1986 September 19

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

1. MARINA GEORGHIOU PIERIDES,
2. PASCHALIS KITROMELIDES,
3. IOANNIS MICHAEL KITROMELIDES,
4. NICOLAS DEMETRIOU SMIRLIS,
5. ANGELIKI DEMETRIOU SMIRLI,

Applicants,

v.

THE MUNICIPALITY OF PAPHOS,

Respondent.

(Case No. 596/85).

Administrative Law—Administrative act—Validity of—Determined on basis of legal status existing at the time of its issue—Exception to the rule in case of unreasonable delay on behalf of administration to do what it was bound to do before the change of the law—Demolition of building—Application for, dated 4.1.85—Sub judice decision taken on 22.5.85—Delay unreasonable—Application should have been dealt on basis of legal status as it was prior to the publication on 4.5.85 of a preservation order.

Streets and Buildings—The Streets and Buildings Regulation Law, Cap. 96, as amended by Laws 14/59 to 15/83—Sections 3, 4 and 9—Section 9(4) added by Law 80/82—Demolition of buildings—Permit for—Except where the demolition is expressly prohibited by Law, the appropriate authority has no power to impose any conditions or restrictions and is not duty bound to consult any other authority before granting the permit.

Constitutional Law—Right to property—Possession and enjoyment of property—Constitution, Article 23—The right can

only be subjected to the limitations or restrictions referred to in Article 23.3—Such limitations or restrictions can only be imposed by law—Refusal to grant a building or demolition permit—It constitutes a disturbance of the possession and ownership of immovable property.

On 4.1.85 the applicants, who are the owners of a building under Reg. No. 28919 at Paphos, submitted an application to the respondent authority, for a permit to demolish their said building. By a telegram of their counsel dated 8.1.85 they requested an immediate written reply to their said application. The respondents, however, kept the said application in abeyance because it was the first time that such an application was submitted without an application for a building permit. The respondents considered it expendient to obtain the views of the Town Planning and Housing Department and, as a result, they sent in this respect a letter dated 25.1.85 to the said Department. On 28.3.85 the applicants took steps to demolish the said building upon which the respondents instituted criminal proceedings against them and secured an interim order restraining them from proceeding with the demolition. The interim order was made returnable on 11.5.85. By letter dated 2.4.85 the Director of Town Planning and Housing Department sent a letter to the Director-General of the Ministry of Interior, referring to the correspondence which ends with the letter of the Chairman of the respondent to the Director-General with regard to the matter of "Publication of Preservation Order in respect of buildings and areas of Paphos town on the basis of s. 38 of the Streets and Buildings Regulation Law" and suggesting that the matter of the said publication be pursued urgently. The letter ended with a request that, as in respect of a particular building, included in the list of buildings for preservation, there will be a hearing on 11.5.85, the publication of the preservation order be made before the 11.5.85. On 30.4.85 the Department of Town Planning and Housing recommended to the respondents to refuse the demolition applied for by the applicants. The preservation order was published on the 3.5.85 and on 22.5.85 the respondents informed the applicants that their application had been refused as the

building in question had been declared to be subject to a preservation order. As a result the applicants filed the present recourse. It should be noted that on the 19.4.85 the applicants had filed recourse 466/85 challenging the omission and/or refusal of the respondents to reply to their application dated 4.3.85 and that the said recourse was served on the respondents on the 29.4.85 and was fixed for hearing on 13.6.85.

Held, annulling the sub judice decision: (1) The general principle that the validity of an administrative act is determined on the basis of the legal status existing at the time of its issue is subject to the exception that the pre-existing legislation is applicable where there has been an omission on the part of the administration to perform within a reasonable time what it was duty bound to do before the change of the law.

(2) No provision exists either under section 9 or any other provision of the Streets and Buildings Regulation Law empowering the appropriate authority to impose any conditions or restrictions or casting upon it a duty to consult any other authority before granting a demolition permit save where the demolition of a building is prohibited by law for reasons expressly set out therein.

(3) What happened in this case is that the respondents, in dealing with an application in a matter of pure routine instead of exercising their functions under the law, as an independent local authority, acted as if they were an organ subject to the control of various governmental departments, delaying all along the taking of a decision for the purpose of affording the opportunity to such departments to consider whether they should make a preservation order in respect of the building in question.

(4) The right of unimpeded possession and enjoyment of property is safeguarded by Article 23 of the Constitution and can only be subjected to the restrictions or limitations provided in paragraph 3 of Article 23, which however, can only be imposed by law. A refusal to grant a building or demolition permit constitutes a disturbance of the possession and ownership of immovable property.

(5) In view of the unreasonable delay of the respondent authority to determine the applicants' application dated 4.1.85, the law applicable was the law before the 3.5.85, when the preservation order was published. Under such law the permit could be issued as a matter of course.

Sub judice decision annulled.
£75 costs in favour of applicants.

Cases referred to:

Lordou and Others v. *The Republic* (1968) 3 C.L.R. 427;

Loiziana Hotels Ltd. v. *The Municipality of Famagusta* (1971) 3 C.L.R. 466;

Georghiou and Another v. *The Municipal Committee of Larnaca* (1985) 3 C.L.R. 2680;

Evripidou v. *The Republic* (1983) 3 C.L.R. 599;

Michael Theodossiou Co. Ltd. v. *Municipality of Limassol* (1975) 3 C.L.R. 203;

Decision 1235/56 of the Greek Council of State.

Recourse.

Recourse against the refusal of the respondent to grant applicants a permit for the demolition of their building under Registration No. 28919 at Paphos.

Chr. Georghiades, for the applicants.

K. Chrysostomides, for the respondent.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The applicants are the owners of a building, Registration No. 28919, plots 1176, 1177, sheet/plan LI/2.6.VIII, 3.4.V. at Paphos. On 4.1.1985, the applicants submitted an application to the respondent, the approriate authority under the Streets and Building Regulation Law, Cap. 96, for a permit to demolish their said building. On 8th January, 1985, counsel on behalf of applicants sent to the respondent Municipality the following telegram:

"Application for demolition 3/85:

You are requested to let me have an immediate written reply to the application of my clients Pierides and others so that they may be able to exercise their rights."

No reply was sent to the applicants neither in respect of their application of the 4th January, 1985, nor to the telegraph of their counsel and as a result applicants filed on the 19th April, 1985, recourse No. 466/85 praying for a declaration that the omission and/or refusal of the respondent to answer their application of 4th January, 1985, is illegal, null and void. They further prayed for a declaration of the Court that the omission and/or refusal of the respondent to grant the permit applied for is null and void and illegal.

The said recourse was served on the respondent on the 29th April, 1985, and was fixed for hearing on 13th June, 1985. After service of the recourse upon the respondent the respondent by letter dated 22nd May, 1985, informed the applicants that their application had been refused on the ground that their building had been declared by the Minister of Interior as property subject to a preservation order published in Supplement No. III (I) of the official Gazette of the Republic No. 2049 of the 3rd May, 1985, under Not. 148/85.

As a result applicants filed the present recourse whereby they pray for a declaration that the refusal of the respondent to grant a permit to them for the demolition of their building is null and void, illegal and of no legal effect.

The legal grounds on which the recourse is based and which were argued at length by counsel for applicants in his written address are the following:

1. The respondent was operating under a misconception of law and in particular with regard to the principle that where there is unreasonable delay in considering an application, such application is decided in accordance with the law in force at the time of the filing of the application and not at the time when the decision is taken.

2. The respondent in issuing the sub judice decision relied on an unconstitutional, illegal and invalid order for perservation and/or an order which had not become final or approved by the Council of Ministers.

3. The sub judice decision violates Article 23 of the *Constitution.*

4. The sub judice decision is contrary to the provisions of the Streets and Buildings Regulation Law.

5. The sub judice decision is contrary to the provisions of the Municipal Corporations Law, 1964.

6. The reasoning is inadequate and wrong.

7. The sub judice decision was taken in abuse and/or excess of power.

In the course of the hearing counsel for applicants very rightly abandoned grounds (2) and (3) as they related to an independent administrative act against which the applicants had already, in the first instance, protested to the Council of Ministers.

In expounding on his grounds of law and in particular on ground (1) counsel for applicants contended that the principle that an application is decided on the basis of the law in force at the time the decision is taken, is subject to the exception that where there is an unreasonable delay on the part of an authority to exercise its functions before a change of the law takes place, then an application is decided on the law in force on the date of the application. In the present case, counsel submitted, the respondent failed and/or refused to examine applicants' application and delayed the matter, to afford the opportunity to the appropriate authority to include applicants' property in a preservation order prohibiting its demolition.

Counsel for the respondent on the other hand contended that there had been no unreasonable delay by the respondent in taking its decision as the application had to be investigated and the views of the Housing and Town Planning Department on the matter obtained. He submitted that the time taken for carrying out the necessary enquiry

was not unreasonable and that the application could not be granted in view of the situation prevailing at the time when the decision was taken, as a result of the preservation order published in the official Gazette of the Republic under the Streets and Buildings (Regulation) Law. Counsel concluded by submitting that the validity of an administrative act or decision has to be examined in accordance with the law in force at the time when the decision is taken.

The position as to whether a change in the legal status between the date when an application is made and the date when a decision is taken on such application came up for consideration before this Court in a number of cases.

In *Andriani Lordou and Others* v. *The Republic* (1968) 3 C.L.R. 427, in which the applicants were challenging the refusal of the Municipality of Famagusta to issue to them a building permit for the erection in Famagusta of a building of twelve storeys, which refusal was based on the ground that the permit sought could no longer be granted in view of a Notice of the Council of Ministers regulating among other things the height and storeys of new buildings in certain areas and fixing to six the maximum permissible number of storeys of such buildings. Triantafyllides, J. (as he then was) said the following at pp. 433, 434:

> "The above principle applies, even, to cases in which there has been a change in the relevant legislation between the submission of an application for a permit and administrative action thereon; for example, in case 398 (39) the Greek Council of State decided that, though a doctor had applied on the 1st June, 1937, for a permit regarding the functioning of his clinic, a decision, prohibiting such functioning, which was taken—while his application was still under consideration—on the 15th October, 1938, was valid, because it was based on legislation which was published on the 24th January, 1938, and was prohibiting the functioning of a clinic of that nature in the particular area; and it was stressed, by the Council of State,

that the administration could not have acted contrary to such legislation and allow something to be done which was prohibited by legislation, relating to a matter of public order (δημοσίας τάξεως), in force at the time when the relevant administrative action was taken.

While on this point it might be observed that, clearly, the Notice published by the Council of Ministers, as aforesaid, on the 25th May, 1967, regarding the heights and storeys of buildings, does regulate a matter of public order.

The applicants have based, mainly, their argument on the decision of the Greek Council of State in case 1235 (56), in which it was held that an application regarding a building permit had to be dealt with under the legislation in force at the time when it was made —and under which all the conditions relevant to the grant of the permit had been satisfied—and that such application was not to be governed by legislation which had come into effect in the meantime, after the making of the application.

A perusal of the aforementioned decision shows, at once, that the situation in that case is clearly distinguishable from the situation in the present case: There, before the coming into effect of the new legislation, there appears to had arisen a duty of the appropriate authority to issue the permit applied for, in view of the fact that the application therefor complied fully with all relevant conditions. In the present case, the application of the applicants was submitted on the 17th May, 1967; it was studied, within reasonable time, by the technical services of respondent 2; and on the date when the Notice in question was published the position was that the applicants were still required to supply some further collateral plans and effect a modification to those already submitted; it could not be said that by the 25th May, 1967, the matter had ripened to such an extent that the building permit applied for by the applicants could, and should, have been issued already."

And after making reference to decided cases of the Greek Council of State went on as follows (pp. 435-436):

"From the aforementioned decisions of the Greek Council of State it is to be derived that, in every such case, what has, first, to be ascertained, is the construction of the relevant legislation. In other words, it has to be decided whether a supervening new enactment was intended to be applicable to applications for building permits which had already been made before the coming into effect of such enactment and which, at the time, were still under consideration; if this is so, then an application for a building permit has to be dealt with on the basis of the new enactment, because of the aforementioned cardinal principle of Administrative Law which prescribes that an act has to be governed by the legislation in force at the time when it is made; if this is not so, then the new enactment is not applicable, and, therefore, it is not legislation which is, really, in force in relation to the particular administrative action to be taken regarding a previously made, and pending, application for a building permit."

Coming now to the construction of our own relevant legislation it is to be noted, first, that section 4(1) of The Streets and Buildings Regulation Law, Cap. 96, reads as follows:

"No permit shall be granted under section 3 of this Law unless the appropriate authority is satisfied that the contemplated work or other matter in respect of which the permit is sought is in accordance with the provisions in this Law and the Regulations in force for the time being".

In my view there is nothing in the construction of section 4(1) to lead to the conclusion that it is intended that a permit should be granted on the basis of the legislation in force when the application for such permit is made; it is, on the contrary, rather indicated that the grant of a permit must be governed by the legislation in force at the time when such permit is to be granted.

The matter was further considered in *Loiziana Hotels Ltd.* v. *The Municipality of Famagusta* (1971) 3 C.L.R. 466 in which the facts were briefly as follows:

The applicants applied on the 16th September, 1970, to the respondents for a building permit for the erection of a five-storey building. Complying with suggestions made on two occasions by the Municipal Engineer, the applicants submitted corrected plans on November 16th and 21st, 1970, which were examined on the 2nd December, 1970, and after the views of the Public Works and the Fire Service Department were obtained the file of the applicants was examined by the technical department of the respondents and on December 28th, 1970, the said department recommended the granting of a building permit. It was common ground that by December 28th, 1970, the applicants' case was ripe for decision, everything being in order by then, and that, had their application been dealt with before the 29th January, 1971, the building permit applied for would have been issued as a matter of course. On 29th January, 1971, by Notification published in the official Gazette the area within which the property of the applicants was situated, was declared "a tourist zone" by the respondents acting in the exercise of powers vested in them by the Streets and Buildings Regulation Law, Cap. 96 (as amended by Laws 65/64 and 38/69) the effect of which was that the maximum number of storeys of buildings was limited to two. The respondents by letter dated March 29th, 1971 addressed to the applicants, informed them that in view of the aforesaid Notification their application of September 16th, 1970, for a building permit was refused. The applicants filed a recourse against such refusal and they were successful in having such refusal annulled. A. Loizou, J. after making reference to the case of *Andriani Lordou and Another* (supra) said the following at pp. 471, 472, 473:

> "On the facts of the present case as hereinabove set out the first point for determination is whether the said delay of the respondents in deciding the applicant's application for a building permit was such as to amount to an omission which could have been put right by applying the law as it was when it should

have been determined and not as the law happened to be at the time the decision was actually taken.

Reference has already been made to the case of *Andriani Lordou*, supra. Relevant to the point in issue is also the following passage from the Decision 1235/56 of the Greek Council of State, which reads:

" ....'the applications for the issue of a building permit, submitted before the publication of the Royal Decree in the Government Gazette, with the necessary supporting documents (complete architectural study) are governed by the pre-existing legal position by virtue of the provisions of which all the conditions by law required for the granting of the building permit applied for were fulfilled, the applicant being entitled since such filfulment to the permit as having complied with all his lawful obligations required in this connection and the Administration being obliged to issue the relevant decision. A contrary view would lead to the absurdity of possibly upsetting, through no fault of the applicant and due to putting off by the Administration, technical studies and financial combinations and agreements, and to an unequal treatment between those who submitted applications for the issue of a building permit under the the pre-existing law.'

It appears that in Greece itself the legal principles set out in Decision 1235/56 came under consideration in a subsequent case, Decision 1477/56, where observations were made regarding the legal effect of the first Decision as follows:

'Given that, that in accordance with established principles of Administrative Law the validity of an administrative act is determined on the basis of the legal status existing at the time of its issue unless same is issued so that the administration may conform with an omission to act which had already occurred prior to the alteration of the legal status or unless the law otherwise expressly provides.'

From the aforesaid exposition of the law, as it is established both here and in Greece, it appears that

independently from the construction of the relevant legislation, the general principle that the validity of an administrative act is determined on the basis of the legal status existing at the time of its issue, is subject to the exception that the pre-existing legislation is applicable when there has been an omission on the part of the administration to perform within a reasonable time what it was duty bound to do before the change of the law.

The unreasonable delay by the respondent in determining the application of the applicant and their subsequent application of the law as it was on the 15th March, 1971, amounts, to my mind, to a misdirection as to the law applicable and in fact to an excess and abuse of power. The law applicable is the law as it was before the 29th January, 1971, under which it is common ground the permit could be issued as a matter of course."

In a later case *Meropi Georghiou and Another* v. *The Municipal Committee of Larnaca* (1985) 3 C.L.R. 2680, Demetriades, J., in dealing with a similar case and after making reference to the above two cases concluded as follows at pp. 2688 - 2689:

"In my view, a statute that takes away rights already acquired cannot, unless its language as such plainly requires that construction, be held to have a retrospective effect. This view of mine, I feel, tallies with another principle of administrative law, namely that when a decision of an administrative organ is held by a Court of Law to be null and void, must be re-examined by that organ on the basis of the facts and the law existing at the time the decision annulled was taken.

As it appears from the contents of the letter dated the 12th June, 1981, containing the sub judice decision, the respondents rejected the application of the applicants on the ground that it did not comply with the Building Regulations in force on that date and in particular with Notification 234. It is, therefore, clear that the respondents failed, even as late as that date,

to examine the application of the applicants and see whether the plans, specifications etc. submitted by them complied with the Building Regulations in force on the date their application was lodged. In view of this I find that the sub judice decision should be declared null and void and of no effect.

By this decision of mine it is obvious that I disagree with the judgments delivered by my learned colleagues in the cases of *Lordou* and *Loiziana*, supra, as well as the Decisions of the Greek Council of State on which my brother Judges based their judgments."

An appeal has been filed against the above decision (R. A. 546) which has been heard by the Full Bench and judgment was reserved on 17th June, 1986. As the decision is under appeal I shall avoid making any comments on same.

A careful consideration of the legal authorities on the matter and in particular the dicta in the cases of *Loiziana* and *Lordou* and the authorities referred to therein I am inclined to agree with the exposition of the law in *Loiziana* case the facts of which bear more resemblance with the facts in the present case rather than the facts in *Lordou* case. I adopt the principle emanating therefrom that the general principle that the validity of an administrative act is determined on the basis of the legal status existing at the time of its issue, is subject to the exception that the pre-existing legislation is applicable *when there has been an omission on the part of the administration to perform within a reasonable time, what it was duty bound to do before the change of the law.*

The facts in *Lordou* case are distinguishable from the facts in *Loiziana* case. In *Lordou* case the applicants filed their application for the erection of a multi-storey building on the 17th May, 1967, and whilst the application was in the process of examination, without any undue delay on the part of the respondent and only a few days later, that is on the 25th May, 1967, there was a change in the law which restricted the respondents from issuing the permit applied for. *Lordou* case was decided on the basis of the findings of the Court that there had been no undue and

unjustifiable delay on the part of the technical service of the respondent Municipality and on that basis the Court drew a distinction between that case and decision 1235/1956 of the Greek Council of State.

On the basis of my findings of law as above I am now coming to consider whether in the present case there has been undue and unjustifiable delay on the part of the respondent to deal with applicants' application.

Under the Streets and Buildings Regulation Law, Cap. 96 (and its subsequent amendments by Laws 14 of 1959 to 15 of 1983) section 3(1)(b), for erecting or demolishing a building or for making any alteration, addition or repair thereto a permit is required from the appropriate authority, which in the present case is the respondent Municipality. In granting a permit under the provisions of section 3 of the Law the appropriate authority is empowered, under section 9(1), to impose certain conditions to be set out in the permit with regard to the laying out or the construction of a street (paragraph (a) of s. 9(1)), with regard to the erection of any new building or addition, alteration or repair to an existing building (paragraph (b) of s. 9(1)), with regard to the laying out or division of any land for building purposes (paragraph (c) of s. 9(1)). The appropriate authority is further empowered to refuse the division of land having a frontage on an existing road subject to the provisions of s. 9(2); also certain requirements have to be satisfied in case of land which is not situated within a water supply area (s. 9(3) added by law 13/74); and lastly subject to certain requirements for the consultation of the Director of the Town Planning and Housing Department concerning properties situated outside a water supply area (s. 9(4) added by Law 80/82).

No provision exists either under s. 9 or any other provision in the law empowering the appropriate authority to impose any conditions or restrictions or casting upon it a duty to consult any other authority before granting a demolition permit save where the demolition of a building is prohibited by law for reasons expressly set out therein.

In *Evripidou* v. *The Republic* (1983) 3 C.L.R. 599 the Court in dealing with a recourse against the refusal of the

District Officer of Larnaca, the appropriate authority in the case, to grant to the applicant a building permit, and expounding on the construction of sections 3(1) and 4(1) of the Streets and Buildings Regulation Law, Cap. 96, held (per Pikis, J. at pp. 602 and 603) that:

"Section 3(1) of Cap. 96 confers discretion upon the appropriate authorities for building purposes, to grant or withhold a permit. The discretion is not absolute but subject to the provisions of s. 4(1) of the law. The construction of s. 4(1) presents complications. It is couched in a negative form. It lays down that no permit shall be granted unless the application complies with the provisions of Cap. 96 and regulations made thereunder. Having regard to the provisions of Article 23 of the Constitution, safeguarding the right to property, s. 4(1) must inevitably be construed as introducing limitations to the use and enjoyment of land in the interests of country planning. The limitations must not go beyond what the law expressly sanctions. Consequently, s. 4(1) must be construed as requiring the appropriate authority to approve an application, provided it complies with the provisions of Cap. 96 and regulations made thereunder. I have heard no arguments to the contrary and none can be entertained. To construe s. 4(1) as conferring an absolute discretion upon the appropriate authority to refuse a permit, would be tantamount to acknowledging power to administrative authorities to introduce at their discretion limitations to the use and enjoyment of property not sanctioned by law. I have carefully perused the provisions of Cap. 96 in order to ascertain whether power vests in the appropriate authority to have regard in examining a permit to the views of the village authority, as to the use of the premises, or the medical authorities for that matter. The answer is plainly in the negative. To the same conclusion one is driven on examination of the regulations, primarily regulating matters pertinent to the structure, the height of the building and, generally, its divisions and matters relevant thereto.

. . . . . .

The conclusion in view of the above, is, that the appropriate authority in this case refused the application for reasons other than those laid down by the law. This was impermissible; the approriate authority exceeded its powers as well as abused them."

It is common ground that at the time when the application was made and till the 3rd May there was no order in force for the preservation of the building of the applicants under the Streets and Buildings Regulation Law or under any law restricting the demolition of the said premises. Therefore, bearing in mind the provisions of the Streets and Buildings Regulation Law and in particular sections 3 and 9 as to the powers of the respondent to grant a permit and as to the conditions that may be imposed, the grant of a demolition permit was a matter of routine and could be issued within a few days, especially in view of the fact that the applicants were in a hurry to demolish the building as it appears from their telegram of the 8th January, 1985, through their advocate, and make plans for the erection of new buildings in respect of which they would have applied for a building permit.

How did the respondent behave in the present case? It kept applicants' application in abeyance because as it is alleged in the written address of its counsel it was the first time that an application for demolition was submitted without at the same time an application for a building permit. Therefore, it considered it expedient to obtain the views of the Town Planning and Housing Department, something which the respondent was not duty bound to do. A letter was sent in this respect to the Town Planning and Housing Department on 25th January, 1985, to which no reply was received till 30th April, 1985. The applicants on or about 28th March, 1985, nearly three months after they submitted their application for demolition, took steps for demolishing the building in question upon which the Municipality of Paphos instituted criminal proceedings against them by virtue of which it secured an interim order restraining them from proceeding with the demolition, which was made returnable in 11th May, 1985.

On the 2nd April, 1985, the Director of Town Planning and Housing Department sent the following letter to the

Director-General of the Ministry of Interior with copy to the respondent:

"Publication of Preservation Order in respect of buildings and areas of Paphos town on the basis of *s. 38 of the Streets and Buildings Regulation Law.*

I refer to the correspondence which ends with the letter of the Chairman of the Municipal Committee of Paphos to you (through the District Officer of Paphos) file No. D.P. 32/82, dated 29.3.85, which was also communicated to me, in connection with the above subject-matter and I am forwarding to you the following particulars for the publication in the official Gazette of the Republic, in accordance with the provisions of the relative regulations.

. . . . . .

. . . . . .

2. From information supplied to me by the Municipality of Paphos, it appears that there is eminent danger of demolition of some of the buildings proposed for preservation; I, therefore, suggest that the matter of the publication of the relevant order be pursued urgently.

3. Please also note that on 11th May, 1985, there will be a hearing in respect of a particular building (which is included in the above list of buildings for preservation) for which the owners applied for a demolition order (copy of the relevant order suspending the Demolition Works is attached) a fact which requires that the publication of the preservation order be made before the 11th May, 1985."

The Department of Town Planning and Housing by further letter dated 30th April, 1985, addressed to the respondent recommended to the respondent to refuse the demolition of the subject-matter building due to its important architectural interest and the forthcoming publication of a preservation order.

Finally the respondent on 22nd May, 1985, communi-

cated to the applicants its decision on their application that same was refused on the ground that a preservation order had been published in the official Gazette.

What emanates from the above correspondence and the conduct of the respondent is that the respondent, in dealing with applicants' application in a matter of pure routine instead of exercising its functions under the law, as an independent local authority, acted as if it was an organ subject to the control of the various governmental departments and their agent, delaying all along the taking of a decision in the matter for the purpose of affording the opportunity to them to consider whether they should make a preservation order of the building.

The right of unimpeded possession and enjoyment of property is one of the fundamental rights safeguarded by Article 23 of the Constitution. It can only be subjected to the restrictions and limitations provided by paragraph 3 of Article 23 which however can only be imposed by law. A refusal to grant a building or demolition permit undoubtedly constitutes a disturbance of the possession and ownership of immovable property (see *Michael Theodossiou Co. Ltd.* v. *Municipality of Limassol* (1975) 3 C.L.R. 195 at p. 203).

As already explained the applicants submitted their application on 4th January, 1985. The respondent instead of meeting within a reasonable time for the purpose of examining and determining applicants' application was unreasonably delaying up the matter for so long as it might become possible for the Town Planning and Housing Department to achieve its object of having the building declared as a preserved one. The unreasonable delay by the respondent in determining the application of the applicant which in the circumstances of the present case amounts to an omission on the part of the respondent to decide applicants' request "expeditiously .... and in any event within a period not exceeding thirty days", in violation of Article 29.1 of the Constitution, and its subsequent application of the law as on the 22nd May, 1985, when its decision was communicated to the applicants, amounts, to my mind, to a misdirection as to the law applicable and in fact to an excess and abuse of powers.

From the exposition of the law, as hereinabove explained and the adoption of the view that the general principle that the validity of an administrative act is determined on the basis of the legal status at the time of its issue is subject to the exception that the pre-existing legislation is applicable when there has been an omission on the part of the administration to perform within a reasonable time what it was duty bound to do before the change of the law, I find that in view of such unreasonable delay on the part of the respondent to determine the application, and, in the circumstances explained above, the law applicable was the law in force before the 3rd May, 1985, under which, it is common ground, the permit could be issued as a matter of course.

For the above reasons the refusal of the respondent to issue the demolition permit applied for has to be annulled and is hereby declared null and void with £75.- against costs in favour of the applicants.

Sub judice decision annulled. £75.- costs in favour of applicants.