

1984 June 20

[TRIANTAFYLIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION  
NICOLAOS GEORGHIOU KOULOUMOU, AND OTHERS,  
*Applicants.*

v.

MUNICIPALITY OF PAPHOS,  
*Respondent.*

(Case No. 260/82).

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*Constitutional Law—Right to property—Deprivation of property  
—Article 23.4 of the Constitution—Application for a building  
permit—Refusal of Department of Antiquities to give its consent  
for the grant of—And consequential refusal of the building permit  
by the appropriate authority concerned—Said refusal constituted 5  
a composite administrative action and resulted in deprivation  
of property, contrary to the above Article—Which could only  
have been effected by means of compulsory acquisition under  
the Compulsory Acquisition Law, 1962 (Law 15/62).*

The respondent Municipality refused to grant a building permit 10  
to the applicants, enabling them to erect a building on their  
property at Paphos; and hence this recourse. The permit was  
not granted because the Department of Antiquities refused  
its consent to the grant thereof as in the property of the applicants 15  
there were ancient ruins which might be destroyed by the pro-  
posed building works; and the Department of Antiquities stated  
that it was intended to acquire compulsorily this property.

*Held*, that the decision of the Department of Antiquities 20  
to refuse its consent to the grant of a building permit to the  
applicants constitutes, together with the consequential refusal  
of the building permit by the respondent Municipality, a com-  
posite administrative action and, also, that they, together, have  
resulted in deprivation of the property of the applicants, contrary

to paragraph 4 of Article 23 of the Constitution; that the deprivation of the property in question of the applicants could only have been effected by means of compulsory acquisition under the provisions of the Compulsory Acquisition Law, 1962 (Law 15/62), which is "a general law for compulsory acquisition" 5 envisaged by Article 23.4(a) of the Constitution, and not by means of the application of the provisions of Cap. 96, which is not a Law coming within the ambit of Article 23.4(a), above; accordingly the recourse will succeed and the refusal of the 10 building permit by the respondent has to be declared to be null and void and of no effect whatsoever.

*Sub judice decision annulled.*

Cases referred to:

- 15 *Holy See of Kitium v. Municipal Council of Limassol*, 1 R.S.C.C. 15 at pp. 28, 29;
- Kirzis v. Republic* (1965) 3 C.L.R. 46 at p. 56;
- Thymopoulos v. 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;
- 20 *Sofroniou v. Municipality of Nicosia* (1976) 3 C.L.R. 124 at pp. 136, 145.

#### **Recourse.**

25 **Recourse against the refusal of the respondent to grant applicants a building permit for the erection of a building on their property at Paphos.**

*L. N. Clerides, for the applicants.*

*K. Chrysostomides with Sp. Kokkinos, for the respondent.*

*Cur. adv. vult.*

30 **TRIANTAFYLIDIS P.** read the following judgment. By means of the present recourse the applicants challenge, in effect, the refusal of the respondent Municipality to grant them a building permit enabling them to erect a building on their property at Paphos.

35 The refusal of the building permit is dated the 10th May 1982 and was endorsed on the application for a building permit which was lodged by the applicants on the 2nd April 1982.

It appears from the said endorsement that the Department of Antiquities did not agree that the applied for building permit could be issued because in the said property of the applicants there are ancient ruins which might be destroyed by the proposed building works; and the Department of Antiquities went on to state that it was intended to acquire compulsorily this property. 5

The property of the applicants is to be found in a building zone which was created by means of a Notice published under section 14(1) of the Streets and Buildings Regulation Law, Cap 96, on the 7th August 1981 (see No. 180 in the Third Supplement, Part I, to the Official Gazette of the Republic). 10

It is true that the applicants did not challenge, by means of a recourse under Article 146 of the Constitution, the creation of the said building zone but I do not think that in the present instance they need, or could, have done so, because the mere publication of the aforementioned Notice did not by itself affect adversely and directly a legitimate interest of theirs, in the sense of Article 146.2 of the Constitution, inasmuch as they were not prevented from building on their property provided that there would be secured in advance the approval of the Department of Antiquities; and it is only when such approval was refused, thus rendering the grant of a building permit to them impossible, that a legitimate interest of theirs was adversely and directly affected in the sense of the said Article 146.2. 15 20 25

I have reached the conclusion that the decision of the Department of Antiquities to refuse its consent to the grant of a building permit to the applicants constitutes, together with the consequential refusal of the building permit by the respondent Municipality, a composite administrative action and, also, that they, together, have resulted in deprivation of the property of the applicants, contrary to paragraph 4 of Article 23 of the Constitution. 30

In the case of *The Holy See of Kitium v. The Municipal Council of Limassol*, 1 R.S.C.C. 15, the following were stated (at pp. 28, 29): 35

“(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.

In the present case the Court is of the opinion, applying principle (d) above, that at any rate the outright prevention of the Applicant from building at all on the property in question would amount to 'deprivation' within the meaning of paragraphs 2 and 9 of Article 23".

Useful reference, in this respect, may be made, also, to the cases of *Kirzis v. The Republic*, (1965) 3 C.L.R. 46, 56, *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, 145.

On the present occasion the deprivation of the property in question of the applicants could only have been effected by means of compulsory acquisition under the provisions of the Compulsory Acquisition Law, 1962 (Law 15/62), which is "a general law for compulsory acquisition" envisaged by Article 23.4(a) of the Constitution, and not by means of the application of the provisions of Cap. 96, which is not a Law coming within the ambit of Article 23.4(a), above.

Consequently, this recourse succeeds and the refusal of the building permit by the respondent has to be declared to be null and void and of no effect whatsoever.

Bearing, however, in mind all relevant considerations I have decided to make no order as to the costs of this recourse.

*Sub judice decision annulled.  
No order as to costs.*