

1985 November 4

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

PAPHOS PLANTATIONS (SMK) LTD.,

*Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF INTERIOR AND OTHERS,

*Respondents.*

(Case No. 142/83).

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5 *Building Permit—The Streets and Buildings Regulation Law, Cap. 96 as amended—Ss. 8(c), 8(d), 9(2)(b) (XIII), 2(e), 12 and 13.—Application for the construction of a fence—Condition imposed as to position of the fence so that there would be widening upto 80 feet of the existing roads—Relevant street widening scheme ready, but not published—A building permit cannot be refused or conditions imposed in anticipation of an order of compulsory acquisition being made or of a street widening scheme being published.*

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15 *Constitutional Law—Constitution, Article 23—The provisions of ss. 8(d) and 9(2)(b) (XIII) of Cap. 96 as amended have to be applied in the light of Article 23 of the Constitution—In the circumstances they were applied in a manner inconsistent with Article 23, that is to say otherwise than through the machinery of compulsory acquisition or through the existence of a street widening scheme made under s. 12 of Cap. 96.*

20 The applicants, who are lessees of an area of land of about 300 donums situated at Yeroskipou for a period of 30 years, applied for a building permit for the erection of a fence around the said land. By letter dated 16.2.83

respondent 2 informed the applicants that the appropriate authority would have no objection to grant the permit applied for, provided a number of conditions set out therein were satisfied. One of those conditions referred to the position of the fence so that there would be widening upto 80 feet of the existing roads, as suggested by the Planning Department. 5

As a result of the said letter the present recourse was filed. Respondents argued that the said condition related to the "right position" of the fence and did not amount to a cession of the relevant part of the land. Any ceding of land would be made at the stage of compulsory acquisition. Respondents admitted that the relevant plans for the street net-work have not been published yet, but allege that the plans are ready. They claim to have relied in imposing the said condition on ss. 9(1)(b)(XIII), 8(d)\* and 2(e) of Cap. 96. 10 15

*Held, annulling the sub judice decision:*

(1) The Minister of the Interior has no locus standi in a recourse against an Improvement Board except possibly where an appeal had been made to him under s. 54 of Cap. 243. 20

(2) Applicants' contention that as lessees of the land they had no right to cede part of the property to the appropriate authority cannot stand because the consent of the owners given to a person to apply for a building permit carries with it the obligation of the applicant to comply with the provisions of the relevant legislation and fulfil any conditions legally imposed in such a permit. 25

(3) A building permit cannot be refused or conditions imposed for its issue that are intended to anticipate the outcome of the completion of a compulsory acquisition process which has not as yet started or which has been set in motion but not completed by the payment of the compensation and the vesting of the property in the acquiring authority. 30 35

(4) A building permit cannot be refused or conditions

\* Sections 9(1)(b)(XIII) and 8(d) are quoted at p. 2750.

5 imposed requiring compliance with a street widening scheme which did not actually and legally come in force and was only a scheme on paper. The provisions of s. 9 (1) (b) (XIII) of Cap. 96 have to be applied in the light of Article 23 of the Constitution and cannot substitute the provisions in ss. 12 and 13 of Cap. 96 relating to the widening or straightening of streets.

10 (5) Without purporting to determine the extent of the powers of the appropriate authority under s. 8(d) and s. 9 (1) (b) (XIII) of Cap. 96, the circumstances of this case lead to the conclusion that both sections have been applied in a manner resulting to deprivation of property in a manner repugnant to Article 23 of the Constitution, i.e. otherwise than through the machinery of compulsory acquisition or through the existence of street widening scheme made under s. 12 of Cap. 96.

*Sub judice decision annulled.*

*No order as to costs.*

Cases referred to:

- 20 *Yiaki Estates Ltd. v. The Improvement Board of Ayia Napa and Another* (1984) 3 C.L.R. 966;
- HadjiPapa Symeou v. The Republic* (1984) 3 C.L.R. 1182;
- Michael Theodossiou Co. Ltd. v. The Municipality of Limassol* (1975) 3 C.L.R. 195;
- 25 *Kyriakides v. The Municipality of Nicosia* (1976) 3 C.L.R. 183;
- Orphanides v. The Improvement Board of Ayios Dhome-tios* (1979) 3 C.L.R. 466;
- 30 *Georghiou and Others v. The Improvement Board of Strovolos* (1981) 3 C.L.R. 348;
- Kyriakides v. The Improvement Board of Eylentzia* (1979) 3 C.L.R. 86;
- Simonis and Another v. The Improvement Board of Latsia* (1984) 3 C.L.R. 109;

*Municipality of Limassol v. Ayia Katholiki Church* (1984)  
3 C.L.R. 1562;

*Atlas Pantou Co. Ltd. and Another v. The Municipal  
Committee of Larnaca* (1985) 3 C.L.R. 47.

**Recourse.**

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Recourse against the decision of the respondents where-  
by the ceding of part of applicants' property for the con-  
struction of a road by the Department of Town Planning  
was imposed as a condition before the respondent issued  
a covering approval for a fence built by applicants around  
their property without a permit to that effect. 10

*G. Triantafyllides*, for the applicants.

*A. Vladimirov*, for respondent 1.

*K. Chrysostomides*, for respondents 2 and 3.

*Cur. adv. vult.* 15

A. LOIZOU J. read the following judgment. The appli-  
cant Company are, by virtue of a contract of lease dated  
30th July 1981, the lessees for a period of 30 years. of an  
area of land of about 300 donums of agricultural land be-  
longing to a certain Terrence Spiby. The said contract was  
registered at the Lands Registry Office. This land is si-  
tuated within the area of the Improvement Board of Yero-  
skipou, respondents 3. whose Board is chaired as provided  
by Law by respondent 2. 20

On or about the 20th March 1982, they applied for a  
building permit for the erection of a fence around the  
said land. Soon afterwards and in fact between the 25th  
and the 31st March, 1982, they started erecting the said  
fence. 25

On the 2nd April 1982, criminal proceedings were insti-  
tuted in the District Court of Paphos, against the applicant  
Company which pleaded guilty to a charge of building  
without a building permit, (exhibit A, blue 14). On the 1st  
September 1982 they were sentenced to ten pounds fine  
and ordered to pull down or remove the unlawfully con- 30  
35

structed fence within two months from that date unless a permit was obtained in the meantime.

5 The question of obtaining a building and/or a covering permit was pursued by the applicant Company and by  
10 letter dated the 16th February, 1983, (exhibit 1), respondent 2. informed them that the appropriate Authority would have no objection to grant the permit applied for, provided a number of conditions set out therein were satisfied. One of those conditions referred to the position of the fence shown  
15 on the plans attached to the said letter, (exhibit A, blues 18 to 20) so that there would be widening up to 80 feet of the existing roads, as suggested by the Planning Department.

15 With regard to the allegation of the applicant Company put forward in their written address in this case to the effect that they were required by respondents 2 and 3 to give in that way to them all the public land of approximately 16 donums in extent for a road which the Department of Town Planning would one day construct in the  
20 area. The respondents replied that what was meant by the said conditions in exhibit 1, was to put the fence at "the right position and not cede any part and/or percentage of land. Any ceding of land would be at the stage of compulsory acquisition when there would be paid compensation  
25 to the applicant Company as assessed by the Lands and Surveys Department". It was further contended that the procedure for compulsory acquisition of part of the plots of the applicant Company under the Compulsory Acquisition Law 1962, was set in motion.

30 As regards the allegation of the applicant Company that there were no definite plans for the construction of the said road and that there were definitely no such plans published pursuant to the provisions of the Town and Country Planning Law 1972 (Law No. 90 of 1972) or of any  
35 other Law, the respondents conceded that though they have plans for the construction of major roads in the area around the property of the applicant Company and that the width of such roads will be 80 ft. as being of major importance, the plans for this street network of the area have not been  
40 published yet, but the relevant studies are ready and the

delay in the publication of the plans was due to the carrying out of a plan for redistribution of land holdings by the Land Consolidation Authority and in delays in the Lands and Surveys Department for the redistribution of the roads and the new plots. 5

On the point of the conditions imposed, the appropriate Authority claims to have relied—in particular for the placing of the fence at the right position—on sections 9(1) (b) (XIII), 8 (d) and 2(e) of the Streets and Buildings Regulation Law, Cap. 96 as amended. Section 2(e) of the Law has no relevance to our case so I shall set out the rest of these statutory provisions. They read as follows: 10

“8 (d). With the object of securing the further improvement of the street net work of the area.”

“9 (1) (b) (XIII) The widening continuation and construction of the street net work in appropriate cases.” 15

Before proceeding any further I shall deal with the objection raised on behalf of respondent 1, the Minister of Interior to the effect that he was wrongly joined as the sub-judice decision was issued by respondents 2 and 3, the appropriate Authority under Section 3(2)(b) of Cap. 96 and that under section 51 of the Villages (Administration and Improvement) Law, Cap. 243 in all legal proceedings the Board may sue and be sued in its name and a Board for the purposes of this Law bears the name “Improvement Board of...” inserting within the dotted lines the name of the improvement area. Reference in this respect was made to the case of *Yiaki Estates Ltd., v. The Improvement Board of Ayia Napa and Another* (1984) 3 C.L.R. 966, where it was held that for all intents and purposes it would be enough in the circumstances to have made the Improvement Board of Ayia Napa as the respondent in those proceedings, the District Officer of the District as such having no locus standi in his said capacity and that therefore the recourse against him should be dismissed for the same reason. 20 25 30 35

Reference was also made to the case of *HadjiPapa Symeou v. The Republic* (1984) 3 C.L.R. 1182 where an

amendment was allowed to add the Improvement Board of Paliometochos, as a party to a recourse and where Triantafyllides, P., observed that it was understood that the District Officer of Nicosia was to be treated as party to these proceedings, not in his capacity as a separate organ of administration, but as being the Chairman of the aforementioned Improvement Board.

No doubt the Minister of Interior has no *locus standi* in a recourse against an Improvement Board unless possibly in those cases where an appeal is made to him from any person aggrieved by the refusal of such Board to grant or renew a licence or permit under section 54 of Cap. 243. But we are not concerned with such a situation in this case. The recourse therefore is dismissed as against respondent 1.

It was argued on behalf of the applicant Company that as they were not the registered owners of the land but only the lessees they had no right to cede to the appropriate Authority, as it was unlawfully demanded of them, any part of that land without the consent of the owner though entitled under their contract of lease to submit applications to the appropriate Authorities to construct buildings including a fence.

I am afraid, I do not subscribe to this contention as the consent of the owners given to a person to apply for a building permit carries with it the obligation of such applicant to comply with the provisions of the relevant legislation and fulfil any condition legally imposed in such a permit; that is if a lessee or other person has the consent of the owner to apply for a building permit on land which is affected by a street widening scheme, such a person cannot avoid a condition demanding the ceding of part of the plot to the road in compliance with its new alignment.

Two basic questions remain for determination in the present recourse, the first is whether a building permit could be refused or conditions imposed for its issue that were intended to anticipate the outcome of the completion of a compulsory acquisition process which has not as yet started.

In the case of *Michael Theodosiou Co. Ltd., v. The Municipality of Limassol* (1975) 3 C.L.R. p. 195 it was held that a refusal to grant a building permit constitutes a disturbance of the possession of the owner of the property, who, until the payment of the compensation, continues to exercise, subject to certain limitations, and have, as owner, intact the rights prescribed by Law regarding possession, disposal and enjoyment. And no building permit may be refused until the payment of the compensation for the property under acquisition. That was a case where the process of compulsory acquisition of the whole of the subject property was set in motion and the building permit applied for, was refused before the payment of the compensation. A fortiori the principle enunciated in the *Theodosiou case* applies to our case where there was only the intention to acquire compulsorily this extensive area of land which was considered necessary to be acquired for the purpose of public benefit.

In this respect reference may also be made to the case of *Evangelia Kyriakides v. The Municipality of Nicosia* (1976) 3 C.L.R. p. 183, where Malachos J., held that the existence of an acquisition order regarding a strip of land did not entitle the appropriate Authority to treat same as not being part and parcel of the building-site of the applicant, but as part of the public road on the date the owner of the land applied for a building permit, as it was still his property once the compensation had not been paid and the provisions of section 13 of the Compulsory Acquisition of Property Law 1962 not complied with.

The answer to this question is obviously in the negative, neither a building permit could be refused nor conditions imposed before the property to be acquired or a part thereof vested in the acquiring authority and taken away from the owner.

As regards the second question of the argument there is a line of authorities establishing that a building permit cannot be refused or a condition imposed requiring compliance with a street-widening scheme which did not actually and legally come in force and was only a scheme on paper. In *Orphanides v. The Improvement Board of Ayios*



*Dhometios* (1979) 3 C.L.R. 466, Stavrinides J., held that "the appropriate Authority has no right to require a person who applies for a permit to erect a building on land not affected by a street-widening scheme to do in connection with that land, anything that is not required by a scheme having actual legal force, as distinct from a scheme existing only on paper;" And he concluded that since there the applicant's property was not affected the requirement made by it was one that the Authority had no power to make.

That case turned on the application of section 8 (c) of Cap. 96, paragraph (d) which is set out in full in this judgment and had not as yet been enacted.

Section 8 (c) reads as follows:-

"With the general object of securing proper conditions of health, sanitation, safety, communication, amenity and convenience in the area in which the intended work is to be carried out."

In *Georghiou and others, v. The Improvement Board of Strovolos* (1981) 3 C.L.R. p. 348, Hadjianastassiou J., held that once there was no valid scheme at the time affecting the area in question the appropriate Authority was not entitled and wrongly acted in refusing the permit to the applicants; accordingly the sub judice refusal is contrary to the provisions of the law and/or the Constitution and was made in excess and/or in abuse of the powers vested in the respondents. It appears that reliance was placed on behalf of the appropriate Authority in that case to section 8 (c) as in the *Orphanides case* though reference was made to paragraph (d), thereof, but it was found not to be applicable as it was enacted after the time which was material to the examination of the application for the issue of a building permit in that case.

In *Frixos Kyriakides v. The Improvement Board of Eylentzia* (1979) 3 C.L.R. 86 the Full Bench held:

"That paragraph (c) of section 8 of Cap. 96 does empower the respondents to take into account in relation to the concept of 'communication... in the

area' the aspect of the access of the plot, in respect of which a division permit is being sought, to a public road; that, therefore, it was within the proper exercise of the discretionary powers of the respondents to refuse the division permit applied for; and that, accordingly, the appeal will be dismissed." 5

That was a case where the appellant was refused a permit for the division of the land into building-sites on the ground that the plot in question did not abut on a public road and the refusal was based on section 8 of Cap. 96. 10

In *Simonis and Another v. The Improvement Board of Latsia* (1984) 3 C.L.R. 109 Pikiis, J., held that section 8, of Cap. 96, empowers the appropriate Authority to make suggestions for alterations of the plans submitted in order to ensure proper communications and road improvement in the area and he referred in that respect to paragraphs (c) and (d) thereof. That was a case of an application for a permit to divide a plot of land into building-sites. 15

In the case of the *Municipality of Limassol v. Ayia KATHOLIKI Church* (1984) 3 C.L.R. 1562, the Full Bench of this Court held that the refusal of the appellant Municipality to issue a building permit to the respondents in order to erect on their property in Limassol shops, amounted to a deprivation, contrary to Article 23.4 of the Constitution and consequently the powers under section 8(c) and 3 (1)(e) of Cap. 96, were resorted to in a manner which was unconstitutional. That is otherwise than through a compulsory acquisition effected under the said article of the Compulsory Acquisition of Property Law 1962 (Law No. 15 of 1962). 20 25 30

In *Atlas Pantou Co. Ltd., and Another v. The Municipal Committee of Larnaca* (1985) 3 C.L.R. 47, I held that section 8 (c) of Cap. 96, empowers the appropriate Authority to take into account in relation to the concept of communication in the area the aspect of the access of the plot in respect of which a division permit is sought to a public road. 35

I have not been able to trace any authority turning on the construction of section 9 (1) (b) (XIII) of Cap. 96 and

to my mind its provision empowering the appropriate Authority to impose conditions regarding the widening, continuation and construction of the street network in appropriate cases have to be applied in the light of Article 23  
5 of the Constitution and cannot substitute the provisions contained in sections 12 and 13 of the Law relating to the widening or straightening of streets.

The condition imposed on the applicant Company cannot be justified by either of the provisions of the Law  
10 relied upon by the respondents. A building permit cannot be refused nor conditions imposed in anticipation of an acquisition order being made nor in anticipation of a street widening scheme. Without purporting to examine  
15 what is the full extent of the powers of the appropriate Authority under the said sections, I have come to the conclusion that in the circumstances of this case they have both been applied in a manner which results in deprivation of  
20 property in a way inconsistent with Article 23 of the Constitution that is otherwise than through compulsory acquisition or through the existence of a street widening scheme published under the provisions of section 12 of  
Law Cap. 96.

The applicant Company applied only for the construction of a fence around their property and they found themselves  
25 required in order to obtain a permit in that respect to have to cede to the public an area of 16 donums, the magnitude of the adjustment sought to be made to the road network of the area is too big in the circumstances to be justified  
30 under the provisions of either sections 8(d) or 9(1)(b) (XIII). The decided cases turning on permits relating to the division of land are distinguishable in any event.

For all the above reasons this recourse succeeds and the sub judge decision is annulled. In the circumstances, however, there will be no order as to costs.

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*Sub judge decision annulled.  
No order as to costs.*