

1982 June 12

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NEW PAPHOS ESTATES LTD.,

Applicants,

v.

THE MUNICIPALITY OF PAPHOS,

Respondents.

(Cases Nos. 353/81 and 355/81).

5 *Practice—Recourse for annulment—Court can examine ex proprio motu the question whether at the time of filing of the recourses there were in existence valid executory administrative decisions that could be made the subject of a recourse under Article 146.1 of the Constitution.*

10 *Administrative Law—Administrative acts or decisions—Executory administrative act—Recourses against omission to issue certificate of approval under section 10 of the Streets and Buildings Regulation Law, Cap. 96—Prerequisites laid down by section 10 for the issue of the certificate applied for not existing at the time of the filing of the recourse—Recourses cannot proceed as they purport to challenge an executory administrative decision which could not in law have existed at the time of their filing.*

15 *Streets and Buildings Regulation Law, Cap. 96—Certificate of approval under section 10 of the Law—Prerequisites for the issue of.*

20 In June 1979 the applicants applied to the respondent Municipality for the issue of a covering permit in respect of certain additions they have made to existing buildings of theirs. By letters dated 19.6.1981 and 26.8.1981, which were addressed to the respondents, Counsel for the applicants inquired for their omission to issue the building permits applied for. These building permits were eventually issued on the 2nd and 3rd November, 1981. On October 3, 1981, however, the applicants

filed the above recourses seeking a declaration that the act and/or omission of the respondent Authority to answer the said two letters of June 1981 "thereby rejecting the applicants' application for a building permit and a certificate of approval in respect of the buildings in question, was null and void and of no effect whatsoever as having been made and or taken contrary to the provisions of the Law and/or of the Constitution and/or in excess and abuse of powers, if any".

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As in the course of the opening address of counsel for the applicant, it became apparent that there existed the question whether at the time of the filing of these two recourses there were valid executory administrative decisions that could be made the subject of a recourse under Article 146 of the Constitution the Court raised *ex proprio motu*, as it was entitled to do, the question whether there was such an executory or administrative decision (see *Razis & Another v. The Republic* (1982) 3 C.L.R. p. 45 and the authorities therein referred to). The Court pursued this course as the matter goes to the root of the jurisdiction of this Court under Article 146 of the Constitution and it invited counsel on both sides to argue whether there could be in law prior to the 3rd October, 1981, an executory administrative decision in the form of a refusal by the respondent Authority to issue a certificate of approval under section 10 of the Streets & Buildings Regulation Law, Cap. 96, that could be so challenged.

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On the question of the existence of valid executory administrative decisions:

Held, that as it appears from section 10* of the Streets and Buildings Regulation Law, Cap. 96 there are three prerequisites to the issue of a certificate of approval:

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(a) the existence of a building permit issued under section 3 of the Law; (b) the completion of the subject building and (c) a notification to the appropriate Authority of the completion of the work; that a certificate of approval will only then be issued if the Authority is satisfied that the work or other matter in respect of which the permit has been granted has been duly completed in accordance with the permit; that in

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* Section 10 is quoted at p. 417 post.

the present case there could not have been a decision for the issuing or the refusing of a certificate of approval once there did not exist the relevant building permits at the time; that, consequently, neither of these two recourses can be proceeded with as they purport to challenge an executory administrative decision which could not in law have existed at the time of their filing; accordingly the recourses should fail.

Applications dismissed.

Cases referred to:

10 *Razis and Another v. The Republic* (1982) 3 C.L.R. 45.

Recourses.

Recourses against the refusal of the respondents to issue a certificate of approval in respect of building permits issued to applicants.

15 *L. Kythreotis*, for the applicants.

K. Chrysostomides, for the respondents.

Cur. adv. vult.

A. LOIZOU J. gave the following judgment. These two recourses have, by a direction made with the consent of the parties, been tried together as they presented common questions of law and fact.

In respect of the property referred to in Recourse No. 353/81, a building permit (exhibit 4) was originally issued on the 6th June, 1979, for the construction of a ground floor building. To this, three more storeys were added without a permit and an application for a covering one was made which was issued on the 3rd November, 1981 (exhibit 5) containing new conditions, one of them being the construction of an impermeable holding tank instead of the usual septic tank required by the previous permit.

In respect of the building referred to in Recourse No. 355/81, a building permit was issued on the 1st March, 1978, (exhibit 1) for the construction of a four-storey block of flats. Later an additional building permit (exhibit 2) was issued on the 28th May, 1979, for the construction of a shed. Subsequently, for the alterations and extensions made to it and for the construction of a swimming pool, a new permit was issued

(exhibit 3) on the 2nd November, 1981, requiring thereby also, among the other conditions imposed, the construction of an impermeable holding tank.

Until the issue of the two building permits—the final ones as they appeared to be—in respect of the two premises on the 3rd and 2nd November, 1981, respectively, counsel for the applicants addressed two letters dated the 19.6.1981 and 26.8.1981 to the respondent Authority inquiring for their omission to issue the building permits applied for. These two recourses were filed on the 3rd October, 1981, seeking a declaration that the act and/or omission of the respondent Authority to answer the said communications “thereby rejecting the applicants’ application for a building permit and a certificate of approval in respect of” the buildings in question, was “null and void and of no effect whatsoever as having been made and/or taken contrary to the provisions of the Law and/or of the Constitution and/or in excess and abuse of powers, if any”.

The hearing of these two recourses was not proceeded with in respect of the omission of the respondent Authority to answer in breach of its obligation under Article 29 of the Constitution, as proceedings under Article 146 were treated as having been instituted through the second leg of the prayer for relief regarding the substance of the unanswered petition and therefore the right of recourse for the failure to reply under Article 29 merged in such proceedings; nor these recourses were proceeded with as against the executory administrative acts of the issuing of the two building permits of the 2nd and 3rd November in view of the fact that both had been issued after the filing of the present recourses, hence they could not have been their subject matter.

Counsel for the applicant, however, has argued that he could challenge what might be described, in the circumstances, the anticipated refusal of the respondent Authority to issue a certificate of approval which he maintained was the third leg of the prayer for relief in these recourses, urging that they would refuse to grant such a certificate of approval because of the non-construction of the impermeable holding tanks which with the evidence he was about to call the applicants would establish that their requirement by the respondent Authority amounted to an exercise of its discretion in abuse or excess of power.

In the course of the opening address of counsel for the applicant, it became apparent that there existed the question whether at the time of the filing of these two recourses there were valid executory administrative decisions that could be the subject of a recourse under Article 146 of the Constitution and I raised ex proprio motu, as I am entitled to do, the question whether there was such an executory or administrative decision (see *Razis & Another v. The Republic* (1982) 3 C.L.R. p. 45 and the authorities therein referred to). I pursued this course as the matter goes to the root of the jurisdiction of this Court under Article 146 of the Constitution and I invited counsel on both sides to argue whether there could be in law prior to the 3rd October, 1981, an executory administrative decision in the form of a refusal by the respondent Authority to issue a certificate of approval under section 10 of the Streets & Buildings Regulation Law, Cap. 96, that could be so challenged.

Having heard both counsel I have come to the conclusion that there could not exist at the time of the filing of these two recourses a valid administrative executory decision relating to that subject. Section 10 of the said law reads as follows:

- “(1) No person shall occupy or use, or cause, permit, or suffer any other person to occupy or use, any building unless and until a certificate of approval has been issued in respect thereof by the appropriate authority.
- (2) The holder of a permit shall, not later than twenty-one days from the completion of the work or matter in respect of which the permit has been granted under the provisions of section 3 of this Law, notify the appropriate authority of such completion and such authority, if satisfied that the work or matter has been duly completed in accordance with the permit, shall furnish the holder with a certificate of approval of the work or other matter in respect of which the permit has been granted”.

As it clearly appears from this provision, there are three prerequisites to the issue therein of a certificate of approval: (a) the existence of a building permit issued under section 3 of the Law; (b) the completion of the subject building permit; (c) a notification to the appropriate Authority of the completion of the work. Needless to say that a certificate of approval

will only then be issued if the Authority is satisfied that the work or other matter in respect of which the permit has been granted has been duly completed in accordance with the permit.

In the present case there could not have been a decision for the issuing or the refusing of a certificate of approval once there did not exist the relevant building permits at the time. Consequently, neither of these two recourses can be proceeded with as they purport to challenge an executory administrative decision which could not in law have existed at the time of their filing. 5

For all these reasons both recourses are dismissed but in the circumstances there will be no order as to costs. 10

Application dismissed. No order as to costs.