

1987 December 21

[TRIANAFYLIDES P DEMETRIADES KOURRIS JJ]

ANTOUAN SAHAKIAN,

Appellant - Respondent,

v

PINELOPI KIZI AND OTHERS,

Respondents - Applicants

(Case Stated No 208)

Rent Control — Eviction — The Rent Control Law, 1983 (23/83) — Section 11(1)(h)(ii) — *The five prerequisites for its application*

This appeal by way of case stated is directed against the Judgment of the Rent Control Court, whereby the appellant was ordered to vacate the shop in question on the ground that it was reasonably required by the landlords for demolition and reconstruction of a new building 5

The facts of this case sufficiently appear from the judgment of the Court

Held, *dismissing the appeal* (1) In the light of the provisions of section 11(1)(h)(ii) of the Rent Control Law, 1983, the President of the Court correctly stated the five prerequisites of its application, as 10

(a) The case must fall within the provisions of the Rent Control Law

(b) The landlord must give to the tenant not less than four months notice in writing to vacate the premises 15

(c) The premises are reasonably required by the landlord for demolition and reconstruction

(d) The Court must be satisfied that the landlord had secured the necessary permit for demolition and reconstruction, and

(e) The Court must be satisfied that the landlord cannot reasonably demolish and reconstruct without first obtaining vacant possession of the premises 20

(2) The appellant has no quarrel with the findings of the Court as regards prerequisites (a), (b) and (d), but complains as to the findings regarding prerequisites (c) and (e) 25

(3) In the circumstances there is no reason to interfere with the findings of the trial Court.

Appeal dismissed with costs.

Cases referred to:

- 5 *Kontou v Solomou* (1978) 1 C.L.R 425;
 Fisher v. Taylors Furnishing Stores Ltd. [1956] 2 All E.R 78;
 Fernandez v. Walding [1968] 1 All E.R. 994;
 Heath v. Drown [1972] 2 All E.R. 561;
 Michaelides v. Iacovides (1979) 1 C.L.R. 123;
- 10 *Yerasimou v Rousoudiou* (1974) 1 C.L.R. 107;
 Chandrel v. Strevett [1974] 1 All E.R. 164.

Case stated.

Case stated by the Chairman of the Rent Control Court Lamaca relative to his decision of the 20th December, 1984 in proceedings
 15 under section 11(i)(h) of the Rent Control Law, 1983 (Law No. 23/83) instituted by Pinelopi G. Kizi against Antouan Sahakian whereby an ejection order was issued against the appellant.

M. Nicolatos, for the appellant.

A. Poetis, for the respondents.

20 *Cur. adv. vult.*

TRIANTAFYLLIDES P.: The judgment of the Court will be delivered by H.H. Judge Demetriades.

25 DEMETRIADES J.: The appellant, who is the tenant of a shop situated in Lamaca at 106 Ermou Street, in the Kizis arcade, was ordered by the Rent Control Court of Lamaca to vacate it and deliver up possession of same to its owners on the ground that it was reasonably required by the landlords for demolition and the reconstruction of a new building.

30 As a result of an application by the appellant to the President of the Court to state a case to the Supreme Court, the President submitted to the Supreme Court the following two legal issues for determination and advice:

«1. Με βάση την προσαχθείσα μαρτυρία ήταν ανοιχτό στο Δικαστήριο Ελέγχου Ενοικιάσεων να βρει ότι το επίδικον υποστατικό απαιτείτο λογικά από τους ιδιοκτήτες - αιτητές;

2. Ορθά ή εσφαλμένα εδέχθη το Δικαστήριο Ελέγχου Ενοικιάσεων ότι οι λέξεις 'απαιτείται λογικώς' στο άρθρο 11(ι)(η) (πρώτη γραμμή) του Περί Ενοικιοστασίου Νόμου του 1983 αναφέρονται και σχετίζονται μόνον με τ. εάν είναι λογικό για τον ιδιοκτήτη να λάβη κατοχή έχοντας υπόψη την φύση και έκταση των προτεινομένων μετατροπών ή της επανοικοδόμησης, νοουμένου ότι τέτοια πρόνοια ρητά περιλαμβάνεται στην τελευταία προϋπόθεση του άρθρου 11(1)(η) του Περί Ενοικιοστασίου Νόμου του 1983, ενώ δεν υπήρχε στον Περί Ενοικιοστασίου Νόμο 36/1975;»

(1. On the basis of the evidence adduced, was it reasonably open to the Rent Control Court to find that the premises concerned were reasonably required by the owners-applicants?

2. Rightly or wrongly did the Rent Control Court accept that the words 'reasonably required' in section 11(1)(h) (first line) of the Rent Control Law 1983 refer and relate only to whether it is reasonable for the owner to take up possession, having in mind the nature and extent of the proposed alterations or reconstruction, in view of the fact that such provision is expressly contained in the last prerequisite of section 11(1)(h) of the Rent Control Law 1983, whilst it did not exist in the Rent Control Law 36/75?»)»

The facts of the case are in a nutshell the following:

The respondents are the owners of nine shops situated in Kizis arcade, one of which is, since 1957, let to the appellant who is a fitter and milling-operator (tomadoros).

On the 1st December, 1983, the respondents, through their advocate, gave a four-months notice to the appellant by double-registered post, by which they asked him to vacate and deliver up the vacant possession of the shop as they intended to demolish it and reconstruct a new building. This notice was sent in accordance

with the provisions of section 11(1)(h) of the Rent Control Law, 1983 (Law 23/83), hereinafter to be referred to as the Law

5 The notice was received by the appellant on the 5th December, 1983, but as he failed to vacate the shop within the statutory period of four months, the respondents filed an application to the Rent Control Court for his ejection

10 During the hearing of the application which started on the 8th November, 1984, the respondents produced in Court Building Permit No 635/84, issued on the 8th October, 1984, by the Municipality of Lamaca, which is the appropriate authority for issuing permits for the demolition and construction of premises within the area of the Town of Lamaca, and by which permission for the demolition and reconstruction of the shops belonging to the respondents was granted

15 It is to be noted that other tenants of the respondents, either willingly or after an order of the Court, had already vacated the shops they rented

After hearing the evidence adduced and arguments by counsel of the parties, the Court ordered the ejection of the appellant

20 In reaching its decision, the Court found that the five prerequisites required under section 11(1)(h)(ii) were satisfied and proceeded to examine them

Section 11(1)(h)(ii) of the Law reads -

25 «11 -(1) Ουδεμία απόφασις και ουδέν διάταγμα εκδίδεται δια την ανάκτησιν της κατοχής οιασδήποτε κατοικίας ή καταστήματος, δια το οποίον ισχύει ο παρών Νόμος, ή δια την εκ τούτου έξωσιν θεσμίου ενοικιαστού, πλην των ακολούθων περιπτώσεων·

.....

30 (η) εις περιπτώσιν καθ' ην το ακινητον απαιτειται λογικως υπό του ιδιοκτήτου-

(i) δια την καταδάφισιν τουτου οσακις αυτη δεν συνιστά κατάχρησιν δικαιωματος,

(ii) διά την κατεδάφισιν και επανοικοδόμησιν νέου ακινήτου,

35 (iii) δι' ουσιαστικας και ριζικας αλλαγας συνεπαγομένης την ριζικήν και ολικήν μετατροπήν τουτου δια σκοπους αξιοποιήσεώς του,

και το Δικαστήριο είναι πεπεισμένο ότι ο ιδιοκτήτης εξησφάλισε δια τα ανωτέρω οσάκις ήτο επάναγκες την αναγκαίαν προς τούτο άδειαν και ότι ο ιδιοκτήτης δεν δύναται λογικώς να προβή εις τα εν ταις υποπαραγράφοις (i), (ii) και (iii) διαλαμβανόμενα άνευ ανακτήσεως της κατοχής του ακινήτου και νοουμένου ότι παρέσχεν ουχί βραχυτέραν των τεσσάρων μηνών έγγραφον προειδοποίησιν εις τον ενοικιαστήν να εκκενώση το ακίνητον.» 5

«(11.-1) No judgment or order for the recovery of possession of any dwelling-house or shop, to which this Law applies, or for the ejection of a tenant therefrom, shall be given or made except in the following cases:- 10

.....

(h) where the premises are reasonably required by the Landlord - 15

(i) for demolition thereof whenever this does not amount to an abuse of right,

(ii) for the demolition and reconstruction of new premises, or

(iii) for substantial and radical alterations entailing their radical and total conversion for the purpose of their development, 20

and the Court is satisfied that the landlord has, where necessary, obtained for the aforesaid the necessary permit and that the landlord could not reasonably do what are in subparagraphs (i), (ii) and (iii) set out, without obtaining possession of the premises and provided that he has given to the tenant not less than four months notice in writing to vacate the premises.» 25

In the light of the provisions of section 11(1)(h)(ii) the President of the Court, in our view, correctly stated the five prerequisites as - 30

(a) The case must fall within the provisions of the Rent Control Law.

(b) The landlord must give to the tenant not less than four months notice in writing to vacate the premises. 35

(c) The premises are reasonably required by the landlord for demolition and reconstruction

(d) The Court must be satisfied that the landlord had secured the necessary permit for demolition and reconstruction, and

- 5 (e) the Court must be satisfied that the landlord cannot reasonably demolish and reconstruct without first obtaining the vacant possession of the premises

10 The trial Court, after examining separately each of the five prerequisites and after taking into consideration the evidence adduced, the Law and the authorities, reached the conclusion that all five prerequisites existed and, therefore, the respondents were entitled to an order for ejection

15 The appellant has no quarrel with the findings of the Court as regards prerequisites (a), (b) and (d), but complains as to the findings regarding prerequisites (c) and (e) His counsel submitted that the Court failed to make separate findings as to the reasonableness required by prerequisites (c) and (e)

However, the trial Court, in its judgment, clearly dealt with prerequisites (c) and (e) separately

- 20 Regarding prerequisite (c), the trial Court, after dealing with the case law on the issue (both English and of the Cyprus Supreme Court, *ie Kontou v Solomou*, (1978) 1 C L R 425, 428, *Fisher v Taylors Furnishing Stores Ltd* [1956] 2 All E R 78, *Armandez v Walding* [1968] 1 All E R 994, *Heath v Drown* [1972] 2 All E R 25 561, *Michaelides v Iacovides*, (1979) 1 C L R 123, 130, *Yerasimou v Rousoudiou* (1974) 1 C L R 107, 112-113 and *Chandrel v Strevett* [1947] 1 All E R 164, 167), found that in the light of the evidence before it and the authorities on the subject, the premises were reasonably required by the landlord for demolition and reconstruction
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On the fifth prerequisite the trial Court reached the conclusion that in view of the facts before it, it was reasonable for the landlords in order to proceed with the execution of the works for which the building permit was issued, to require the vacant possession of the premises.

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Having regard to the findings of the trial Court, we see no reason to interfere with them. Having regard to the provisions of the Law

and the facts that were placed before the trial Court, we find that it rightly found that the demolition and reconstruction of the premises cannot reasonably be effected without obtaining possession of them.

In the result, the appeal is dismissed with costs.

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*Appeal dismissed
with costs.*

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