

1986 January 4

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

RENA E. PANAYIOTOPOULLOU-TOUMAZI.

Applicant,

v.

THE MUNICIPAL COMMITTEE OF NICOSIA.

Respondents.

(Case No. 580/84).

*Constitutional Law—Constitution, Article 29—Omission to
reply.*

*Administrative act—Validity of—Should be judged in principle
on the basis of the law existing at the time of its issue—
5 Unless there has been unreasonable delay by the Admini-
stration to perform that which it was duty bound to do
before the change of the Law.*

*The Streets and Buildings (Regulation) Law, Cap. 96, s. 4(1)—
Building permit—Validity of—Should be judged on the
10 basis of the law existing at the time of its issue, provided
there is no unreasonable delay in the determination of the
relevant application—A building permit may not be refused
by reason of a compulsory acquisition of the relevant plot
of land until the acquisition is completed by the payment
15 of compensation.*

*Compulsory Acquisition—Notice and order of—Ownership and
possession of the property in question not affected.*

On 14.1.83 the applicant applied for a building permit
for a multi-storey building on her plot number 202 in
20 Nicosia. The plans, drawings and documents submitted by
the applicant were checked by the servants of the res-
pondents on 17.2.83 and 19.2.83. Very minor alterations

would be required, which could be effected in a very short time by the applicant and/or her architect.

Thereafter, the respondents, instead of dealing with the said application, directed their attention to a provisional study by the Project Manager of an agency of the United Nations and the Department of Town Planning and Housing of the Republic for the construction of a main road connecting the northern and southern part of Nicosia. 5

As a result the respondents started consultation with Government Departments whether it was advisable to construct a road running through applicant's said plot and/or to compulsorily acquire it. They failed to deal with the application of the applicant, and/or inform her of their decision. 10 15

The recourse was filed on 1.11.84. On 7.12.84 a notice of compulsory acquisition of the said plot was published in the Official Gazette. The relevant order of acquisition was published on 5.10.85. The applicant challenged the acquisition by recourse 988/85. 20

Counsel for the respondents raised various preliminary objections, which were rejected by the Court*.

The applicant treated respondents' failure to reply to her application as a rejection of such application and thus she prays for annulment of such negative decision. 25

It was contended by the respondents that in the particular circumstances of this case, acting in the public interest, they could not possibly reach the decision sought by the applicant; that they acted within their discretionary power under the Law and that the applicant is not entitled to the relief prayed. 30

Held: (1) The applicant suffered material detriment due to respondents' omission to deal with her application. There has been a wrongful omission by the respondents to deal with applicant's application. The applicant is entitled to 35

* See (1985) 3 C.L.R 2405

succeed on her contention that contrary to Article 29 of the Constitution she has not been given a reply in relation to such application.

5 (2) The validity of an administrative act generally in principle is determined on the basis of the legal status existing at the time of its issue, except where the Administration omits to perform within reasonable time what it was duty bound to do before the change of the law. Having regard to s.4(f) of Cap. 96 a building permit must be
10 governed by the legislation in force at the time when it is to be granted, provided that there is no unreasonable delay in the determination of the relevant application.

(3) In the present case applicant rightly treated the omission to reply as a rejection of her application.

15 (4) The fact that plot in question was affected by the Nicosia Master Plan in the sense that through such plot a street of major importance would be constructed and the fact of the notice and order of acquisition do not carry the case of the respondents any further. Neither the
20 notice nor the order of acquisition affect the ownership or the possession of the applicant. It is well settled that no building permit may be refused until the acquisition is completed by the payment of the compensation.

25 *Sub judice omission to reply declared wrong. Sub judice act not to grant the building permit annulled. Order for £50.- towards applicant's costs.*

Cases referred to:

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

Cullen v. The Republic (1974) 3 C.L.R. 101;

Republic v. Nishiotou (1985) 3 C.L.R. 1335;

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

Aspri v. The Republic, 4 R.S.C.C. 57;

The Holy See of Kitium v. The Municipal Council of Limassol, 1 R.S.C.C. 15;

Kyriakides v. The Municipality of Nicosia (1976) 3 C.L.R. 183;

Theodossiou v. The Municipality of Limassol (1975) 3 C.L.R. 195.

Recourse.

Recourse against the omission of the respondents to determine applicant's application for the issue of a building permit on her property at Nicosia. 10

A. Skordis, for the applicant.

A. *Indianos*, for the respondents.

Cur. adv. vult.

STYLIANIDES J. read the following judgment. The applicant complains against the omission of the respondents, who are the appropriate authority for the issue of building permits under the Streets & Buildings Regulation Law, Cap. 96, as amended, to communicate to her any decision with regard to her application for a building permit and to issue to her the building permit applied for. 15
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She prays for:-

- (a) Declaration that the omission of the respondents to determine the application of the applicant dated 14.1.83 No. 13/83 whereby she applied for a building permit for Plot No. 202, Sheet/Plan XXI/45.6.11, Block "C" in Nicosia, within their competence, and/or to communicate a duly reasoned decision to the applicant, is null and void, unlawful and of no effect whatsoever; 25
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- (b) Declaration that the omission of the respondents to issue a building permit in accordance with the application of the applicant dated 14.1.83 hereinabove is void, unlawful and of no effect whatsoever and/or declaration that whatever has been omitted should have been performed by the appropriate authority. 35

Preliminary objections were raised that this recourse is out of time, contrary to the provisions of Article 146.3 of the Constitution; that as the applicant proceeded in respect of the substance of the matter, for which a reply had been sought, she has no legitimate interest to pray for a relief for the omission to reply, and that, since there was no decision existing at the time of the recourse refusing the application for the issue of a building permit, the Court cannot grant the relief claimed therein.

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10 The said objections were rejected by the Court in its judgment delivered on 15th November, 1985*, on the preliminary points raised.

The applicant is the owner of a building site shown on D.L.O. maps as Plot 202, Sheet/Plan XXI/45.6.11, Complex "C", in Nicosia.

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20 On 14.1.83 she applied for a building permit for a multi-storey building on the said plot. Her said application was accompanied by all the necessary documents and drawings prescribed by the Streets & Buildings Regulations. As it emerges from the file of the respondents and the material before the Court, the plans, drawings and documents submitted by the applicant were checked by the servants of the respondents on 17.2.83 and 19.2.83. Very minor alterations would be required, which could be effected in a very short time by the applicant and/or her architect had they been asked for. Thereafter, however, instead of dealing with the application of the applicant for a building permit, they directed their attention and acts to a provisional study prepared by the Project Manager of an agency of the United Nations and the Department of Town Planning and Housing of the Republic (herein referred to as "T.P.H.D.") for the construction of a main road connecting the northern and southern part of Nicosia, as envisaged in a Nicosia Master Plan. Correspondence was exchanged between Mr. Pota, the Project Manager, the Municipal Engineer and the Director of T.P.H.D.

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35 On 13.6.83 the respondents decided to discuss the matter of the Nicosia Master Plan with T.P.H.D. having regard to

* See (1985) 3 C.L.R. 2405.

the financial repercussions that the implementation of such suggestion would entail. An offer was made to the applicant to exchange her said building site with State land which she rejected. Nothing was said, however, to her about her application for a building permit. 5

On 16.4.84 the Municipal Engineer raised the question of the application for a building permit at a meeting of the respondents who decided to give two months' period to T.P.H.D. to consider the matter of expropriation of her said property and if no final decision was taken by the Government, then the Municipal Committee to examine the issue of the building permit applied for—(Red 44, Minutes of the meeting of the respondents). 10

On 9.7.84 the Planning Bureau approved the road proposed by the group that studied and prepared the Nicosia Master Plan and recommended to the Government to proceed with the acquisition of applicant's building plot. 15

The applicant, being non-informed of these movements, by letter of her advocates dated 24.8.84 (Red 48) insisted on the issue of a building permit. 20

On 17.9.84 the respondents decided to inquire whether the Government would compulsorily acquire the building plot of the applicant and to ask T.P.H.D. to give a definite answer within 15 days so as to enable the respondents to dismiss the application for a building permit and further to inform T.P.H.D. that they would be responsible for all damages that might be claimed by the applicant due to the failure and/or delay to reply to her. In implementation of this decision a letter was sent on 20.9.84 (Red 49) informing the Director of T.P.H.D. that in case the Government proceeded to the compulsory acquisition at Government's expense of the plot of the applicant, the Municipality would dismiss the application for a building permit but they held the Government responsible for any claim for damages that would ensue from such action. 25 30 35

Finally the Planning Bureau authorised T.P.H.D. to proceed with the notice of acquisition of applicant's plot. On 7th December, 1984, a notice of compulsory acquisition of applicant's plot was published in the Official Ga-

zette of the Republic No. 2015, under Notification No. 1844. On 5.10.85 the order of acquisition was published and the acquisition was challenged by Recourse No. 988/85.

On 1.11.84 the present recourse was filed.

5 It was contended by the respondents that in the particular circumstances of this case, acting in the public interest, they could not possibly reach the decision sought by the applicant; that they acted within their discretionary power under the Law and that the applicant is not entitled
10 to the relief prayed.

An application for a building permit has to be dealt with by the appropriate authority expeditiously and any decision taken, duly reasoned, should be given to the person making the request.

15 In the present case the respondents started consultations with Government departments whether it was advisable to construct a road running through the building site of the applicant and/or to compulsorily acquire it and they failed to deal with the application of the applicant and/or in-
20 form the applicant of their decision. Applicant's request for a building permit was only used as a spring-board for the furtherance of the Nicosia Master Plan.

The applicant admittedly suffered material detriment due to this omission. I have no difficulty in holding that
25 there has been a wrongful omission by the respondents to deal with the application of the applicant for a building permit—(*Loiziana Hotels Ltd. v. The Municipality of Famagusta*, (1971) 3 C.L.R. 466). She is entitled to succeed on her contention that, contrary to Article 29 of the Consti-
30 tution, she has not been given a reply in relation to her application—(*Inez Cullen v. The Republic*, (1974) 3 C.L.R. 101; *Republic v. Nishiotou*, (1985) 3 C.L.R. 1335, 1347, where the previous case-law is referred to).

35 The validity of an administrative act generally in principle is determined on the basis of the legal status existing at the time of its issue. This, however, is subject to the exception that the pre-existing legislation is applicable when

there is an omission on the part of the Administration to perform, within reasonable time, what it was duty-bound to do before the change of the law—(*Loiziana Hotels Ltd. v. The Municipality of Famagusta* (supra)).

In the case of building permits, having regard to the provisions of s. 4(1) of the Streets & Buildings Regulation Law, Cap. 96, the grant of a permit must be governed by the legislation in force at the time when such permit is to be granted, provided that there is no unreasonable delay by the Administration in determining the application of an applicant—(*Andriani G. Lordou and Others v. The Republic*, (1968) 3 C.L.R. 427). 5
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In the present case the failure of the respondents to reply to the request was rightly deemed by her as a rejection of her application and thus she prays for annulment of such a negative decision. 15

The Nicosia Master Plan neither at the material time nor even today received the sanction provided by the relevant legislation and it is not valid or binding on the owners affected. The fact that the building plot of the applicant was affected by the Nicosia Master Plan in the sense that through the above plot a street of primary importance would be constructed and the subsequent publication of the notice of acquisition do not in any way carry any further the case of the respondents. Neither the publication of the notice of acquisition nor the order of acquisition affect the ownership or the possession of the applicant. Neither ownership nor possession is transferred to the acquiring authority by virtue of such notice or order. The property vests in the acquiring authority on payment or deposit with the Accountant-General of the sum agreed or determined to be paid as compensation for the acquisition of any property—(Section 13 of the Compulsory Acquisition Laws 15/62, 25/83 and 148/85; *Aspri v. The Republic*, 4 R.S.C.C. 57). 20
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It is well settled that no building permit may be refused until the acquisition of the property is completed by the payment of the compensation for the property under acquisition—(*The Holy See of Kitium v. The Municipal Council*

- of Limassol, 1 R.S.C.C. 15; *Michael Theodossiou Co. Ltd. v. The Municipality of Limassol*, (1975) 3 C.L.R. 195; *Evangelia I. Kyriakides v. The Municipality of Nicosia*. (1976) 3 C.L.R. 183; Saripolos—System of Constitutional Law of Greece, 4th edition, volume 3, p. 215).

For all the above reasons, the omission to reply to the application of the applicant is hereby declared wrong and the act of the respondents not to grant the building permit is faulty because of abuse and excess of power and it is hereby annulled. The respondents' exercise of their power was done in flagrant violation of the notions of proper administration and the law.

In the circumstances the respondents to pay £50.- towards applicant's costs.

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Declaration as above.

Respondents to pay £50.- costs.