1984 February 25

[PIKIS, J.]

ANTONIS TH. SIMONIS AND ANOTHER,

Applicant.

v.

THE IMPROVEMENT BOARD OF LATSIA, THROUGH THE DISTRICT OFFICER, NICOSIA,

Respondent.

(*Case No.* 255/83

Administrative Law—Administrative acts or decisions—Executory act—Application for permit to divide land into building sites—Suggestions of appropriate Authority for alteration of plans—Do not amount to an executory decision—Only the decision which was definitive of the stand of the administration to the applicant with a corresponding impact upon the rights of the applicant is executory and as such amenable to review.

Building sites—Division of land into—Permit for—Within the powers of the appropriate authority to suggest alterations for the creation of a satisfactory network of roads—Section 8(*c*) *and* (*d*) *of the Streets and Buildings Regulation Law, Cap.* 96.

Constitutional Law—Right to property—Article 23.3 *of the Constitution—Application for permit to divide land into building sites—Appropriate authority conditioning the grant of permit on the cession of part of the land for construction of a major road designed to serve the communication needs of the area—Imposition of such conditions not an act of deprivation but an act of limitation.*

In October, 1980 the applicants applied to the respondents for a permit to divide a plot of land of theirs at Latsia into building sites. In response the respondents made a series of suggestions for alteration or modification of the plans for division in order to facilitate their approval; and they reminded the applicants of the need to fit in the development of their land

into the wider development scheme for the area envisaging the construction of a major road designed to serve the communication needs of the area as well as those associated with the use of the land of the owners. By a letter dated 30.9.1982 respondents intimated that they could approve as many as eleven building sites but refused to approve the division of the land into any greater number of building sites. The applicants remained unsatisfied and kept pressing for the approval of their application without any alterations whatsoever. On the 25th April, 1983 the respondents informed the applicants that they could not approve the division of the land into more than eleven building sites. Hence this recourse.

On the questions whether:

(a) The sub judice decision is confirmatory of the decision of the 30th September and is therefore, not justiciable;

(b) The sub judice decision was void because of abuse of authority;

(c) Conditioning the development of land on the cession of part of it to the public for environmental purposes constitutes an act of deprivation of the land, a course impermissible except in the manner envisaged by Article 23 of the Constitution, or an act of limitation:

Held, (1) that decisions of the respondents prior to 25th April, 1983, were of a tentative character designed to reach an accommodation with the applicants: that only the decision communicated on 25th April, 1983 was definitive of the stand of the administration to the application of the owners with a corresponding impact upon the rights of the applicants; and, that, therefore, the act challenged in these proceedings is executory and as such amenable to review under Article 146.1 of the Constitution.

(2) That it was within the powers of the respondents to suggest alterations considered necessary for the creation of a satisfactory network of roads because the orderly development of an area and the creation of proper environmental conditions is very much the responsibility of an appropriate authority under Cap. 96; (see section 8(c) and (d) of Cap. 96); that in this case the development envisioned was designed to ensure the scaping of the area in a manner ensuring the existence of an adequate

network of roads; that they had good reasons to refuse an application such as that of applicant frustrating their plans by making their implementation impossible; and that, therefore, the decision was taken in the exercise of the legitimate powers of the respondents.

(3) *After dealing with the meaning of "deprive" and "limit"—vide pp. 114–115 post*). That the imposition of conditions for the development of land involving cession of land to the public for environmental purposes is not an act of deprivation; and that it could only be regarded as an act of deprivation if the owner of land had an unrestricted vested right for its use in any manner he chose and no such right vests in the owners of land (see, also, Article 23.3 of the Constitution which envisages restrictions or limitations in the interests of town and country planning).

Application dismissed.

Cases referred to:

Kyriakides v. *Improvement Board of Aglandjia* (1979) 3 C.L.R. 86;

Holy See of Kitium v. *The Municipal Council of Limassol*, 1 R.S.C.C. 15;

Kirzis and Others v. *Republic* (1965) 3 C.L.R. 46;

Thymopoullos and Others v. *Municipal Committee of Nicosia* (1967) 3 C.L.R. 588;

Sofroniou and Others v. *Municipality of Nicosia and Others* (1976) 3 C.L.R. 124.

Recourse.

Recourse against the refusal of the respondent to issue a division permit to applicants in respect of their land.

Chr. Kitronilides, for the applicants.

E. Odysseos, for the respondents.

Cur. adv. vult.

PIKIS J. read the following judgment. The refusal of the Improvement Board of Latsia to approve the division of land, proposed by applicants, into building sites is at the root of the

ontroversy of the parties; the applicants on the one side wners of a plot of land of an extent of 7 donums, 3 evlecks and .300 sq. ft. and the respondents on the other, the appropriate uthority for the purposes of the Streets and Buildings Law, ap. 96. The dispute has a long history and dates back to 20th ctober, 1980 when applicants submitted plans for the division f their land into 14 building sites. In response, the authority ade a series of suggestions for the alteration or modification the plans for division in order to facilitate their approval. ll the time, however, they kept hinting that unless applicants ade the suggested alterations, their application would be fused. The correspondence of the parties was reproduced and ade part of the file of the case. The applicants did not heed e suggestions of the authority and kept pressing for the appro- al of their application in an unmodified form. They disputed e right of the respondents to suggest alterations as well as eir necessity in the circumstances of the case.

For their part, the respondents kept reminding the applicants f the need to fit in the development of their land into the wider evelopment scheme for the area envisaging the construction of major road designed to serve the communication needs of the ea as well as those associated with the use of the land of the wners. It is fair to say they made an effort to accommodate to hatever degree possible the demand of the applicants for the ivision of their land into as many building sites as it was feasible. t first they suggested that division should be limited into eight uilding sites (see letter of 14.8.81). Later they signified readi- ss to approve division of the land into ten building sites tter 30.3.82). Finally, they intimated they could approve as any as eleven (letter 30.9.82), but refused to approve the di- sion of the land into any greater number of building sites.

The owners remained unsatisfied and kept pressing for the proval of their application without any alterations whatsoever. hey made this clear in a letter addressed to the authorities on 4th October, 1982 warning that in the event of continuing to withhold approval of the division suggested by them, they would eat their omission as refusal and proceed with the matter ccordingly. They renewed their request for a definitive nswer two months later by a letter written by their advocate on eir behalf on 14.12.82 demanding that decision be taken at the test within one month.

The negative reply of the respondents came on 25th Apı 1983. They adhered to their previous stand informing t applicants they had decided to adopt the recommendations of t Town and Country Planning Department as to the developme of their land, making impossible the approval of the division the land into more than eleven building sites. Prior to t decision specified in this letter, so far as I may gather, the views the Town and Country Planning Department were provisiona accepted. Failing an amicable arrangement, they decided adopt their suggestions, and give effect to them. Upon tl basis they refused permission for the division of the land suggested by the applicants. This is the decision challenged the proceedings before us.

The respondents disputed the timeliness of the recourse on t ground that the decision complained of was nothing other th a repitition of a previous one, notably that of 30th Septembı 1982. Hence they argued the sub judice act is confirmatoı not of itself justiciable. I cannot go along with this submissio To my comprehension a proper interpretation of the facts befo the Court suggests that decisions of the respondents prior 25th April, 1982, were of a tentative character designed to rea an accommodation with the applicants. Only the decisic communicated on 25th April, 1983 was definitive of the stand the administration to the application of the owners with corresponding impact upon the rights of the applicants. Ther fore, the act challenged in these proceedings is executory and such amenable to review under Article 146.1 of the Constitution

The essence of the case of the applicants, on the merits, is th the decision of the respondents is void because of abuse authority. They exercised their powers, allegedly, not for th purpose they were entrusted, that is, proper appreciation of tl divisibility of the land into fourteen building sites, but with a ulterior purpose, namely, to promote the acquisition of thr building sites for future road construction, without resort t acquisition proceedings in flagrant abuse of their power Consequently, they exceeded their authority as well as abused ı The decision of the authority entailed deprivation of the land the owners, a course impermissible except in the manner envisa ged by Article 23 of the Constitution and legislation introduce thereunder for the compulsory acquisition of land. Moreover the project in furtherance to which they refused the applicatio

was not one due for immediate implementation but associated with the development of the area at an indefinite future time, having more to do with respondents vision of the future than concrete plans for the environment. Consequently, by trying to give effect to something that had no relationship to the immediate needs of the area, they abused their discretion. The decision is, in the contention of the applicants, vulnerable to be set aside on this ground as well.

Respondents refuted the contention that they abused their authority and denied they invoked their powers for any purpose other than the bona fide appreciation of the need to ensure the proper development of the area at present and in the years to come. Plans for the creation of the road under consideration had been approved sometime prior to the application of the owners and were meant to establish a proper network of roads that would serve the locality at present and in the years to come. Similar restrictions were imposed on the division of the land into building sites of other owners having property in the vicinity. The construction of the aforementioned road is part of the plans for the development of the greater Nicosia area.

The law specifically enjoins an appropriate authority to have regard to the factor of communications in an area in exercising its powers under Cap. 96. More important still, they must have regard to the need for improvement of the network of roads in a given locality. Section 8 empowers the authority to make suggestions for alterations of the plans submitted in order to ensure proper communications and road improvement in the area. (See s.8(c) and (d) - s.5 24/78). In the face of refusal to heed suggestions for alterations, the authority may dismiss the application. This is made abundantly clear by the decision of the Full Bench of the Supreme Court in *Kyriakides v. Improvement Board of Aglandjia,* (1979) 3 C.L.R. 86.

I am clearly of opinion it was within the powers of the respondents to suggest alterations considered necessary for the creation of a satisfactory network of roads. The orderly development of an area and the creation of proper environmental conditions is very much the responsibility of an appropriate authority under Cap. 96. In this case the development envisioned was designed to ensure the scaping of the area in a manner ensuring the existence of an adequate network of roads. They

had good reasons to refuse an application such as that of applicant frustrating their plans by making their implementation impossible. In my judgment the decision was taken in the exercise of the legitimate powers of the respondents. What remains to decide is whether the refusal of the application viewed in the context of the history of the proceedings, particularly suggestions for alteration of the plans, amounted to an indirect process to acquire land compulsorily in abuse of their powers and the rights of the applicants safeguarded by Article 23 of the Constitution. More precisely, the question is whether conditioning the development of land on the cession of part of it to the public for environmental purposes constitutes an act of deprivation, as opposed to limitation. To deprive means to take away a right or thing, whereas to limit means to curtail or cut down a right or thing. If the curtailment is so extensive as to virtually obliterate the right or thing, it can properly be regarded as an act of deprivation; otherwise it is a limitation. The two concepts were seen in this light by the Supreme Constitutional Court in the case of *Holy See of Kitium and the Municipal Council of Limassol*, 1 R.S.C.C. 15. Whether a given restriction or limitation to the use of property is so extensive as to amount to an act of deprivation is a matter of fact and degree.

If it constitutes an act of deprivation it cannot be imposed in any way other than by compulsorily acquiring the property. Equally clear is that limitations may be imposed to the use and enjoyment of property without resort to compulsory acquisition. In the case of limitation of rights the remedy of the owner, provided he suffers loss, is one for damages.

In *Nicos Kirzis and 2 others v. The Republic*, (1965) 3 C.L.R. 46, it was held that conditioning the division of land on cession to the public of an area designated as a street or square is par exellence an act of limitation. Nothing is taken away from the owner. Conditions are merely stipulated for its development.

In my judgment the imposition of conditions for the development of land involving cession of land to the public for environmental purposes is not an act of deprivation. It could only be regarded as an act of deprivation if the owner of land had an unrestricted vested right for its use in any manner he chose, taking the form in this case, of a right to develop it into the biggest possible number of building sites. No such right vests

n the owners of land. If that were the case, the creation of ›roper environmental conditions would be left to the discretion ›f the owners of land. So far as I know, this is not the case in .ny civilized country. And Article 23.3 specifically envisages estrictions or limitations in the interests of town and country ›lanning. The development of an area, urban as well as rural, s very much a corporate matter that concerns the community as ı whole. It affects the quality of life of everyone using the area ıs well as the amenity of all those residing therein. Acknowedgement of a vested right to developing immovable property ıt the option of the owner would be catastrophic for town and :ountry planning. The matter of restrictions and limitations vas approached in a similar vein as in *Kirzis* in two subsequent lecisions of the Supreme Court, namely, *Thymopoullos and Others v. Municipal Committee of Nicosia,* (1967) 3 C.L.R. 588, ınd *Sofroniou and Others v. Municipality of Nicosia and Others,* 1976) 3 C.L.R. 124.

By refusing the application of the owners in this case, the espondents took nothing away from them. Applicants renained as before the absolute owners of their land. They can make any use of it they choose, as a field. To change its use by lividing their land into building sites they must fit their plans nto those of the community.

In the light of the foregoing, the recourse fails. It is dismissed. Let there be no order as to costs.

Recourse dismissed. No order as to costs.