

1984 February 29

[TRIANTAFYLIDIS, P., L. LOIZOU, SAVVIDES, LORIS, PIKIS, JJ.]

THE MUNICIPALITY OF LIMASSOL,

*Appellant,*

v.

AYIA KATHOLIKI CHURCH OF LIMASSOL  
AND OTHERS,

*Respondents.*

(*Revisional Jurisdiction Appeal No. 313.*)

*Constitutional Law—Right to property—Deprivation of property—  
Article 23.4 of the Constitution—Absolute refusal of application  
for a building permit under sections 8(c) and 3(1)(e) of the Streets  
and Buildings Regulation Law, Cap. 96—Amounts to a deprivation  
contrary to the above Article 23.4—Said sections 8(c) and 3(1)(e)  
resorted to in an unconstitutional manner.* 5

The respondents in this appeal sought a building permit in order to erect on their property in Limassol twelve shops. The appellants, acting under sections 3(1)(e) and 8(c) of the Streets and Buildings Regulation Law, Cap. 96 (as amended by sections 3 and 5 of Law 24/78, respectively), refused such permit absolutely and informed the respondents that they could submit plans for underground shops. 10

Upon a recourse by the respondents the trial Judge annulled the said refusal and hence this appeal. 15

*Held*, that the sub judge refusal of the appellant amounts to a deprivation contrary to Article 23.4 of the Constitution, and, consequently, the powers under sections 8(c) and 3(1)(e) of Cap. 96 were resorted to in a manner which was unconstitutional; accordingly the appeal must be dismissed. 20

*Appeal dismissed.*

## Cases referred to:

- Hadjiyiannis v. The Mayor, Deputy Mayor, Municipal Councillors and Townsmen of Famagusta* (1968) 3 C.L.R. 240 at p. 247;
- Kyriakides v. Improvement Board of Eylenja* (1977) 3 C.L.R. 198;
- 5 *Karseras v. Improvement Board of Strovolos* (1983) 3 C.L.R. 144;
- Holy See of Kitium v. The Municipal Council of Limassol*, 1 R.S.C.C. 15 at pp. 27, 28;
- Kirzis v. Republic* (1965) 3 C.L.R. 46 at pp. 55-58;
- 10 *Thymopoulos v. The Municipal Committee of Nicosia* (1967) 3 C.L.R. 588 at p. 602;
- Araouzos v. Republic* (1968) 3 C.L.R. 287 at p. 301;
- Sofroniou v. Municipality of Nicosia* (1976) 3 C.L.R. 124 at p. 136.

## Appeal.

- 15 Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Hadjianastassiou, J.) given on the 31st March, 1983 (Revisional Jurisdiction Case No. 390/79)\* whereby the refusal by the Municipality of Limassol of a building permit to the respondents was annulled.
- 20 *J. Potamitis* with *Ph. Potamitis*, for the appellant.
- E. Michaelides*, for the respondents.

*Cur. adv. vult.*

- 25 TRIANTAFYLIDIS P. read the following judgment of the Court. The appellant challenges a first instance decision of a Judge of this Court by means of which there was annulled, in recourse No. 390/79 which was filed under Article 146 of the Constitution, the refusal of the appellant to grant to the respondents a building permit in relation to a property in Limassol belonging to respondent 1 and managed by the other
- 30 respondents.

\* Reported in (1984) 3 C.L.R. 199.

The said refusal was communicated to respondent 1 by a letter dated 7th August 1979 and was based, inter alia, on section 8(c) of the Streets and Buildings Regulation Law, Cap. 96 (which has been amended by section 5 of the Streets and Buildings Regulation (Amendment) Law, 1978, Law 24/78) and on section 3(1)(e) of Cap. 96 (which has been amended by means of section 3 of Law 24/78).

During the hearing of this case before us arguments were advanced as regards the extent of the powers of the respondent municipality under the aforementioned legislative provisions and, in particular under section 8(c), above, and reference was made, in this respect, to, inter alia, *Hadji Yiannis v. The Mayor, Deputy Mayor, Municipal Councillors and Townsmen of Famagusta*, (1968) 3 C.L.R. 240, 247, *Kyriakides v. The Improvement Board of Eylenja*, (1977) 3 C.L.R. 198 and, on appeal, (1979) 3 C.L.R. 86 and *Karseras v. The Improvement Board of Strovolos*, (1983) 3 C.L.R. 144.

It is unnecessary in this case to examine what is the full extent of the powers of the appellant municipality under sections 8 and 3(1)(e), above—and we leave such examination for a future suitable occasion—because, irrespective of the extent of the said powers, it is clear to us that the legislative provisions concerned cannot be applied in a manner which results in deprivation of property in a way inconsistent with Article 23.4 of the Constitution, that is otherwise than through a compulsory acquisition effected under the said Article 23.4 and the Compulsory Acquisition of Property Law, 1962 (Law 15/62).

In the case of *The Holy See of Kitium v. The Municipal Council of Limassol*, 1 R.S.C.C. 15, 27, 28, the following were stated in the judgment:

“(a) The requirement of applying for a building permit under section 3 of CAP. 96 is connected with the right of property safeguarded by paragraph 1 of Article 23, which includes the right to possess and enjoy property.

(b) Paragraph 2 of Article 23 provides that no deprivation or restriction or limitation of any such right shall be made except as provided in the said Article and paragraph 3 thereof provides:

5 'Restrictions or limitations which are absolutely necessary in the interest of the public safety or the public health or the public morals or the town and country planning or the development and utilization of any property to the promotion of the public benefit or for the protection of the rights of others may be imposed by law on the exercise of such right'.

10 It is noteworthy and significant that whereas 'deprivation' is specifically mentioned in paragraph 2 in addition to 'restriction or limitation' paragraph 3 provides only for 'restrictions or limitations'.

(c) In the particular case where the owner is an ecclesiastical authority the position is governed specifically by paragraph 9 of Article 23 which reads as follows:

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25 'Notwithstanding anything contained in this Article no deprivation, restriction or limitation of the right provided in paragraph 1 of this Article in respect of any movable or immovable property belonging to any See, monastery, church or any other ecclesiastical corporation or any right over it or interest therein shall be made except with the written consent of the appropriate ecclesiastical authority being in control of such property and the provisions of paragraphs 3, 4, 7 and 8 of this Article shall be subject to the provisions of this paragraph:

30 'Provided that restrictions or limitations for the purposes of town and country planning under the provisions of paragraph 3 of this Article are exempted from the provisions of this paragraph'.

35 It is again noteworthy that whereas 'deprivation' is expressly mentioned in the main part of this paragraph, yet it is expressly omitted from the proviso thereto.

(d) In each case where a building permit is applied for it is a question of fact and of degree, depending upon the circumstances of the particular case whether

the decision of the appropriate authority thereon amounts to a 'deprivation' (within the meaning of the above provisions) and which can only be achieved under paragraph 4 of Article 23, or whether it amounts to 'restriction or limitation' (within the meaning of the above provisions) which can only be imposed under paragraph 3 of the said Article, and in the particular case of an owner such as the Applicant, only under the proviso to paragraph 9 thereof". 5

(See, also, in this respect, too, *Kirzis v. The Republic*, (1965) 3 C.L.R. 46, 55-58, *Thymopoulos v. The Municipal Committee of Nicosia*, (1967) 3 C.L.R. 588, 602, *Araouzos v. The Republic*, (1968) 3 C.L.R. 287, 301 and *Sofroniou v. The Municipality of Nicosia*, (1976) 3 C.L.R. 124, 136). 10

In the present instance where the respondents have sought a building permit in order to erect on the aforementioned property twelve shops and they were refused such permit absolutely and were then informed by the appellant Municipality that they could submit plans for underground shops, we have no difficulty in arriving at the conclusion that the sub judice refusal of the appellant amounts to a deprivation contrary to Article 23.4 of the Constitution, and, consequently, the powers under sections 8(c) and 3(1)(e) of Cap. 96 were resorted to in a manner which was unconstitutional. 15 20

We are, therefore, of the opinion that this appeal should be dismissed on the above ground; but bearing all the relevant considerations in mind we shall not make any order as to its costs. 25

*Appeal dismissed with no order as to costs.* 30