

1985 November 15

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ANDREAS P. LANITIS AND ANOTHER,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE DIRECTOR OF LANDS AND SURVEYS,

Respondent.

(Case No. 17/83).

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- 5 *Immovable Property—Transfer of—Transfer and registration of immovable property by way of gift by applicant 1 in the name of applicants 2, a private company limited by shares, declared by an Order of a Court issued by consent to be null and void as being ultra vires the memorandum of applicants 2—Re-transfer and re-registration in the name of applicant 1—Respondent rightly refused to refund the transfer fees paid in respect of the transfer declared by the said Order as null and void.*
- 10 *The Department of Lands and Surveys (Fees and Charges) Law, Cap. 219 as amended by Law 66/79—Schedule to the said Law, paragraph 3(b)(v)—In the case in hand the fees for the said transfer by applicant 1 to applicant 2 had not been*
- 15 *paid for services rendered, but as a kind of tax to the State.*

20 In February 1979 applicant 1 transferred by way of gift eight pieces of immovable property to applicants 2, a private company with limited liability. The declaration of transfer was made in accordance with the Immovable Property (Transfer and Mortgages) Law 9/65 and the sum of £8,500.800 mils was paid in accordance with paragraph 3(b)(v) of the Schedule to the Department of Lands and

Surveys (Fees and Charges) Law, Cap. 219, as amended by Law 66/79.

In a civil action brought by applicant 1 against applicants 2 an order was issued by consent whereby the said transfer and registration of the said properties in the name of applicants 2 were declared null void ab initio as having been made ultra vires the memorandum of applicants 2. It was further ordered that the properties in question be re-registered in the name of applicant 1. 5

As a result the applicants wrote, on the 12th April, 1982, to the Limassol District Lands Office requesting the cancellation of the said transfer and re-registration of the properties in question in the name of applicant 1 and the refund to him and/or to the applicant company of the transfer fees amounting to £8,500.800 mils. 10 15

In response to this application the respondent cancelled the transfer of the said properties and issued new certificates of registration in the name of applicant No. 1 but refused to refund the said transfer fees for the following reasons stated in their letter of 13th December, 1982: 20

- (a) The services for which the applicants had been charged were rendered;
- (b) The order of the Court cancelling the transfer was made by consent;
- (c) The Republic was not a party to the action; and 25
- (d) The D.L.O. did not commit any mistake or omission necessitating the cancellation of the act.

Hence the present recourse. Counsel for the respondent argued that the fees in question had been collected for services rendered in accordance with the provisions of the law. 30

Held, dismissing the recourse:

(1) As it can be reasonably inferred from the wording of para. 3(b) (v) of the Schedule to Cap. 219 as amended by Law 66/79 the transfer fees paid in the case in hand 35

cannot be considered as having been charged for services rendered but they are a kind of tax payable to the State.

(2) The applicants' argument that the Court Order was binding on the respondent is without substance as such order would only be important as far as the respondent's possible refusal to effect the re-transfer and re-registration, which is not the case here, and not in relation to the fees charged by the D.L.O. The transfer was declared void not because of any provision of the Law but only because applicants 2 were not entitled to acquire the immovable properties in question.

Recourse dismissed.

No order as to costs.

Recourse.

Recourse against the refusal of the respondent to refund to applicants the transfer fees that had been paid in respect of a transfer by applicant 1 to applicants 2 of certain immovable property which transfer was later declared null and void by an order of the Court.

G. Cacoyiannis, for the applicants.

A. Vassiliades, for the respondents.

Cur. adv. vult.

MALACHTOS J. read the following judgment. By the present recourse the applicants apply for the following relief:-

1. A declaration of the Court that the act or decision of the respondent communicated to the applicants by letter dated 13th December, 1982, signed by or on behalf of the Limassol District Lands Officer whereby the respondent refused to refund to them the transfer fees that had been paid in or about February, 1979, in respect of a transfer by applicant 1 to the applicant 2 of certain immovable properties which transfer was later declared by Order of the Court null and void ab initio, is null and void and of no effect whatsoever, and

2. A declaration that the respondent's omission to refund to the applicants or to either of them the said transfer fees

ought not to have been made and that the refund of the said transfer fees should have been made.

The relevant facts of the case are as follows:

In or about February, 1979, applicant 1 transferred to applicant 2, a private company with limited liability, eight pieces of immovable property of a total area of 50 donums and 1 evlek. The transfer was declared to be "by way of gift." All the said properties, with the exception of a carob tree, were fields with no buildings or structures standing thereon. As everything appeared to be in order, the declaration of transfer which was made in accordance with the Immoveable Property (Transfer and Mortgages) Law, of 1965 (Law 9/1965), was accepted by the Limassol District Lands Office and the sum of £8,500.800 mils was paid by way of transfer fees in accordance with paragraph 3(b) (v) of the Schedule to the Department of Lands and Surveys (Fees and Charges) Law, Cap. 219, as amended by Law 66 of 1979 and new certificates of registration dated 26th February, 1979, were issued to applicant 2 company.

On the 16th May, 1981, applicant 1 instituted Action No. 1672/81 in the District Court of Limassol against the applicant company by which he claimed a declaration of the Court that the said transfer and registration was null and void ab initio being ultra vires the memorandum of Association of the applicant company and further claimed an order for the registration of the said properties in his name. It was the allegation of applicant No. 1, plaintiff in the action, that the defendant company was not empowered under any of the objects enumerated in its memorandum of association to acquire the said immovable properties by way of gift and, therefore, the said transfer was void ab initio.

On 22nd March, 1982, by an Order of the Court, issued by consent, the said transfer and registration were declared null and void ab initio having been made ultra vires the memorandum of association of the applicant company and it was further ordered that the properties in question be re-registered in the name of applicant 1.

As a result the applicants wrote, on the 12th April, 1982,

to the Limassol District Lands Office requesting the cancellation of the said transfer and re-registration of the properties in question in the name of applicant 1 and the refund to him and/or to the applicant company of the transfer fees amounting to £8,500.800 mils.

In response to this application the respondent cancelled the transfer of the said properties and issued new certificates of registration in the name of applicant No. 1 but refused to refund the said transfer fees for the following reasons stated in their letter of 13th December, 1982:

- (a) The services for which the applicants had been charged were rendered;
- (b) The order of the Court cancelling the transfer was made by consent;
- (c) The Republic was not a party to the action; and
- (d) The D.L.O. did not commit any mistake or omission necessitating the cancellation of the act.

As a result of this refusal, the applicants filed the present recourse, which is based on the following grounds of law:

1. The refusal of the respondent to refund the transfer fees was in abuse or excess of powers;
2. The letter of the respondent of 13th December, 1982, and/or the act or decision complained of, is not duly or properly reasoned and/or the reasons given are invalid or insufficient to justify the respondent's decision;
3. The transfer fees are not fees payable in respect of services rendered but are fees payable under the law upon the carrying out of valid transactions, and
4. The respondent acted under an erroneous estimation of the facts and/or the law.

The main argument of counsel for applicants is that the respondent was wrong to refuse to refund the fees paid be-

cause such fees are charged and become payable only for valid transactions. Therefore, since in the present instance the transfer and registration in respect of which the said fees were paid, were declared by the Court to be null and void ab initio, then such fees are deemed to have been wrongly collected and thus became refundable as having been collected in respect of an invalid transaction. 5

On the other hand, counsel for the respondent argued that, as stated in the letter of the 13th December, 1982, the fees were collected for services rendered to the applicants and in accordance with the provisions of the law. 10

As stated in section 3 of the Department of Lands and Surveys (Fees and Charges) Law, Cap. 219, fees are charged in respect of the various matters set out in the Schedule to the Law. In paragraph 3(b)(v) of the Schedule, as amended by section 2 of Law 66 of 1979, it is provided that fees for registration of title by transfer payable by the person to be registered upon gift other than by parent to child or by relative to relative, up to the third degree, or by spouse to spouse, as in the present case, the fee reckoned on the market value to be determined by the Director. 15 20

It can reasonably be inferred from the wording of the Schedule that the fee payable in the case in hand cannot be considered as being charged for services rendered but it is a kind of tax payable to the revenue of the State. 25

As regards the other argument submitted on behalf of the applicants that the Order of the District Court of Limassol was binding on the respondent, this, again, is without substance as such Court Order would only be important as far as the respondent's possible refusal to effect the re-transfer and re-registration, which is not the case here, and not in relation to the fees charged by the D.L.O. Such transfer was declared void not because of any provision in the Law but only because the applicant company was not empowered to acquire such immovable property. 30 35

I, therefore, find that the sub judge decision was proper and correct in the circumstances, it is duly reasoned and in accordance with the Law. For these reasons the recourse must fail and is hereby dismissed.

5 There will be no Order as to costs.

Recourse dismissed.

No order as to costs.