

1986 February 8

[TRIANAFYLLIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

- 1. ZENA DEMETRIOU,
- 2. AKIS DEMETRIOU,

Applicants,

.v.

THE MUNICIPAL COMMITTEE OF NICOSIA,

Respondent.

(Cases Nos. 22/84, 23/84).

Time within which to file a recourse — «Complete knowledge» of sub judice decision — An essential element, which sets in motion the running of time — Building permits in respect of buildings to be erected on land adjacent to applicants' land — Building works commenced in July 1983 — In the circumstances, time began to run on 3.11.83, because it is only on that day that applicants were furnished with information enabling them to ascertain precisely their rights. 5

Legitimate interest — Building permits for erection of buildings on land adjacent to applicants' land — Allegation as to detriment to applicants' rights as a result of such permits — Prima facie applicants possess a legitimate interest. 10

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

Cases referred to:

Moran v. The Republic, 1 R.S.C.C. 10, 13;

Carolou v. The Municipality of Kyrenia (1971) 3 C.L.R. 455;

HjiCostas v. The Republic (1974) 3 C.L.R. 1; 15

Zivlas v. The Municipality of Paphos (1975) 3 C.L.R. 349;

Aspri v. The Republic (1979) 3 C.L.R. 490;

Irrigation Division «Katzilos» v. The Republic (1983) 3 C.L.R. 1068;

Iacovou v. The Republic (1984) 3 C.L.R. 1508;

Ploussiou v The Central Bank of Cyprus (1982) 3 C.L.R. 230.

Ttofinis v Theocharides (1983) 2 C.L.R. 363.

Recourses.

5 Recourses against the decision of the respondent to grant building permits to the interested parties.

M. Montanios, for the applicants.

K. Michaelides, for the respondents.

A. S. Angelides, for the interested parties.

Cur. adv. vult.

10 TRIANTAFYLLIDES P. read the following judgment. By means of these two recourses the applicants are, in effect, complaining in respect of building permits granted by the respondent to the interested parties, the «Greek Evangelical Church of Cyprus» (to be referred to hereinafter as «the Church» and «The Alpha and
15 Omega Evangelical, Educational Foundation Limited» (to be referred to hereinafter as «the Foundation»).

Applicant 1 is the registered owner of a plot of land (No.35/2) at Gladstone street, in Nicosia, and on such plot there has been built a house in which applicant 1 resides with her husband, applicant
20 2.

The interested parties are the registered owners of two plots of land (Nos. 183 and 182) which are adjacent to the property of applicant 1. On the one plot (No. 183) there is a church and on the other plot (No. 182) there are school buildings used by the
25 American Academy of Nicosia.

Both the Church and the Foundation appears to be institutions controlled by one and the same body of persons.

On 12 January 1983 the respondent issued a building permit enabling the Church to effect internal alterations and make
30 additions to the buildings standing on plots 182 and 183, on condition that the said two plots would be amalgamated and that the proposed buildings would be at a distance of ten feet from the boundaries of the property of applicant 1.

On 27 September 1983 a building permit was issued to the Foundation for the erection of additional buildings on plots 182 and 183, and there were imposed the same conditions as those imposed when a building permit was issued on 12 January 1983 to the Church, as aforesaid.

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By means of the motions for relief in these two recourses the applicants are seeking, among other things, the annulment of the aforementioned building permits in so far as they relate to buildings which are, allegedly, being constructed at a distance of less than ten feet from the boundaries of the plots in question.

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Both these recourses were filed on 16 January 1984.

Counsel for the interested parties has raised two preliminary objections, namely, that the present recourses are out of time and the applicants have no legitimate interest, as envisaged by Article 146.2 of the Constitution, entitling them to file these recourses.

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Regarding his first objection counsel for the interested parties has argued that as the applicants came to know since July 1983 that building works had commenced on plots 182 and 183 and as they had been informed on 6 September 1983, by a letter of the Head of the Church, and on 15 September 1983, by a letter of respondent, that building permits had been issued in respect of such plots, they should have filed their recourses within the time-limit provided for by Article 146.3 of the Constitution, that is before the lapse of seventy-five days as from, at the latest, 15 September 1983.

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On the other hand, counsel for the applicants has submitted that they had gained complete knowledge of the building permits concerned only on 26 April 1984 when copies of such permits were attached to the Oppositions of the respondent in these proceedings, and, in any event, not before 3 November 1983, when the necessary information was given to them by the Municipal Engineer of the respondent and, therefore, the time envisaged by Article 146.3 began to run as from then only.

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It is well settled that «complete knowledge» is an essential element which sets in motion the running of time for the purposes of Article 146.3 of the Constitution; and useful reference may be made in this respect to the principles expounded by this Court in, inter alia, the cases of *Moran v. Republic*, 1 R.S.C.C. 10, 13, *Carlou v. The Municipality of Kyrenia*, (1971) 3 C.L.R. 455, 462,

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463, *HjiCostas v. The Republic*, (1974) 3 C.L.R. 1, 12, *Zivlas v. The Minicipality of Paphos*, (1975) 3 C.L.R. 349, 361, *Aspri v. The Republic*, (1979) 3 C.L.R. 490, 497, *Irrigation Division «Katzilos» v. The Republic*, (1983) 3 C.L.R. 1068, 1076, 1077 and *Iacovou*
5 *v. The Republic*, (1984) 3 C.L.R. 1508, 1512, 1513.

I have considered the particular circumstances of the present cases, bearing in mind that any doubt as regards the application to them of the provisions of Article 146.3 should be resolved in favour of the applicants (see, inter alia, in this respect, *Neophytou*
10 *v. The Republic*, 1964 C.L.R. 280, 290, *Ploussiou v. The Central Bank of Cyprus*, (1982) 3 C.L.R. 230, 236 and the *Irrigation Division «Katzilos»* case, supra, 1077).

As prior to 3 November 1983 only piecemeal information was given by the respondent to the applicants and as only on that date
15 they were furnished with information enabling them to ascertain precisely the possible detriment to their rights I am inclined to the view that it is as from 3 November 1983 that the time envisaged by Article 146.3 of the Constitution began to run and, therefore, the present recourses were not filed out of time.

20 Regarding, next, the second preliminary objection of counsel for the interested parties I have reached the conclusion, in the light of the circumstances of the present cases and of case-law such as *Ttofinis v. Theocharides*, (1983) 2 C.L.R. 363, that since the applicants allege detriment to their rights as a result of building
25 permits granted by the respondent to the interested parties in relation to plots of land adjacent to the property of the applicants, there appears, at least prima facie, to exist a legitimate interest of the applicants, in the sense of Article 146.2 of the Constitution, entitling the applicants to file these two recourses.

30 Consequently, both the preliminary objections raised by counsel for the interested parties cannot be sustained and these cases will have to be heard and determined on their merits

Order accordingly.