

1986 November 11

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

KATHLEEN MARY SARKIS,

Applicant.

v.

THE IMPROVEMENT BOARD OR PARALIMNI,
THROUGH THE DISTRICT OFFICER OF FAMAGUSTA
AS ITS CHAIRMAN,

Respondent.

(Case No. 428/84).

Legitimate interest—Free and voluntary acceptance of an administrative act—Deprives acceptor of legitimate interest to challenge it by an administrative recourse.

5 *Legitimate interest—Act or decision issued upon application of applicant or brought about or caused by him—Applicant has no legitimate interest to challenge it.*

Streets and buildings—Building permit—Street widening scheme existing on paper—No right to impose conditions in compliance thereto.

10 *Streets and buildings—Street widening scheme—The Streets and Buildings Regulation Law, Cap. 96—Sections 13(1) and 12—The existence of a binding scheme under s. 12 is the basic prerequisite for the application of section 13(1).*

15 The respondents granted a building permit to the applicant in relation to her plot 492 in Paralimni on the following conditions, namely that the main building be placed ten feet from the street widening alignment, that the fence be placed on such alignment, that no part of the building with an elevation of more than four feet will be at a dis-

tance smaller than 10 feet from such alignment, that the part of the plot affected by such scheme be ceded to the public road and that a road should be constructed thereon.

This recourse is directed against the said conditions. The respondents conceded that there does not exist an approved and valid street widening scheme covering the area under consideration, but contended that the permit granted what the applicant had asked for by her application and submitted that the applicant is unjustified in complaining for having been given what she applied for.

Held, annulling the sub judice conditions: (1) Free and voluntary acceptance of an administrative act or decision deprives the acceptor of legitimate interest to challenge it by an administrative recourse. Moreover, there does not exist a legitimate interest to challenge an administrative act or decision which was issued on the application of the applicant or was brought about or caused by him.

(2) An appropriate Authority has no right to require a person, who applies for a building permit, to do anything that is not required by a scheme having actual legal force as distinct from a scheme existing only on paper. The basic prerequisite of the application of section 13(1) of Cap. 96 is the existence of a scheme that has become binding in virtue of section 12 of the same law.

(3) In the light of all the circumstances of this case it cannot be said that the applicant went that far as to accept in advance the aforesaid conditions. It follows that the sub judice conditions have to be annulled.

Sub judice decision annulled.

No order as to costs.

Cases referred to:

Myrianthis v. The Republic (1977) 3 C.L.R. 165;

Tomboli v. C.Y.T.A. (1980) 3 C.L.R. 266 and on appeal (1982) 3 C.L.R. 149;

Orphanides v. Improvement Board of Ayios Dhometios (1979) 3 C.L.R. 466;

Houridou and Another v. The Improvement Board of Ayios Dhometios (1979) 3 C.L.R. 219;

Nemitsas Industries Ltd. v. Municipal Corporation of Limassol (1967) 3 C.L.R. 134.

5 Recourse.

Recourse against the imposition of terms on building permit No. 1968 issued in respect of a building on plot 492, Sh/Plan 42/8 at Paralimni and the additional terms connected with the alleged existence of a street widening
10 scheme.

A. *Panaviotou*, for the applicant.

N. *Economou*, for the respondent.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By the pre-
15 sent recourse the applicant seeks a declaration of the Court that Term 1, of the building permit No. 1968, dated 15th June, 1984, issued in respect of a Building on plot 492 sheet/plan 42/8 in Paralimni and Terms 8 and 9 thereof as well as Terms a, b, c, and m, of the Additional Terms
20 of the said permit and any other terms connected with the alleged existence of a street widening scheme and requiring that, the said building and or part of it be built ten feet from the street widening alignment, and/or that the fence and/or surrounding wall be built on the street
25 widening alignment and that the part of the property which is affected by the alleged alignment be ceded to the road for its widening and that a road be constructed on it, is contrary to Law null and void and without any legal effect.

30 The applicant is the owner and/or possessor and/or the person entitled to and/or she has an interest in, the property under the aforesaid described plot in respect of which she submitted an application for a building permit. The respondents who are the appropriate Authority of Paralimni in-
35 formed the applicant that her application had been granted and issued the permit under No. 1968 which, inter alia, contains the terms challenged by the present recourse.

On the Survey plan and the architectural plans which the applicant herself submitted it was indicated that part of her property would not be used for the construction of the building and that it would be left free for future street widening purposes. 5

In the affidavit filed by the applicant together with the address in reply it was deposed that the respondents refused to proceed to examine the plans as originally submitted and instead they returned them to the architect of the applicant so that they would be made to comply with the street widening scheme which was marked by an employee of the respondents on the Survey plan. The applicant and her architect indicated that there did not exist in the area an approved street widening scheme and although the respondent Authority in the end admitted this, they insisted that there should be made the relevant provision for the construction of the main building in the property in such a way so that there would be no problems in the future when a street widening scheme might come into existence. Upon the insistence of the respondents, the applicant claimed that she accepted to modify her plans but never accepted, the existence of a street widening scheme or to cede part of her immovable property for the widening of the road and the obligation imposed to construct such road or to erect the fence on the non-existing street widening alignment and any other restrictive term contrary to the lawful and absolute ownership and/or possession and/or use and/or enjoyment of her immovable property which is contrary to its legal and factual situation. 10
15
20
25

In their opposition the respondents admit that they approved and granted the said building permit dated 15th August 1984. in which they included a term that the surrounding wall be placed on the street widening alignment and they claim that Terms 8, 9 and a, b, c, and m, of the Additional Terms correspond to the application and the Survey and architectural plans submitted by the applicant. It is further claimed by them that the term "street widening" (ρυμοτομία) was used both by the applicant and the respondents in its technical sense and especially for the purpose of widening the existing public road. 30
35
40

The permit in question and the attached thereto terms are to be found in the file of the respondents produced as exhibit A, pages 30 to 33 Terms 8 and 9—(Term 1, referred to in the prayer of relief is identical to Term 8)—
 5 in so far as relevant and Terms (a), (b), (c) and (m) read as follows

8 The main building to be placed ten feet from the street widening alignment and ten feet from the rest of the boundaries of the plot

10 9 The fence to be placed on the street widening alignment (γραμμή ομοιομοιίας)

(a) No part of the building or uncovered verandah with an elevation of more than four feet from the ground will be at a distance smaller than ten feet
 15 from the boundaries of the plot and the street widening alignment (ομοιομοιία)

(b) The part of the plot which is affected by the street widening scheme (ομοιομοιία) as shown with yellow colour on the Survey plans to be ceded to the road for its widening and to construct a road
 20 thereon to the satisfaction of our Office

(c) The buildings will be constructed at a distance of at least ten feet from the street widening alignment (γραμμή ομοιομοιίας) and from the side-
 25 boundaries of the plot

(m) The fence to be placed on the street widening alignment (γραμμή ομοιομοιίας)

It has been conceded by the respondents that there does not exist an approved and valid street widening scheme
 30 covering the area under consideration They further conceded that they cannot deprive her of her property once there is no such scheme in force They disagree, however, with the way the case of the applicant was presented and they claim that the permit granted is what the applicant
 35 had asked for by her application and the plans submitted and that the applicant is unjustified in complaining for having been given what she applied for, and that the re-

ference to the street widening alignment neither adds nor takes away anything from the ownership of the applicant. On the contrary they claim that the applicant ceded part of her property for the widening of the existing public road and that is the significant and practical effect of her having intimated this with yellow colour on the Survey plan which she submitted. Consequently it was argued, the applicant could not claim that any legitimate interest in the sense of Article 146.2 of the Constitution has been adversely affected since she herself has in substance accepted in advance the challenged decision of the respondents, her acceptance having been expressed clearly, freely and without reservation by submitting her said application for a building permit. In support of the aforesaid proposition I was referred to the cases of *Myrianthis v. The Republic* (1977) 3 C.L.R. 165 and *Tomboli v. C.Y.T.A.* (1980) 3 C.L.R. 266.

The judgment in the latter case was upheld on appeal by the Full Bench and is reported as *Tombolis v. C.Y.T.A.* (1982) 3 C.L.R. 149.

These cases along with others are authorities for the proposition that free and unreserved acceptance of an administrative act or decision deprives the acceptor of a legitimate interest entitling him to make an administrative recourse against such act or decision. No-one indeed can disagree with this well settled proposition. In the instant case, however, the principle applicable is the related one that there does not exist also a legitimate interest to challenge an administrative act which was issued on the application of the applicant or which was brought about or caused by him (see Conclusions of the Greek Council of State 1929 - 1959 pp. 260 - 261 and Tsatsos the Application for Annulment pp. 41 - 43).

I need not deal with the preliminary objections raised in the opposition as both have been withdrawn by the respondents and rightly so in my view. It is the contention of the applicant that all the terms and restrictions of the building permit in question complained of are contrary to law and null and void as they were imposed without any legal authorisation once there did not exist a valid street

widening scheme under the provisions of section 12 of the Streets and Buildings Regulation Law, Cap. 96.

5 It was moreover stressed that the applicant is deprived of her ownership over that part of the property which supposedly is affected by the street widening scheme and which is taken away for the widening of the public road and worst of all there is imposed on her an obligation to construct at her own expense such a road to the satisfaction of the respondents. On these issues I was referred to the cases
10 of *Charalambos Orphanides v. The Improvement Board of Ayios Dhometios* (1979) 3 C.L.R. 466, *Houridou and Another v. The Improvement Board of Ayios Dhometios* (1979) 3 C.L.R. 219 and *Nemitsas Industries Ltd., v. Municipal Corporation of Limassol and Another* (1967) 3 C.L.R.
15 134. In essence the principles to be discerned from these authorities are that an appropriate Authority has no right to require a person who applies for a building permit to do anything that is not required by a scheme having actual legal force as distinct from a scheme existing only on paper.

20 I need not elaborate further on the principles which are not in dispute. Suffice it to say that under Section 13(1) "where a permit is granted by an appropriate Authority and such permit entails a new alignment for any street in accordance with any plan which has become binding under
25 section 12 of the Law, any space between such alignment and the other alignment which is left over when a permit is granted shall become part of such street...". It is clear that the basic prerequisite of this section, namely, the existence of a scheme which has become binding under
30 Section 12 of the Law is not satisfied in the present case and therefore Section 13 does not apply.

On the totality of the circumstances and as accepted by me I am not satisfied that the applicant by her application and the plans submitted in the circumstances explained
35 above, went that far as to accept in advance all those terms and conditions included in the permit in question without any legal authorisation by the respondent Authority. The maximum that one could accept is that the applicant decided to construct her building at such a place in her
40 plot that if in the future a street widening scheme came

into existence her house would not be unduly handicapped by being too near to the so widened public road and at that deprived of the front part of the unbuilt space or possible garden.

The intention manifested in her application to built her front surrounding wall further in than the boundary of her property, constitutes indeed an acceptance on her part to do so but does not mean that she thereby intended to cede to the road unreservedly her ownership over the part of her plot and more so that she undertook an obligation to construct at her own expense and to the satisfaction of the respondents the road on that part of her plot so left. The word "ρυμοτομία" was obviously indicatively used and not in the strict sense it has when a street widening scheme under Section 12 of the Law becomes binding.

For all the above reasons this recourse succeeds and the terms as above explained, imposed in the building permit in question are hereby declared null and void but in the circumstances there will be no order as to costs.

Sub judice decision annulled.
No order as to costs.