

1988 November 21

(SAVVIDES, J)

IN THE MATTER OF ARTICLE 155 4 OF THE CONSTITUTION

IN THE MATTER OF AN APPLICATION BY KERMIA PALACE ENTERPRISES LTD., OF NICOSIA, FOR LEAVE TO APPLY FOR ORDERS OF CERTIORARI AND MANDAMUS TO THE DISTRICT COURT OF NICOSIA (HADJICONSTANTINOY, S D.J.)

AND

IN THE MATTER OF A RULING DATED 23.6.1988 MADE AND/OR ISSUED BY THE DISTRICT COURT OF NICOSIA (HADJICONSTANTINOY, S.D.J.)

(Application No. 131/88).

5 *Immovable property — The Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, section 70(d) and (e) and section 80 — General valuation of land under section 70 — Determination of an objection by the Director — A decision within the meaning of «decision» in section 80 — Therefore, an appeal lies to the District Court.*

*Jurisdiction — Immovable property — Appeal from a decision of the Director — See Immovable property, ante.*

10 The Director of Lands and Surveys assessed the value of applicants' immovable property (plot 34) at Ayios Andreas Quarter, Nicosia at £215,000. The applicants objected. The Director reassessed the value at £300,000. The applicants appealed under s.80 of Cap. 224 to the District Court of Nicosia.

15 The appeal was dismissed for lack of jurisdiction. The relevant part of the judgment reads:

20 «Therefore, once the sub judice decision of the Director according to paragraph (4) of s.69(1) of the Law has no application it is not executory and it does not create or vary a legitimate result or interest, I find that the company has no cause which can be tried either by this Court or by the Supreme Court by virtue of the provisions of Article 146.1 of the Constitution.»

Having obtained the necessary leave\* the applicants filed this application for Orders of mandamus and certiorari.

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\* See (1988) 1 C.L.R. 446.

It is common ground in the present case that the valuation was a general valuation and was made by the Director of Lands and Surveys pursuant to s.70 of Cap. 224 which sets out the procedure for effecting a general valuation.

Held, granting the application:

(1) Under the provisions of s.70, paragraph (d), the valuation is final and conclusive, unless the person affected objects thereto in writing to the Director within the specified period or unless the Director applies to the Court for the revision of same. The Director must consider under sub-paragraph (e) every objection made to him and must give notice of his decision to the person affected. 5

(2) The decision of the Director in the case under consideration is a decision taken under the Law and as such is subject to an appeal to the District Court under the provisions of s.80. 10

(3) Section 80 confers jurisdiction upon the District Court to deal with an appeal against the decision of the Director and the Court is bound to deal with such appeal unless the provision of the law is held to be unconstitutional, a question which was not raised by either party. 15

*Application granted.*  
*No order as to costs.* 20

**Application.**

Application for an order of certiorari to remove into the Supreme Court for the purpose of quashing a ruling and/or decision issued by the District Court of Nicosia (Hjiconstantinou. S.D.J.) given on the 23rd June, 1988 dismissing appeal/ application No.43/86 by means of which applicant challenged a valuation and/or notice issued by the District Lands Office, Nicosia. 25

*P. Polyviou*, for the applicant

*Gl. Hadjipetrou*, for the respondent. 30

*Cur. adv. vult.*

SAVIDES J. read the following judgment. On the 12th July, 1988, on an ex-parte application on behalf of the applicant in this case I granted leave to the applicant to apply for orders of certiorari and mandamus against the ruling of a Judge of the District Court 35

of Nicosia dated 23rd June, 1988. In pursuance of such leave counsel for applicant filed the present application praying for:-

- 5 (a) An order of certiorari to remove into the Supreme Court for the purpose of its being quashed a ruling and/or decision issued by the District Court of Nicosia, dated 23rd June, 1988 by means of which the District Court of Nicosia dismissed appeal/application No.43/86 by means of which the applicant had challenged a valuation decision and/or notice issued by the District Lands Office of Nicosia.
- 10 (b) An order of mandamus directed to the District Court of Nicosia requiring it to hear and determine according to the law, appeal/application No. 43/86 filed before the District Court of Nicosia.

15 The facts relevant to the present application are briefly as follows:

The applicant is a company registered in Nicosia and deals, inter alia, with immovable property and the development thereof.

20 Applicant is the owner of property under registration No. 258 at Ayios Andreas quarter of Nicosia, plot 34 of sheet/plan XXI. 46.4.IV, Part 26, of an extent of six donums, 2 eveks and 2300 square feet. The Director of Lands and Surveys assessed the value of such property as at 1st January, 1980 at £215,000. Applicants object to such valuation and by letter dated 1st July, 1985, requested the reassessment of the value of the property.

25 On the 24th May, 1986, the Director of Lands and Surveys informed them that he revalued the property at £300,000.- as at 1st January, 1980 as against the alleged by the applicant value of £550,000.- Applicant as a result filed an appeal by way of an application No. 43/86 in the District Court of Nicosia challenging  
30 the decision of the Director of Lands and Surveys. Evidence was given on the part of both sides and eventually the learned Judge after both sides had closed their case asked that written addresses should be filed.

35 On or about the 3rd June, 1988, the Court addressed a notice to both sides inviting argument whether the challenged decision was an administrative one or not, a question which was touching the jurisdiction of the Court to adjudicate on the matter. Both counsel representing applicant and respondent, respectively, appeared before the Court and argued that there was no question

of an administrative act and/or decision, that the Supreme Court had no jurisdiction in the matter and that jurisdiction in respect of the matter in issue was vested in the District Court in accordance with the provisions of s.80 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap 224, as amended. 5

On 23rd June, 1988, the District Court of Nicosia delivered the reserved ruling in the matter by means of which it held that neither the District Court nor the Supreme Court had jurisdiction in the matter, with the result, in effect, that applicant is without a remedy.

The reasons for concluding as above, as appearing in the judgment of the learned trial Judge, read as follows: 10

«Therefore, once the sub judice decision of the Director according to paragraph (4) of s.69(1) of the Law has no application it is not executory and it does not create or vary a legitimate result or interest, I find that the company has no cause which can be tried either by this Court or by the Supreme Court by virtue of the provisions of Article 146.1 of the Constitution.» 15

In arguing his case counsel for applicant submitted that the ruling of the District Court of Nicosia is vitiated by errors of law on the face of the record in that it holds that the District Court has no jurisdiction in the matter in question and that, furthermore, the Supreme Court has no jurisdiction in the matter as the act complained of is not an executory act. Thus, applicant, according to this decision, is left without a remedy. The valuation in question, counsel submitted, was made by the Director of Lands and Surveys pursuant to s.70 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, as amended, which provides that if a person is aggrieved by a valuation he can object to the Director of Lands and that if a final decision is taken by the Director then under the provisions of s.80 an appeal can be made to the District Court by means of an application within the statutory period of 30 days. 20 25 30

Counsel submitted that s.70 of the law in combination with s.80 entitled the applicant to challenge the final decision of the Director by means of an appeal. Therefore, the finding of the trial Judge that such decision does not bring about any alteration to the rights and obligations of owners of immovable property is wrong. 35

It was conceded by both counsel that in the light of the

provisions of s.80 of the law an appeal could be made to the Court from a final decision of the Director in this respect.

In the way that the trial Judge decided the case, counsel submitted, he treated the decision of the Director as a final and binding decision without any right of appeal to the Court for testing its authority.

Counsel finally submitted that if an enactment on its face confers jurisdiction upon a Court that Court can only refuse to take jurisdiction if the provision of the law is held to be unconstitutional. In the present case there was no submission that s.80 which confers jurisdiction on the District Court on the matter in issue is unconstitutional.

Counsel for the respondent agreed with the arguments advanced by counsel for applicant, adopted same and joined in the submission that the Court was wrong in deciding that it had no jurisdiction under s.80 to deal with the appeal before it.

It is common ground in the present case that the valuation was a general valuation and was made by the Director of Lands and Surveys pursuant to s.70 of Cap. 224 which sets out the procedure for effecting a general valuation. In fact the learned trial judge found that the valuation in question was made in the process of a general valuation of immovable property.

Under the provisions of s.70, paragraph (d), the valuation is final and conclusive unless the person affected objects thereto in writing to the Director within the specified period or unless the Director applies to the Court for the revision of same. The Director must consider under sub-paragraph (e) every objection made to him and shall give notice of his decision to the person affected. Under s.80 of the same law an appeal lies to the District Court. S.80 provides as follows:

«Any person aggrieved by any order, notice or decision of the Director made, given or taken under the provisions of this Law may, within thirty days from the date of the communication to him of such order, notice or decision, appeal to the Court and the Court may make such order thereon as may be just but, save by way of appeal as provided in this section, no Court shall entertain any action or proceeding on any matter in respect of which the Director is empowered to act under the provisions of this Law.

Provided that the Court may, if satisfied that owing to the absence from the Republic, sickness or other reasonable cause the person aggrieved was prevented from appealing within the period of thirty days, extend the time within which an appeal may be made under such terms and conditions as it may think fit. » 5

The decision of the Director in the case under consideration is a decision taken under the Law and as such is subject to an appeal to the District Court under the provisions of s.80. S.80 confers jurisdiction upon the District Court to deal with an appeal against the decision of the Director and the Court is bound to deal with such appeal unless the provision of the law is held to be unconstitutional, a question which was not raised by either party, who, on the contrary, submitted that the Court had jurisdiction, nor did the Judge touch the question of unconstitutionality of s.80. 10 15

In the result I have come to the conclusion that the applicant has shown a good cause that an order of certiorari and mandamus should be made and, therefore, the application succeeds and the orders applied for are hereby granted. The order of mandamus is directed to the District Court of Nicosia but the case should be fixed before a differently constituted bench. 20

In the circumstances and as the application has not been contested I make no order for costs.

*Application granted.*  
*No order as to costs.* 25