

1984 February 14

[A LOIZOU, J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

COSTAS MAKRIS AND ANOTHER

Applicants

v

THE REPUBLIC OF CYPRUS THROUGH
THE DISTRICT OFFICER NICOSIA AS CHAIRMAN
OF THE IMPROVEMENT BOARD OF STROVOLOS

Respondent

(Case No 149/81)

Administrative Law—Administrative acts or decisions—Executory act—Occupation and use of building without a certificate of approval, contrary to section 10 of the Streets and Buildings Regulation Law Cap 96—Warning to occupants that judicial proceedings were intended, not excluding issue of a demolition order if illegality not abated—Not an executory administrative act that can be made the subject of a recourse under Article 146 of the Constitution—Position prevailing in Greece regarding demolition orders distinguished

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The applicants in these recourses have been occupying and using a kiosk, without a certificate of approval having been issued in respect thereof by the Appropriate Authority contrary to section 10 of the Streets and Buildings Regulation, Law Cap. 96 This kiosk was built on a Public road by a certain Ioannis Pettemerides—now deceased—without a building permit under Cap 96 On the 24th March, 1981, the respondents asked the applicant to remove the said kiosk by the 31st May, 1981, otherwise Court measures will be taken against them not excluding the issue of an order of demolition Hence this recourse

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Held, that the sub judice decision is not an executory administrative one capable of being made the subject of a recourse under Article 146 of the Constitution, accordingly the recourse

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should fail (position prevailing in Greece regarding demolition orders distinguished—vide pp. 13-14 post).

Application dismissed.

Recourse.

5 Recourse against the decision of the respondents whereby it was decided not to permit a kiosk, which was built without a building permit, to remain in Klimataria Square, Strovolos.

A. S. Angelides, for the applicants.

G. Teoulides, for the respondent.

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Cur. adv. vult.

A. LOIZOU J. read the following judgment. By the present recourse the applicants seek the annulment of "the decision or act of the respondent which was communicated to applicant by letter dated 14.3.1981 and by which he decided not to permit the kiosk to remain in Klimataria Square, Strovolos Avenue 8 and/or by which he decided that the said kiosk be removed from the place where it stands since 30 and more years".

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This kiosk was built on the public square without a building permit by the late Ioannis Pettemerides to whom the District Officer, Nicosia, in his capacity as Chairman of the Improvement Board of Strovolos addressed on the 18th December, 1978 a letter (exhibit 1) drawing his attention to the fact that he had built on a public road, namely, Grivas Dighenis Square, Strovolos, a kiosk of cheap construction without a building permit and that no covering permit could be issued as it had not been built in accordance with the Streets and Buildings Regulation Law, Cap. 96, and he was asking him to demolish same within one month, otherwise legal proceedings would be instituted against him without any further notice.

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Pettemerides by letter dated the 9th January, 1979 (exhibit 2) through his advocate, acknowledged receipt of the aforesaid letter and informed the respondent that he was an invalid since 30 years and in bad health and that he was at the time in a clinic undergoing treatment. He requested that an extension of time be given to him until his recovery from his illness so that a meeting would be arranged obviously for the discussion of the whole matter.

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On the 22nd June, 1979, the respondent wrote to the said advocate a letter (exhibit 3) informing him that the kiosk in question had been let by Pettemerides to applicant 1 for the monthly rent of C£30.- and that the Improvement Board of Strovolos insisted for the demolition of the arbitrarily placed kiosk within one month, otherwise legal proceedings would be instituted against everyone who was responsible. In reply to the said letter counsel wrote on the 14th July, 1979 (exhibit 4) asking the respondent to postpone the demolition of the said kiosk until the 31st December, 1979, as with the rent of C£30.- his client was meeting the expenses of his treatment.

On the 10th November, 1980, the respondent wrote to applicant 1 (exhibit 5) informing him that it came to his knowledge that he was using a kiosk which was constructed unlawfully on the public road near Grivas Dighenis Square (Klimataria) in Strovolos the construction of which consisted of cheap material and that a covering permit could not be issued, hence he was asked to demolish not later than the 30th November, 1980, same, otherwise legal proceedings would be instituted against them without further notice.

Applicant 1 acknowledged receipt of the said letter by his letter dated the 24th November, 1980 (exhibit 6) and stated, inter alia, therein that the kiosk which it was mentioned as having been built unlawfully was functioning since 20 years and more and that he had bought it from the late Ioannis Pettemerides, of Strovolos, since three years; that he was a poor family man, that he had built his house with a loan and that he had bought the said kiosk for a substantial sum and had stocked it with goods acquired on credit; that his wife was working in a chemist shop but since the purchase of the kiosk she gave up her work and started operating the kiosk in question instead in the hope of a better future. For those reasons he asked that in case there were street works carried out for the development of the area and the kiosk interfered with them, he was prepared to move it elsewhere.

On the 14th March, 1981, and in reply to the applicant's letter of the 24.11.1980, respondent wrote to him the following letter (exhibit 7):

"I refer to your letter dated 24.11.1980 by which you ask that you be permitted to keep the kiosk in Klimataria

Square until the carrying out of the development works in the area and I inform you that the Board examined your request and decided to give you a last extension until the 31st May, 1981.

- 5 2. After this you are asked to remove the said kiosk until that date, otherwise Court measures will be taken against you not excluding also the issue of an order of demolition".

10 As against the decision contained in this letter, the applicant filed the present recourse.

15 On these facts it is established that the kiosk in question was built on a public road by the late Pettemerides, without a building permit from the Appropriate Authority under the Street and Buildings Regulation Law, Cap. 96, which in this case is the Improvement Board of Strovolos. Furthermore same is not occupied and used by the applicants without a certificate of approval having been issued in respect thereof by the Appropriate Authority contrary to section 10 of Cap. 96. It is also 20 these violations of the Law that the letters from the Improvement Board of Strovolos were intending to warn and inform the applicants that if they failed to abate such illegality, legal proceedings would be instituted against them, obviously proceeding under the Streets and Buildings Regulation Law, being one of the courses open to the respondents.

25 These circumstances have led me to the conclusion that the sub-judice decision is not an executory administrative one capable of being the subject of a recourse under Article 146 of the Constitution. Counsel for the applicant has argued to the contrary and sought to draw support to his contentions from the 30 fact that in the Case Law of the Greek Council of State orders of demolition of buildings are executory administrative acts capable of being the subject of a recourse for annulment, hence provisional orders for the suspension of their execution are given because of the likelihood of irreparable damage being 35 caused in case their execution is not suspended pending the determination of the recourse on the merits.

In support of this proposition he has referred me to a number of text-books, namely, V. Skouris "The Temporary Protective

In Administrative Disputes" 1979 pp. 40-41. Th. Tsatsos "The Application For Annulment Before The Council of State" 3rd edition p. 426, footnote 4. Spyliotopoulos "Handbook of Administrative Law" 1977 p. 452 footnote 3, and Stassinopoulos "The Law of Administrative Disputes" pp. 241-242.

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In all these passages quoted by him reference is made to the Case Law of the Greek Council of State where the execution of an order of demolition of a building is given as an example of irreparable damage justifying the issue of a provisional order. I have not had the advantage of having the full text of these several decisions but from the short reference made to some of them, it is clear that the provisional orders were made in cases where under the express provisions of some Law an order of demolition had been made by an administrative organ empowered thereby and upon a recourse having been filed challenging the legality of such decision. One cannot fail noticing that in Tsatsos (supra) p. 426, footnote 4, the relevant passage reads. "Instances of irreparable damage constitute the execution of ordered demolition" and in Stassinopoulos (supra)p.241 the relevant passage reads "If the District Engineer orders the demolition of a building because it offended the Street Alignment of the Town Plan and the owner is of the opinion that the building did not in fact offend the Street Alignment and that its demolition was ordered on account of misconception, he may challenge the order of the District Engineer before the Council of State by an application for annulment."

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Unlike the aforesaid instances where orders of demolition had been made and challenged as such by a recourse, in our case there is no order for demolition made under the authority of a statutory provision - such an order in the circumstances could only be made by a Court under the Streets and Buildings Regulation Law, section 20 as amended - but the subject decision consists only of the statement of the alleged factual background and its legal consequences regarding this kiosk and a warning that judicial proceedings were intended to be instituted if the illegality was not abated.

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For this reason this recourse is dismissed but in the circumstances there will be no order as to costs.

Having reached this conclusion I need not examine the recourse on its merits.

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Recourse dismissed with no order as to costs.