

1985 October 30

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

CHRYSTALLA MICHAEL KYPRIANOU,

Applicant,

v.

- 1) THE REPUBLIC OF CYPRUS, THROUGH
 - a) THE MINISTER OF INTERIOR,
 - b) THE IMPROVEMENT BOARD OF IDALION,
- 2) THE IMPROVEMENT BOARD OF IDALION
THROUGH THE DISTRICT OFFICER NICOSIA,

Respondents.

(Case No. 282/83).

5 *Building Permits—Condition for the cession of part (3,150 sq. ft.) of applicant's land for use as a public road—Reasonable and necessary in the circumstances for the development of the land (a fairly big plot) which had no access to a public road.*

10 *Constitutional Law—Constitution, Art. 23—The legal framework with regard to the development of land in correlation to the right of ownership—Such right does not carry with it a vested interest for the development of the land—The term in the building permit imposing as a condition the cession of 3,150 sq. f. of the applicant's land for use as a public road does not amount to a "deprivation" in the sense of Art. 23 of the Constitution.*

Constitutional Law—Constitution, Art. 28.

15 *Constitutional Law—Constitution, Art. 23.11.*

At issue in the proceeding is the validity of the terms attached to a building permit sought by the applicant in order to legitimize buildings erected without a permit on her land at Dhali. By the terms of the permit the appli-

cant was required to cede an area of her property of an extent of about 3,150 sq. ft. for use as a public road and carry out work incidental to the creation of the road.

The property in question (a fairly big plot) had no access to the public road. The applicant had initially joined in an application of her neighbours for the construction of a public road, expressing readiness alongside with her neighbours to cede an appropriate portion of her land for the purpose. However, she subsequently resiled therefrom. As a result the public road that was constructed reached only up to the applicant's adjacent properties.

In support of her contention that the terms imposed constitute an act of deprivation of ownership the applicant produced a valuation report of Mr. Kimonis, a land valuer, in whose opinion the overall value of the applicant's land will, after the cession required, fall by £1,000. On the other hand the Nicosia District Officer of the Town Planning Department alleged in his evidence that the land will, as a result of the cession, gain value. This Officer, however, is not an expert valuer.

Held, dismissing the recourse (1) The outcome of the case depends on the answers to the following three questions, i. e. (a) Do the terms of the permit amount to deprivation in the sense of Article 23 of the Constitution. If yes, the land cannot be acquired except by the machinery of compulsory acquisition, (b) Are the terms in question reasonable in the sense of a proper exercise of the discretionary powers of the appropriate authority and (c) Do the said terms entail discriminatory treatment of the applicant contrary to Article 28 of the Constitution?

(2) The case law has established incontrovertibly that conditions attached for the development of land are par excellence acts of limitation of the rights of ownership within the scope of the discretion of the authority responsible for the development of the area in question. By the attachment of conditions to the development of land nothing is taken away from the owner. If he does not wish to proceed, he can keep his land and enjoy it as before. The right of ownership does not carry a vested

interest in the development of the land. Question (a) above should, therefore, be answered in the negative. The valuation of Mr. Kimonis irrespective of its correctness, does not support the view that the cession requested amounts to deprivation.

(3) In view of the totality of the material placed before the Court the terms imposed appear to be not only reasonable but also necessary for the development of the land in question. Question (b) above should, therefore, be answered in the affirmative.

(4) Applicant's allegation that respondents, discriminated against her is totally unfounded; one need only remind that the applicant herself originally joined with neighbouring owners in an application to the authorities to establish an appropriate road network in the area.

*Recourse dismissed.
No order as to costs.*

Cases referred to:

Simonis and another v. The Improvement Board of Latsia
(1984) 3 C.L.R. 109;

Holy See of Kitium and the Municipal Council of Limassol, 1 R.S.C.C 15;

Thymopoulos and Others v. Municipal Committee of Nicosia
(1967) 3 C.L.R. 588;

Sofroniou and Others v. Municipality of Nicosia and Others (1976) 3 C.L.R. 124.

Recourse.

Recourse against the validity of the terms attached to the building permit sought for by applicant in order to legitimize buildings erected without a permit on her land at Dhali village.

C. Velaris, for the applicant.

E. Odysseos, for the respondents.

Cur. adv. vult.

PIKIS J. read the following judgment. At issue in the proceeding is the validity of the terms attached to the building permit sought for by the applicant in order to legitimize buildings erected without a permit on her land at Dhali, notably on plot 681. By the terms of the permit, the applicant was required to cede an area of her property for use as a public road, of an extent of about 3,150 sq. ft. and carry out work incidental to the creation of the road so as to pave the ground for its construction. The property has no access to the public road. In the past it was served, so far as it may be gathered, by a right of passage through adjoining properties seemingly to make possible its use as an agricultural tenement. In the meantime a public road was created reaching up to adjacent properties following the wish of the owners to lay the foundations for the development of their land. Initially the applicant too joined in the application of her neighbours to the authorities requesting the construction of a public road, expressing readiness alongside with her neighbours to cede an appropriate portion of her land for the purpose. However, she subsequently resiled therefrom. Reference to the right of way attached to the property and matters incidental to the use of the land was made by Mr. Michael Kyprianou, the father and donor of the property to the applicant, in his evidence before the Court. Notwithstanding the volume of the documentary evidence that piled up around the terms of the permit, the outcome of the case depends on the answer to the following three questions:-

(1) Do the relevant terms of the permit amount to an act of deprivation in the sense of Art. 23? If the answer is in the affirmative, the land could not be acquired by the authorities except by compulsory acquisition. It is the case for the applicant that the terms imposed are not incidental to the development of their land, but constitute an attempt on the part of the appropriate authority to deprive the owner of her land for their own purposes. For the respondents it has been contended that the terms amount to nothing other than what was reasonably necessary for the authorization of the use of the land of the applicant for building purposes.

(2) Are the pertinent terms of the permit reasonable in

the sense of proper exercise of the discretionary powers of the appropriate authority? Aside from allegations that the conditions imposed amount to an act of deprivation, it has been argued that in any event the terms imposed, particularly the extent of the land required to be ceded, was out of all proportion to the needs of the owner and the value of the building standing thereon. Consequently, their imposition was an abuse of the discretionary power of the authority. The case of the applicants on this point was raised supplementarily or alternatively to the one under (1) above. The answer of the respondents is that the terms were reasonable and their implementation will not only cause no detriment to the owner but will be beneficial to her by enhancing the overall value of her land.

(3) Do the terms imposed entail discriminatory treatment of the applicant in breach of the provisions of Art. 28 of the Constitution safeguarding equality of treatment by the administration? Here the contention is that the terms imposed for the development of the property of the applicant were far more onerous than the terms attached to the development of the land of other owners in a like position. This allegation too is refuted by the respondents who assert that the terms imposed for the development of each property were dictated by the need to ensure orderly development of the area, a fact inevitably beneficial to the owners affected thereby.

Apart from the documentary evidence adduced that helps to explain the history of the case, Mr. Christos Kyprianou, the Nicosia District Officer of the Town Planning Department, gave an account of the details of the examination of the application for a permit as well as the approach of his department to the development of the area. In support of the contention that the terms imposed constitute an act of deprivation, the applicant produced a valuation report of Mr. Kimonis, a Land Valuer. In his opinion the overall value of the land, a fairly big plot, will, after cession of the land designated for use as a road, fall by about £1,000. Irrespective of the correctness of this valuation, it does not in any way support that the requirement to cede part of the land as a public road amounts in the circumstances of this case to an act of deprivation. On the other hand, Mr.

Kyprianou contested the suggestion that implementation of the terms of the permit will entail any loss to the owner and argued that the land will, as a result, gain in value. Of course, he is not an expert valuer and his testimony on this aspect of the case must be viewed with the necessary reservation. Nevertheless, there is objectively much to be said that access to the road will have beneficial effects on the value of the land of the applicant. 5

Counsel for the respondents submitted the decision is supportable from whatever angle viewed upon. Gaining access to the public road was the only available means for the development of the property of the applicant. The plans attached to the address of counsel give a graphic picture of the state of development in the locality and shed light on the reasonableness of the terms of the permit. 10 15

Viewing the material before me in its entirety, the terms imposed appear to be not only reasonable but also necessary for the development of the property of the applicant. The contention that respondents discriminated against the applicant is altogether unfounded and merits no further consideration. One need only remind that the applicant herself originally joined with neighbouring owners in an application to the authorities to establish an appropriate road network in the area. 20

In *Simonis and Another v. The Improvement Board of Latsia* (1984) 3 C.L.R. 109, I examined the legal framework with regard to the development of the land in correlation to the right of ownership. Attention was drawn to the cases of *Holy See of Kitium and the Municipal Council of Limassol*, 1 R.S.C.C. 15; *Thymopoulos and Others v. Municipal Committee of Nicosia* (1967) 3 C.L.R. 588, and *Sofroniou and Others v. Municipality of Nicosia and Others* (1976) 3 C.L.R. 124, that establish incontrovertibly that conditions attached for the development of land are par excellence acts of limitation within the scope of the discretion of an appropriate authority responsible for the development of a particular area. In *Simonis* it was emphasized that the right of ownership does not carry a vested interest in the development of the land and indicated that development "... is very much a corporate matter that concerns the community as a whole". By the attachment of 25 30 35 40

conditions to the development of land nothing is taken away from the owner. If he does not wish to proceed with the change of user by the development of his land, he can keep his land and enjoy it as before. On the other hand, if
5 he wishes to develop it, his plans must be reconciled with those of the community. The owner is not remediless if the value of his property is materially affected by the restrictions or limitations imposed for the development of his property. He may pursue an action for damages under Art.
10 23.11 of the Constitution.

For the reasons above given the recourse is dismissed. Let there be no order as to costs.

Recourse dismissed.

No order as to costs.