

1987 September 18

[KOURRIS J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

METRO FOODS LIMITED AND OTHERS,

Applicants,

v

THE REPUBLIC OF CYPRUS, THROUGH
1 THE MINISTER OF INTERIOR,
2 THE MUNICIPALITY OF LARNACA,

Respondents

*(Cases Nos 403/86, 462/86, 463/86
464/86)*

Constitutional Law — Right to property — Constitution, Art 23 — Street Widening Scheme published in virtue of section 12(c) of the Streets and Buildings Regulation Law, Cap 96 — It results, in the normal course, to limitations or restrictions in the sense of Art 23 3 — Ecclesiastical property affected thereby — Whether the written consent of the Church is necessary — Answer in the negative, because limitations or restrictions in the interests of Town and Country Planning are exempted from such a requirement — Paras 9 and 10 of Art 23 5

Streets and buildings — Street Widening Scheme — The Streets and Buildings Regulation Law, Cap 96, section 12(c) — Scheme aiming at the construction of new road, not at the widening or straightening of an existing road — Decision annulled as taken in abuse or excess of power or contrary to proper administration 10

Natural Justice — Right to be heard — Administrative matters — Authority may determine complaint without hearing the complainant, provided there is sufficient material before it to enable it to reach a decision 15

As the Minister of Interior dismissed the applicants' objections against a Street Widening Scheme, which had been published by the Municipality of Larnaca, the applicants filed these recourses

The Street Widening Scheme in question affected Nicodemus Mylonas Street and Metropolis Square in Larnaca 20

Applicants' counsel argued, inter alia, that

a) *The aforesaid Scheme cannot be implemented, because it affected ecclesiastical property and the Church had not given a written consent,*

5 b) *The purpose of the Scheme as far as Nicodemos Mylonas Street is concerned was not to straighten or widen the aforesaid street, but to construct in the future a new road, and,*

c) *The rules of Natural Justice had been violated because the Minister examined the objections without hearing the applicants*

Held, annulling the sub judice decision

10 (1) *A Street Widening Scheme does not, in the normal course, result in deprivation, but only in limitations or restrictions of property in the sense of Art 23 3 of the Constitution. Restrictions or limitations for the purposes of Town and Country Planning under Art 23 3 are expressly exempted from the operation of paras 9 and 10 of Art 23. It follows that in this case the written consent of the Church was not required*

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(2) *There is no doubt that the Scheme in question did not aim at the widening or straightening (Section 12(i) of Cap 96) of Nicodemos Mylonas Street, but to the construction of a new road. It follows that the Municipality acted in abuse or excess of power and contrary to the principles of proper administration*

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(3) *In Administrative cases it is not necessary to hear the person concerned provided that the Authority examining the complaint had sufficient material before it to enable it to reach a decision such as for example a petition in writing of the person concerned*

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*Sub judice decisions annulled
Costs against respondents*

Cases referred to

*Thymopoulos and Others v The Municipal Committee of Nicosia (1967)
3 C L R 588,*

30 *Sofroniou and Others v The Municipality of Nicosia and Others (1976) 3
C L R 124,*

*Marangos and Others v The Municipal Committee of F'sta (1970) 3
C L.R. 7,*

Parides v The Republic (1984) 3 C L R 715

35 **Recourses.**

Recourses against the rejection by the respondents of

applicants' objections to the street widening scheme of Nicodemos Mylonas and Metropolis Square in Lamaca.

L. Papaphilippou, for applicants in Case No. 403/86.

L. Papaphilippou for N.K. Cleanthous, for applicants in Cases Nos. 462/86, 463/86 and 464/86. 5

T. Ioannides, for respondent 1.

G. Nicolaides, for respondent 2.

Cur. adv. vult.

KOURRIS J. read the following judgment. The applicants in the present recourses, which have been heard together as they present common questions of law and fact, challenge the validity of the decision of the respondents relating to the Street Widening Scheme in respect of Nicodemos Mylonas street and Metropolis Square in the town of Lamaca and claim: 10

A declaration that the act or decision of the Minister of Interior dated 20.5.1986 by which the applicants' objections- hierarchical recourses- to the Street Widening Plans of Nicodemos Mylonas Street and Metropolis Square in Lamaca were rejected, is null and void and of no legal effect whatsoever. 15

By virtue of s.2 of the Streets and Buildings Regulation Law, Cap. 96, a Notice was published by the Municipality of Lamaca in Supplement No. 3 to the official Gazette of the 7th September, 1984, under Notification No. 444, to the effect that plans have been prepared with the object of widening or straightening Nicodemos Mylonas street and Metropolis Square in Lamaca. 20 25

It should be noted that on the same day the Municipality of Lamaca by virtue of a notice published in Supplement No. 3 to the official Gazette under Notification No. 2086 revoked the previous street widening scheme published in the official Gazette of 4.9.1977 relating to the same properties with the exception of the portion of land coloured green on the survey plan belonging to the applicants in Case No. 403/86, because this portion of land was ceded by the applicants to the Municipality of Lamaca and formed part of Nicodemos Mylonas street when the applicants applied to build a supermarket on their land on 18.1.1982 (see reds 24, 25, 26 and 27 of the file exhibit 3). 30 35

As the said plans affected properties belonging to the

applicants, they objected to them by letter and their objections were considered by the Minister of Interior and finally rejected as shown in the letters of the Director-General of the Ministry of Interior dated 20.5.1986 which read as follows:

- 5 «1.

2. The objection having been considered by the appropriate Departments and the appropriate Authority, was put before the Minister of Interior, as provided by s. 18 of the Streets and Buildings Regulation Law, Cap. 96, who however
 10 has rejected it as it was ascertained that the preparation of the said plans was carried out after having taken into consideration the future road traffic requirements of the area, as well as the consequences to the present and future
 15 development of the affected plots.»

Hence the present recourse.

Counsel for the applicant raised a number of legal points as to why the sub judice decision should be set aside mainly on the grounds of excess and abuse of powers and acting in
 20 contravention of the principles of proper administration.

I propose to deal first with two grounds of these recourses which, I think, are decisive of the case. The first argument advanced by counsel for the applicants is that the Street Widening Scheme cannot be implemented at all because it also affects ecclesiastical
 25 property for which the appropriate Authorities have not obtained the written consent of the Church concerned before deciding to publish in the official Gazette the said Street Widening Scheme.

I need not elaborate on this point because it has been decided in the case of *Thymopoulos and others v. The Municipal Committee of Nicosia* (1967) 3 C.L.R. 588 which was followed in
 30 the case of *Sofroniou and Others v. The Municipality of Nicosia and Others* (1976) 3 C.L.R. 124, which is a decision of the Full Bench of the Supreme Court. It was decided that a Street Widening Scheme is to be regarded for the purposes of Article 23
 35 of the Constitution as imposing, in the normal course, only restrictions or limitations, and not as resulting in deprivation; this may be derived from the fact that though paragraphs 9 and 10 of Article 23 provide that no deprivation, restriction or limitation may affect ecclesiastical or vakf properties without the written consent

of those in control of such properties, however, «restrictions or limitations for the purposes of town and country planning under the provisions of paragraph 3» of Article 23 are expressly exempted from the operation of the aforesaid paragraphs 9 and 10.

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In the present case we are concerned with restrictions or limitations for the purposes of town planning under the provisions of paragraph 3 which is exempted from the operation of paragraphs 9 and 10 and, therefore, no written consent of those in control of the ecclesiastical properties is required. Consequently, this point fails.

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I, now, propose to deal with the second point raised to the effect that the Municipality of Lamaca is seeking by means of the sub judice street widening scheme to obtain applicants' portion of land in Case No. 403/86 not for the purpose of widening or straightening Nicodemos Mylonas street but to use it to form part of a future road appearing with dotted line and marked with the letters A,B,Γ,Δ, on the survey plan in the file of the Municipality of Lamaca exhibit 1.

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Section 12 of the Streets and Buildings Regulation Law, Cap. 96, so far as material for the determination of these recourses, reads as follows:-

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«12 (1). Notwithstanding anything contained in this Law, an appropriate Authority may, with the object of widening or straightening any street, prepare or cause to be prepared plans showing the width of such street and the direction that it shall take.»

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Counsel for the applicants argued that a mere glance on the Survey Plans showing the properties of applicants and the proposed Street Widening Scheme leaves no doubt in one's mind that it is not a widening or straightening of Nicodemos Mylonas Street; he said that the respondents intend to acquire the property of the applicants in order to use it to form part of a new road which they proposed to construct in order to connect Metropolis Square with Nicodemos Mylonas Street. He concluded that the sub judice street widening scheme is not a street widening scheme within the ambit of s. 12 of the Streets and Buildings Regulation Law, Cap. 96.

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Counsel for the applicants invited the Court to give a narrow construction to the wording of this section as it affects the rights of the citizen and he cited Maxwell on Interpretation of Statutes, 12th edition, p. 251 which reads as follows:

- 5 «Encroachment of rights.
Statutes which encroach on the rights of the subject, whether
as regards person or property, are subject to a strict
construction in the same way as penal Acts. It is a recognised
rule that they should be interpreted, if possible, so as to
10 respect such rights, and if there is any ambiguity the
construction which is in favour of the freedom of the
individual should be adopted.»

- This principle was followed in the case of *Marangos and Others*
v. The Municipal Committee of Famagusta (1970) 3 C.L.R. 7,
15 where it was stated that in cases involving interference with a
fundamental right, such as the right to property, any doubt about
the extent and effect of the relevant enactment has to be resolved
in favour of the liberties of the citizen.»

- The Street Widening Scheme affecting Nicodemos Mylonas
20 Street which is the property of the applicants in Case No. 403/86
is shown coloured yellow in the survey plan which leaves no doubt
in my mind that the appropriate Authority proposed to acquire this
piece of land not for the purpose of widening or straightening
Nicodemos Mylonas Street but for the purposes of constructing in
25 the future a new road connecting Metropolis Square with
Nicodemos Mylonas Street without resorting to compulsory
acquisition of this piece of land.

- In these circumstances I am of the opinion that the appropriate
Authority acted in excess and/or abuse of its powers and contrary
30 to the principles of proper administration and I set aside their
decision with regard to all the properties concerned in the cases
under consideration because the sub judice street widening
scheme forms a whole scheme which cannot be implemented in
part.

- 35 Before concluding I propose to deal with some other points
raised in these recourses. There has been an allegation that the
Minister of Interior, when examining the objections of the
applicants, did not hear them. It has been decided in a number of
cases that in Administrative cases it is not necessary to hear a

person provided that the Authority examining his complaint had sufficient material before it to enable it to reach a decision such as for example a petition in writing by the person concerned. As the applicants in the present case objected in writing to the Minister of Interior and they have put the grounds of their objections in writing, I am of the view that the Minister of Interior was not at fault and he did not act contrary to the rules of natural justice. (See *Parides v. The Republic* (1984) 3 C.L.R. 715). 5

It was further argued that the decision should be set aside for lack of due reasoning. I do not think that this argument can stand and it is hereby dismissed. 10

For all the above reasons these recourses succeed with costs against the respondents.

Costs to be assessed by the Registrar.

*Sub judice decision
annulled with costs
against the respondents.* 15