

1983 June 23

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION.

ELENI EVRIPIDOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE DISTRICT OFFICER, LARNACA,

Respondents.

(Case No. 265/82).

5 *Streets and Buildings Regulation Law, Cap. 96—Building permit—
Sections 3(1) and 4(1) of the Law—Give no power to the appropriate authority to have regard, in examining a permit, to the views of the village authority and the medical authorities as to the use of the premises.*

Town and country zoning—Need for a comprehensive town and country zoning.

10 This was a recourse against the refusal of the respondent to grant a permit to the applicant for the building of certain premises at Avdellero village and the sole issue was whether the District Officer of Larnaca, as appropriate authority for building purposes for the village of Avdhellero, had power to withhold the permit in view of the intention of the village authorities to withhold permission for the use of the premises to be built as a pig-sty, declared by the applicant, the objections of the medical authorities and the likely complications upon the development of the network of roads in the area.

20 *Held*, that section 3(1) of the Streets and Buildings Regulation Law, Cap. 96 confers discretion upon the appropriate authorities for building purposes to grant or withhold a permit; that this discretion is not absolute but subject to the provisions of section 4(1) of the Law; that having regard to the

provisions of Article 23 of the Constitution, safeguarding the right to property, s.4(1) must inevitably be construed as introducing limitations to the use and enjoyment of land in the interests of country planning; that the limitations must not go beyond what the law expressly sanctions; that, consequently, s.4(1) must be construed as requiring the appropriate authority to approve an application, provided it complies with the provisions of Cap. 96 and regulations made thereunder; that to construe s.4(1) as conferring an absolute discretion upon the appropriate authority to refuse a permit, would be tantamount to acknowledging power to administrative authorities to introduce at their discretion limitations to the use and enjoyment of property not sanctioned by law; that the provisions of Cap. 96 and the relevant regulations give no power in the appropriate authority to have regard in examining a permit to the views of the village authority, as to the use of the premises, or the medical authorities for that matter; and therefore the appropriate authority in this case refused the application for reasons other than those laid down by the law. This was impermissible; the appropriate authority exceeded its powers as well as abused them. Consequently, the decision must be annulled.

Sub judice decision annulled.

Observations with regard to the need for comprehensive town and country zoning, something of vital importance for the well-being of all the inhabitants of the country.

Cases referred to:

Vassiliades and Another v. District Officers Larnaca (1976) 3 C.L.R. 269.

Recourse.

Recourse against the refusal of the respondents to issue a building permit to the applicant for the erection of a pig-sty.

G. Constantinides with Z. Mylonas, for the applicant.

A. Vladhimirou, for the respondents.

Cur. adv. vult.

PIKIS J. read the following judgment. The extent and ambit of the powers of the authorities entrusted with power under the

provisions of the Streets and Buildings Law - Cap. 96, to license the building of premises, is the basic issue calling for resolution in these proceedings. Specifically, we must decide whether the District Officer of Larnaca, as appropriate authority for building purposes for the village of Avdhellero, had power to withhold the permit in view of the intention of the village authorities to withhold permission for the use of the premises to be built as a pigsty, declared by the applicant, the objections of the medical authorities and the likely complications upon the development of the network of roads in the area, from the proximity of the building to the main road linking the village with the rest of the country. Reference to the history of the proceedings will illuminate the issues and make the search for solution casier.

On 4.7.1980 the applicant made application for the authorisation of a building at Avdhellero on a site adjacent to the main road, close to the inhabited area, some two thousand feet away from the housing estate. The application was refused because of the objections of the village authorities to the contemplated use of the building, intended for use as a pigsty and, the hazards to health certified by the medical authorities. Avdhellero is a small and fairly isolated village of about fifty inhabitants. The refusal of the authorities was communicated to the applicant on 6.8.1980. Shortly afterwards, she filed a recourse challenging the decision. The recourse was eventually withdrawn on an undertaking being given by the appropriate authority to re-examine the matter; so, on 20.3.1982, the recourse was dismissed. Soon afterwards, on 29.3.1982, the applicant renewed her application for a permit and the authorities, true to their undertaking, promptly went into the matter afresh. As on the first occasion, the village authorities voiced strong objections to the grant of a permit because of the nuisance it would create in the area and threats to the amenities and comfort of the inhabitants, as well as the equally strong objections of the medical authorities who saw great risks to the health of the inhabitants and, public health in general, from the operation of a pigsty so close to the inhabited area of the village. The experience from the village of Aradhippou, demonstrated the hazards to health and the great problems created by the operation of pigsties close to the village.

The present recourse was the response of the applicant to the negative decision of the authorities. Counsel for the applicant argued, vaguely, I must say, that the appropriate authority transgressed its powers by taking into account matters extraneous to their discretionary powers. They concentrated on what I regard as irrelevant, the toleration by the authorities of the inhabitants of the village rearing goats and sheep and other domestic animals. 5

It is well settled that the unauthorised use of buildings does not create an obligation on the part of the authorities, or anybody else, to sanction an illegal use of premises. An illegality does not create a precedent for equal treatment. The principle is, equal treatment under the law, not outside it. 10

Counsel for the respondents drew attention, in his address, to the discretionary powers of the Court to withhold the permit, the existence of which is evident from the plain provisions of the law, as recognised by *Hadjianastassiou, J.*, in *Nicos Vasiliades and Another v. District Officer Larnaca* (1976) 3 C.L.R. 269. It is my considered view that neither side addressed itself to the basic issue that must be tackled in these proceedings, that is, whether it was legitimate for the District Officer, in re-examining the application and exercising his undoubted discretionary powers, to have regard to likely objections by the village authorities to the contemplated use of the premises, the repercussions upon public health identified by the medical authorities and possible interference with the future, as yet unfashioned plans, to develop the network of roads. To answer the question, we must examine closely the powers of the appropriate authority under Cap. 96 and regulations made thereunder. Section 3(1) of Cap. 96 confers discretion upon the appropriate authorities for building purposes, to grant or withhold a permit. The discretion is not absolute but subject to the provisions of s.4(1) of the law. The construction of s.4(1) presents complications. It is couched in a negative form. It lays down that no permit shall be granted unless the application complies with the provisions of Cap.96 and regulations made thereunder. Having regard to the provisions of Article 23 of the Constitution, safeguarding the right to property, s.4(1) must inevitably be construed as introducing limitations to the use and enjoyment of land in the interests of country planning. The 15
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limitations must not go beyond what the law expressly sanctions. Consequently, s.4(1) must be construed as requiring the appropriate authority to approve an application, provided it complies with the provisions of Cap.96 and regulations made thereunder.

5 I have heard no arguments to the contrary and none can be entertained. To construe s.4(1) as conferring an absolute discretion upon the appropriate authority to refuse a permit, would be tantamount to acknowledging power to administrative authorities to introduce at their discretion limitations to the use and enjoyment of property not sanctioned by law. I have carefully

10 perused the provisions of Cap.96 in order to ascertain whether power vests in the appropriate authority to have regard in examining a permit to the views of the village authority, as to the use of the premises, or the medical authorities for that matter. The answer is plainly in the negative. To the same conclusion one is driven on examination of the regulations, primarily regulating

15 matters pertinent to the structure, the height of the building and, generally, its division and matters relevant thereto. There is, of course, power under s.14 of Cap.96 to introduce zones restricting buildings designed for certain purposes within specified areas. No such zones were declared, at least so far as Avdhel-

20 lero is concerned. Consequently, the provisions of s.14 do not aid the case for the respondents.

The only section of the law that enjoins the appropriate authority to have regard to proper conditions of health and sanitation, is s.8(c) of the law and, respecting the network of roads s.8(4) of the law. But the provisions of s.8 are of limited pur-

25 port. They do not confer a general power upon the appropriate authority to refuse a permit because of hazards to the health, comfort and amenity of the inhabitants of a community, or future development of the system of roads. All they empower the appropriate authority, is to require, before approval, the

30 applicant to make modifications to his plans, so as to safeguard, inter alia, proper conditions of health, sanitation, etc.

The conclusion in view of the above is, that the appropriate authority in this case refused the application for reasons other than those laid down by the law. This was impermissible; the appropriate authority exceeded its powers as well as abused

35 them. Consequently, the decision must be annulled.

However, nothing said in this judgment should be construed as encouragement for the applicant to carry on with her plans

for, although she may secure a permit upon re-examination of the matter by the authorities, in the light of this judgment, a permit to build does not in itself constitute an authorisation for the contemplated use of the premises as a pig-sty. The Avdhellero Health Commission has power, under the Public Health Regulations for Avdhellero, notably Regulation 84, to prohibit the use of premises for keeping and rearing pigs. Having regard to the views of the medical authorities, it appears they would have good reasons for so doing. 5

Lastly, this case brings to the fore the need for comprehensive town and country zoning, something of vital importance for the wellbeing of all the inhabitants of the country. The quality of life will deteriorate unless urgent steps are taken in that direction. 10

The sub judice decision is hereby annulled. There shall be no order as to costs. 15

Sub judice decision annulled. No order as to costs.