**BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL**

**ELAT 2009/21**

**In the matter of :-**

1. Chandramanee Appadoo (born Miththereddi Appadu)

2. Sailendra Miththereddi Appadu

Appellants

v/s

Ministry of Housing and Land Use Planning

Respondent

**IPO:**

Ministry of Agro Industry and Food Security

Co-respondent

**DETERMINATION**

1. This is an appeal against the decision of the Ministry of Housing and Land Use Planning ["the Ministry"], for having refused to the Appellants the granting of a permit for the subdivision of a plot of land of an extent of 3464 sq.m (approximately 84 perches) into 2 lots of 1732 sq.m each (approximately 42 perches) for agricultural purposes at Plaisance, Grand Port. The Appellants are siblings and co-owners of the land *in lite* which they purchased from their parents in year 2000, transcribed and registered in volume TV 4466/12. The sole ground of refusal of the Ministry as per their email dated 4th February 2021 is "due to non-compliance with the minimum plot size requirement."

2. The case for the Appellants in essence revolves around the fact that at the time of purchase of the land the law did not provide for a minimum plot size of 50 perches where there is subdivision of agricultural land for the category of applicants as in this case and that it will not

be possible for both Appellants to obtain a title deed each for their property if the subdivision is not allowed since the size of the land is about 84 perches thereby resulting in 2 lots of 42 perches after subdivision. The grounds of appeal as per the notice of appeal are set out below:

*"a) That the Respondent failed to take into consideration that the Appellants purchased the land in lite prior to the coming into force of the minimum plot size (50 Perches) requirement.*

*b) That the Respondent, in breach of the principles embodied in the legal maxims '**lex non cogit ad impossibilia**' failed to realise that the Appellants find themselves in an impossibility to conform with the minimum plot size requirement through no fault of theirs.*

*c) That the decision of the Respondent is tantamount to forcing the appellants to remain in indivision and as a result causing serious prejudice.*

*d) That the Respondent failed to consider alternative avenues such as the imposition of strict conditions to implement the intention of the legislator which is mainly to prevent prime agricultural land to be put to uses other than agriculture related activities.*

*e) For any other reasons in law that may be given at the hearing on issues of Law."*

**Under ground (a)**

3. It is the contention of the Appellants that the Respondent should have taken into account that the land in lite was purchased prior to the coming into force of the legal requirement of the minimum plot size being 50 Perches. The Sugar Industry Efficiency Act came into force in 2001 while the property was purchased by the Appellants in the year 2000. Under **section 28 (4AA)** of the **Sugar Industry Efficiency Act 2001 [SIE Act]** it is provided

*"For the purpose of subsection (4A), the minimum plot size for land subdivided for agricultural purposes shall be-*

*(a) where the subdivision relates to a donation by an ascendant to a descendant and the site is-*

*(i) within the settlement boundary, 10 perches*

*(ii) outside the settlement boundary, 20 perches*

*(b) in any other case, 50 perches."*

4. It remains uncontested that the property *in lite* was acquired by the Appellants through purchase, not through donation from ascendants to their descendants. The law as it exists at the time of the subdivision will need to be applied, which the Respondent has done. Irrespective of what the law was at the time of the land purchase does not determine the law applicable to subdivision. They are separate issues. This ground therefore fails.

**Under ground (b)**

5. It is the contention of the Appellants that it is impossible for them to comply with the legal requirement of having the minimum plot size of 50 perches after subdivision through no fault of theirs. The fact of the matter is that the land is not bigger than some 84 perches and therefore whichever way the subdivision is done, one plot will always end up being less than 50 perches and therefore no subdivision will be possible in this instance as it is not acceptable under the law. Counsel for the Appellants has painstakingly submitted to the Tribunal the legal impossibility faced by the Appellants, which could not have been the intention of Parliament. We are, however, of the view that the legal maxim of ***"lex non cogit ad impossibilia"*** is not applicable here. The law normally imposes obligations to regulate and/or prohibit certain type of conduct or transactions for good governance. In the same way, **section 28 (4AA) of the SIE Act 2001** imposes a requirement of a minimum plot size for subdivision of agricultural land. This is not a legal impossibility which in any way precludes people from complying with the law. True it is that the Appellants may find it physically impossible to meet the land size division requirements, but the maxim of legal impossibility relates to a situation where the state of the law is such that it will be impossible for anyone subjected to that law to be able to comply with it since that will entail either breaching or

being non-compliant or being in non-alignment with another law. Bennion on Statutory Interpretation, sixth edition at Page 1003 provides an example of legal impossibility at Example 346.3 :

*"The court construed a byelaw authorizing the Poulter's Company to fine any poulterer in the area who refused to be admitted to the Company. By law, a poulterer could not be admitted unless he was a freeman of the City of London. Held The byelaw must be treated as limited to poulterers who were freemen."* This was an example of legal impossibility in that not all poulterers could be fined for non-admittance, despite the wording of the law, as legal compliance for admission was impossible unless a poulterer was also a freeman of the City of London. We are of the view that the application of the plot size requirement under **Section 28 (4AA) of the 2001 Act** is perfectly permissible and does not in any way render compliance impossible or put the Appellants in conflict with any other legal requirement. The legislator is perfectly entitled to regulate activity and conduct by imposing conditions or restrictions and in this instance, it does not in any way offend against the principle ***"lex non cogit ad impossibilia"***. The application of the law is good. This ground therefore fails.

**Under ground (c)**

6. The Appellants' case is that the decision of the Respondent is tantamount to forcing the Appellants to remain in indivision and as a result causing serious prejudice. We are of the view that the Respondent has correctly applied the law as regards the subdivision of agricultural land. While remaining in indivision may understandably not be a desirable state of affairs for which other avenues may be open to the Appellants for challenge, the Respondent was perfectly correct in its application of the law. This ground therefore fails.

**Under grounds (d) and (e)**

7. It is the contention of the Appellants that the intention of the legislator in imposing this minimum plot requirement is to preserve agricultural land and that the Respondent failed to consider alternative avenues such as imposing strict conditions on the Appellants so that the intention of the legislator is still met. The law is to be applied as it is, the moreso where there

is no ambiguity in its wording. We find no ambiguity in its language nor in its application. It is rather unfortunate that the purchase of the land by the Appellants from their parents have led them to ultimately fall within the category of applicants for subdivision under s.28 (4AA) (b) as opposed to subsection (4AA) (a), had it been a case of inheritance. The law may not favour the situation that the Appellants find themselves in but we find no fault with the way the Respondent applied the law, which in our view, is clear. The Tribunal will only intervene if the decision of the Respondent was wrong on planning principles or if it wrongly applied the law or both. This is not the case here. The law was correctly applied. This ground therefore also fails.

8. For all the reasons set out above, we find that the Respondent's decision was based on the correct application of the law. The appeal is set aside. No order as to costs.

Determination delivered on the 23rd August 2021.

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| **Mrs. J. RAMFUL-JHOWRY** | **Mr. R. ACHEMOOTOO** | **Mr. R. SEEBOO** |
| **Vice Chairperson** | **Member** | **Member** |