1984 October 20

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ETERIA AKINITA ANTHOUPOLIS LTD.,
Applicants,

v.

THE IMPROVEMENT BOARD OF KATO POLEMIDHIA,
Respondent.

(*Case No.* 465/82)

Administrative Law—Omission—Application for division of land into building sites—All prerequisites set out by section 9(1)(*c*)(*ii*) *of the Streets and Buildings Regulation Law, Cap.* 96 *fulfilled—But respondents omitting for about* 5 *years to issue the building permit under various pretences—In so omitting they acted unreasonably, arbitrarily and in excese of the powers conferred upon them by Cap.* 96*—Clear case of maladministration—Declaration that the omission to issue the building permits ought not to have been made—Demand for payment of fees for issue of permit—Effect.*

Administrative Law—Administrative acts or decisions—Unilateral act of revocation of.

The applicants as owners of various pieces of land at Kato Polemidhia applied for their division into building sites by means of an application dated November 16, 1973. In April 1974 they were informed by respondents that no building permits would be issued in respect of the above application prior to the issue of a certificate of final approval in respect of the division applied for by another application No. 1188/69. This certificate of approval was finally issued on October 12, 1977. On the 19th May, 1978 the respondents wrote to their legal adviser for his opinion on the matter who advised them that since all the prerequisites set out by section 9(1)(c)(ii) of the Streets and Buildings Regulation Law, Cap. 96, as amended

by Law 13 of 1974, had been fulfilled, the respondents, as the appropriate authority, could not refuse to issue the division permits requested.

On the 19th February, 1980 the respondents wrote to the applicants informing them that their application had been approved and that they were to pay a sum of £302.–, as prescribed fees, which they did pay on the 25th February, 1980. On the same day the District Officer addressed two letters to the applicants, informing them that since the proposed division of the properties was not in accordance with the road network for the area new plans had been drawn and requested them, if they agreed, to furnish him with certain documents as well as "a bacteriological and chemical analysis of the water of the water–source and also the quantity of the output of the borehole". The applicants complied with all conditions except the last one because, as they informed the respondents, the water source had been twice examined and approved by the Department of Water Development.

Further correspondence was exchanged and on 21st October, 1982, the respondents, informed the applicants' advocate that it was decided that new water analysis had to be carried out and that the amount of £200.– was to be paid by them to the Water Development Department in respect of tests to establish the quantity of the water supply of the source and that the quantity required in respect of each plot would now be 300 gallons daily instead of the 200 gallons which was required in respect of their old building sites.

As a result, the applicants on the 2nd November, 1982, filed the present recourse for a declaration that the omission of the respondents, to issue the said division permits ought not to have been made and that whatever has been omitted should have been performed and, alternatively, for a declaration that the refusal of the respondents to issue the said permits is null and void and of no effect whatsoever.

Held, that it is abundantly clear from the facts of this case, that the respondent authority and, in particular, the then District Officer of Limassol, in dealing with the applications with which we are concerned in this recourse, acted unreasonably, arbitrarily and in excess of the powers conferred upon them by the Streets and Buildings Regulation Law, Cap. 96 and that,

in short, the present case is a clear case of maladministration; accordingly this Court declares that the refusal and/or omission of the respondent authority to issue the division permits requested by the applicants, ought not to have been made and that whatever has been omitted should have been performed.

Held, further, (1) that the demand for payment of fees entailed or presupposed an intention or obligation to issue the division permits because respondents with their demand for payment informed applicants that their applications had been approved and that the payment would be in respect of the issue of the permits (see, also, regulation 62(1) of the Streets and Buildings Regulations).

(2) That the letter of the District Officer of the 25th February, 1980, imposing new conditions on the applicant company, after the prescribed fees had been paid, which letter was obviously written without consulting the other members of the respondent Board, amounts to nothing short of a unilateral act of revocation of an administrative decision which had become binding on the respondent authority since it had been communicated to the applicant company who, accordingly, acted upon it, paid the respective fees and received the relevant receipts (see *Panayides* v. *The Republic* (1972) 3 C.L.R. 467 at p. 482 and *Yiannakis Charalambous* v. *The Republic* (1981) 3 C.L.R. 203 at p. 211).

Declaration that sub judice omission ought not to have been made.

Cases referred to:

Kaniklides v. *Republic*, 2 R.S.C.C. 49 at p. 59;

Panayides v. *Republic* (1972) 3 C.L.R. 467 at p. 482;

Charalambous v. *Republic* (1981) 3 C.L.R. 203 at p. 211.

Recourse.

Recourse against the refusal of the respondent to issue division permits for the division of applicants' lands into building sites.

K. Michaelides, for the applicants.

E. Demosthenous, for the respondent.

Cur. adv. vult.

MALACHTOS J. read the following judgment. The applicant company seeks by this recourse:

(A) A declaration that the omission of respondent Improvement Board to issue the division permits requested by applications Nos. D960/73 and D961/73 for the division of the applicants' lands at Kato Polemidhia plots Nos. 150/2, 152/2, 153/1, 588/3/2 and 154 of S/P LIII/56 and LIII/55, into building sites, ought not to have been made and that whatever has been omitted should have been performed.

(B) Alternatively, a declaration that the refusal of respondent Board contained in its letter dated 21st August, 1982, to issue the division permits requested by applications Nos. D960/73 and D961/73 for the division of the applicants' lands at Kato Polemidhia plots Nos. 150/2, 152/2, 153/1, 588/3/2 and 154 of S/P LIII/56 and LIII/55 into building sites is null and void and of no effect whatsoever.

The relevant facts of the case are as follows:

The applicants are the owners of various pieces of land at Kato Polemidhia under plot Nos. 150/2, 152/2, 153/1, 154 and 588/3/2, S/P LIII/56 and LIII/55. Plots 150/2 and 152/2 were purchased by a written contract of sale dated 16th July, 1973 from a certain Savvas Theophani Achilleos of Ypsonas and plots 153/1 and 588/3/2 were purchased by a written contract of sale dated 24th October, 1973 from a certain Polymnia Char. Kleanthi of Ypsonas.

On 16th November, 1973 two applications for the division of the aforesaid plots into building sites were filed by the then registered owners, application No. D960/73 in respect of plots 153/1 and 588/3/2, and application No. D961/73 in respect of plots 150/2 and 152/2. The division envisaged by the said applications was a continuation of the division of the adjoining plots 155/1/1, 440/5 and 153 belonging to the applicants in respect of which division permit No. 073 was issued on 19th December, 1970, as a result of application No. D1189/69. The access to the new plots, which are the subject matter of this recourse, was to be effected through the roads to be constructed on the land which was divided by virtue of division permit No. 073. The source of water-supply for the whole project was the same.

On 27th April, 1974, the District Officer of Limassol, as Chairman of the respondent Board, addressed two identical

letters to the applicants proposing an alteration of the plans prepared for the construction of the streets to serve the new plots. He also informed the applicants that no building permits would be issued in respect of these applications prior to the issue of a certificate of final approval in respect of the division applied for by application No. 1188/69. The applicants accepted the proposed alteration of the plans, by their letter of 1st May, 1974. The said certificate of approval was finally issued on 12th October, 1977. In the meantime, the applications D960/73 and D961/73 were examined and were recommended for approval on 12th November, 1974 and 13th November, 1974, respectively.

As it appears from the respondent's file the entire consideration of these applications by the various technical government departments was completed by November, 1974 but they had not been approved "because the certificate of approval in application No. D1188/69 ought to have been issued first". It was also stated that the proposed source of water serving the plots subject to division was a private one.

Subsequently, on 19th May, 1978, the respondent wrote to their legal adviser for his opinion in the matter who advised them that since all the prerequisites set out by section 9(1)(c)(ii) of the Streets and Buildings Regulation Law, Cap. 96, as amended by Law 13 of 1974, had been fulfilled, the respondent, as the appropriate authority, could not refuse to issue the division permits requested.

Nonetheless, the permits were still not issued and so on the 24th July, 1978, the applicants wrote to the respondent once more but still received no reply. On 4th August, 1978, the new amendment of the Streets and Buildings Regulation Law, Cap. 96, came into force.

On 31st October, 1979, counsel for the applicants wrote to the respondents complaining about the unjustified delay. As a result the respondents asked the Attorney-General for his legal advice on the matter. On 26th January, 1980, the Deputy Attorney-General advised the respondent District Officer of Limassol that they were under an obligation to issue the permits applied for and that their attitude was wrong and they had no justification for the delay and that the law applicable was as

on the 12th October, 1977, when all the prerequisites had been satisfied.

The respondent finally wrote to the applicants on the 19th February, 1980, that their applications had been approved and that they were to pay a sum of £302.– as prescribed fees for the issue of the division permit in respect of application D961/73. On 25th February, 1980, the respondent addressed an identical letter to the applicants to pay the sum of £278.500 mils in respect of application D960/73. These fees were paid on 25th February, 1980.

On the same day the District Officer addressed two letters to the applicants, informing them that since the proposed division of the properties was not in accordance with the road network of the area new plans had been drawn and requested them, if they agreed, to furnish him with certain documents as well as "a bacteriological and chemical analysis of the water of the water-source and also the quantity of the output of the borehole". The applicants complied with all conditions except the last one because, as they informed the respondent, the water source had been twice examined and approved by the Department of Water Development.

The permits, however, were still not issued because, as the applicants were informed, the water source No. H848, which was the source for the water supply of the whole project, had been register by mistake in the name of the Government, by virtue of application No. D1188/69; consequently, there was no private water. As a result, applicants had a meeting with the Assistant District Officer of Limassol and on the 28th August, 1980, complained to him in writing about the whole situation. Again, no permits were issued and so on the 10th Feburary, 1981, the applicants' advocate sent to the respondent another letter complaining about their omission. The respondent replied on 7th March, 1981, requiring the applicants to file an application to the District Lands Office of Limassol for the reacquisition of the water source, after which, provided that the necessary analysis for the suitability of the water was carried out, the applications would be proceeded with.

On the 17th June, 1981, the District Officer of Limassol wrote to the District Lands Officer explaining that by mistake the water

source had been registered in the name of the Government, whereas it ought to have remained as private property and requested the D.L.O. to make the necessary corrections. The necessary steps were then taken by the D.L.O. and the mistake was corrected under a new certificate of registration No. 26646, but still no permits were issued. Further correspondence was exchanged and on 21st October, 1982, the respondent informed the applicants' advocate that it was decided that new water analysis had to be carried out and that the amount of £200.- was to be paid by them to the Water Development Department in respect of tests to establish the quantity of the water supply of the source and that the quantity required in respect of each plot would now be 300 gallons daily instead of the 200 gallons which was required in respect of their old building sites.

As a result, the applicants on the 2nd November, 1982, filed the present recourse.

The grounds of law on which the recourse is based may be summarised as follows:

1. The respondent authority failed in its duty to issue the relevant permits, which failure constitutes a continuing omission.

2. The division permits ought to have been issued by December, 1977, and in accordance with the legislation in force at that time.

3. The respondent acted contrary to law and in excess or abuse of power.

It has been argued by counsel for applicants that since their application was in compliance with the relevant legislation, the respondent had an obligation to issue the permits applied for, not having any discretion in the matter. The issue of such permits being mandatory. He relied on the case of *Kaniklides* v. *The Republic*, 2 R.S.C.C. 49, at page 59 and the Conclusions from Case Law of the Greek Council of State 1929–1959 page 174 to 175 and submitted that the continuous refusal of the respondent authority to issue the permits applied for was in excess and abuse of power.

It is abundantly clear from the facts of this case, as they emerge from the documentary evidence before me, that the

respondent authority and, in particular, the then District Officer of Limassol in dealing with the applications with which we are concerned in this recourse, acted unreasonably, arbitrarily and in excess of the powers conferred upon them by the Streets and Buildings Regulation Law, Cap. 96. In short, the present case is a clear case of maladministration.

It can be reasonably inferred from the whole attitude of the respondent authority that they were doing their best to hinder the applicants one way or another from obtaining the permits applied for.

At first they said that the permits could not be granted before the issue of the certificate of approval in application for division No. 1188/69. No other condition was imposed. When, however, the relevant certificate of approval was issued, and the division permit concerning application No. 1188/69 was finally granted on the 12th October, 1977, they still failed to issue the said permits inspite of the legal advice which was given to the respondent authority by their legal adviser at their own request.

Furthermore, on the 25th February, 1980, even though they informed the applicants that their applications had been approved and asked them to pay the prescribed fees, they collected the fees but again failed to issue the permits. On this point counsel for the respondent argued that their demand for payment did not entail or presuppose an intention or obligation to issue such permits. I must say straight away that this argument cannot possibly hold ground. In the first place, with their demand for payment, they informed the applicants that their applications had been approved and that the payment would be in respect of the issue of the permits. Secondly, in regulation 62(1) of the Streets and Buildings Regulations, it is provided that "..... Fees shall be payable to the several appropriate authorities for permits granted by such authorities.....".

Subsequently, when it was found out that the water source for the supply of water to the building sites in question had by mistake been registered in the name of the Government, the permits were again not issued, not even when the mistake was finally rectified, but a new excuse was put forward that

the water of this source, which was considered suitable for 75 other approved building sites had to be analysed once again.

Before concluding my judgment, I must point out that the letter of the District Officer of the 25th February, 1980, imposing new conditions on the applicant company, after the prescribed fees had been paid, which letter was obviously written without consulting the other members of the respondent Board, amounts, in my view, to nothing short of a unilateral act of revocation of an administrative decision which had become binding on the respondent authority since it had been communicated to the applicant company who, accordingly, acted upon it, paid the respective fees and received the relevant receipts. (In this respect see *Petrakis Panayides* v. *The Republic* (1972) 3 C.L.R. 467 at page 482 and *Yiannakis Charalambous* v. *The Republic* (1981) 3 C.L.R. 203 at page 211.

For the above reasons this recourse succeeds.

In the result, this Court declares that the refusal and/or omission of the respondent authority to issue the division permits requested by the applicants, ought not to have been made and that whatever had been omitted should have been performed.

As regards costs, the respondent authority is directed to pay £50.- against the costs of the applicant company.

Declaration that sub judice omission ought not to have been made. Respondent to pay £50.- *against costs.*