλλεται υπό του Διευθυντού, συγκατατεθή εις τούτο.”

The unofficial English translation of same reads as follows:

“Notwithstanding the provisions of the Immovable Property (Transfer and Mortgage) Law, 1965, whenever upon the production to a District Lands Office or sub-office of a declaration of intended transfer of immovable property, the Director considers on the basis of factors given to him by the Minister that the proposed acquisition of the said immovable property by the intended transferee is likely to endanger or in any way affect the public safety, the Director shall not permit the acceptance of such a declaration by the appropriate officer of the said office, or sub-office, except if and when the Minister to whom the matter is submitted by the Director consents to it.”

The term “Director” is defined in section 2(c) of the said Law as meaning “the Director of the Department of Lands and Surveys of the Ministry of Interior and includes a District Lands Officer and any other officer appointed by the Director for all or any of the purposes of this Law, either generally or for any particular purpose.”

As it appears from the aforesaid provisions the Director, as defined, has to form his opinion and therefore exercise his discretion on the basis of factors or material given to him by the Minister and which would show that the proposed acquisition by the intended transferee of the subject property is likely to endanger or in any way affect the public safety. It is then that if so satisfied he will not permit the acceptance of such declaration of transfer.

It is unfortunate, therefore, that there does not exist any record of the factors or material which the Minister gave to the Director in the present case. The absence of such records prevents me to perform my duties for the judicial control of the administrative discretion of the Director in this instance. In fact the absence of such records renders the sub judice decision defective inasmuch as it lacks due reasoning. Such reasoning, if it existed, would reveal the factors on account of which the

administration came to the sub judge decision, which in this way is easier to be judged by the public opinion and for its control by an Administrative Court (see Tsatsos on the Recourse for Annulment before the Council of State 3rd edition p. 233).

- 5 For all the above reasons the sub judge decision is annulled but in the circumstances I make no order as to costs.

Having reached this conclusion it becomes unnecessary to examine the other grounds of Law relied upon by the applicant in this recourse.

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*Sub judge decision annulled.  
No order as to costs.*