

1986 September 23

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

XANTHI PAPACONSTANTINOU AND ANOTHER,

Applicants,

v.

THE DIRECTOR OF THE DEPARTMENT OF
INLAND REVENUE,

Respondent.

(Cases Nos. 1005/85 and 1006/85).

*Constitutional Law—Taxation—Constitution, Article 24.3—The
Capital Gains Tax Law 52/80, sections 6 and 9—Said
sections do not impose tax retrospectively and, therefore,
they are not repugnant to or inconsistent with the said
Article of the Constitution.*

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By means of the above recourses the applicants challenge the validity of the assessments raised on them under the Capital Gains Tax Law 52/80 in respect of certain disposals of building sites at Larnaca.

The sole question raised in these recourses is the question of the constitutionality of sections 6 and 9 of the said law, that is whether their provisions offend against Article 24.3 of the Constitution, which provides that “No tax, duty or rate of any kind whatsoever shall be imposed with retrospective effect”.

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The applicants submitted that as by virtue of section 6 every person is required to pay tax on any increase in the value of his land between the 27.6.78 and the day of the enactment of the said Law and as the increase in the value of the applicants’ land was effected before the commencement of the said law, and as any capital gains tax imposed for the period before the existence of the law

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3 C.L.R. **Papaconstantinou and Another v. Republic**

affects, even for the future only, the consequences or transactions and/or situations previously in existence, the said provisions of section 6 is given retrospective effect.

5 *Held, dismissing the recourse:* (1) In the light of the authorities it is clear that the challenged provisions of the said law do not impose tax retrospectively merely because the profit is calculated by reference to time prior to its enactment. Nor are they retrospective merely because a part of the requisites for its action is drawn from
10 a time antecedent to the enactment of the Law. If section 6 had imposed tax on transactions prior to the date of its coming into force, namely 1.8.80, it would have been retrospective.

15 (2) In the light of the above the two sections challenged as unconstitutional are constitutional and valid.

*Recourse dismissed.
No order as to costs.*

Cases referred to:

- 20 *R. v. Inhabitant of Christ Church* [1848] 12 Q.B. 149;
Re Solicitor's Clerk [1957] 3 All E. R. 617;
Master Ladies Tailors Organisation v. Minister of Labour and National Service [1950] 2 All E.R. 525;
Customs and Excise Commissioners v. Thorn Electrical Industries [1975] 3 All E.R. 881;
25 *HadjiKyriacos and Sons Ltd. v. The Republic*, 5 R.S.C.C. 2;
Demetriades v. The Greek Communal Chamber and Another (1965) 3 C.L.R. 605.

Recourses.

30 Recourses against the assessments raised on applicants in

respect of the capital gains arising on the disposal of certain building sites at Larnaca.

A. *Poetis*, for the applicants.

Y. *Lazarou*, for the respondent.

Cur. adv. vult. 5

A. LOIZOU J. read the following judgment. By their respective recourses, which by direction of the Court have been tried together as they present common questions of law and fact, the two applicants challenge the capital gains tax Assessments on the capital gain arising on the disposal of certain building sites at Larnaca. Three of them were jointly owned in equal shares by both applicants and a fourth one was owned solely by applicant in recourse No. 1005/85, Xanthi Papaconstantinou. 10

As the sole issue before me is the constitutionality of sections 6 and 9 of the Capital Gains Tax Law, 1980, (Law No. 52 of 1980)—hereinafter to be referred to as the Law—I do not intend to refer the particulars of the subject properties, or the said assessments as it is sufficient for the purposes of this judgment to say that these building-sites were acquired in 1974 by the two applicants by way of gift. Plots 227, 190 and 184 were held in equal undivided shares by them whereas plot 217 was solely owned by applicant Papaconstantinou. The applicants and their agent-consultant, Mr. Phanos G. Ionides, raised objections to the said assessments on the ground that the market value of these building-sites on the 27th June, 1978, was higher than the assessment of the respondent, but apparently they failed to produce any particulars or documentary evidence to substantiate their claim regarding the market value of the sites as on that date. 15 20 25 30

The respondent then considered the evidence available to him and having regard to comparative sales of other building-sites in the area, as well as the other factors affecting the market value of the building-sites in question, computed as at 27th June, 1978, their market value as follows: 35

Plots 227 and 190 £5.000 the whole.

Plots 184 and 217 £5.500.

The respondent communicated to the applicants his final decision together with the relevant Notices of Assessment, whereupon the applicants filed the present recourses.

Sections 6 and 9 of the Law read as follows:

5 “6. (1) In computing the gains -
 (a) any appreciation in the value of the property before the 27.6.1978 or if the owners so chooses, before the 14.7.1974, shall not be taken into account:

10 Provided that no appreciation in the value of the property shall be taken into account in respect of property situate within an area that became inaccessible by reason of the Turkish invasion;

15 (b) allowance shall be made for any expenditure wholly and exclusively incurred after the 27.6.78 in relation to the acquisition of such gains, which is not an allowable deduction under the Income Tax Laws in force for the time being.

20 9. (1) The proceeds from the disposal of property shall be the amount which, in the opinion of the Director, such property might be expected to realise if sold in the open market at the time of the disposal of such property.

25 (2) If no purchase or sale has taken place, there shall be deemed to have been paid or received an amount equal to the amount which in the opinion of the Director such property would realise, if bought or sold, as the case may be, in open market at the time
30 of the occurrence of the event.”

It is the contention of learned counsel for the applicants that these provisions impose tax retrospectively and consequently offend Article 24.3 of the Constitution which reads as follows:

35 “No tax, duty or rate of any kind whatsoever shall be imposed with retrospective effect.

Provided that any import duty may be imposed as from the date of introduction of the relevant Bill."

In support of his contention counsel argued that by virtue of the provisions of Section 6 of the Law every person is required to pay tax on any increase of the value of his land which was made between the 27th June, 1978 and the date of the enactment of the Law and that the increase in the case of the applicants was effected before the Law came into existence and that any capital gains tax imposed "for the period before its existence, affects, even for the future only, the consequences or transactions and/or situations previously in existence", and that in view of this as regards the period 27th June, 1978, till the enactment of the Law, the said provision is given retrospective effect and imposes tax for increase of the value of the land achieved before the commencement of the Law. Hence the provision is unconstitutional and the sub judice decision is null and void having been based on such unconstitutional provision of the Law. In support of this learned counsel referred to the case of *Re Solicitor's Clerk* [1957] 3 All E.R. 617 where at p. 619 Lord Goddard C. J. said:

"It would be retrospective if the Act provided that anything done before the Act came into force or before the order was made should be void or voidable or if a penalty were inflicted for having acted in this or any other capacity before the Act came into force or before the order was made."

On the other hand counsel for the respondent has argued that Section 6 of the Law imposes tax upon the disposal of property which takes place after the coming into force of the Law, namely the 1st August 1980 and the substance of the matter is that such disposal cannot be treated as imposing retrospectively a tax, on the sole ground that computing the profit the base value of the property is considered as at 27th June, 1978, or at the option of the taxpayer as at 14th July 1974. It was urged that the enactment is a prospective one in its operation since it relates to further transactions only and no question of retroacti-

ty arises because part of the requisites of its action is drawn from time antecedent to its passing.

In support of this proposition counsel for the respondents referred me to the case of *R. v. Inhabitant of Christ Church* [1848] 12 Q.B. 149 in which Lord Denman C. J. said
5 “No one would class Statutes of Limitation or prescription as retrospective merely because the space of time which is essential for their operation may consist in part of time passed before the Act.”

10 In Halsbury’s Laws of England 4th Edition Volume 44 paragraph 921 the position is summed up as follows:-

“921. Meaning of ‘retrospective’. It has been said that ‘retrospective’ is somewhat ambiguous and that a good deal of confusion has been caused by the fact
15 that it is used in more senses than one. In general, however, the courts regard as retrospective any statute which operates on cases or facts coming into existence before its commencement in the sense that it affects, even if for the future only, the character or
20 consequences of transactions previously entered into or of other past conduct. Thus a statute is not retrospective merely because it affects existing rights; nor is it retrospective merely because a part of the requisites for its action is drawn from a time antecedent to
25 its passing.”

As an authority for the last proposition the case of *Master Ladies Tailors Organization v. Minister of Labour and National Service* [1950] 2 All E.R. 525 is given where it was pointed out by Somervill L. J. that “the fact that a
30 prospective benefit is in certain cases to be measured by or depends on antecedent facts does not necessarily,, make the provision retrospective.”

Furthermore in *Customs and Excise Commissioners v. Thorn Electrical Industries* [1975] 3 All E.R. 881 at p.
35 890 it was said by Lord Morris of Borth-Y-Guest that: “The fact that as from a future date tax is charged on a source of income which has been arranged or provided for before the date of the imposition of the tax does not mean that a tax is retrospectively imposed.”

It is clear therefore that the sections of our Law challenged do not impose tax retrospectively merely because the profit is calculated by reference to time prior to its enactment. Nor are they retrospective merely because a part of the requisites for its action is drawn from a time antecedent to the enactment of the Law. It would have been retrospective only if the section imposed tax on transactions prior to the date of its coming into force, namely the 1st August 1980. 5

The cases of *Hadjikyriakos and Sons Ltd.*, 5 R.S.C.C. 22 and *Demetriades v. The Greek Communal Chamber and Another* (1965) 3 C.L.R. 605 are not of much assistance to the case of the two applicants as they refer to the non-retrospectivity of taxation if tax is imposed in any year of assessment on a person on the basis of his income in that particular year by means of legislation enacted during that same year, so that, even if the legislation may have been enacted at the end of that year the Law takes effect from the beginning of such year without offending paragraph 3 of Article 24 of the Constitution. 10 15 20

For all the above reasons I conclude that the two sections of the Law challenged as unconstitutional by these recourses on the ground of retrospectivity in imposing taxation are constitutional and valid and consequently the assessments challenged are valid and the two recourses are dismissed. with no order as to costs. 25

Recourses dismissed.
No order as to costs.