

1983 December 23

[A. Loizou, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS CONSTANTINOU,

*Applicant*

v.

1. THE DISTRICT OFFICER NICOSIA,
2. THE REPUBLIC OF CYPRUS, THROUGH  
THE ATTORNEY-GENERAL,

*Respondent.*

(Case No. 479/80).

*Electricity Law, Cap. 170—Placing of electric lines, by virtue of section 31 of the Law, above ground and across private property—Nothing more than a restriction, falling within the ambit of Article 23.3 of the Constitution, which was imposed in the public interest—Article 23 of the Constitution not offended.*

*Constitutional Law—Right of property—Restrictions thereon—Placing electric lines above ground and across private property, by virtue of section 31 of the Electricity Law, Cap. 170—Merely a restriction under Article 23.3 of the Constitution.*

*Administrative Law—Administrative acts or decisions—Reasoning—Supported by the material in the file.*

On the 14th January, 1980 the Electricity Authority of Cyprus by notice in writing asked the applicant to give his consent for the installation across his property at Yeri of two overhead 132 KV lines and erection of two steel pylons thereon. The applicant refused to give his consent on the ground that he intended to divide the property in question into building sites. The District Officer Nicosia, acting under section 31 of the Electricity Law, Cap. 170, and after obtaining the views of the Assistant District Inspector to the effect that there was no prospect for the development into building sites of applicant's property gave his consent on condition that the installation

would not affect the legal rights of the applicant. Hence this recourse.

Counsel for the applicant mainly contended:

- (a) That the consent of the respondent constituted a deprivation of ownership and not a restriction and consequently the proper procedure to be resorted to was the one provided for by the Compulsory Acquisition of Property Law, 1962. 5
- (b) That the decision of the District Officer to give his consent was taken without due inquiry on a misconception of fact and that it had no reasoning and that no proper minutes were kept. 10

*Held*, (1) that the proposed erection of the steel pylons and the placing of the lines across the property of the applicant, is nothing more than a restriction falling within the ambit of para. 3 of Article 23 of the Constitution and that such restriction was done in the public interest; that, therefore, Article 23 of the Constitution cannot be held to have been offended; accordingly contention (a) should fail. 15

(2) That the decision of the District Officer was taken after a proper inquiry, is duly reasoned, inasmuch as the District Officer has adopted the reasoning contained in the memoranda submitted to him by the Officers who were instructed by him to carry out the necessary inquiry, and which is further supported by the rest of the material in the files and constitutes the reasoning for his own decision; accordingly contention (b) should also, fail. 20 25

*Application dismissed.*

Cases referred to:

- Mallouros and Another v. Electricity Authority* (1974) 3 C.L.R. 220 at p. 224; 30
- Mikellidou v. Republic* (1981) 3 C.L.R. 461 at pp. 471-472;
- Eleftheriou and Others v. Central Bank* (1980) 3 C.L.R. 85 at p. 98;
- Photiades & Co. v. Republic*, 1964 C.L.R. 102 at pp. 112, 113; 35
- Karagiorghis v. Republic* (1982) 3 C.L.R. 549;
- Medcon Construction and Others v. Republic* (1968) 3 C.L.R. 535 at p. 543;

*Kyprianou and Others v. Republic* (1975) 3 C.L.R. 187 at p. 193;  
*Papaonisiforou v. Republic* (1982) 3 C.L.R. 1182 pp. 1184–1185.

### Recourse.

5 Recourse against the decision of the respondent to give his consent to the Electricity Authority of Cyprus for the installation, across applicant's property at Yeri, of two overhead 132 KV lines and the erection of two steel pylons.

*M. Vassiliou*, for the applicant.

*A. Vassiliades*, for the respondent.

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*Cur. adv. vult.*

A. LOIZOU J. read the following judgment. By the present recourse the applicant seeks a declaration that the consent of the District Officer Nicosia given to the Electricity Authority of Cyprus on the 20th September, 1980, for the installation  
 15 across his property at Yeri under Sheet/Plan 30/8.E.2, block 'C', of plot 73, at locality "Kakoscali" of two overhead 132 kv lines under section 31 of the Electricity Law Cap. 170, and the erection of two steel pylons on the said plot, is null and void and of no effect whatsoever as being contrary  
 20 to Law, the Constitution and the general principles of Administrative Law.

On the 14.1.1980 the Electricity Authority of Cyprus by notice in writing asked the applicant to give his consent to the carrying  
 25 out of the aforementioned works in his said property. The applicant refused to give his consent on the ground given by a letter of his advocate dated 26.1.1980 (blue 39, exhibit 'B') that he intended to divide the plot in question into building sites. The consent was given on the 20th September, 1980, on condition that the installation would not affect the legal  
 30 rights of the applicant. Before doing so, however, the District Officer who had before him the necessary plans and other relevant material (exhibit 'B', blue 100 et seq.) asked the District Inspector of his office to report to him on the situation. The latter by his report of the 25th June, 1980 (blue 102, exhibit  
 35 'B') had, inter alia, this to say:—

“.....  
 2. As it is known the Electricity Authority of Cyprus intends

to convey electric current to Nicosia from the new Electric Power Station of Dhekelia 132 kv.

3. In the area of Yeri all the owners object strongly yet as I have been told by the appropriate Officer of the Authority, a change of its plans is impossible. 5
4. As the pylons to be erected and the overhead lines will occupy a substantial part of the plots, it is recommended that the consent is given on conditions.
5. It is recommended that the views of the Assistant District Inspector of Potamia and Ayios Sozomenos be obtained". 10

There followed the following note from the said Assistant District Inspector:

"As I have ascertained the installation of the proposed overhead electric line of high voltage is intended to pass over properties of the villages of my district, Potamia and Ayios Sozomenos which are mostly arid and for which no prospect for their development into building sites exists. In view of the aforesaid and the fact that the proposed work serves the public interest and especially the area of Idalion, it is recommended that our consent be given". 15  
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The District Inspector then suggested that the consent be given on condition that the owners affected will be compensated.

The first ground relied upon by the applicant in support of his application is that the consent of the respondent given for the construction of the two pylons and the installations of the overhead electric lines constitute a deprivation of ownership and not a restriction and consequently the proper procedure to be resorted to was the one provided for by the Compulsory Acquisition of Property Law, 1962. As stated in the case of *Mallouros and Another v. The Electricity Authority* (1974) 3 C.L.R. 220, at p. 224: "For the determination of this issue one has to ascertain the character of the interference with the ownership of property complained of". 25  
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Although it was indicated that evidence was to be called on behalf of the applicant, no evidence was given and on the 35

contrary there has been a statement of fact on behalf of the respondents to the effect that the property of the applicant could not be divided into building sites for a number of reasons which included:

- 5 (1) That the plot in question had no access to road.
- (2) That it was very far from the water supply area and the plot as such did not have any other source of water.
- (3) That it lies within Town Planning Zone 'C' where the ratio for building is 10%.

10 In addition to and/or in the alternative, it was argued that the decision of the District Officer to give his consent was taken without due inquiry on a misconception of fact and that it has no reasoning and that no proper minutes were kept.

In support of the aforesaid propositions reference has been  
15 made to a number of cases where the general principles of Administrative Law calling for compliance to these propositions have been expounded (see *Mikellidou v. The Republic* (1981) 3 C.L.R. 461 at pp. 471-472; *Eleftheriou & Others v. Central Bank* (1980) 3 C.L.R. p. 85, at p. 98; *Ph. Photiades & Co. v. The Republic*, 1964 C.L.R. p. 102, at pp. 112 & 113; *Karagiorghis v. The Republic* (1982) 3 C.L.R. p. 459; *Medcon Construction & Others v. The Republic* (1968) 3 C.L.R. 535, at p. 543; *Kyprianou & Others v. The Republic* (1975) 3 C.L.R. 187, at p. 193; *Papaonisiforou v. The Republic* (1982) 3 C.L.R. 25 1182, at pp. 1184-1185).

Having gone through the relevant material, I have come to the conclusion that the proposed erection of the steel pylons and the placing of the lines across the property of the applicant, is nothing more than a restriction falling within the ambit of  
30 para. 3 of Article 23 of the Constitution and that such restriction was done in the public interest. Therefore, Article 23 of the Constitution cannot be held to have been offended. The perusal of the relevant file shows that the decision of the District Officer was taken after a proper inquiry, is duly reasoned, inasmuch  
35 as the District Officer has adopted the reasoning contained in the memoranda submitted to him by the Officers who were instructed by him to carry out the necessary inquiry, and which is further supported by the rest of the material in the files and constitutes the reasoning for his own decision.

The question of the compensation of the applicant is a matter that has to be determined by the appropriate procedure (see *Mallouros & Another v. The Electricity Authority of Cyprus* (1974) 3 C.L.R. 220, at p. 225). In fact, the consent of the applicant was given with due cognizance and by expressly safeguarding such right. 5

Before concluding I would like to refer briefly to the question raised in the opposition that the sub judice act is not an executory one in the sense of Article 146 of the Constitution which objection, however, was not pursued at the trial, although extensive argument was advanced on behalf of the applicant in anticipation to it. In view of this turn of events and the outcome of this recourse, I have not thought it pertinent to go into the matter as I ought to, being a question that affects the jurisdiction of this Court and this because by assuming the act to be an executory administrative act in the sense of the said Article, I have come to the conclusion to dismiss the recourse on the merits and I leave the matter open. 10 15

For all the above reasons this recourse is dismissed, but in the circumstances I make no order as to costs. 20

*Recourse dismissed with no order as to costs.*