

1988 December 22

[MALACHTOS, DEMETRIADES, PIKIS, PAPADOPOULOS, HADJITSANGARIS,
CHRYSOSTOMIS, JJ.]

THE MUNICIPAL COMMITTEE OF LIMASSOL AND OTHERS,

Appellants-Respondents,

and

- 1. MARIA S. PANTAZI,
- 2. HELENA G. PANAYIOTOU,
- 3. MARTHA CHR. PAPACHRISTOFOROU,

Appellants-Interested Parties,

v.

PHIVOS GRIVAS AND OTHERS,

Respondents-Applicants.

(Revisional Jurisdiction Appeal No. 749).

Streets and Buildings—Division permit in favour of interested parties subject to a condition involving construction of a road on applicant's land—Excess of powers.

Time within which to file a recourse—Recourse filed on 21.6.1986 impugning validity of division permit issued in favour of the interested parties—Trial Judge entertained doubts whether applicants knew of the permit prior to 10.5.1986—On the material placed before the Court, it is evident that the applicants knew of the permit as early as January, 1986—Recourse out of time.

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Time within which to file to recourse—The period of 75 days (Art. 146.3 of the Constitution)—A provision mandatory in nature that cannot be by-passed.

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

Appeal allowed.

No order as to costs.

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Cases referred to:

Panayides and Others v. The Republic (1988) 3 C.L.R. 2435.

Appeal.

5 Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Loris, J.) given on the 8th October, 1987 (Revisional Jurisdiction Case No. 399/86)* whereby the decision of the Municipal Committee of Limassol to issue a division permit to the interested parties was annulled.

Y. Potamitis, for appellants-respondents.

10 *E. Theodoulou*, for the appellants-interested parties.

Ph. Pitsillides, for respondents-applicants.

Cur. adv. vult.

MALACHTOS J.: The judgment of the Court will be delivered by Hadjitsangaris, J.

15 HADJITSANGARIS J.: This is an appeal from a decision of a Judge of this Court whereby he allowed a recourse and annulled the decision of the Municipality of Limassol to grant a division permit under No. 21231 dated 6.7.84 to the Interested Parties.

20 The said annulment was based on the ground that the division permit involved an interference with the property rights of the applicants in that a condition was imposed by the Municipality entailing the construction of a road by the Interested Parties on part of the applicants property. Conditions were imposed affecting the rights of the applicants in their absence and without regard to their
25 views.

* (Reported in (1987) 3 C.L.R. 1448).

The facts of the case clearly reveal that indeed one of the roads envisaged by the permit would have to be constructed in part of the applicants' property.

Had this been the only issue in the appeal we would be clearly inclined to rule in agreement with the judgment at first instance that the permit in question is void ab initio for the reason that respondents acted in excess of their powers. 5

However, the first and main ground of appeal is that the Court of first instance erred in holding that the recourse was not out of time by deciding that it had not been sufficiently established that the applicants had full knowledge of the nature and extent of the permit prior to the time within which a recourse could have been filed. 10

A recourse was filed by the applicants on the 21.6.86 and the applicants alleged therein that they came to know of the permit on 10.5.86. The learned Judge considered that on the evidence before him there was doubt whether any of the applicants had full knowledge of the permit before the 10.5.86 resolved this issue in favour of the applicants. 15

It is on this point that we take a different view. It is clear that the applicants had filed an application under No. 9/86 of the District Court of Limassol dated 21.5.86 against the Municipality of Limassol and the Interested Parties on the same issue. In support of the said application applicant No. 1 Phivos Grivas swore an affidavit dated 29.5.86 to the effect that he was fully authorized to swear the affidavit on behalf of all the applicants and further he testified that the applicants had been informed about the permit and its consequences on their property by the end of January 1986 following which they submitted their objections to the Municipality of Limassol. 20
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The same applicant admitted in his evidence before the trial Court that he knew of the existence of the permit as early as January 1986.

5 Our conclusion on these facts is that the applicants must clearly be taken to have had knowledge of the permit and its effect on their property since January 1986 and thus cannot avoid the implications from the affidavit made on their behalf. Consequently there appears to be no justification for the view that the time factor is in doubt with the result that the recourse filed by the applicants on the 21.6.86 was out of time.

10 The time provisions of Article 146(3) are mandatory and cannot be by-passed as we had opportunity to reiterate in the recent appeal - R. A. 754 - *Panayides and Others v. Republic* - (1988) 3 C.L.R. 2435.

15 In the face of evidence that applicants - appellants came to know of the decision and failed to challenge it within 75 days we have no alternative but to allow the appeal and dismiss the recourse as raised out of time.

 In the result the appeal is allowed. The recourse is dismissed with no order as to costs.

*Appeal allowed.
No order as to costs.*