

1985 November 18

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

BLUEWAVE PROJECTS LTD. AND OTHERS.

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE COUNCIL OF MINISTERS AND OTHERS.

Respondents.

(Case No. 423/79).

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*Town and Country Planning—The Streets and Buildings Regu-
lation Law, Cap. 96 as amended by the Streets and Buil-
dings Regulation (Amendment) Laws 1963-1978 (Laws
67/63, 6/64, 65/64, 12/69, 38/69, 13/74, 28/74 and
24/78), section 14(1)—Zone restricting number of storeys
upto two and building ratio to 0.05:1—Such restrictions do
not amount to deprivation of the right of property con-
trary to Article 23.2 of the Constitution—Said restrictions
within the ambit of Article 23.3.* 5

*Administrative act—A notice imposing a zone under s. 14(1)
of Cap. 96 is an administrative act in the sense of Article
146.1 of the Constitution.* 10

*Constitutional Law—Articles 23.2, 23.3, 25, 28 and 146.1 of
the Constitution.*

By this recourse the applicants challenge a Notice, pub- 15
lished in the Official Gazette of 31.8.79 under s. 14(1)
of Cap. 96 as amended, whereby the applicants' immova-
ble property (which had been bought by applicants 1-4
from applicant 5 who is the registered owner for the pur-
poses of tourist development) was included in zone 2 and 20
building restrictions were imposed upon it, namely a

building ratio of 0.05:1 and prohibition to build a building consisting of more than two storeys.

5 The applicants complained, inter alia, that there was no justification not to extend zone A1 to include their property and that by failing so to do the respondents acted under a misconception of fact and law and contrary to the principles of equality in that areas A1 and Z2, though the same from the aspect of suitability for tourist and housing purposes, were treated and classified differently.
10 The applicants also complained that the restrictions imposed amounted to a deprivation of their right of property contrary to Article 23.2 of the Constitution and that respondents, also, contravened Article 25 of the Constitution in that the notice restricts or prevents the applicant company from practicing any profession, occupation, trade or business in relation to or in connection with the development of their affected property.
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Held, dismissing the recourse:

20 (1) (A) A notice under s. 14(1) of Cap. 96 as amended is an administrative act in the sense of Article 146.1 of the Constitution.

25 (2) The principle of equality entails the equal or similar treatment of all those found to be in the same or similar situation, which is not the case in the present instance as the respondents took into consideration the particular circumstances of each area, its problems and needs, the character of each district and its particular suitability for particular uses as well as the fact that each area is governed by different considerations in relation to the neighbouring or surrounding areas.
30

(3) The sub judice notice does not amount to a deprivation of the applicant's right to property; it only amounts to a limitation or restriction of such a right within the ambit of Article 23.3 of the Constitution.

35 (4) Article 25 of the Constitution is inapplicable to the present case. The restrictions are not such that prevent the applicant company from carrying on its business. Article 25 protects the right to exercise a profession or to carry

on any occupation, trade or business from direct and not indirect restriction or interference.

(5) The applicants failed to establish any misconception of law or fact on the part of the respondents.

Recourse dismissed. 5
No order as to costs.

Cases referred to:

Charalambides and Others v. Republic (1984) 3 C.L.R. 1516;

Francis v. The Attorney-General and Another (1971) 3 C.L.R. 134; 10

Mangli and Others v. The Republic (1984) 3 C.L.R. 351;

Savva v. The Republic (1979) 3 C.L.R. 250;

Apostolou and Others v. The Republic (1984) 3 C.L.R. 509.

Recourse. 15

Recourse for a declaration that Not. 197 published in the Official Gazette of 31st August, 1979 under section 14(1) of the Streets and Buildings Regulation Law, Cap. 96, whereby zones for the purposes of tourism were created and building restrictions were imposed, is null and void. 20

St. Ambizas, for the applicants.

A. Vassiliades, for the respondents.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By the present recourse the applicants seek a declaration that Notice 197 published in Supplement III to the Official Gazette No. 1547 of 31st August 1979, under section 14(1) of the Streets and Buildings Regulation Law, Cap. 96 (as amended by the Streets and Buildings Regulation (Amendment) Laws 1963-1978 (Laws 67 of 1963, 6 of 1964, 65 of 1964, 12 and 38 of 1969, 13 and 28 of 1974 and 24 of 1978) is null and void and/or of no legal effect whatsoever. 25 30

This case was taken over by me at the end of 1983 and

the hearing of the case was completed in May 1985 when judgment was reserved.

5 The applicants are the owners of plots Nos. 42, 36/5, 36/6, reg. No. 7593, 7594, 7595/19-6/73, sheet/plan LI/28 of a total area of 45 donums and 3 evleks: applicants 1-4 purchased the said plots from applicant 5 (who is the registered owner) for the purposes of tourist development.

10 By virtue of the said Notice which empowered the creation of zones for the purposes of tourism, there were imposed building restrictions regarding the height and the number of storeys of buildings to be erected.

15 By virtue of the said Notice the aforesaid property of the applicants was included in zone Z2 and was imposed upon building restrictions of up to two storeys and a building ratio of 0.05:1. As a result the applicants filed the present recourse, the grounds of law upon which it is based can be summarised as follows:

- (1) The respondents exercised their discretion wrongly and contrary to the principles of good administration.
- 20 (2) They have acted contrary to the principles of equality.
- (3) They have acted under a misconception of fact and law.
- (4) The sub judice decision is based on a defective
25 reasoning.
- (5) The respondents acted contrary to Articles 23, 25, 33 and 35.

30 On behalf of the respondents a preliminary objection was raised to the effect that the sub judice notice does not constitute an administrative decision which can be challenged under Article 146 but is an act of legislative nature which has been authorised by law.

35 It has been held by the Court on more than one occasions that Notices under Section 14(1) of Cap. 96 are not legislative acts but are administrative acts in the sense of Article 146.1 of the Constitution which can be challenged

by means of a recourse. In *Kratinos Charalambides and Others v. The Republic* (1984) 3 C.L.R. 1516 it was held by the Full Bench at p. 1521 that:

“Each one of the said Notices may be described as being both the sum total of individual administrative acts and an administrative act of a general content (see, in this respect, inter alia, Dagtoglou on General Administrative Law (Δαχτόγλου ‘Γενικό Διοικητικό Δίκαιο’) 1977, Volume A, p. 58).”

Useful reference can also be made to the cases of *Francis v. The Attorney-General and Another* (1971) 3 C.L.R. 134—extensive reference to which is made in *Charalambides* (supra)—and to *Ioulia Mangli and Others v. Republic* (1984) 3 C.L.R. 351. I shall now proceed to deal with the grounds of law as argued by the applicant Company.

It is contended that the respondents exercised their discretion wrongly and contrary to the principles of good administration in that there was no valid justification for not extending zone A1 to include the area of zone Z2, which latter area was a natural extension of the area of zone A1. As a result, it was alleged, the property of the applicants was adversely affected and grossly restricted and thus the respondents acted under a misconception of fact and law and contrary to the principles of equality in that areas A1 and Z2 though the same from the aspect of suitability for tourist and housing purposes were treated and classified differently. The end result was that the respondents by such imposition of zoning restrictions acted unconstitutionally and in particular contrary to Article 23 of the Constitution in that such “restrictions” were not in fact mere restrictions or limitations as allowed under Article 23 but amounted to a deprivation of their rights to their property. As a result, they contended, they will suffer grave financial hardship being no longer able to utilise, develop or dispose of their property without great financial loss.

Such breach of Article 23, it was also alleged, constitutes a breach of Article 25 in that it restricts or prevents the applicant Company from practicing any profession, occupation, trade or business in relation to or in connection with

any development of their affected property which they would have otherwise been able to do, had their property not been thus affected.

5 I find no merit in any of the above contentions. The respondents in reaching their decision as regards the sub judice building zones took into consideration the particular circumstances of each area, its problems and needs, the character of each district and its particular suitability for particular uses, as well as the fact that each area is governed
10 by different considerations in relation to the neighbouring or surrounding areas. No discrimination can thus be established, as "the principle of equality entails the equal or similar treatment of all those found to be in the same or similar situation". (See *Savva v. Republic* (1979) 3 C.L.R. 250 at p. 257 referring to case No. 1273/65 of the Greek Council of State) which is not the case in the present instance. Moreover the applicant has failed to establish that the respondents acted under any misconception of fact or law, so this argument of theirs must also be dismissed.

20 Nor does the proposed scheme amount to a deprivation contrary to Article 23.3. From the perusal of the sub judice Notice it is clear that the properties within zone Z2 are not affected in such a way or to such an extent as to amount to a deprivation as alleged, but the effect of the
25 Notice is nothing more than a limitation or restriction which is within the ambit of Article 23.3 and constitutional. Relevant is what was, inter alia, stated in the case of *Ioulia Manglis and Others v. Republic* (supra) at p. 360-361:

30 "As regards the issue of the constitutionality of Notices 116 and 117, which were published under section 14, above, there should be stressed, mainly, the following:-

35 (a) They involve restrictions or limitations of the exercise of the right of property, imposed by law, in the interest of town and country planning and for the development and utilization of properties

to the promotion of the public benefit, in the sense of Article 23.3 of the Constitution (see, also, the *Loiziana Hotels Ltd., v. The Municipality of Famagusta* (1971) 3 C.L.R. 466).

- (b) They make detailed provisions for putting into effect restrictions or limitations of the right of property within the framework laid down by a Law—in this instance section 14 of Cap. 96—and they are, therefore, within the requirements of constitutionality which were expounded in *Police v. Hondrou*, 3 R.S.C.C. 82, 85-86. 5 10
- (c) The restrictions or limitations imposed by means of the two Notices in question are not so patently unreasonable or arbitrary as to be treated as having exceeded the limits of the relevant discretionary powers; and, once this is so, it is not within the competence of this Court to embark on an evaluation of the correctness of such Notices from the scientific point of view." 15

Certainly if the applicant Company considers that the value of its property is materially affected, it may proceed to claim compensation, under Article 23.3, a matter, however, which should be referred to the Civil Courts, not being within the competence of this Court. 20

Finally I should state that there is no breach of Article 25, as alleged, because such Article is inapplicable in the present case, the restrictions or limitations imposed by the zoning regulations are not such that prevent the applicant Company from carrying on its business. 25

It may be reiterated here that Article 25 of the Constitution protects the right to exercise a profession or to carry on any occupation, trade or business from direct and not indirect restrictions or interference. See *Apostolou and Others v. The Republic* (1984) 3 C.L.R. 509 at p. 524 where this principle was confirmed by the Full Bench of this Court by reference to a number of previous authorities on the subject. 30 35

For the above reasons I find that the sub judice Notice is perfectly valid and in accordance with the Constitution. The recourse must therefore fail and is hereby dismissed.

5 There will be, however, no order as to costs.

Recourse dismissed.
No order as to costs.