

1988 October 13

[KOURRIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

TSIKKINA NICOLOUDE,

Applicant,

v.

1. THE IMPROVEMENT BOARD OF KORNOS,
2. THE DISTRICT OFFICER LARNACA, AS CHAIRMAN OF THE IMPROVEMENT BOARD OF KORNOS,

Respondent.

(Case No. 733/87).

Streets and Buildings—Building permit, Renewal of—The Streets and Buildings Regulation Law, Cap. 96, as amended, the proviso to section 5—No power thereunder to modify the conditions of the original permit—Ambition of the discretion thereunder.

The applicant failed to comply with certain conditions, attached to the building permit, which she originally obtained. The conditions related to the cesspit.

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When the applicant applied for the the renewal of her permit, the respondents decided to renew it, but with modifications of its conditions relating to the cesspit.

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Hence this recourse.

Held, annulling the sub judice decision:

- (1) The crux of the matter is whether the proviso to s.5 of the law vested power in the respondents to modify their original decision.
- (2) The discretion of the appropriate authority is limited to establishing
 - (a) whether building works commenced;
 - (b) whether the renewal

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conflicts with any building regulations in force.

Sub judice decision annulled.

Costs against respondents.

Cases referred to:

- 5 *Siman (No.2) v. The Municipality of Famagusta* (1972) 3 C.L.R. 329;
Hadjiosif and Others v. The Improvement Board of Lakaitamia (1985) 3
 C.L.R. 171;
Kitsis v. The District Officer of Paphos (1987) 3 C.L.R. 642.

Recourse.

- 10 Recourse against the decision of the respondents to modify a
 term of the building permit issued to applicant on 31.3.1984.

D. Papachrysostomou, for the applicant.

A. Koukounis, for respondent No. 1.

Cur. adv. vult.

- 15 KOURRIS'J. read the following judgment. By the present re-
 course, applicant challenges the decision of respondent 1 dated
 13.7.1987, whereby they modified a term of the building permit.

At the hearing of this recourse applicant withdrew the recourse
 against respondent 2, which was dismissed.

- 20 The facts which gave rise to this recourse shortly are as fol-
 lows:

The applicant is the owner of a building plot, under plot No.
 196 sheet/plan 39/56 within the village of Kornos, in the District
 of Larnaca and on 24.9.1983 she submitted an application to the

appropriate authority, which in the present case is the Improvement Board of Kornos, for a building for the erection upon her property of a flat and two shops on the ground floor and one flat on the first storey. On 31.3.1984 a building permit was issued to her under No. 356 to which a number of sanitary conditions were attached. The conditions relevant to this recourse are Nos. 3 & 7. By virtue of condition No. 3 the cesspit had to be constructed in a place indicated by the appropriate authority in order not to endanger the foundations or the walls of any other building. Condition 7 provided that the sanitary installations had to be inspected by the Health Inspector before they were covered.

The applicants started digging the cesspit without calling upon the appropriate authority to visit her plot and indicate to her where to construct the cesspit in accordance with condition 3 of the sanitary conditions attached to the building permit, whereupon her neighbour, a certain Maria Evagorou, whose house was next to the building plot of the applicant, complained to the appropriate authority that the cesspit might endanger the walls of her house.

As a result of this complaint, Senior Health Inspector 1st Grade, Andreas Pavlou, and Health Inspector, 2nd Grade, Pavlos Pavlides, visited the plot in question and they found that the cesspit was about 3 ft. from the surrounding wall of the house of Maria Evagorou, and they realized that the cesspit might endanger the walls of the house of the neighbour in as much as the house was built on a plot which was lower than the building plot of the applicant. They indicated to the daughter and son-in-law of the applicant who were there either to construct a watertight tank (idatostegis dexameni) or fill in the cesspit and dig it in another place and for this purpose they indicated a place under the upper storey of the house of the applicant. It should be noted that at this point the applicant according to the architectural plans, intended to build the two shops. Further, the two Health Inspectors noticed that the wall of the cesspit was not cemented up to 1 metre from its top.

The appropriate authority addressed a letter to the applicant dated 1st December, 1984, drawing her attention to the contra-

vention of the sanitary conditions (see Red 36 of exhibit 3 which is the file in respect of building permit 536/83). Then the respondent authority prepared a summary of the facts giving rise to the contravention of the sanitary conditions to the effect that the applicant has been in breach of conditions 3 & 7, and they instructed
5 counsel to bring charges against the applicant. For reasons unknown to me, counsel brought a charge against the applicant before the District Court of Larnaca, under case No. 3653/85, which is exhibit 1, to which she pleaded guilty, and it appears
10 from exhibit 1A which is a certified copy of the record, that when counsel for the respondent authority related the facts to the Court, he stated that accused, the applicant in the present application, failed to comply with condition 7 of the sanitary conditions to the effect that the cesspit was covered without informing the authorities to inspect it who, upon inspection found that the cesspit was
15 not cemented up to 1 metre from its opening. The District Court ordered the applicant to fill in the cesspit within 2 months unless she had complied, in the meantime, with the relevant sanitary condition. The applicant complied with condition 7 and addressed a letter to this effect to the respondent which is red 52 dated
20 28.12.1985 of exhibit 3.

It should be noted that when the two Health Inspectors visited the plot in question and found out about the contravention of the sanitary conditions with regard to the cesspit, the house on the
25 first storey was almost completed.

By letter dated 23.5.1987 (red 60 of exhibit 3), applicant applied for the renewal of the building permit as the construction of all the premises was not completed and the respondent authority considered the matter and decided to modify the term of the original permit so that the cesspit be converted into a watertight tank,
30 (idatostegis dexameni), or to be filled in and a new cesspit be constructed under the first storey house - which is the place where the shops were to be constructed - and its walls to be covered with concrete up to 3 meters. (Red 64 of exh. 3).

35 Applicant refused to comply and by letter dated 27.9.1987,

written by her counsel (see red 67 of exhibit 3), invited the respondents to withdraw that term, and as they refused, the applicant filed the present recourse.

It appears from the above summary of the facts that in effect the respondents sought to modify the terms of the original building permit in the exercise of the powers given to them by the proviso to s.5 of the Streets and Buildings Regulation Law, Cap. 96. The crux of the matter is whether the proviso to s.5 of the law vested power in them to modify their original decision. The answer is in the negative because the proviso to s.5 does not confer power on the appropriate authority to modify the terms of the permit. The ambit of the proviso to s.5 was expounded in the cases of *Nina Siman (No.2) v. The Municipality of Famagusta* (1972) 3 C.L.R. 329, *Hadjiosif and Others v. The Improvement Board fo Lakatamia* (1985) 3 C.L.R. 171, and *Kitsis v. The District Officer of Paphos* (1987) 3 C.L.R. 642.

Section 5 of Cap.96 reads as follows:

"5. A permit shall be valid for one year from the date of the issue thereof:

Provided that if the work or other matter is not completed within that period the permit shall be renewable at any subsequent time if not conflicting with any regulations in force at the time of such renewal, upon payment of the fee prescribed for the original permit or of £2, whichever is the less. The permit so renewed shall be valid for one year from the date of renewal."

It was emphasized in the abovementioned cases that the discretion of the appropriate authority is limited to establishing (a) whether building works commenced; and (b) whether the renewal conflicts with any building regulations in force.

It is obvious that the respondent authority's decision to modify the terms of the original building permit exceeded as well as

abused the powers given to them by the relevant provisions of the law.

5 As the building works commenced and were not completed at the time the building permit expired, the respondent authority had to renew the building permit with the same terms unless the re-
newal conflicted with the building regulations in force. The fact
10 that the applicant did not comply with condition 3 of the Sanitary Conditions did not authorise the respondent authority to impose a modified sanitary condition upon renewal of the building permit. There may be other remedies against the applicant but certainly not modification of the sanitary conditions.

15 In the result, the sub judice decision is annulled and declared, pursuant to Article 146.4(b), to be void and of no effect whatsoever. In the exercise of my discretion I order the respondents to pay the costs of the applicant which are to be assessed by the Registrar.

*Sub judice decision
annulled with costs.*