

1987 May 25

[A LOIZOU, J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NICOS CHRISTODOULIDES AND OTHERS,

Applicants,

v

THE REPUBLIC OF CYPRUS, THROUGH
THE DISTRICT OFFICER, NICOSIA,

Respondent

(Case No 685/85)

Streets and buildings — Division of land into building sites — In the absence of delay on the part of the administration, the law applicable is the law in force at the time the decision is taken

Constitutional Law — Right to property — Constitution, Art 23 — Deprivation — The Streets and Buildings Regulation (Amendment) Law 80/82 — Refusal of subdivision of land — Does not amount to deprivation

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Constitutional Law — Equality — Constitution, Art 28

On 3 4 1979 applicants submitted an application for the subdivision of land in Psimolophou village into building sites On 19 10 79 the application was rejected on the ground that the land lay outside the boundanes of the water supply of the village

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On 4 2 80 the applicants reverted to the matter, indicating a source of water supply in one of the plots for which the application for subdivision related There followed further correspondence in respect of the matter and finally the respondents communicated by letter dated 4 5 85 their final decision, namely that the application has to be rejected, on the ground that it contravenes The Streets and Buildings Regulation (Amendment) Law 80/82

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Hence the present recourse

Held, *dismissing the recourse* (1) The sub judice decision was taken under section 2 of Law 80/82 and not, as the applicants alleged, on the basis of Notification 301/79, which imposes restrictions concerning the height of the buildings and the building ratio.

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(2) In the light of the circumstances of this case this Court reached the

conclusion that there was no delay on the part of the administration and, therefore, the respondents correctly applied the law in force at the time the decision was taken.

5 (3) The sub judge decision does not amount to deprivation of the applicants' right of property, contrary to Art. 23 of the Constitution. The applicants remained the absolute owners of the land in question and the subjection of their right to certain restrictions as to the use of their property does not amount to deprivation.

10 (4) Applicants' complaint of discrimination contrary to Art. 28 of the Constitution between the applicants and owners of adjacent properties in that the applicants' water supply may be contaminated, because of the absence of any sewage system, if building permits are issued by reason of the inclusion of such adjacent properties within a permitting zone, cannot be accepted.

15 (5) Applicants' complaint in respect of absence of due inquiry as to the quality of the water supply has not been substantiated and in any case the permit applied for could not be granted as the conditions of section 9(4)(a) of the Law were not satisfied.

Recourse dismissed.

No order as to costs.

20 *Cases referred to:*

Lordos v. Republic (1968) 3 C.L.R. 427;

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

Simonis v. Improvement Board of Latsia (1984) 3 C.L.R. 109.

Recourse.

25 Recourse against the decision of the respondent rejecting applicants' application for a division permit in respect of their property at Psimolophou village.

A. Dikigoropoulos, for the applicants.

A. Vassiliades, for the respondent.

30 *Cur. adv. vult.*

35 A. LOIZOU J. read the following judgment. By the present recourse the applicants seek a declaration of the Court that the decisions of the respondent communicated by letter dated 4th May, 1985, rejecting their application for a division permit of plots numbers 122, 123 and 157, sheet/plan XXX/3.W.1 at Psimolophou is null and void and of no legal effect whatsoever.

On the 3rd April 1979 the applicants applied to the respondent as the appropriate authority under the Streets and Buildings Regulation Law, Cap. 96 for a permit to have the aforesaid plots subdivided into building sites. On the 19th October 1979, the respondent rejected their application as the plots lay outside the boundaries of the water supply of the village. 5

Subsequently on the 21st December, 1979, Notification 301/79 was published in Supplement III to the Official Gazette of the Republic by virtue of which building restrictions were imposed.

On the 4th February 1980, counsel for the applicants wrote to the respondent that water was available in plot number 123 and that they were prepared to make all necessary arrangements for the supply of water to each and everyone of the intended building sites if the water was examined and found suitable by the respondent. 10
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The respondent informed the applicants on the 23rd February, 1980, that the matter was being examined. On the 5th August 1980, the respondent informed the applicants that their application would be further proceeded with on condition that the suitability of the water source indicated would be examined. He further informed them that their plots fell within zone c.1. by virtue of Notification 301/79. 20

The applicants replied on 28th August 1980, that steps were taken for the trial pumping of the available water but disagreed that their property was subject to the zoning restrictions imposed by Notification 301/79, as their application had to be examined on the basis of the law and the regulations applicable as on 4th April 1979, when such application was filed. 25

As the applicants did not proceed with the trial pumping of the water on their land as requested, the respondent wrote on the 7th April 1981, requesting them to submit new plans for the division of their properties in accordance with Notification 301/79. As against this decision recourse number 218/81 was filed. 30

On the 23rd December 1981 the Streets and Buildings Regulation (Amendment) Law 1982, (Law No. 80 of 1982) was published by virtue of which further conditions were imposed in relation to granting division permits of land situated outside the water supply area. 35

Subsequently on the 15th October 1984, the applicants wrote

to the respondent asking to be informed whether the trial pumping referred to in his letter of 7th April 1981 should be made by the Water Development Department and if so to request the said Department to arrange for such trial pumping upon the payment
5 of the prescribed fees

The respondent replied on the 14th January 1985 that the examination of their application would now be made in accordance with the provisions of Law No 80 of 1982 and that if
10 any further action of their part was necessary they would be informed

The respondent, acting in accordance with the provisions of Law No 80 of 1982, obtained the advice of the Director of the Department of Town Planning and Housing according to which it
15 was considered that the application was not in accordance with the provisions of the said Law and that it should therefore be rejected

The respondent accordingly informed the applicants that their application was rejected as

20 a) It does not contribute to the unification or improvement of the existing settlements, on the contrary, by the proposed division a scattered development is to be created

b) It is not a recommended development and it does not tally with the prevailing use in the area which is mainly agricultural, and

25 c) It does not supplement the road network of the area

Hence the present recourse

The main argument of the applicants is that the respondent acted under a misconception of fact and law in that he failed to consider their application in time and in accordance with the law
30 applicable at the time of such application, that is under Notification 41/77 but that instead, contrary to the principles supported by the cases of *Lordos v Republic* (1968) 3 C L R 427, and *Loiziana Hotels Ltd v Municipality of Famagusta* (1971) 3 C L R 466, examined such application in the light of the law applicable at the
35 time of the sub judice decision, that is under Notification 301/79 despite the fact that there had been unreasonable delay on the part of the respondent

I generally find no merit in such argument of the applicants As

correctly submitted by counsel for the respondent and as it clearly appears from the wording of the decision itself it was based on the provisions of section 2 of Law No 80 of 1982 (amending section 9 of Cap. 96), which imposes conditions as to the granting of division permits Such decision was not taken on the basis of Notification 301/79, which, from a perusal of the wording thereof clearly imposes zoning restrictions on building permits concerning the height of buildings and the building ratio

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In any case considering the case factually, I find no delay at all on the part of the administration, on the contrary it is clear from the facts that the delay was due to the fault of the applicants Consequently the respondent correctly applied the law as at the time the decision was taken

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It was further argued that such refusal was contrary to Article 23 of the Constitution as it amounted to a deprivation of the rights of property safeguarded by such Article

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I find that the sub judice decision is not contrary to such Article The applicants remained as before the absolute owners of their property and the fact such right of theirs may be subject to certain restrictions as to the use such property may be put, in the interest of Town and Country Planning, does not amount to a deprivation (See *Simonis v Improvement Board of Latsia* (1984) 3 C.L.R 109 at 116)

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It was also contended that such refusal was contrary to Article 28 in that it discriminates between the applicants and other land owners in the area in that owners of plots immediately adjoining such property, for which building permits may be issued by reason of their inclusion within a permitting zone, will, by reason of the non availability of a central sewage system, contaminate the applicants' water supply

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I do not accept this contention either, there is no contravention of the principles of equality safeguarded by such Article

Finally it was submitted that the respondent failed to conduct a due inquiry as to the quality of the available water supply. This ground must fail too As already stated above, the applicants, though they had undertaken to examine the water themselves, they failed to do so But in any case, even if a satisfactory water supply had been established, since the conditions of section

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9(4)(a) were not satisfied, such permit could not be granted and was rightly refused.

For the above reasons this recourse fails and is hereby dismissed with no order as to costs.

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*Recourse dismissed
No order as to costs.*