

1984 July 17

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

YIAKI ESTATES LTD.,

Applicants,

v.

- 1. THE IMPROVEMENT BOARD OF AY. NAPA,
- 2. THE DISTRICT OFFICER OF FAMAGUSTA,
NOW OF LARNACA,

Respondents.

(Case No. 265/81).

Constitutional Law—Equality—Discrimination—Article 28 of the Constitution—Reasonable differentiations permissible in view of the intrinsic nature of things and only arbitrary and unreasonable differentiations constitute impermissible discrimination and offend Article 28 of the Constitution.

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Practice—Parties to a recourse—Improvement Boards—Recourse against decisions of—District Officer acting solely in his capacity as Chairman of the Board and taking no executory decision of his own—He could not be made a respondent.

The respondent Board refused applicants' application for a building permit for the construction of a block of flats on the ground that their property was outside the water supply area; and hence this recourse against the respondent Board and the District Officer Famagusta.

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Counsel for the applicants mainly contended that the respondents acted in a discriminatory manner because they issued a building permit for the construction of touristic apartments to "Romulus Hotel Apartments Ltd." whose property was situated in the same area as theirs.

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The intended buildings of the applicants were purely residential whereas those of the above company were for touristic development.

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5 *H li*, that reasonable differentiations are permissible in view of the intrinsic nature of things and only arbitrary and unreasonable differentiations constitute impermissible discrimination and offend Article 28 of the Constitution which safeguards the principle of equality; that there was a fundamental reasonable differentiation in this case because the "Romulus" buildings were a touristic development project coming under the Hotels and Touristic Establishments Law of 1969, as amended, whereas the intended buildings of the applicant Company were a residential development lying outside the inhabited area of the village and the water supply thereof; accordingly the recourse must fail.

15 (2) Held, further, that the District Officer acted solely in his capacity as Chairman of the respondent Board and he took no executory decision of his own or confirmed any decision taken by the appropriate authority; that for all intents and purposes it would be enough in the circumstances to have made the Improvement Board of Ayia Napa as the respondent in these proceedings, the District Officer of Famagusta as such having no locus standi in his said capacity in the present proceedings; and that, therefore, the recourse against him must be dismissed for that reason.

Application dismissed.

Recourse.

25 Recourse against the refusal of the respondents to issue a building permit to applicants.

A. Karras, for the applicants.

Y. Panayi, for respondent 1.

A. Vladimirov, for respondent 2.

30 *Cur. adv. vult.*

35 *A. LOIZOU J.* read the following judgment. By the present recourse the applicants seek the annulment of the decision of the respondent Board contained in the letter of respondent No.2, dated 1st June, 1981, by which they refused to them a permit for the building of a block of flats in plot No. 59, Sheet/Plan 42/21 in Ayia Napa.

On the 4th November, 1978, an application for a building permit was submitted to the respondent Board by a certain

Anastasios A. Economou, acting as a duly authorized agent of a number of persons as per the Power of Attorney which can be found in the relevant file of the Administration (exhibit 'X' - Blue 22). Same was accompanied by the necessary architectural plans for the building of two five-storey blocks which would consist of 19 flats. The above said plot of land is within Zone 'C' which has been defined as such in Regulatory Order under Notification 145/72, published in Supplement No.3, Part I, to the official Gazette of the Republic of the 5th August, 1972. The buildings to be constructed were purely residential and not a touristic development and the plot of land in question was away from the inhabited area of the village, Zone 'H', and outside the Village Water Supply.

The Medical Services of Cyprus made it a condition that "each of the proposed buildings will be supplied by sufficient quantity of piped water stored in suitable water tanks for the normal functioning sanitary installations in case of interruption of the water supply".

On the 19th May, 1979, the said application was refused on the ground that the property in question was situated outside the Water Supply Area. On the 7th September, 1979, the advocate of the applicants re-submitted the plans having been informed, as it is stated by him in his letter Appendix 'D', that his client had heard that similar applications were being re-examined. He referred, however, to the present applicants, a Company limited, which apparently are the successors of the previous applicants.

On the 12th May, 1980, the respondent Board informed the applicants that in order to proceed further with their application, it was necessary that there should be secured sufficient quantity of piped water for the needs of the proposed flats in accordance with the special terms put by the Medical Department.

In the meantime, however, counsel for the applicants wrote to respondent 2, protesting at not having received a reply to his letter, pointing also out that as he had information that applications submitted later were being dealt with and granted.

By letter dated the 1st June, 1981, respondent 2 replied to this letter of the applicants and informed them that their application

could not be proceeded further on account of lack of drinking water. It is as against this decision so communicated that the applicants filed the present recourse.

5 The only ground upon which the applicants rely is that of
discrimination and they claim that the respondent Board issued
a building permit for the construction of touristic apartments
to "Romulus Hotel Apartments Ltd.", in respect of an appli-
cation submitted during the second semester of 1979, that their
10 property is situate in the same area as theirs and the building
permit was in respect of more flats than those to be constructed
by the applicants.

It was urged that this indicated inconsistency in the handling
of all similar situations and showing arbitrariness in that some
citizens were denied in an arbitrary manner advantages which
15 were given to others as offending Article 28 of the Constitution.

It was further urged that the Administration exercised its
discretionary powers in a self-contradictory manner undermining
the confidence of the citizens to it, contrary to the demands of
good administration.

20 It is the case for the respondent Board that at the material
time of the submission of the application of the applicants, the
water supply of Ayia Napa was in a very bad situation. The
quantity of water through the Main Famagusta Supply, as well
as the additional quantity of 1,000 c.m. per day approved by the
25 Council of Ministers by its Decision No. 15.660 of the 3rd
March, 1977, was intended to cover the water supply of the
villages of Ayia Napa and Paralimni and partly the Touristic
Development. On the other hand, the additional quantity of
water of 1,200 c.m. daily, approved by the Council of Ministers
30 by its Decision No. 16967 of the 8th June, 1978, was for the
purpose of being disposed exclusively and only for purely
touristic development.

It was pointed out that characteristic in this respect of the
seriousness of the subject, was the letter of the Director-General
35 of the Ministry of Agriculture under No. 23/59/490, dated
21st March, 1970, addressed to the Director-General of the
Cyprus Tourist Organization, in which he mentioned that the
supply of additional quantity of water from the Famagusta
Supply to make possible the issue of new building permits for

the construction of hotel units was impossible, given that it was doubtful on the basis of the new factors regarding the Lofkara Dam whether the Ministry of Agriculture could respond even to the existing commitments which emanate from the said decisions of the Council of Ministers.

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In respect of the building permit granted to "Romulus" the following differentiations are pointed out by the respondent Board. In the first place, the building was on property away from the inhabited area of the village and the supply from the public water supply was not justified. Furthermore, in no case until that time had public water supply been given for residential development away from the inhabited area and outside residential zones. On the contrary, there had been given public water supply for purposes of Touristic Development as it is the case of the Romulus Hotel Apartments Ltd., where their application refers to the construction of an organized block of flats and the development included six two-storey buildings which in all, included 44 flats, one ground floor with a basement which included a discoteque and subsidiary areas and on the ground floor, reception area, cafe-bar, kitchen, one shop, office, sanitary conveniences and a swimming pool. The architectural plan of the said "Romulus" flats had been approved by the K.O.T. in accordance with the provisions of the Hotels and Touristic Establishments Law of 1969, whereas the architectural plans of the applicants, as they were intended for a mere residential development, had not been submitted at all and consequently had not been approved by K.O.T.

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The refusal of the permit of the applicant Company was based on the express provisions of the Streets and Buildings Regulation Law, Cap. 96, as amended by Law No. 13 of 1974, which latter Law amended section 9 and it is provided by subsection 2, paragraph (c), which was added to the basic Law the following new provisions:

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"9(3)(α) 'Οσάκις υποβάλλεται αίτηση:

- (i) δυνάμει της παραγράφου (α) ή (γ) του έδαφίου (1) του άρθρου 3 αναφορικώς πρὸς οίανδήποτε γαϊάν η
- (ii) δυνάμει της παραγράφου (β) ή (δ) του έδαφίου (1) του άρθρου 3 αναφορικώς πρὸς οίανδήποτε οίκοδομήν, έξαιρουμένης μόνον τῆς περιπτώσεως οίκοδομῆς ἀπο-

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5 τελούσης μονοκατοικίαν και μη άποτελούσης τμήμα
οικοδομής ή ομάδος οικοδομών ή κτιριακού συγκροτή-
ματος ή έτέρας οικοδομής ανάπτυξεως, κειμένην εκτός
περιοχής ύδατοπρομηθείας, ή άρμόδια άρχή δέν θα
10 χορηγή άδειαν άναφορικώς προς την έν λόγω γαίαν ή
οικοδομήν εκτός έάν αυτή, άφοϋ λάβη την συμβουλήν του
Διευθυντου του Τμήματος Άναπτύξεως Ύδάτων του
Ύπουργείου Γεωργίας και Φυσικών Πόρων (έν τοίς
15 έφεξής έν τώ παρόντι έδαφίω καλουμένου "Ο ρηθείς
Διευθυντής" Ικανοποιείται πλήρως ότι ό έν τή ύπο-
παραγράφω (ii) τής παραγράφου (γ) του έδαφίου (1)
του άρθρου 9 όρος άναφορικώς προς οίανδήποτε γαίαν
ή, άναλόγως τής περιπτώσεως, ό έν τή υποπαραγράφω
20 (xi) τής παραγράφου (β) του έδαφίου (1) του άρθρου 9
όρος άναφορικώς προς οίανδήποτε οικοδομήν, πληρουται
κατά τρόπον Ικανοποιούντα ταύτην ή ή πλήρωσις του
διασφαλίζεται κατά τόν ρηθέντα τρόπον.

20 Νοείται ότι έάν, έν οίανδήποτε συγκεκριμένη περιπτώ-
σει, ή άρμόδια άρχή διαφωνή προς τόν ρηθέντα
Διευθυντήν, αυτή δέον να παραπέμψη τó ζήτημα
άμελλητι εις τόν Ύπουργόν Έσωτερικών όστις
άποφασίζει έπ' αυτού τó ταχύτερον και κοινοποιεί
άμελλητι τήν άπόφασιν α' του εις πάντα ένδιαφερό-
25 μένον, και άπό τής τοιαύτης κοινοποιήσεως ή άπό-
φασις του Ύπουργού καθίσταται έκτελεστή.

(β)

In English it reads:

- 30 "9(3)(a) Whenever an application is submitted -
- (i) By virtue of para. (a) or (c) of subsection (1) of section
3 regarding any land or
- (ii) By virtue of para. (b) or (d) of subsection (1) of section
35 3 regarding any building, except only regarding the
case of a building consisting of a single residence and
not constituting part of a building or a group of
buildings or a building complex or other building
development, situate outside a water supply area, the
appropriate authority shall not grant a permit with
regard to the said land or building except if, after
obtaining the advice of the Director of the Department

of Water Development of the Ministry of Agriculture and Natural Resources (hereinafter in the present subsection referred to as "the said Director"), is fully satisfied that the condition in sub-paragraph (ii) of para. (c) of subsection 1 of section 9 regarding any land or as the case may be, the condition in subsection (xi) of para. (b) of subsection 1 of section 9 regarding any building is satisfied in a manner satisfying it or its compliance is secured in the said manner: 5

Provided that if in any particular case the appropriate Authority disagrees with the said Director, it must refer the matter forthwith to the Minister of Interior who decides the soonest and communicates his decision immediately to every interested person and as from such communication the decision of the Minister becomes executory." 10 15

Before proceeding any further with the examination of the sole issue of discrimination raised in this recourse, I shall deal with the objection of respondent No. 2, who in the present case obviously acted in his capacity as Chairman of the respondent Improvement Board of Ayia Napa, that he should not have been joined as a party to the present proceedings as he acted solely in his said capacity and he took no executory decision of his own or confirmed any decision taken by the appropriate Authority other than having participated in the collective decision of the respondent Board which in accordance with the Streets and Buildings Regulation Law, Cap. 96, section 3(2), para. (b), is the appropriate Authority and as such the Authority to which the applicants applied for a building permit. I uphold the objection as by virtue of section 51 of the Villages (Administration and Improvement) Law, Cap. 243: 20 25 30

"(1) In all legal proceedings the Board may sue and be sued in its name.

(2) A Board shall, for the purposes of this Law, bear the name 'Improvement Board of _____' (inserting the name of the improvement area)". 35

For all intents and purposes it would be enough in the circumstances to have made the Improvement Board of Ayia Napa

as the respondent in these proceedings, the District Officer of Famagusta as such having no locus standi in his said capacity in the present proceedings. The recourse, therefore, against him is dismissed for that reason.

- 5 As regards the ground of discrimination, it has been time and again said that reasonable differentiations are permissible in view of the intrinsic nature of things and only arbitrary and unreasonable differentiations constitute impermissible discrimination and offend Article 28 of the Constitution which safeguards
- 10 the principle of equality. In the present case, as already seen, there was a fundamental reasonable differentiation. The "Romulus" buildings were a touristic development project coming under the Hotels and Touristic Establishment Law of 1969 as amended, whereas the intended buildings of the applicant
- 15 Company were a residential development lying outside the inhabited area of the village and the water supply thereof.

For all the above reasons the recourse is dismissed, but in the circumstances there will be no order as to costs.

Recourse dismissed with no order as to costs.