

1982 September 17

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PLATON ANTONIADES AND OTHERS,

Applicants,

v.

THE CHAIRMAN AND MEMBERS OF THE MUNICIPAL
COUNCIL OF PAPHOS,

Respondents.

(Case No. 18/81).

Practice—Application dealt with by organ which had no authority to deal with it and reach a decision—Court can deal with the issue ex proprio motu.

Buildings—Building permit—Municipal Corporation—Appropriate Authority to issue building permit within any area of a Municipal Corporation shall be the Municipal Council of such corporation —Section 3(2) of the Streets and Buildings Regulation Law, Cap. 96—Application for building permit dealt with by Municipal Engineer and not placed before Municipal Council—Decision of Municipal Engineer taken without Authority, contrary to the provisions of Cap. 96—Annulled. 5 10

Administrative Law—Application for building permit—Dealt with by an organ which had no authority to deal with it and reach a decision—Annulled.

The applicants, who were the registered owners of a building site at Paphos submitted, on the 17th July, 1980, to the respondents, who were the Municipal Council of Paphos, an application accompanied by architectural plans, for the issue to them of a building permit. On the 31st October, 1980, the Municipal Engineer of the respondents wrote to the applicants a letter by which he informed them that the permit applied for could not be issued as the building intended to be constructed was 15 20

to be affected by a proposed street, alignment scheme. By the said letter the Municipal Engineer invited the applicants to amend the architectural plans in accordance with the proposed street alignment scheme, which is marked in red colour on a site plan attached to this letter. As a result of the refusal of the respondents to issue the building permit applied for, the applicants filed the present recourse by which they attacked the legality of the decision and/or the refusal of the respondents to issue the building permit.

Held, that under section 3(2) of the Streets and Buildings Regulation Law, Cap. 96 the appropriate authority for issuing permits within any area of a municipal Corporation shall be the municipal council of such corporation; that since in the present case, the Municipal Engineer stated in evidence that when the application of the applicants came to his notice, he immediately sent them the letter by which he informed them that the intended building was to be affected by the proposed street alignment scheme and that they had to amend their plans accordingly and the application of the applicants was not placed before the municipal council of Paphos or any body appointed by the council under sub-sections 5 and 6 of section 3 of Cap. 96 and that no decision was reached by them; and that since there is no evidence that the Municipal Engineer was a competent organ of the respondents to decide on the issuing or not of a building permit, it is clear that the decision was taken without authority, contrary to the provisions of Cap. 96; that when an application is dealt with by an organ which has no authority to deal with it and a decision is reached, the Court has jurisdiction to deal with the issue *ex proprio motu* and such decision is considered to be illegal and has to be annulled; that, therefore, it is unnecessary to examine any of the other legal issues raised by the applicants or the respondents; and that as the sub-judice decision was taken by an officer of the respondents who was unauthorised to take it, the applicants could avail themselves of the rights given to a citizen under Article 146 of the Constitution and, in the circumstances, the recourse must succeed and the sub-judice decision be declared null and void and of no legal effect.

Sub judice decision annulled.

Recourse.

Recourse against the refusal of the respondents to grant applicants a building permit in respect of their building site under Reg. No. 27184 situate at Paphos.

A. Stylianidou (Miss), for the applicants.

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K. Chrysostomides, for the respondents.

Cur. adv. vult.

DEMETRIADES J. read the following judgment. By this recourse the applicants, who are the registered owners of the immovable property hereinunder described, pray for a declaration -

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- (1) That the decision of the respondents, which was communicated to them by letter dated 31st October, 1980 (received by them on or about the 1st November, 1980) not to issue a building permit for their plot under Registration No. 27184, Sheet-Plan LIV/3.4.V. plot 1205, situated at Paphos (hereinafter to be referred as "the building site"), is void and of no effect whatsoever. 15
- (2) That the decision of the respondents not to issue a building permit for the said building site of the applicants is void, as being contrary to the provisions of the law and/or as it has been taken in excess and/or in abuse of power. 20
- (3) That failure of the respondents to issue the building permit and/or their refusal to grant the permit, though there existed at all material times all that is required by law for the issue of such permit, is unlawful and/or arbitrary and/or without lawful reasoning. 25
- (4) The failure of the respondents to issue the building permit is unlawful and/or arbitrary constituting a failure to act lawfully. 30

The facts of the case are, in brief, the following:

The applicants, who are the registered owners of the building site hereinabove described, of an extent of 1 donum and 1296 sq. ft., submitted, on the 17th July, 1980, to the respondents, who are the Municipal Council of Paphos, an application accompanied by architectural plans, for the issue to them of a

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building permit. On the 31st October, 1980, the Municipal Engineer of the respondents wrote to the applicants a letter by which he informed them that the permit applied for could not be issued as the building intended to be constructed was to be affected by a proposed street alignment scheme. By the said letter the Municipal Engineer invited the applicants to amend the architectural plans in accordance with the proposed street alignment scheme, which is marked in red colour on a site plan attached to this letter.

10 As a result of the refusal of the respondents to issue the building permit applied for, the applicants filed the present recourse by which they attack the legality of the decision and/or the refusal of the respondents to issue the building permit.

15 By their opposition the respondents allege that the sub judge decision and their refusal to issue the said permit is lawful and that it was taken in accordance with the provisions of the Streets and Buildings Regulation Law, Cap. 96, and the Regulations made thereunder. They, further, deny that their decision is not duly reasoned, that it was taken in excess and/or 20 in abuse of their power and that it was taken as a result of a misconception of the actual facts.

During his address counsel for the respondents had further alleged that the sub judge decision is not an executory act, but that it is a preparatory one as what the respondents did was to 25 advise the applicants and/or give notice to the applicants of the intended street alignment scheme and for the amendment of their plans accordingly.

Before proceeding to deal with the legal ground raised by counsel for the respondents, namely that the decision contained 30 in the letter of the Municipal Engineer addressed to the applicants is not an executory one, it is pertinent, I feel, to refer to the relevant legal provisions regulating the matter of the issuing of a building permit.

35 The law governing the issue of building permits is the Street and Buildings Regulation Law, Cap. 96, which provides as to when a permit is granted and which is the appropriate authority for the issue of such permits. Sub-section 2 of section 3 of the

Law provides that the appropriate authority for issuing permits within any area of a municipal corporation shall be the municipal council of such corporation.

By sub-section 4 of section 3 of Cap. 96, it is provided that where the appropriate authority is the municipal council, the mayor, or the deputy mayor of the corporation or any other person authorised by the corporation in that behalf shall have power to issue permits, notices or any other instrument or document which such appropriate authority has power to issue under the provisions of the Law; and by sub-sections 5 and 6 it is further provided that the council may, from time to time, delegate to an executive committee consisting of not more than three members of the council all or any of the powers conferred upon the council under the provisions of the Law and that such body shall be, during the term of its appointment, the appropriate authority for the purposes of the Law.

In the present case, the Municipal Engineer stated in evidence before the Court that when the application of the applicants came to his notice, he immediately sent them the letter by which he informed them that the intended building was to be affected by the proposed street alignment scheme and that they had to amend their plans accordingly. It is nowhere to be found that the application of the applicants was placed before the municipal council of Paphos or any body appointed by the council under sub-sections 5 and 6 of section 3 of Cap. 96 and that a decision was reached by them. Further, there is no evidence before me that the Municipal Engineer was a competent organ of the respondents to decide on the issuing or not of a building permit.

In the circumstances, it is clear that the decision was taken without authority, contrary to the provisions of Cap. 96. As this issue was not argued by either side I shall have to see whether the Court can examine it *ex proprio motu* and what is the remedy of the applicants in case they succeed.

As it appears from Greek legal literature and decisions of the Council of State in Greece (see Παπαχατζή Σύστημα του Ισχύοντος στην Ελλάδα Διοικητικού Δικαίου, 5η Έκδοση, σελ. 469) (System of the Administrative Law applicable in Greece, 5th edition, p. 469 and, *inter alia*, Decision 781/1966) when an

application is dealt with by an organ which has no authority to deal with it and a decision is reached, the Court has jurisdiction to deal with the issue *ex proprio motu* and such decision is considered to be illegal and has to be annulled.

5 In view of the above, I consider it unnecessary to examine any of the other legal issues raised by the applicants or the respondents. As the *sub judice* decision was taken by an officer of the respondents who was unauthorised to take it, I
10 find that the applicants could avail themselves of the rights given to a citizen under Article 146 of the Constitution and, in the circumstances, the recourse must succeed and the *sub judice* decision be declared null and void and of no legal effect.

In the circumstances of the case, each party to pay his costs.

15 *Sub judice* decision annulled.
Order for costs as above.