

1985 May 16

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

IOANNIS PAPA-ADAMOU,

Applicant,

v.

1. THE IMPROVEMENT BOARD OF LAKATAMIA
2. THE REPUBLIC OF CYPRUS, THROUGH
THE DISTRICT OFFICER OF NICOSIA,

Respondents.

(Case No. 60/84).

5 *Time within which to file a recourse—Article 146.3 of the Constitution—Recourse against conditions contained in a division permit—Not filed within 75 days from communication of conditions to applicant—Recourse out of time—Dismissed.*

10 *Administrative Law—Administrative acts or decisions—Informatory act—Application for a division permit—Letter supplying applicant with certain information, asked for by him, and with copy of the permit which had been issued to him previously—Not containing any new decision amounting to an executory act but is merely of an informative character—And as such cannot be made the subject of a recourse.*

15 The applicant having applied for a new division permit of two adjacent building sites was on 23.7.1983 granted a new division permit subject to certain conditions. On 21.11.1983 his counsel applied to be sent the permit and by his reply dated 2.12.1983 respondent 1 attached copy of the permit and, also, informed him that the division permit was
20 issued on 23.7.1983 and his client has deposited same with the Land Registry Office.

Upon a recourse by the applicant against the conditions contained in the permit, which was filed on 31.1.1984, counsel for respondent 1 raised the preliminary objection that the recourse was filed out of time. The Court after hearing evidence found that the conditions of the permit were communicated to applicant on 23.7.1983.

5

On the preliminary objection:

Held, that once the conditions contained in the division permit were communicated to him on 23.7.1983, this recourse, which was filed on 31.1.1984, has not been filed within the 75 days time prescribed by Article 146.3 of the Constitution and has to be dismissed.

10

Held, further, that the letter of respondent 1 Board dated 2.12.1983 in reply to the letter of applicant's counsel, does not contain any new decision amounting to an executory administrative act but is merely of an in-formatory character supplying him with the information asked for together with copy of the permit which was issued to the applicant on 23.7.1983, and as such it could not be made the subject of a recourse.

15

20

Application dismissed.

Recourse.

Recourse against the decision of the respondents to impose certain conditions in the division permit granted to him in respect of his property situated at K. Lakatamia.

25

A. Eftychiou, for the applicant.

E. Odysseos, for respondent 1.

A. Vladimirov, for respondent 2.

Cur. adv. vult.

SAVVIDES J. read the following judgment. Applicant by this recourse prays for a declaration of the Court that the decision of the respondents which was communicated to him by letter dated 2.12.1983, addressed to his advocate, concerning certain conditions which were imposed in the division permit granted to him is null and void and of no legal effect.

30

35

The applicant is the owner of two building sites under Registration B 1014 and B 1015, Plots 695 and 696, respectively, situated at Kato Lakatamia. On or about the 21st April, 1982 the applicant submitted an application to the appropriate authority for the issue of a building permit on Plot 696. By letter dated 7.6.1982 addressed to him by the Ag. District Officer of Nicosia in his capacity as Chairman of the Improvement Board of Lakatamia applicant was informed that his application could not be approved for the following reasons as stated therein:

“(a) The said property is affected by an approved street widening scheme which was published under Notification 1863 (official Gazette No. 1305 dated 8.10.1976) and by a new street widening scheme as shown in blue and green on the survey plan.

(b) The effect of the approved street widening scheme and the new street widening scheme, was not taken into consideration.

(c) The building should be at a distance of not less than 10 ft. from the line of the approved street widening scheme under Regulation 6(3) and section 12 (3) of Law Cap. 96.

(d) The building ratio of the construction after deducting the area which is affected by the approved street widening scheme, is 1.05:1 instead of not exceeding 1.00:1, contrary to the provisions of Notification 119/75.

(e) The enlargement of the plot is wrong.

(f) Whereas the parking requirements for the building are for four cars in the plans you show only one.”

The applicant, instead of submitting new plans, applied for a new division of his two adjacent building sites and readjustment of their boundaries so that part of the building site under plot 695 be deducted from such plot and be amalgamated with plot 696 so that the area of plot 696 be increased to a satisfactory degree.

The appropriate authority on 23.7.1983 granted his application for a new division and readjustment of the

boundaries of plots 695 and 696 and a permit was issued to him signed by the Ag. District Officer of Nicosia on behalf of the respondent Improvement Board subject to the conditions appearing therein that-

(a) a final certificate of approval was not to be granted unless there was installation of sufficient and suitable water supply to the satisfaction of the appropriate authority. 5

(b) The new division and re-arrangement of boundaries of plots 695 and 686 should be effected as shown on the approved survey plan. 10

(c) The part of plot 696 which was affected by the street widening scheme was to be ceded to the public road and there should be constructed on it a pavement of 10 ft. wide with concrete slabs of dimensions of 0.40 x 0.40 meters and the rest will be asphalted with premix so that it will form a smooth surface with the existing road. 15

It is the contention of the applicant that the conditions imposed by the appropriate authority for the new division and readjustment of boundaries of the two building sites were communicated to him for the first time by letter of the applicant dated 2nd December, 1983 in reply to the letter of his advocate dated 21.11.1983. 30

The contents of the letter of applicant's counsel of 21.11.1983 which was addressed to respondent 1 with copy to respondent 2 (copy of which was annexed to the application as exhibit 3(b)) read as follows: 25

"I have been instructed by my client Ioannis Papa Adamou of Kato Lakatamia to refer to his application for the issue of a permit of division in connection with the readjustment of the common boundary of two plots belonging to him at Kato Lakatamia (File No. D 2119/82) and to inform you that till today notwithstanding the fact that he has paid the sum of £22.- for the issue of such permit, you have not sent such permit to him so that he may have knowledge of same. Therefore, you are requested to send to me the said permit the soonest possible." 35

The reply of the District Officer in his capacity as Chairman of respondent 1 Board dated 2.12.1983, reads as follows:

5 *"Division of plots 695, 696, Sheet Plan XXX/13W.
1 of Kato Lakatamia.*

10 I refer to your letter dated 21.9.1983 in connection with the above case of your client Ioannis PapaAdamou and wish to inform you that the said division permit—copy of which is attached—was issued on
15 23.7.1983 and your client has deposited same with the Land Registry Office—File No. B1123/83. The letter of the District Lands Officer dated 5.9.1983 copy of which is hereby attached is related."

15 The copy of the said letter to which reference is made in the letter of the District Officer and which is directed to the applicant reads as follows:

20 "With reference to your application B1123/83 for the division of your immovable property at Kato Lakatamia, I wish to inform you that the survey work
25 has been completed.

25 If you wish the issue of titles in your name in accordance with the said division, you must produce a certificate of approval of the division as per permit for division 3820 D 2119/82 which you have to obtain from the appropriate authority. Also, you have to apply to the District Lands Officer for the registration of the division and pay the sum of £1.700 mils fees for the local inquiry and the issue of titles of registration."

30 In consequence of the said letter, the applicant filed the present recourse which he based on the following grounds of Law:

(1) The sub judice decision was taken in abuse and/or excess of power.

35 (2) The sub judice decision was taken in violation of the principles of good administration.

(3) It is not duly or sufficiently reasoned.

(4) The respondents did not carry out a proper and/or due inquiry of all the material facts of the case before the sub judge decision was taken.

(5) The sub judge decision was taken in violation of the principles of equality under Article 28 of the Constitution. 5

(6) The sub judge decision was taken in violation of the existing legislation and in particular of the Streets and Buildings Regulation Law, Cap. 96, as amended and in particular sections 3, 9(1)(c) of Cap. 96. 10

(7) The sub judge decision was taken in violation of Article 23(1) (2) (3) of the Constitution.

The application was opposed by counsel for the Improvement Board of Lakatamia, respondent 1 and also by counsel appearing for the Republic, respondent 2. Counsel for respondent 2 raised a preliminary objection that they have not issued any executory act and in consequence the recourse against the Republic should be dismissed. Subject to the above, he contended that the recourse was filed out of time and that in any event the decision was properly taken by respondent 1. 15 20

Counsel for respondent 1 by his opposition raised a preliminary objection that respondent 2 has no locus standi in the case and that the sub judge decision was taken by respondent 1 as the appropriate authority under the provisions of section 3 of the Streets and Buildings Regulation Law, Cap. 96, and not by respondent 2. Also that the recourse was filed out of time. Subject to the above preliminary objections, he contended that in taking its decision and issuing the permit No. 3820 dated 23.7.1983 for the new division and readjustment of the boundaries of plots 695 and 696 respondent 1 acted lawfully and after due consideration of all material facts. 25 30

In the course of the hearing of these proceedings counsel for applicant applied for leave to withdraw the recourse against respondent 2 which was granted to him and as a result the recourse against respondent 2 was dismissed. 35

At the hearing of this recourse applicant testified on oath in support of his version that he came to know about the restrictions contained in the division permit through the letter of respondent 1 to his advocate dated 2.12.1983.

5 To contradict the applicant, counsel for respondent 1 called a number of witnesses.

Applicant's version was that on or about the 15th July, 1983 and after a long delay had occurred since he made his application, he went to the office of District Officer, Nicosia, to inquire about his case. There he was given a closed envelope and was asked to take it to the office of respondent 1. He did so and after they opened the envelope he was asked to pay £20.- which he did and a receipt was given to him together with an envelope which he was asked to take to the office of the District Officer of Nicosia. After handing over the envelope, he inquired about the fate of his application for a building permit and as a result he was given "something in an envelope to take to the Land Registry Office" which he took to the Land Registry Office where he was told that the title deeds would be sent to him later. The only thing he knew, as alleged by him, was that a division permit was granted to him but he never knew that any conditions were imposed on such permit.

In cross-examination he admitted that he received from the Land Registry Office the letter of the 5th September, 1983 asking him to produce the certificate of approval of the division and pay the necessary fees for the issue of the new title deeds, if he wished to have such title deeds. Concerning the survey which was carried out for the division, and to which reference is made in the letter of the Land Registry Office of the 5th September, 1983, he denied that such survey took place in his presence and alleged that he was represented at such survey by his brother-in-law. As to the existence of a street widening scheme affecting his property, he admitted that after enquiries he made at the Town Planning Office he was told about it and it is for this reason that his architect made new building plans bearing in mind the area affected by the street widening scheme. For the same reason he made the application for new division of his two building sites and readjustment of their boundaries so that part of his adjoining plot of land be deducted and be amalgamated with the other.

Counsel for respondent 1 called four witnesses. The first witness was a clerk employed by all Improvement Boards, stationed at the office of the District Officer of Nicosia and was the person in charge of the files of building permits of the Improvement Boards. He produced the file of the case (exhibit "B") and drew the attention of the Court to blue No. 5 which is the letter addressed to the applicant on the 11th July, 1983 to pay the sum of £22.- as fees to the Improvement Board of Lakatamia for the issue of the division permit and also to blue 7 which is the division permit issued on the 23rd July, 1983.

The second witness Mr. S. Efstathiou, an Administrative Officer at the office of the District Officer in charge of the building and division permits, deposed that the applicant prior to the issue of the permit, called several times at his office and discussed with him various problems which arose as a result of the street widening scheme, as a result of which the applicant submitted an application for readjustment of the boundaries of his building sites so that part of the one site be deducted from it and be amalgamated with the other. Such permit, signed by the witness on behalf of the District Officer as Chairman of respondent 1 Board, was issued to the applicant on the 23rd July, 1983. He did not send this permit to the applicant by post, as the applicant who was urgently pressing for such permit, said that he was going to collect it personally and in fact such permit was delivered to him on the 23rd July, 1983. He did not hand such permit to him enclosed in an envelope, addressed to the Land Registry Office, nor did he ask the applicant to take it to the Land Registry Office in a sealed envelope, as there was no reason for him to do so. As to the conditions which were imposed on the permit, the witness testified that on several occasions prior to the issue of the permit, he explained the conditions subject to which such permit was to be issued, and that all terms which were to be endorsed on the permit and which were recorded in the relevant file, were discussed and explained by him to the applicant.

The third witness called for respondent 1 was the Land Registry clerk, who dealt with the application for the new division of his building sites. According to his evidence, applicant called at the Land Registry Office on the 25th

July, 1983 and submitted an application for the new division. The witness produced the relevant file (exhibit "D") which was opened as a result of the application made by the applicant. Such application (exhibit D-red 3 in the relevant file) reads as follows:

"Application for the division of land into building sites for building purposes.

District Lands Officer,

Nicosia.

I enclose certificates of registrations Nos. B1015, B1014 dated 23.1.61 in respect of my property situated at Kato Lakatamia, together with the division permit obtained from the appropriate authority under No. D 2119/82 as well as an approved plan of the building sites, and I request for the fixing of the boundaries of the proposed new sites, as indicated on the aforementioned plan.

The number of the new sites which will result will be two.

20

Signed

The Applicant

Date : 25.7.1983."

According to witness 3 attached to such application were the survey plan on which the approved division was indicated (red 1 of exhibit "D") and the original division permit dated 23.7.1983 issued by witness 2 for respondent 1 (red 2 of exhibit "D"). Applicant paid £4.- fees for such application. The witness stated emphatically that for him to accept an application of this type an applicant has to submit the application with all relevant documents attached to it which have to be checked by him. Such application cannot be sent by the District Officer or submitted to him in a closed envelope.

The last witness called by respondent 1 was Mr. Neophytos Drakos, the Surveyor who carried out the survey and readjustment of boundaries in accordance with the

application of the applicant as appearing in exhibit "D" on 27.8.1983. According to the witness, the survey, which lasted about two hours, was carried out in the presence of the applicant himself with whom he discussed the case and to whom he pointed out the new boundaries as fixed by him in accordance with the plan. He also fixed the boundaries of the part which was to be ceded to the road and explained to the applicant that he had to construct a pavement of cement slabs on such part according to the conditions of his permit. The fact that the survey was carried by this witness in the presence of the applicant appears recorded on the relevant file (exhibit "D") under note 2 which reads as follows:

"To Senior Surveyor,

The readjustment of boundaries of plots 695-696 of Block B at Kato Lakatamia as well as the deduction of the part affected by the street widening scheme, was carried out in the presence of the applicant and appears in Survey book 10481 page 29.

Time required two hours.

27.8.1983.

(Sgd) N. Drakos

Surveyor, 1st Grade."

Having heard the evidence of both sides I have not the slightest hesitation in rejecting the version of the applicant and his story about the closed envelopes on all occasions, as the product of his imagination in an effort to overcome the obstacle of the time bar in challenging the conditions imposed for the new division of his property. The impression I formed of the applicant is that of an unreliable and untrustworthy witness whose evidence in the material respects I reject. It is abundantly clear from the evidence of the witnesses for respondent 1 whose evidence I accept and the material in the files produced at the hearing that the applicant was well aware of the conditions imposed and that such conditions appeared on the permit for division issued to him on 23.7.1983 which was collected by him in person and was submitted together with his appli-

cation of 25.7.1983 to the Land Registry Office for such division to be carried out.

5 Having found as above, I accept the preliminary objection raised by counsel for respondent 1 that once the conditions contained in the division permit were communicated to him on 23.7.1983, this recourse, which was filed on 31.1.1984, has not been filed within the 75 days time prescribed by Article 146.3 of the Constitution and has to be dismissed.

10 The letter of the District Officer in his capacity as Chairman of respondent 1 Board dated 2.12.1983 in reply to the letter of applicant's counsel, does not contain any new decision amounting to an executory administrative act but is merely of an informatory character supplying him
15 with the information asked for together with copy of the permit which was issued to the applicant on 23.7.1983, and as such it could not be the subject of a recourse.

20 In the result this recourse fails and is hereby dismissed with £75.- towards costs of respondent 1, against the applicant.

Recourse dismissed.

Order for costs as above.