

1985 March 2

[TRIANTAFYLLIDES, P.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

MARIOS MAHLOUZARIDES,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF INTERIOR
2. THE DIRECTOR OF LANDS AND SURVEYS,

Respondent.

(Case No. 284/79).

5 *The Sale of Land (Specific Performance) Law, Cap. 232 as amended by Laws 50/70 and 96/72—Deposit with the District Lands Office at Paphos of a contract granting an option to purchase immovable property—Decision of the District Lands Officer to cancel such deposit—In the light of the case-Law and the circumstances of this case such decision belongs to the domain of private law—And, therefore it cannot be challenged by a recourse under Article 146 of the Constitution.*

10 On the 25.4.79 the applicant deposited with the District Lands Office at Paphos under the provisions of the Sale of Land (Specific Performance) Law, Cap. 232 as amended by Laws 50/70 and 96/72 an agreement dated 2.4.79, whereby he obtained an option to purchase an immovable
15 property belonging to a certain Chr. Ioannides.

The said Ioannides, as the owner of the property, disputed the validity of the deposit of the said agreement. The District Lands Officer at Paphos took the view that the said agreement was not a contract of sale in the sense
20 of Cap. 232 and allowed the said Ioannides to transfer the said property to his daughter.

Hence the present recourse. It should be noted that the applicant on 2.6.79 filed a civil action for specific performance of his said agreement with Ioannides. Counsel for the parties agreed that the sub judice decision is within the domain of public law.

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Held, dismissing the recourse: (1) This Court, as an administrative Court, is not bound by the submission of the parties even by way of consensus.

(2) In the light of the case-law and the particular circumstances of this case the sub judice decision was one regulating primarily civil law proprietary rights of the parties and, therefore, comes within the domain of private law. The fact that it gives rise to a legal issue which may attract the interest of the public is not sufficient to bring it within the domain of public law.

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It follows that the sub judice decision cannot be challenged by means of a recourse under Article 146 of the Constitution.

Recourse dismissed.

No order as to costs.

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Per Incuriam: An option to purchase is not a contract of sale. Cap. 232 applies only to finally concluded contracts of sale. Therefore if this Court had jurisdiction, the conclusion would have been that the sub judice decision was validly reached.

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Cases referred to:

Angelidou v. The Republic (1982) 3 C.L.R. 62;

Platis v. The Republic (1978) 3 C.L.R. 384;

HjiKyriakou v. HjiApostolou, 3 R.S.C.C. 89;

Valana v. The Republic, 3 R.S.C.C. 91;

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Asproftas v. The Republic (1973) 3 C.L.R. 366;

The Republic v. M.D.M. Estate Developments Ltd. (1982) 3 C.L.R. 642;

Kalisperas Estates Co. Ltd. v. Ministry of Interior (1982)
3 C.L.R. 509;

Coudounaris Food Products Ltd. v. The Republic (1982)
3 C.L.R. 530;

5 *Antoniou v. The Republic* (1984) 3 C.L.R. 623.

Recourse.

10 Recourse against the decision of the District Lands Officer, Paphos to cancel the deposit in the said Lands Office, for purposes of specific performance, of an agreement relating to immovable property belonging to a certain Christos Ioannides and situated at Peyia village.

A. Eftychiou with Chr. Constantinou (Miss), for the applicant.

15 *M. Kyprianou*, Senior Counsel of the Republic, for the respondents.

G. Triantafyllides, for the interested party.

Cur. adv. vult.

20 TRIANTAFYLLIDES P. read the following judgment. By means of the present recourse the applicant challenges the decision of the District Lands Officer at Paphos to cancel the deposit in the said Lands Office, for purposes of specific performance, of an agreement relating to immovable property belonging to a certain Christos Ioannides and situated at Peyia. Such decision was communicated to the
25 applicant and the said Ioannides by means of a letter dated 2nd June 1979.

The salient facts of the case are briefly as follows:

30 On the 2nd April 1979 the applicant and the said Ioannides entered into an agreement by virtue of which there was granted to the applicant, in exchange of a certain amount of money, an option to purchase the immovable property in question.

On the 25th April 1979 the applicant deposited the said agreement with the District Lands Office at Paphos, under

the provisions of the Sale of Land (Specific Performance) Law, Cap. 232, as amended by the Sale of Land (Specific Performance) (Amendment) Law, 1970 (Law 50/70) and the Sale of Land (Specific Performance) (Amendment) Law, 1972 (Law 96/72).

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On the 2nd June 1979 Ioannides, as the owner of the property, disputed the validity of the deposit of the agreement and applied to be allowed to transfer the property to his daughter Stella Ioannidou.

On the same day the applicant had filed civil action No. 501/79 in the District Court of Paphos by means of which he was seeking specific performance of the aforesaid agreement.

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The District Lands Officer at Paphos allowed the transfer of the property in the name of Stella Ioannidou, because he took the view that the agreement which was deposited on the 25th April 1979 was not a contract of sale in the sense of the relevant provisions of Cap. 232.

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The applicant then challenged the sub judge decision of the District Lands Officer by means of the present recourse and, also, by means of an appeal (No. 67/79) in the District Court of Paphos, under section 80 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224; and the said appeal, being an alternative remedy, has been adjourned sine die pending the outcome of this recourse.

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Before the conclusion of the hearing of this case arguments of counsel were invited by the Court on the issue of whether or not the sub judge decision comes within the domain of public, and not of private law, so that it can be challenged by this recourse under Article 146 of the Constitution.

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Counsel for the applicant submitted that Cap. 232, as amended by Laws 50/70 and 96/72, has as a primary purpose the regulation, in the public interest, of the interest of purchasers of land and, therefore, the sub judge decision comes within the domain of public law. Counsel for the respondent and for the interested party took the view that as the sub judge decision raises the issue of

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whether an agreement granting an option to purchase land can be deposited under Cap. 232 there arises a legal issue in the domain of public law because it is of general public interest and is not limited only to the facts of this particular case.

It must be pointed out, at this stage, that this Court, as an administrative court, is not bound by the submissions of the parties even by way of consensus (see, inter alia, in this respect, *Angelidou v. The Republic*, (1982) 3 C.L.R. 62, 65, and *Platis v. The Republic*, (1978) 3 C.L.R. 384, 390).

I will refer, next, to case-law relevant to the issue of whether the sub judice decision in the present case comes within the domain of public law or of private law:

In *HadjiKyriacou v. HadjiApostolou*, 3 R.S.C.C. 89, the following are stated (at pp. 90, 91):

“Section 58 of Cap. 224 provides for the determination by the Director of disputes as to boundaries of immovable property.

The determination of disputes as to boundaries of immovable property is a matter in the domain of private law. In so far as a public officer, i.e. the Director in a case of this nature, is vested with competence to take action in connection with the determination of such disputes as to boundaries, with the primary purpose of regulating private rights, then such action is a matter in the domain of private law and not in the domain of public law; consequently this is not a matter within the ambit of Article 146.”

In *Valana v. The Republic*, 3 R.S.C.C. 91, the Court said (at pp. 93, 94):

“Civil law rights in immovable property are, as a rule, matters in the domain of private law.

In so far as a public officer, in this case the Director, is vested with competence to take action in connection with civil law rights in immovable property, and the primary object of such action is not the promotion of

a public purpose, but the regulation of the aforesaid civil law rights, then such action is a matter within the domain of private law and does not amount to an 'act' or 'decision' in the sense of paragraph 1 of Article 146.

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In the present case the Director acting under his powers under section 61 of CAP 224 has purported to proceed to correct an error concerning the boundaries of the immovable property in question of applicant and in doing so it is clear, from the contents of the said notice of the 22nd May, 1961, that the Director has acted with the primary purpose of regulating the relevant civil law rights of applicant.

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It should be observed that there may be other cases under section 61 of CAP 224 where the primary object of the action taken is the promotion of a public purpose and in all such cases this Court would have competence under Article 146."

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In *Asproftas v. The Republic*, (1973) 3 C.L.R. 366, the Court took the view that the refusal of the Director of Lands and Surveys to register in the applicant's name a strip of land was a decision regulating civil law rights in property and did not amount to an act or decision in the sense of Article 146.1 of the Constitution.

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In the case of *The Republic v. M.D.M. Estate Developments Ltd.*, (1982) 3 C.L.R. 642, Hadjianastassiou J., in delivering the majority judgment of the Full Bench of this Court, said the following (at pp. 654, 655):

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"The Immoveable Property (Restriction of Sales) Law, Cap. 223, as one may gather from its provisions and the reasons that led to its enactment, is a piece of legislation that was principally intended to protect the property of farmers from sales at ruinous prices. At the time of the enactment of Cap. 223, and for many years subsequently, the value of land in rural areas and particularly the financial position of farmers,

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was of very grave concern to the public, considering that Cyprus was an intensely agricultural country, largely dependent on the productivity of farmers. Realities had changed considerably since, a fact heeded by the legislature in 1966, by extending the application of the provisions of Cap. 223 to urban areas, equating thereby town and country properties for the purposes of the law. (See section 8 Law 60/66). This does not mean that Cyprus had ceased to be an agricultural country or that the position of farmers is no longer of interest to the public at large. But it signifies that the position of farmers is not, in comparison to other sections of the community, as vulnerable as it used to be. The special association of Cap. 223 with land in rural areas and the financial position of farmers, has, as from 1966, ceased to exist. Consequently, it may be validly presumed that the interest of the public in the enforcement of the law has correspondingly declined, particularly its interest in the protection of farmers. We may also take stock of the fact that the number of forced sales of agricultural properties has, over the last decades, dropped appreciably in view of the improvement of credit facilities to farmers.

The question we must, therefore, resolve, is whether any valid grounds subsist for elevating a matter primarily affecting private rights into the realm of public law because of any special interest of the public in the proper enforcement of the particular piece of legislation. That the fixing of the reserve price is otherwise a matter of private law, we are in no doubt considering its implications on the rights of debtor and creditor involved. The decision in *Valanas supra*, clearly establishes that decisions of the public administration relevant to the adjustment of private rights are pre-eminently matters of private law. A recent decision of first instance, notably, *Silentsia Farms v. Republic* (1981) 3 C.L.R. 150, reinforces this view. In our judgment, the disappearance of the special interest of the public in the enforcement of Cap. 223, arising from its connection with rural properties and

the financial position of farmers, takes away that special interest of the public that might conceivably be invoked to render a decision fixing the reserve price to the jurisdiction of this Court.”

The *M.D.M. Estate Developments Ltd.* case, supra, was followed subsequently in the cases of *Kalisperas Estate Co. Ltd. v. Ministry of Interior*, (1982) 3 C.L.R. 509, *Coudounaris Food Products Ltd. v. The Republic*, (1982) 3 C.L.R. 530 and *Antonίου v. The Republic*, (1984) 3 C.L.R. 623.

In the *Antonίου* case, supra, Pikis J. stated the following (at pp. 626, 627):

“The ascertainment of the rights of citizens to immovable property is primarily of interest to the parties immediately affected thereby. The public has but a remote interest in the matter.

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The Supreme Court was alive to the conceptual difficulties inherent in drawing the dividing line between acts of administration in the domain of public law on the one hand and in the domain of private law on the other. In one sense the public is interested in every decision of the administration. Underlying the above decisions is the appreciation by the Court that the degree of interest on the part of the public in actions of the administration varies in proportion to the extent to which such decisions are likely to affect the public or sections of it. The Supreme Constitutional Court adopted a practical test to chart the line of demarcation between decisions in the domain of public and private law. It revolves round the primary object of the act or decision. If the decision is primarily aimed to promote public purpose it falls in the domain of public law; otherwise in that of private law. Naturally the public has a livelier interest in public purposes.”

Having in mind the case-law cited above and having considered the particular circumstances of the present case I have reached the conclusion that the sub judge decision was one regulating primarily civil law proprietary rights of the parties and it, therefore, comes within the domain of private law and not of public law. The fact that it gives rise to a legal issue which may attract the interest of the public is not sufficient to bring the matter within the domain of public law.

For this reason the sub judge decision could not be challenged by means of the present recourse under Article 146 of the Constitution which has, therefore, to be dismissed.

Before concluding I would like to add that even if I was of the opinion that this Court possessed jurisdiction to entertain this recourse I would have come to the conclusion that the sub judge decision was validly reached under the provisions of Cap. 232, as, in my view, only finally concluded contracts for the sale of immovable property come within the ambit of Cap. 232 and can be deposited for purposes of specific performance and an option to purchase is not such a contract.

For all the above reasons the present recourse is dismissed; but with no order as to its costs.

*Recourse dismissed with
no order as to costs.*