

1983 September 10

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF AN APPLICATION BY ANDREAS PANOU LANITI LTD., FOR AN ORDER OF PROHIBITION.

(Application No. 15/80)

*Prohibition—Article 155.4 of the Constitution—Only in respect of action of a judicial nature, and not of an administrative nature, an order of prohibition may be granted—Decision of Director of Lands and Surveys under section 61 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224—Director acting as an organ of the administration and not in a judicial capacity—No jurisdiction to grant an order of prohibition, under the above article, in respect of such a decision.* 5

The Director of Lands and Surveys (“the Director”), in the exercise of his powers under section 61 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, sent a notice to the applicant by means of which he informed him that he proposed to correct an error regarding the boundaries of immovable property at Yermasoyia which was registered in the name of the applicant and by doing so to vary accordingly the recorded, in respect of such registration, area of the said property of the applicant. 10 15

Hence this application for an order of prohibition preventing the Director from taking any further action in accordance with the said notice. 20

*Held*, that it is only in respect of action of a judicial nature, and not of an administrative nature, that an order of prohibition may be granted; that in acting under section 61 of Cap. 224 the Director is acting as an organ of the administration and not in a judicial capacity; accordingly this Court does not possess jurisdiction to grant an order of prohibition, under Article 155.4 of the Constitution, in respect of a decision under section 61 of Cap. 224. 25

*Application dismissed.*

## Cases referred to:

- Valana v. Republic*, 3 R.S.C.C. 91;  
*Ramadan v. Electricity Authority of Cyprus*, 1 R.S.C.C. 49;  
*Chakkarto v. The Attorney-General*, 1961 C.L.R. 231 at p. 237;  
5 *Frangos v. Medical Disciplinary Board* (1983) 1 C.L.R. 256;  
*Turner v. Kingsbury Collieries Ltd.* [1921] 3 K.B. 169 at pp. 174-179.

**Application.**

10 Application for an order of prohibition preventing the Director of Lands and Surveys from taking any further action in accordance with a Notice sent by the Director to the applicant on the 8th February, 1980 under section 61 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224.

- A. *Anastassiades*, for the applicant.  
15 Cl. *Antoniades*, Senior Counsel of the Republic, for the Republic.

*Cur. adv. vult.*

20 TRIANTAFYLIDIS P. read the following judgment. By means of this application the applicant company (to be referred to hereinafter as "the applicant") is, in effect, seeking an order of prohibition preventing the Director of Lands and Surveys from taking any further action in accordance with a Notice sent by the Director to the applicant on the 8th February 1980, under section 61 of the Immovable Property (Tenure,  
25 Registration and Valuation) Law, Cap. 224.

By means of the said Notice the Director informed the applicant that he proposed, in the exercise of his powers under the said section 61, to correct an error regarding the boundaries of immovable property at Yermassoyia which is registered  
30 in the name of the applicant, by means of registration No. 18013 of the 28th November 1968, and by doing so to vary accordingly the recorded, in respect of such registration, area of the said property of the applicant.

35 When I granted leave to the applicant to apply by means of the present application for an order of prohibition I made an order staying any further action by the Director in the matter and, therefore, the situation remained frozen as it was when the said Notice of 8th February 1980 was sent to the applicant.

I have perused carefully the arguments which have been put forward by means of the written addresses of counsel for the parties, as well as all the other material which has been placed before me by them, and I have reached the conclusion that this is an instance in which I do not possess jurisdiction, under Article 155.4 of the Constitution, to grant an order of prohibition as applied for by the applicant. 5

There can be no doubt that the Director of Lands and Surveys, in acting under section 61 of Cap. 224, is acting in an administrative capacity for the purpose of regulating, in the domain of private law, civil law rights in relation to property (see, in this respect, inter alia, *Valana v. The Republic*, 3 R.S.C.C. 91). 10

It is true that in view of the fact that the Director is acting in the domain of private law, and not in the domain of public law, his complained of by the applicant action is not subject to judicial control under Article 146 of the Constitution (see the *Valana* case, supra). But this factor is not by itself sufficient to bring the action in question of the Director within the ambit of judicial control by means of an order of prohibition under Article 155.4 of the Constitution. 15 20

It is correct that in view of the mutually exclusive nature of the respective jurisdictions under Articles 146.1 and 155.4 of the Constitution (see, *Ramadan v. The Electricity Authority of Cyprus*, 1 R.S.C.C. 49) administrative action in the domain of public law, which comes within the ambit of Article 146.1, above, is not within the ambit of Article 155.4, too. But it does not follow from this premise that administrative action which is not within the scope of the jurisdiction under Article 146.1 is always subject to judicial control under Article 155.4 by means of an order of prohibition; because it is only in respect of action of a judicial nature, and not of an administrative nature, that an order of prohibition may be granted. 25 30

In acting under section 61 of Cap. 224 the Director of Lands and Surveys is acting as an organ of the administration and not in a judicial capacity (see *Chakkarto v. The Attorney-General*, 1961 C.L.R. 231, 237); and also, in my opinion, there can be no doubt that the complained of in the present case action, under section 61 above, of the Director cannot be regarded as a judicial function, as such function has been quite recently 35

described in *Frangos v. Medical Disciplinary Board*, (1983) 1 C.L.R. 256.

It is useful, too, to refer to the case of *Turner v. Kingsbury Collieries, Limited*, [1921] 3 K.B. 169, where McCardie J. stated the following (at pp. 174–179):

“Now the writ of prohibition is a judicial writ, issuing from a Court of superior jurisdiction and directed to an inferior Court for the purpose of preventing it from usurping a jurisdiction with which it is not legally vested: see Short and Mellor’s *Crown Office Practice*, 2nd ed., p. 252. The proceedings to be prohibited must be of a judicial character, and not belonging to the executive government: *Ibid.* p. 253; and the cases there cited. If the jurisdiction of the judge of the inferior Court depends upon contested facts, it is his duty to decide upon the facts, and his decision cannot be questioned on prohibition: *Ibid.*, p. 255; *Brown v. Cocking*<sup>1</sup>; and the *County Court Practice*, 1921, notes to s. 127, where many cases on prohibition are collected.

The phrase ‘inferior Court’ has been liberally interpreted: see Short and Mellor, 2nd ed., p. 258 et seq. But I deem it clear that no prohibition will lie to an ordinary arbitrator. This seems plain on principle. See too per Channell J. in *Tunbridge Wells Corporation v. Natural Telephone Co.*<sup>2</sup> and Short and Mellor, 2nd ed., p. 262.

Now what is the position of a county Court judge who is sitting and adjudicating under the provisions of the Second Schedule to the Workmen’s Compensation Act?

Now the result of the statutory provisions and decisions so far seems to be that a county Court judge when sitting to determine under the Workmen’s Compensation Act, 1906, is an arbitrator and an arbitrator only.

I must hold that prohibition will not lie to an arbitrator under the Workmen’s Compensation Act, whether he be a county Court judge or an arbitrator appointed under

1. [1868] L.R. 30 Q.B. 672

2. [1900] 83 L.T. 525, 530.

paras. 2 and 3 of the Second Schedule. With respect to prohibition each seems to stand on the same footing”.

If as was found in the *Turner* case, supra, a county Court judge sitting as an arbitrator under the Workmen’s Compensation Act, 1906, in England, was not acting in a manner which could bring him within the ambit of the remedy of prohibition, a fortiori in the present instance the Director of Lands and Surveys, who is not a judicial officer and is not even acting as an arbitrator under section 61 of Cap. 224, but only in an administrative capacity, cannot be treated as performing a judicial function coming within the ambit of the jurisdiction to make an order of prohibition under Article 155.4 of the Constitution; and, consequently, as already stated in this judgment, I am of the opinion that I do not possess jurisdiction to grant the order of prohibition applied for by the applicant in this case.

It might be observed that the proper course open to the applicant in the present instance would be to object to the aforementioned Notice and, then, if the applicant is dissatisfied with any eventual decision of the Director in the matter in question, the applicant may appeal to the District Court, under section 80 of Cap. 224, and from its judgment to the Supreme Court, if necessary.

In concluding I would add that even if, contrary to my above view, it could be held that a decision of the Director of Lands and Surveys under section 61 of Cap. 224 amounts to the exercise of a judicial function, in the present case there does not as yet exist such a decision but only a preparatory step by way of Notice which was given by the Director; and it cannot be surmised from now that his decision, after the applicant objects to such Notice, is going to be against the applicant.

Thus, the said Notice cannot be treated, in any event, as a judicial function in respect of which the applicant would be entitled to be granted an order of prohibition, even assuming that in the present case I have jurisdiction to grant such an order, under Article 155.4 of the Constitution, in respect of a decision under section 61 of Cap. 224.

For all the foregoing reasons this application fails and is dismissed; but I have decided to make no order as to its costs.

*Application dismissed. No order as to costs.*