

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1660/18

In the matter of:-

ROBERT JOSEPH BERNARD MONTOCCHIO

Appellant

v/s

DISTRICT COUNCIL OF FLACQ

Respondent

RULING

1. A point in law was raised in the statement of case of the Appellant which was by the Respondent and forms the subject-matter of the present ruling, with the case yet to be heard on its merits. It is averred at the last paragraph of the statement of case that, "Moka-Flacq as one **legal entity** does not exist since the coming into force of the Local Government 2011, hence the relevant Outline Scheme ought to have been amended accordingly."

2. Two out of the three grounds of refusal as per the letter issued by the Council on the 29th June 2018, make reference to non-compliance of the proposed development to policies contained in the Moka-Flacq Outline Scheme, and hence the averment of the Appellant. We have duly considered the submissions of both Counsel. The gist of the submissions of the Appellant's Counsel is that since the coming into force of the **Local Government Act 2011** ["LGA"], there has been a segregation in the areas into distinct planning areas so that development in the area of Flacq falls under the aegis of the District Council of Flacq and that of Moka falls under the aegis of the District Council of Moka. It is agreed that there is no entity known as Moka/Flacq District Council.

5. From the above extract it can be gauged that the prerogative to declare an area a planning area lies with the President by way of Order. The power to approve any outline scheme is given under **section 14 of the TCP Act** to the President followed by Gazetted notification:

S.14 Approval of an Outline Scheme

(1) The President may, with or without modifications, approve an outline scheme submitted to him under section 13 (2).

(2) Where the President approves an outline scheme, the Board shall deposit the scheme with any modifications made by the President in such places it considers desirable, and shall by notice in the Gazette declare the scheme to be in force, and inform the public where it is available for inspection.

(3) As soon as a notice has been published under subsection (2), the scheme shall have full effect, and no authority shall pass or approve any plan for building or development that contravene the scheme.

6. From the above section the Outline Scheme can be approved with modifications and once the Notice is published in the gazette it takes effect. Section 15 sets out how the execution of the outline scheme is done and that includes how it is done by the local authority:

S.15 Execution of an Outline Scheme

(1) Where an outline scheme has been brought into effect, the committee subject to any directions given to it by the Minister on the advice of the Board, shall be the authority responsible for executing and enforcing the scheme.

(2) Where the committee is not the local authority, the local authority shall be responsible for passing all building and development plans to the same extent as it was responsible prior to the scheme coming into effect, but it shall act in respect of the enforcing of the execution of the scheme in accordance with any direction given to it by the committee.

9. The Council has statutory powers to administer planning functions including exercising development control through the application of the Outline Scheme and other planning instruments. The Outline Scheme though prepared by the TCPB, is approved by the President so that it is in fact the President's decision, through his assent, that an Outline Scheme is brought to life, so to say, after it has been published. The scheme as approved by the President, for the region of the Moka and Flacq has been named as the Outline Planning Scheme for the Moka-Flacq District Council Area. The District Councils of Moka and of Flacq will administer the planning scheme for the region, which is called Outline Planning Scheme for the Moka-Flacq District Council Area for this area and each Council will control development within its respective designated boundaries, which are in fact districts, pursuant to the scheme. As stated earlier, the Outline scheme contains the policies essentially but also some planning forecast for the area, vision of the district, where it caters for one or more districts and the respective maps of the areas with the boundaries clearly set out.

10. The Tribunal hence has no jurisdiction to pronounce itself on whether the extension of the Outline Planning Scheme for the Moka-Flacq District Council Area or the manner in which it was done is proper or not. The Tribunal cannot enquire into whether the authority of the Minister of Housing and Land Use Planning has been received. There is a presumption of regularity in the process and it will be beyond the powers of this Tribunal to go into any inquisitorial venture. We have to accept and apply the Outline Scheme as it has been approved by the President in his wisdom. We believe that even the District Councils, Municipal Councils or City Council have no prerogative not to apply the Outline Scheme as approved by the President. Any challenge as to the legality of the Scheme or President's decision will have to lie before an appropriate jurisdiction.

11. As regards the function of the TCPB, the TCP Act confers the power on the Board to apply to the President for modification of Outline Scheme and we believe that modification can include extension. The approval for modification was done by the President and the Ag. Administrative Manager duly informed the Councils of the

3. We agree with the point made by Counsel for the Appellant that the LGA has brought about the segregation of the District Councils. **Section 7 (1)** of the LGA “A district shall, for the purposes of local government, be administered by a local authority which shall be known as a District Council”. Therefore, it is clear that the demarcation of the districts has been done for administrative purposes of local government. **S.7(2)** of the LGA also sets out the individual districts. We do not believe that the **section 166** of the LGA is of relevance for the purposes of the subject matter of the ruling. It deals with transitional provisions and is silent on the guiding policies under the Outline Scheme. It cannot be deemed from that section that these policies are applicable or that they are null and void.
4. The whole conception of Outline Schemes is laid down in the **Town and Country Planning Act 1954 [“TCP Act”]**. **Section 6 of the TCP Act** sets out the procedure for **Declaration of planning areas**, which is partly reproduced below for the purposes of the subject matter of this ruling, whereby the Town and Country Planning Board [“TCPB”] is empowered to decide whether an Outline Scheme is needed for an area and it can make representations to the President to declare that specific area as a “Planning Area” by Order published in the Gazette:

“(1) (a) Where, in respect of any area, the Board is of the opinion that an outline scheme should be made in respect of that area, and makes representations to that effect to the President, the President may, after consultation with the local authority concerned, by Order declare that the area specified in the representations shall be a planning area.

(b) Any representations under paragraph (a) shall be accompanied by a plan of the area concerned.

(2) Any Order made under this section shall come into operation on the day of its publication in the Gazette and shall cease to have effect if within 3 years from that date no outline scheme in respect of the planning area has been approved under section 14.

(3) A copy of every Order made under this section shall be posted at such conspicuous places within the planning area as the Board shall direct. ...”

7. Each planning area normally falls under administrative control of a particular council. However, what is worthy of note is that the policies contained in these outline scheme for all rural areas are essentially the same. Therefore, whether it is for the area of Flacq, Moka, Pamplemousses, Riviere du Rempart or any other rural area, all planning areas are guided by the same policies and these are set out in the outline scheme for all rural areas. The nature and application of the policies do not differ. What differs is the development map annexed to outline schemes and this is what each District Council has to bear in mind when controlling the development within their respective boundaries, where their jurisdictions start and end. In practice, the outline planning scheme for two combined rural areas, such as Moka-Flacq, is in the same document and hence guided by the same policies but there are 2 distinct development maps annexed to the scheme, one for the area of Moka and the other for the area of Flacq. This allows the planning department of each Council to confine themselves to the planning assessment of development proposals within their respective areas whilst applying the same planning policies and guidelines to provide better cohesion and standardization in application of planning principles.
8. **Section 24(4) of the TCP Act** provides *“(4) Where an application has been made under subsection (1) or (2), the President or the Board, as the case may be, may revoke or modify the scheme or refuse the application.”* From our reading of the above provision, it appears that where an application is made for revocation or modification the President of the State has a choice of whether to grant it or to refuse. The modification of the Outline Planning Scheme for Moka- Flacq amongst others has been approved by the President of the Republic by virtue of powers vested upon him under **s.24(4) of the Town and Country Planning Act 1954** so that the scheme’s enforcement is extended until the year 2022 as evidenced by Doc A, an extract of GN 2299 of 2020. The President, having in his wisdom, granted his approval for modification of the Outline Planning Scheme as Moka-Flacq District Council area, the Tribunal cannot make any pronouncement on the legality of the decision or the prerogative of the President as this will be tantamount to the Tribunal acting beyond its jurisdiction as set out under **s.4 (1) of the Environment and Land Use Appeal Tribunal Act 2012**.

approval and the enforcement date of the Outline Schemes as per Notice published in the GN that was attached to the letter, Doc A.

12. For all the reasons set out above, particularly as regards the jurisdiction of this Tribunal, the point in law raised by Counsel for the Appellant is set aside. The case is to proceed.

Ruling delivered on the 2nd August 2021

Mrs. J. RAMFUL

Vice Chairperson

Mr. P. MANNA

Member

Mr. R. SEEBOO

Member