1985 October 15

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

AKINITA ANTHOUPOLIS LTD., AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE DISTRICT OFFICER, NICOSIA AND ANOTHER,

Respondents.

(Case No. 389/82).

The Streets and Buildings Regulation Law, Cap. 96, s. 10(2)—Permits for the division of land into building sites—Diminution of the yield of the water supply of the boreholes earmarked in the permits—Absence of term relating to the supply of water at a specified or any level—Section 10(2) of Cap. 96 does not vest the appropriate authority with a residual power to withhold approval for any reason other than the non-compliance with the terms of the permit—Their discretionary powers and the relevant inquiry confined to ascertaining whether the terms of the permit have been complied with.

Certificate of approval—Section 10(2) of Cap. 96—The certificate is a verification of the fact that the terms of the relevant permit have been complied with.

Administrative act—Revocation of—Also an administrative act.

The applicants, who are land developers and developed over a period of year a large housing estate near Nicosia, known as "Anthoupolis", complain that the respondents unreasonably withheld covering approval for some of their building sites.

The division and construction of the building sites in Anthoupolis proceeded piecemeal. With the completion of each phase of the building the work was approved and certificates of approval issued accordingly. Thus out of 620 sites approved by permit 10768, 612 were approved in 1979, out of 476 sites approved by permit 10804, 133 were approved in 1979, out of 20 sites approved by permit 11209 2 were approved in 1979 and out of 12 sites approved by permit 11206, 5 were also approved in 1979.

The respondents, however, refused approval of an additional number of sites, for which application was made in 1979 and 1980. In particular they refused approval for 16 building sites covered by permit 10768, 132 covered by permit 10804, 18 covered by permit 11209 and 7 covered by permit 11206.

Two separate grounds were given for the said refusal. First, that the yield of the boreholes indicated for the water supply of the above building sites is not adequate to cover their needs. Secondly, deficiencies and anomalies in the construction of the network or roads.

The alleged inadequacies in the construction of the roads were of minor importance and could be easily remedied. The basic reason for the refusal to issue the certificates of approval applied for was the diminution of the yield of the water sources specified in the said permits.

Held, annulling the sub judice decision:

(1) The answer to the question whether the respondents had the right to refuse approval on the ground of the diminution of the yield of the water sources earmarked for the supply of the building sites depends solely on the terms of the division permits and the obligation, if any, on the part of the applicants to provide water supply at a specified level as a condition precedent to the approval of the sites.

(2) In permits 10804, 11209 and 11206 there was no such a condition. Permit 10768 envisages an undertaking by the developers to enter into a specified form of an agreement with a prospective purchaser. This makes no

difference to the outcome of the case as the importance of this condition lies in readiness on the part of the developers to enter into an agreement of the kind specified. The performance of the agreement once entered is a bilateral matter between the parties to the agreement.

Further clause 15 of the specimen agreement provides that if the yield of the boreholes becomes insufficient the developer may make up the deficiency from other water sources. The respondents misconceived and misapplied this condition as they confined their inquiry to the yield of the specified water sources. To that extent their decision is liable to be set aside.

(3) The argument of the respondents that in view of the material in the file of the administration a term relating to the continuance of the water supply should be read in the permits has no merits. If the law was ever to accept such proposition, the administrative process would be thrown into a state of uncertainty.

(4) Section 10 (2) of the Streets and Buildings Regulation Law, Cap. 96 confines the discretionary powers vested in the appropriate authority as well as their inquiry to ascertaining whether there has been compliance with the terms of the permit. A certificate of approval is a verification of the fact that the work has been carried out in accordance with the terms of the permit. The section does not vest the authority with any residual power to withhold approval for any reason other than non-compliance with the terms of the permit.

Sub judice decision annulled.
No order as to costs.

Observations made by the Court: This case demonstrates convincingly how unwise it is to leave town planning in private hand. The nature of town planning requires co-operation of every social agency. Proper town and country planning should be a top priority for any society striving to safeguard the quality of life of its citizens.

Cases referred to:

The Director of the Department of Customs and Excise

v. *Grecian Hotel Enterprises Ltd.* (1985) 1 C.L.R. 476;

A. and S. Antoniades v. *The Republic* (1965) 3 C.L.R. 673;

Nemitsas Industry Ltd. v. *Municipal Corporation of Limassol and Another* (1967) 3 C.L.R. 134.

Recourse.

Recourse against the decision of the respondents to withhold covering approval for some of their building sites allegedly constructed in accordance with the permits authorising their division.

K. Michaelides with *E. Lemonaris* and *P. Liveras*, for the applicants.

E. Odysseos, for the respondents.

Cur. adv. vult.

PIKIS J. read the following judgment. To begin I regret the delay in rendering my decision. The judgment was reserved for nearly eight months. Such partial excuse as I may have for lack of the necessary expedition in the disposal of the case stems from pressing work we had to cope with at the Full Bench. This, on the one hand. On the other, personal reasons kept me away from my duties for some time. To that one may add the voluminous material in the case. When I summoned enough courage to go through it, the emerging issues were far simpler than I was led to believe and eventually the answer fairly obvious. Stripping the material of unnecessary detail the salient facts of the case may be summarized as follows: The applicants are land developers on a grand scale. Over a period of years they developed "Anthoupolis", a large housing estate near Nicosia. Their complaint is that respondents unreasonably withheld covering approval for some of their building sites allegedly constructed in accordance with the four permits authorizing their division. The relevant permits are:

(a) Permit 10042 issued on 4.9.1969, re-numbered 10768 upon its amendment on 21.11.1972.

(b) Permit 10804 issued on 27.3.1974.

(c) Permit 11209 issued on 15.3.1976, and

(d) Permit 11206 issued on 15.3.1976.

Division and construction of building sites proceeded piecemeal as may be gathered from the material before the Court. With the completion of each phase of the project the work was approved and certificates were issued accordingly. Out of the 620 building sites approved by permit 10768, 612 of them were completed and approved in 1979(1). Also the parcellation of 133 building sides out of the 476 authorized by permit 10804 was completed and approved in 1979 (2). Likewise two of the twenty building sites envisaged by permit 11209 were approved in 1979, as well as five of the twelve building sites covered by permit 11206. In 1979 and 1980 application was made for the approval of an additional number of building sites the construction of which was completed in the meantime, in particular approval was sought for:

(a) 16 covered by permit No. 10768

(b) 132 covered by permit No. 10804

(c) 18 covered by permit No. 11209

(d) 7 covered by permit No. 11206.

Approval was refused for the reasons stated in a letter of the respondents dated 14th July, 1982 (Appendix 'A' to the application). Two separate and independent reasons were given for the refusal. First, lack of adequate water supplies for the building sites. The wording of this paragraph, brief as it is, may appropriately be recited: "The yield of the boreholes indicated for the water supply of the above building sites is not adequate to cover their needs"(1). Secondly, deficiencies and anomalies in the construction of the network of roads detailed thereunder. On examination of the material before us it is fair to conclude

(1) See Document 4 of List of Documents.
(2) Approval No. 1796.
(1) Η απόδοσις των γεωτρήσεων αι οποίαι υπεδείχθησαν δια την ύδρευσιν των ανωτέρω οικοπέδων δεν είναι επαρκής δια την κάλυψιν των αναγκών των.

the alleged inadequacies in the construction of roads were of minor importance and could be easily remedied. On no occasion did the applicants signify unwillingness to comply with possible suggestions of the appropriate authority designed to regularize their position. The basic reason for refusal of the respondents to issue certificates of approval was the diminution of the yield of the water sources specified in the permits for the supply of water for the domestic needs of prospective users (purchasers) of the property. Tests carried out before the sub judice decision revealed that the yield of the boreholes earmarked for the water supply of the building sites in question was greatly diminished in comparison to their yield at the time of the issuance of the aforesaid division permits.

Applicants challenge the refusal of the respondents as an abuse of their powers under s.10(2) of the Streets and Buildings Law—Cap. 96—the provisions of which limit the discretion of the appropriate authority to verifying compliance with the terms of the division permit. And, as no condition was attached respecting the future yield of the specified resources at the time of the completion of the building sites, the refusal of the applicants was arbitrary and as such wholly unjustified. In the submission of applicants the refusal of the respondents was nothing other than a belated attempt to revise the terms of the division permits in a manner detrimental to the applicants. The policy of the respondents is depicted as contradictory because on no previous occasion was the approval of building sites, constructed pursuant to the terms of the permits, tied to the level of water supplies at the time. As a matter of fact, on no prior occasion was approval conditioned on the yield of the boreholes. The good faith of the respondents is questioned. They sought to change the framework of development of the area by a misuse of their powers under s. 10 - Cap. 96. Their haphazard approach to the development at "Anthoupolis" is, in the contention of counsel, also evidenced by the fact that building permits were issued and many buildings were erected on building sites approval for which was refused by the sub judice decision. It is true that some 100 building permits or more were granted and a good number of houses were built pursuant thereto, on unapproved building sites. In refusing certifi-

cates of approval they disregarded the recommendations of the Town Planning Dept. who seemingly took the view that applicants complied with the terms of the division permit.

Respondents supported their decision as a legitimate exercise of their powers under s.10 - Cap. 96. Counsel argued it was warranted in view of the marked diminution of the water supplies available for the needs of the building sites. Undoubtedly the yield of the boreholes earmarked for the purpose dropped considerably. That of itself is, as counsel for the respondents acknowledged, not a conclusive factor. Its relevance must be established by reference to the terms of the division permits. Some of those terms, those attached to permit 10768 in the form of specimen agreements between applicants and prospective purchasers of building sites, counsel described as legally invalid and parts of them as meaningless. Respecting the terms of the remaining division permits as to water supply counsel had to concede, as I read his address, that no specific obligation was imposed on the applicants to ensure continued water supply of the building sites at a specified or any level. However, he argued we should read such a term in the permit in view of the material in the file of the administration. This is a tenuous argument indeed that merits no further consideration The administrative process would be thrown into a state of uncertainty if the law was ever to accept such a proposition as legally valid. The truth is that no onerous terms can be read into a permit other than those expressly spelled out therein and communicated to the applicants. It is subject to and in accordance with the terms of a permit that the subject plans his course of action.

Respondents dismissed as unfounded charges of inequality of treatment arising from the issuing of certificates of approval to owners of nearby building sites deriving their water supply from the same sources as the applicants, because at the time of their issue in 1981 no tests had been carried out to reveal the diminution of the water supply. In the end counsel argued that on ascertaining the vast diminution of the yield of the sources of water supply respondents were not only justified to refuse approval but

might as well consider revocation of the division permits. I may remind perhaps that revocation of an administrative act is on principle and authority a fresh administrative act subject to judicial review(1). Therefore, no more need be said of this assertion.

Applicants admit that the yield of the boreholes allotted for the water needs of the building sites to be conctructed under the division permits diminished substantially; but, they submitted, for no fault of their own. The diminution was attributed to causes beyond their control as follows:

(a) The establishment of a habitation in the vicinity of "Anthoupolis" to house displaced persons that necessitated the sinking of a number of boreholes to satisfy their water needs, a fact that greatly affected the yield of applicant's water sources.

(b) The drilling of a number of boreholes in the surrounding area for the satisfaction of the needs of the owners made with the permission of the authorities.

(c) The construction of reservoirs on the bed of Pedhiaeos river that weakned the acquifer, and last but not least

(d) The drought that afflicted the country in recent years.

The respondents did not dispute the correctness of the above facts but assumed no responsibility for them. The applicants, they argued, had no right to determine the distribution of water resources in the area that belonged, in accordance w 'h Art. 23.1 of the Constitution, to the Republic. Did the respondents have the right to refuse approval owing to the diminution of the yield of the water sources earmarked for the supply of the building sites? The answer depends solely on the terms of the division permits and the obligation, if any, on the part of the applicants to provide water supplies at a specified level as a condition precedent to the approval of the building sites. To resolve the issue we must examine in detail the terms

(1) The Director of the Department of Customs and Excise v. Grecian Hotel Enterprises Ltd. (1985) 1 C.L.R. 476; A. & S. Antoniades Co. v. The Republic (1965) 3 C.L.R. 673.

of the permits, a task to which I shall turn forthwith.

Terms as to water supply of division permits 10804, 11209 and 11206.

In none of the aforementioned division permits was a condition attached as to the level of water supply at any future date. The only conditions imposed relevant to the water supply of the building sites were (a) that they should be supplied from specified boreholes, and (b) pipes should be laid in accordance with plans to be approved by the Director of the Water Development Dept.

Upon no construction of the terms of the permits could a condition be implied casting an obligation on the applicants to maintain the yield of the boreholes at a certain level or provide a daily quantity of water for the needs of the building sites. It seems, therefore, that the policy of the respondents over the years to issue certificates of approval without inquiring into the yield of the beroholes was consonant with the terms of the permits and based on a correct appreciation of their effect. And the recommendations of the Town Planning Dept. were made in that spirit.

Terms as to water supply in permit 10768

The terms affecting water supply of divisioin permit 10768, though less straight forward than the terms of the permits examined above, their interpretation and effect presents no insurmountable obstacles. The permit envisages, apart from compliance with the terms imposed therein, an undetaking by the developers to enter into a specified form of agreements with prospective purchasers of the building sides labelled "specimen agreement". Counsel were critical of their existence and doubted the validity of their terms, not least counsel for the respondents, who invited me to disregard them as illegal and unreasonable. Counsel for the applicants disputed their validity arguing they are ultra vires the law. Perhaps I should remind him we are not here concerned with the validity of the terms of the permit that his clients accepted without demur. Whatever the merits of the respective criticism may be, the existence of the agreement and the terms incorporated therein they

make no difference to the outcome of the case for the importance of this agreement lies in readiness on the part of the developers to enter into an agreement of the kind specified in the conditions of the permit. In the absence of any suggestion that the developers showed any disinclination to fulfil this undertaking, the respondents can have no legitimate complaint. The performance of the terms of the agreement once entered, on the other hand, is a bilateral matter between the developers and the counter-contracting parties, viz. prospective purchasers. Not that the terms of the specimen agreement imposed anything in the nature of a positive obligation on the developers to maintain a minimum level of water supply independently of the yield of the boreholes.

The terms of the permit relevant to water supply are those set out in clauses 13-16 (inclusive). Those material are the terms embodied under conditions 14 and 15. Clause 14 casts an obligation on the developers to provide a daily supply of 200 gallons of bacteriologically and chemically suitable water for the needs of each building site. This condition, absolute as it appears to be, does not tie the discharge of the above obligation to the yield of the specified boreholes. Clause 15 expressly provides that if the yield of the boreholes becomes for any reason insufficient to provide the specified quantity of water, the developers may make up the deficiency from other water sources. The respondents misconceived and misapplied the effect of these conditions for they confined their inquiry to the yield of the specified water sources and to that extent their decision is liable to be set aside. Counsel for the applicants argued for the expunction of clause 15 on the ground that it was ultra vires the law. For support he relied on the decision in *Nemitsas Industry Ltd.* v. *Municipal Corporation of Limassol and Another*(1), authority for the proposition that terms imposed without legal authority are of no effect and may, on that account, be disregarded. The law as it stood before its amendment by Law 33/74, counsel argued, conferred no power on the appropriate authority to impose conditions relevant to the adequacy of water supply. I consider it unnecessary to give a conclusive answer to the

(1) (1967) 3 C.L.R. 134, 145.

efficacy of clause 15 in view of the conclusion reached above, nor do I consider it necessary to express a considered opinion whether it is at all possible for the applicants to dispute the validity of a condition attached to a permit after unqualified acceptance of it. For the purposes of the present judgment I confine my finding to a misconception on the part of the approriate authority of the combined effect of clauses 14 and 15 and failure to apply them in their correct perspective.

Conclusions

Section 10(2) of the Streets and Buildings Law—Cap. 96—confines the discretionary powers vested in the appropriate authority as well as their inquiry to ascertaining whether there has been compliance with the terms of the permit. If satisfied "that the work or matter has been completed in accordance with the permit" they are duty bound by the succeeding provisions of s. 10(2) to issue a permit. In the words of the statute they ".... shall furnish the holder with a certificate of approval of the work or other matter in respect of which the permit has been granted". What a certificate of approval is designed to elicit is compliance with the terms of the permit. In effect a certificate of approval is a verification of the fact that work has been carried out in accordance with the terms of the permit. Section 10 does not vest in the appropriate authority any residual discretion to withhold a certificate for any reason other than non-compliance with the terms of the permit. Certainly it does not confer upon them discretion to refuse a certificate for wider social considerations, a fact that should make appropriate authorities all the more careful in the identification and imposition, in the first place, of the terms necessary to safeguard public interest in the orderly and beneficial town and country development.

In the light of what is said earlier in this judgment the respondents exceeded their authority under s. 10(2) as well as abused it by refusing the permit for reasons other than non-compliance with the terms imposed in the division permit.

Observations

Going through the facts of the case, I was astounded to notice the shaky and unscientific basis upon which town

development on such a vast scale was approved to proceed. In the first place the supply of water for domestic purposes was contemplated to be and remain in the hands of the developers. The adequacy and sanitary supply of water for domestic purposes is by any standards a matter of public concern and very much the responsibility of the State. The approval of the plans for development in this case shows, at the least, lack of awareness of the duties of society in the field of town planning as well as overlooks the fact that underground water is, in accordance with Art. 23.1 of the Constitution, the property of the Republic. The grant of permits authorizing the erection of building on unapproved sites is another indication of the haphazard way in which development at "Anthoupolis" was allowed to proceed. Such deviation from the law no doubt generates pressure on the side of lawlessness. The case demonstrates convincingly, I believe, how unwise it is to leave town planning in private hands an exercise that by its nature requires cooperation and coordination of every social agency. Lack of a comprehensive and scientific plan for town and country development was no doubt a major contributory cause to this unpalatable state of affairs. Proper town and country planning should be a top priority for any society striving to safeguard the quality of life of its citizens. It is through scientific and farseeing planning we can strive to attain appropriate standards of habitation and harmonize development with the environment. I can only hope these remarks will alert the responsible authorities to the need for comprehensive implementation and enforcement of town planning legislation, namely, the Town Planning Law - 90/72.

In the result the sub judice decision is annulled. Let there be no order as to costs.

Sub judice decision annulled.
No order as to costs.