

1984 November 20

[TRIANTAFYLLIDES, P., L. LOIZOU, HADJIANASTASSIOU, JJ.]

MUNICIPALITY OF LIMASSOL,

Appellant,

v.

MICHALIS AVRAAM,

*Respondent.**(Civil Appeal No. 5949).*

*Landlord and Tenant—Statutory tenancy of a dwelling house—
The Rent Control Law 36/1975, s. 16(1)(ia)—Local
authority claiming possession under said section on the
ground that it is reasonably required for execution of
its statutory powers and duties under ss.123 and 124 of
Cap. 240—The powers and duties aforesaid do not enable
appellant to claim possession of the premises in question—
Public interest—In the circumstances of this case not a
separate ground of eviction.* 5

*The Rent Control Law 23/1983 s.32(2)—Cannot be interpreted
so widely as to affect rights of parties to appeals in which
judgment had been reserved before its enactment.* 10

The respondent occupies, as statutory tenant, one of
a block of flats, built in 1957, by the appellant
Municipality, for the purpose of letting them out to citizens
of the town of Limassol, who in the opinion of the Muni-
cipal Committee have no means to rent out any other
house without great difficulty. In the opinion of the
Municipal Committee respondent's financial means are
now better and he can rent any other house, whereas
there are other citizens of Limassol whose financial means
are worse and therefore the premises occupied by the
respondent are required to be given to them. The appel-
lant's claim for eviction is based on section 16(1)(ia) of the
Rent Control Law 36/1975, which provides that an order
for eviction from a dwelling house may be made where 15
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it is reasonably required, for the purpose of the execution of statutory duties or powers of a local authority or for any other purpose which in the opinion of the Court is in the public interest. In this respect counsel for the appellants referred to their statutory powers under sections 123 and 124 of the Municipal Corporations Law, Cap. 240 and in particular to paragraphs (b), (g) and (i) of subsection 2 of section 124 and further argued that in any event an order for the recovery of possession should have been made on the ground of public interest. The judgment of the Court had been reserved, before the enactment of Law 23/1983.

Held, dismissing the appeal, (1) The above provisions of Cap. 240 do not vest in the appellants, as a local authority, such duties or powers as to enable them to claim eviction of the respondent for the purpose of their execution on the basis of section 16(1)(ia) of Law 36/1975.

(2) In the circumstances of this case the factor of public interest could not be treated as a separate ground inasmuch as in the statement of claim it has been practically identified with the execution of the alleged statutory powers and duties.

(3) Section 32(2) of Law 23/1983 cannot be interpreted so widely as to affect rights of parties to appeals in which judgment had been reserved before its enactment.

Appeal dismissed.

No order as to costs.

Appeal.

Appeal by applicant against the judgment of the District Court of Limassol (Anastassiou, D.J.) dated the 14th April, 1979. (Appl. No. 19/79) whereby applicant's claim for possession of a house in Limassol, which is the property of the applicant and in which the respondent has been residing, was dismissed.

Y. Potamitis, for the appellant.

St. McBride, for the respondent.

Cur. adv. vult.

TRIANAFYLLIDES P. read the following judgment of the Court. The appellant Municipality has challenged the judgment of the District Court of Limassol by means of which there was dismissed the claim of the appellant municipality for possession of a house in Limassol, which is the property of the appellant and in which the respondent has been residing. 5

The facts of this case are stated as follows in the judgment of the trial Court:

“The applicant is the Municipal Corporation of Limassol and the building in question is one of a block of flats described and known as The Municipal Workers’ Houses in the quarter of Ayios Nicolaos, built in 1957, which as the applicants state in the statement of claim were built for the purpose of letting them out to citizens of the town of Limassol who in opinion of the Municipal Committee of Limassol have no means to rent out any other house without great difficulty. 10 15

The Municipal Committee of Limassol is seeking an order of eviction against the respondent because in their opinion his financial means are now better and he can rent any other house, whereas there are other citizens of Limassol whose financial means are worse and therefore these premises are required to be given to them. The ground of eviction put through by the applicants is that this house is reasonably required for the purpose of carrying out all their legal duties and/or powers as local authority and/or for the purposes of public interest.” 20 25 30

As it was common ground that the respondent was a statutory tenant the claim for possession of the premises in question was based by the appellant on section 16 (1) (ia) of the Rent Control Law, 1975 (Law 36/75), which provides that an order for the recovery of possession of a dwelling-house may be made where it is reasonably required for the purpose of the execution of the statutory duties or powers of a local authority or for any purpose which in the opinion of the Court is in the public interest. 35

5 It has been contended further by counsel for the appellant that the relevant statutory powers of the appellant are those to be found in sections 123 and 124 of the Municipal Corporations Law, Cap. 240, and, in particular, in paragraphs (b), (g) and (i) of subsection (2) of the said section 124.

10 We agree with the learned trial Judge that the above provisions of Cap. 240, which have been relied on by counsel for the appellant, do not vest in the appellant, as a local authority, such statutory duties or powers as would enable it to claim that for the purpose of their execution it is required to evict the respondent from the premises in question on the basis of the provisions of section 16(1) (ia) of Law 36/75.

15 As regards the ground of public interest, on the strength of which counsel for the appellant has claimed that, in any event, an order of recovery of possession should have been made under the said section 16(1) (ia) of Law 36/75, we do not agree that in the circumstances of this case the factor of public interest could be treated as a separate ground inasmuch as by paragraph 4 of the statement of claim it has been practically identified with the execution of alleged statutory duties and powers of the appellant which, as has been already held, cannot be derived from the provisions of Cap. 240 which were relied on by counsel for the appellant.

For all the foregoing reasons we have come to the conclusion that this appeal must fail and is dismissed accordingly, but we will make no order as to its costs.

30 Before concluding this judgment we should state that after the hearing of the present appeal was completed and judgment had been reserved there came into force on the 22nd April, 1983, the Rent Control Law, 1983 (Law 23/83), and, in view of the provisions of section 32(2) of that Law, this Court directed that the parties to the appeal should be notified that if any party wished to be heard, before the delivery of the reserved judgment, in relation to the effect, if any, regarding the outcome of this appeal, of the

provisions of section 32(2) of Law 23/83, such party should apply, in writing, to the Registry of this Court accordingly. Neither party has, however, taken such a step and we proceeded to decide this appeal treating it as unaffected by the provisions of Law 23/83, because, we eventually reached the view that section 32(2) of Law 23/83 cannot be interpreted so widely as to affect rights of parties to appeals in which judgment had been reserved before its enactment. 5

Appeal dismissed with no order as to costs. 10