

1981 September 26

[TRIANTAFYLIDES, P.]

IN THE MATTER OF AN APPLICATION
BY AGROKTIMATI KI EPIHIRISIS ROUSIAS CO. LTD.
FOR AN ORDER OF CERTIORARI,

and

IN THE MATTER OF THE ORDER OF THE DISTRICT COURT
OF NICOSIA, DATED OCTOBER 15, 1979, IN TAX
CASE NO. 3959/79.

(Application No. 27/80).

5 *Certiorari—Income tax—Arrears of—Order for payment of—Proce-
dure envisaged by section 9 of the Tax Collection Law, 1962
(Law 31/62) not followed—Error of law, on the face of the procee-
dings, vitiating validity of the order—What constitutes the Court
record.*

*Income tax—Arrears of—Order for payment of—No compliance
with procedure envisaged by section 9 of the Tax Collection
Law, 1962 (Law 31/62)—Order quashed.*

10 This was an application for an order of certiorari to quash
an order of the District Court of Nicosia by means of which
the applicant was ordered to pay C£3,989.375 mils as arrears of
income tax. The order was made under the provisions of section
9* of the Tax Collection Law, 1962 (Law 31/62), but there
15 has not been traced, and there did not appear to exist in the
archives of the registry of the above Court a tax Collector's
application and the Chief Revenue Officer's certificate, which
are envisaged by sub-section 2 of section 9.

20 In order to discover whether the correct procedure has been
followed the Court looked at the whole of the material before
it, as it was entitled to do, but it was not at all concerned with
the question of what were the records which existed in
the relevant file of the Inland Revenue Office, because they
could not be regarded as constituting Court records.

* Section 9 is quoted at p. 705 *post*.

Held, that under section 9(1) the District Court could not have made the order concerned only on an application by a tax collector; that there was required, in any event, the production of a certificate under the hand of the Chief Revenue Officer to the effect that the tax in question was still due and unpaid; that only after the production of such a certificate the applicant could have been summoned to appear before the District Court; that there has been made an order under section 9 without the prescribed procedure having been followed; that, therefore, there exists, on the face of the proceedings, an error of law vitiating the validity of the complained of order (see, *inter alia*, *R. v. Paddington Valuation Officer and Another, Ex Parte Peachey Property Corporation Ltd.* [1965] 2 All E.R. 836, 842); accordingly the order of certiorari applied for will be granted.

Application granted.

Cases referred to:

Rex v. Northumberland Compensation Appeal Tribunal. Ex parte Shaw [1952] 1 K.B. 338;

R. v. Southampton Justices, Ex parte Green [1975] 2 All E.R. 1073;

R. v. Paddington Valuation Officer and Another, Ex parte Peachey Property Corporation, Ltd., [1965] 2 All E.R. 836 at p. 842.

Application.

Application for an order of certiorari to remove into the Supreme Court and quash the order of the District Court of Nicosia, dated 15th October, 1979 in tax Case No. 3959/79.

L. Papaphilippou with *Chr. Christofides*, for the applicant,

G. Constantinou (Miss), Counsel of the Republic, for the respondent.

Cur. adv. vult.

TRIANAFYLLIDES P. read the following judgment. In this case the applicant seeks an order of certiorari to quash the order of the District Court of Nicosia in tax case No. 3959/79, by means of which the applicant was ordered, on October 15, 1979, to pay C£3,989.375 mils on November 30, 1979, as arrears of income tax.

The said order was made under the provisions of section 9 of the Tax Collection Law, 1962 (Law 31/62).

Subsections (1) and (2) of the said section 9 read as follows:

5 “9.—(1) Ἐὰν πρόσωπον ὀφείλων οἰονδήποτε φόρον παραλείψη
 νὰ καταβάλῃ ἅπαντα τὰ ὑπ’ αὐτοῦ ὀφειλόμενα ποσὰ ὅταν
 τοῦτο ἀπαιτηθῇ ὑπὸ τοῦ φοροεισπράκτορος, τὸ Δικαστήριον
 δύνανται, τῇ αἰτήσῃ τοῦ φοροεισπράκτορος καὶ τῇ προσα-
 10 γωγῇ πιστοποιητικοῦ ὑπογεγραμμένου ὑπὸ τοῦ Πρώτου
 Λειτουργοῦ Προσόδων, βεβαιούντος ὅτι ποσὸν τι ὀφείλεται
 καὶ παραμένει ἀπλήρωτον, νὰ καλέσῃ τὸ ἐν ὑπερημερίᾳ
 πρόσωπον ἐνώπιόν του καὶ νὰ προβῇ εἰς τὴν διενέργειαν
 15 ἐρεύνης περὶ τῆς καταστάσεως καὶ τῶν μέσων διαβιώσεως
 τοῦ ἐν ὑπερημερίᾳ προσώπου, καὶ νὰ διατάξῃ τὸ τοιοῦτο
 πρόσωπον ὅπως καταβάλῃ τὸ ὀφειλόμενον ποσὸν ὁμοῦ
 μετὰ τῶν συνεπειῶν τῆς ὑπερημερίας γενομένων ἐξόδων καὶ
 τῶν ἄλλων ὄλων ἐξόδων ὧν τὴν καταβολὴν ἤθελε κρίνει
 20 εὔλογον, εἴτε παραχρῆμα εἴτε διὰ δόσεων ὡς τὸ Δικαστήριον
 ἤθελεν καθορίσει.

(2) Ἡ αἴτησις τοῦ φοροεισπράκτορος καὶ τὸ πιστοποιη-
 25 τικὸν τοῦ Πρώτου Λειτουργοῦ Προσόδων, ὧν μνεῖα γίνεται
 ἐν ἔδαφίῳ (1), θὰ εἶναι ἐν τῷ τύπῳ τῷ ἐκτεθειμένῳ ἐν τῷ
 Δευτέρῳ Παραρτήματι”.

(“ 9(1) If any person owing any tax fails to pay, when
 so requested by the tax collector, all amounts due by him,
 the Court may, on the application of a tax collector and
 25 upon the production of a certificate under the hand of
 the Chief Revenue Officer to the effect that any amount is
 still due and unpaid, summon the person in default before
 such Court and such Court shall proceed to make inquiry
 as to the circumstances and means of livelihood of the
 30 person in default and shall order such person to pay the
 sum due, together with any costs occasioned by his default,
 and such other costs as to the Court may seem fit, either
 forthwith or by instalments as the Court may direct.

(2) The tax collector's application and the Chief Revenue
 35 Officer's certificate referred to in subsection (1) shall be
 in the form set out in the Second Schedule.”).

It does not appear from the record of the order in question,
 which has been produced before me as *exhibit A*, whether the
 applicant, who was the respondent in the tax collection case
 before the District Court, was present or absent, but it is common
 40 ground that he was absent.

It is not, however, common ground why he was absent: Counsel for the respondent, on the strength of affidavit evidence filed in support of the opposition to the present application, contends that the applicant was notified of the proceedings of October 15, 1979, and that he was not present because he had agreed to pay the arrears of income tax which were due by him, whereas the applicant, in his affidavit in support of the present application for an order of certiorari, appears to give a practically opposite version. 5

I do not have to resolve the above issue of disputed facts, because I will determine the fate of the present application on legal grounds: 10

It is not disputed that *exhibit A* is the only Court record which was made in relation to the complained of order. There has not been traced, and there does not appear to exist in the archives of the Registry of the District Court of Nicosia, a tax collector's application and the Chief Revenue Officer's certificate, which are envisaged by subsection (2) of section 9 (and, see, too, the forms which are prescribed by the Second Schedule to Law 31/62). 15 20

It is clear under section 9(1) that the District Court could not have made the order concerned only on an application by a tax collector; there was required, in any event, the production of a certificate under the hand of the Chief Revenue Officer to the effect that the tax in question was still due and unpaid; and only after the production of such a certificate the applicant could have been summoned to appear before the District Court. 25

I am not at all concerned with the question of what are the records which exist in the relevant file of the Inland Revenue Office, because they cannot be regarded as constituting Court records. 30

I am, thus, faced with the situation that there has been made an order under section 9 without the prescribed procedure having been followed; and in order to discover whether such procedure has been followed I have looked at the whole of the material before me, as I was entitled to do (see *Rex v. North-umberland Compensation Appeal Tribunal. Ex parte Shaw*, [1952] 1 K.B. 338, which has been considered in *R. v. Southampton Justices, ex parte Green*, [1975] 2 All E.R. 1073). 35

In the circumstances of this case I find that there exists, on the face of the proceedings, an error of law vitiating the validity of the complained of order, in the sense in which such an error has been explained in, *inter alia*, *R. v. Paddington Valuation Officer and Another, Ex parte Peachey Property Corporation, Ltd.*, [1965] 2 All E.R. 836, 842.

I, therefore, grant this order of certiorari applied for by the applicant, quashing thus the order made by the District Court of Nicosia as aforesaid.

10 The present order of certiorari does not, of course, prevent the appropriate authorities of the Republic from initiating, once again, action in accordance with the procedure under section 9 of Law 31/62, for the recovery of any tax that may be due by the applicant.

15 In view of the particular circumstances of this case I am not prepared to make any order as to its costs.

*Application granted; no order
as to costs.*