

Third civil chamber : Demolition of irregular constructions and right to privacy

16/01/2020



Demolition of irregular constructions for violation of urban planning rules and right to privacy: ineffective proportionality test in the presence of a pressing social need to preserve the safety of individuals.

Ruling n° 68 of 16 January 2020(19-13.645) - Cour de Cassation (Court of Cassation) - Third Civil Chamber
ECLI:FR:CCASS:2020:C300068

Dismissal

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Summary

Finding that a pressing social need existed to preserve the safety of people exposed to a natural flooding and to prevent new constructions or reconstruction within flood-prone areas subject to significant risk, a cour d'appel (court of appeal), which was not obliged to carry out an investigation into the disproportionate nature of an order to demolish a building erected without a building permit, with regard to the family circumstances and financial situation of the occupant, which its findings had rendered irrelevant, legally justified its decision to order the demolition.

Appellant : Ms A.. X... Respondent : Municipality of Montévrain, represented by its mayor

Facts and procedure

1. According to the ruling under appeal (Paris, 26 October 2018), Mrs X... owns a plot of land on which a dwelling house was built. The house was destroyed by fire on 18 June 2006.
2. Mrs X..., wishing to proceed with the reconstruction of the dwelling house, submitted three applications for planning permission. All three applications were rejected on 12 March, 16 May and 7 September 2007, respectively.
3. Mrs X... having nevertheless proceeded with the reconstruction of her house, the City of Montévrain brought proceedings against her on 28 October 2014 to request its demolition.

Reviewing plea

Statement of plea

4. Mrs X... submits that the ruling under appeal has upheld the application for demolition, whereas :

"1°/ Everyone has the right to respect for his private and family life and his home ; that there shall be no interference with this right except such as is in accordance and as is necessary in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others ; these strictly necessary measures do not include a decision ordering the demolition of the dwelling house of a mother and her three children who own the plot on which their home is built and who are eligible for income support benefit ; the construction is an identical reconstruction of the dwelling house following damage and is built in a densely built-up area close to a stream ; according to the applicable flood risk management plan, only new constructions are prohibited rather than the reconstruction of buildings following damage ; the local authority has tolerated the current situation for a period of seven years following the reconstruction of the dwelling house ; that in deciding otherwise, the cour d'appel (Court of Appeal) violated Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, together with Article L. 111-3, L. 480-14 and R. 111-2 of the

Town Planning Code then in force.

2°/ Everyone has the right to respect for his or her private and family life and home ; that there shall be no interference by a public authority with the exercise of this right unless the persons concerned have benefited from an examination of the proportionality of the interference in accordance with the requirements of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms ; that by ordering the demolition of the building erected without authorisation by Mrs X.. on her land where she lived with her children, without specifically examining, as it was requested to do, whether these measures were proportionate with regard the family circumstances and financial situation of the applicant as a single parent, having responsibility for three minor children and eligible for income support, and of the tolerance of the situation for seven years by the local authority since the reconstruction as well as the absence of third party rights at stake, the cour d'appel (Court of Appeal) deprived its decision of any legal ground in view of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, together with Articles L. 111-3, L. 480-14 and R. 111-2 of the town planning code then in force.”

Court’s response

5. Finding that a pressing social need existed to preserve the safety of people exposed to a natural flooding risk and to prevent new constructions or reconstruction within flood-prone areas subject to such significant risk, the cour d’appel (Court of Appeal), which was not obliged to carry out an investigation which its findings rendered irrelevant, has justified in law its decision to order demolition on these grounds alone.

ON THESE GROUNDS, the Court :

DISMISSES the appeal.

President : Mr Chauvin

Reporting Judge : Mr Jacques

Advocate-General : Mr Burgaud, Referee Judge

Lawyer (s) : SCP Piwnica et Molinié – SCP Rousseau et Tapie

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