

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 2144/22

In the matter of:

Papmu Co Ltd.

Appellant

v.

The Ministry of Housing and Land Use Planning

Respondent

Determination

1. The Appellant submitted an application to the Respondent for the subdivision of a plot of land of the extent of 4360 square metres into eight lots situated at Coromandel, for residential purposes. The Morcellement Board has at its sitting of the 9th November 2022 not approved the subdivision. As per the notice of appeal, the letter of refusal bearing reference MHL-M-2022-604 had been delivered on the 5th December 2022. The sole ground of refusal contained therein is as follows:
“The site has been earmarked and approved as an open space for the existing residential morcellement bearing reference MHL/M/4162.”

2. The Notice and grounds of appeal

The Appellant lodged a notice of appeal on the 12th December 2022 and the grounds of appeal were set out as follows:

- (1) The land of 4360 square metres has been purchased by Papmu Co. Ltd. as per TV 202202/001947 on 11/2, 18/12/2014 from co-owners of Morcellement Montreal registered on 25/2/2022.
- (2) The land did not form part of the Morcellement Montreal but was a surplus owned by the co-owners of Société Montreal.
- (3) The land was never vested with the authorities and/or the Government of Mauritius.
- (4) (a) There was in the said Morcellement Montreal Phase III, a reserved space for “community facilities” being Lot 276 of the extent of 12460 square metres which was sold by Societe Montreal to Kirkland Co. Ltd as per TV7540/40 on 22/10/2009.
(b) Kirkland Co. Ltd has parcelled the land into 31 lots on approval being obtained from the Ministry on 4/3/2010 MHL/M/13989.
- (5) Hence the objection by the Ministry does not stand as Kirkland Co. Ltd was in a similar situation, whereas the land of PAPMU Co. Ltd does not form part of Morcellement Montreal.

(6) Applicant therefore prays that the objection be set aside and request that the approval be granted.

3. The position of the Appellant:

In the Statement of Case (SOC) filed, the Appellant reiterated the contention of the Appellant as contained in the notice of appeal (*supra*). The Appellant furthermore submitted that the land *in lite* never formed part of the Morcellement bearing reference MHL/M/4162. It was a reserve for the promoters and concluded that the land *in lite* is owned by Pappu Co. Ltd and is a private property and there cannot be any hindrance for its sub-division. Moreso, when the Morcellement Montreal was developed and sold, the extent of the land of 4360 m² never formed part of the Master Plan. Hence, it remains the property of the original owners who sold it to the Appellant.

The Appellant further submitted that the land in lite (4360 m²) does not meet the requirements and exigencies laid down, firstly, by the Municipal Council in Document J and, secondly, by the Morcellement Board in Document L, by reason of its locus, its topography and, more importantly, its ownership.

In relation to the locus and topography, the Appellant's witness, Mr. Ramdewar, Sworn Land Surveyor, deposed to the effect that the lot of 4360 m² as earmarked for 'Open Space Reserve', would not be an appropriate 'green space' that corresponds to the requirement for residential morcellement as provided by the planning instruments, nor is it the green space that is intended in the Letter of Intent, for the following reasons:

- (1) Its proximity with a stone crushing plant,
- (2) The plot is sloping, i.e. with a 15% inclination,
- (3) It is not centrally located
- (4) It will not accommodate a school, recreational area as set out in Document A dated 4 October 1993, which contains the initial recommendations of the then 'Ministry of Works'.

As per the evidence of Mr. Ramdewar, Lots No. 275 and 276 taken together, as shown in Document B, respond to all the requirements set out in Document A (letter from Ministry of works), Document J (recommendations of the planning committee of the Municipal Council) and Document L (Letter of Intent) and, incidentally, they tally with the surface area of 12460 m².

With regard to the issue of the ownership of the plot, the evidence adduced on behalf of the Appellant is that the land *in lite* is private land that had been sold to "PAPMU Ltd." in the year 2014, as per the title deed produced as Document C. The vendors are individuals, who may have been shareholders of Société Montreal, but sold it as a distinct plot from Société Montreal. The presence of this plot was not meant not to cater for the specific facilities for Morcellement Montreal. Thus, it called for an independent consideration from the Morcellement Permit of the latter.

4. The Respondent's position on the status of the plot *in lite*:

The representative of the Ministry of Housing and Lands, deposed as witness for the Respondent. She made a chronology of the application for a morcellement permit for Société Montreal. As per her evidence, a first plan had been submitted in 1995 for a morcellement permit for 331 lots of the extent of 156725 m² (Document E).

Following an undertaking between the promoter and Gamma civic, the area marked as 'open space' in the said plan had been reduced from 6120 m² to 4360 m² to cater for a buffer zone due to the presence of the stone crushing plant operated by Gamma Civic. This gave rise to the second plan submitted, dated 6 May 1997 (Document F).

None of these two plans catered for land to be used for community facilities. Such a requirement came into play when the Municipal Council laid down the conditions set out by its Planning Committee (condition 1(4) in Document J), that green space of 6120 m² be left for Community Service for the Municipal Council.

In the opinion of the witness, reference to the area of 6120 m² could have been a mistake on the part of the Municipal Council, who should have referred to an open space which ought to reflect the area of 4360 m² as now shown on the plans.

5. Be that as it may, on 23 December 1997, a month after the requirement for green space was laid by the Municipal Council, an amended plan had been submitted. This plan (Document K) now showed 'Community Facilities' of the extent of 12460 m², marked as Lot 276 and Children Play Area of an area of 450 m², marked as Lot 275.

The plot marked 'Reserved for open space' of 4360 m² was still present on the amended plan. It was on the basis of this plan that the Letter of Intent (Document L) was issued on the 15th April 1998. The Letter of Intent embodied the condition (3) (iv) as laid down by the Municipal Council, namely that green space of the extent of 6120 m² be left for community service.

We note that, presumably, the Ministry of Housing must have reproduced the 'mistake' arising from the Municipal Council by referring to the green space as being of the extent of 6120 m².

The Morcellement Permit in respect of Société Montreal was issued on 4 February 2000 (Document G) with the approved plan (Document G1) showing the community facilities of the extent of 12460 m² as well as the area 'reserved for open space' of the extent of 4360 m².

6. The Ministry's representative went on to explain that Lot 276, which had been earmarked for community facilities, has subsequently been granted a morcellement permit on 4 March 2010 (Documents M and M1) for 31 lots and green space for residential development.

We fail to understand how this lot which was reserved for community facilities has been granted a morcellement permit. Although this is not a matter that pertains to the present appeal, it does raise questions being given that it is the contention of the Appellant throughout that the condition put by the Municipal Council has been the very reason for the introduction of Lot 276 in the amended plan (Document G1), and not the reserved space of 4360 m², which was there at the outset (save for the reduction due to the buffer zone).

It has been submitted on behalf of the Respondent that the initial plans submitted, namely Documents E, dated 1996 and F, dated 1997, indicate the presence of the open

space and there had been no community facility in those plans. The Respondent's view is that this open space has been the space referred to for the obtention of the Morcellement Permit. Yet, the chronology of the successive plans submitted, indicates that Document G1, being the annex to the Morcellement permit (Document G), is the one that embodies and is compliant with the conditions set down by the Municipal Council.

It is true that Document G1 makes reference to the plot *in lite* as 'reserved for open space'. In this respect, the version put forward by the Appellant is that this had indeed been reserved by the owners, but it had been reserved for their own use and was not at any material time meant to be part of Morcellement Montreal.

7. The evidence adduced by the parties has brought to light certain decisions surrounding the Morcellement Montreal, which ought to weigh in the balance.
We are not convinced that the mere fact that the land *in lite* has been placed on the plan (Document B) and Document G1 should be a sufficient basis to conclude that this plot is the 'designated land' as per the Morcellement permit.
8. We find it necessary to look at the broader picture in order to assess the characteristics of the land *in lite* to determine its purpose, and more importantly, the chronology followed by the developers and the exchanges with the authorities at different points in time. The evidence adduced by Mr. Ramdewar, the sworn land surveyor has amply explained the sequence followed in adapting the proposal to the requirements laid down by the Municipal authorities, which were subsequently embodied in the Letter of Intent (albeit with its mistakes).
9. As pointed out on behalf the Appellant, the requirement of a green space, as laid down by the Planning Policy Guidance (PPG, Document N) and the Technical Guidelines issued by the Ministry of Housing and Lands (Document D) must be observed. Yet, the characteristics of the reserved space clearly do not correspond to those parameters. More importantly, the PPG clearly sets out that the public open space 'should be an integral part of the layout for the project'. The land now belonging to Ppamu Co. Ltd. clearly does not correspond to that.
10. We cannot but agree with the submission made on behalf of the Appellant that the open space of 4360 m² cannot meet the exigencies of Documents J and L (the Municipal Council's conditions and those of the Letter of Intent) and the topography of the land reinforces this.
11. On the other hand, the extent and the specific positioning of Lots 275 and 276, when taken together with the chronology of the decision to introduce these two lots in the Morcellement Montreal project, bring support to the version of the Appellant that they meet all the considerations indicated in Document A (the original proposal) and successively in Documents J and L. Documents N (the Outline Planning Scheme produced by the Mrs. Goolaup, witness for the Respondent) and P (the PPG) are also supportive of the argument that this was the original purpose of lots 275 and 276.
12. The evidence adduced by Mrs. Goolaup explains the need for and rationale for the presence of open spaces in any morcellement having more than twenty lots and the reserve to be kept for such open spaces. As per the planning instruments relied upon

(Documents N and P), such reserve ought to be kept for Morcellement Montreal as well. We are however left in the dark as to why the plots that had been earmarked for community facilities and children playground had been granted permits to be parcelled for residential development. We acknowledge that this is not subject matter of the present appeal. Yet, being given the consequence that this development has had, resulting in the unavailability of open and green spaces to meet the planning consideration of the existing Morcellement Montreal, we cannot obliterate this aspect.

13. After considering the evidence on record, we are of the view that the sole ground put forward by the Respondent to reject the application for subdivision of the plot *in lite* cannot be supported. The version put forward on behalf of the Appellant to the effect that the portion earmarked as 'Reserve for open space' does not tally with the requirements laid down in the successive administrative documents is a more plausible one. The 'mix up' that came about in the correspondences referred to as Documents J and L may have been a contributing factor.
14. Based on all the above considerations we allow the appeal and refer the matter to the Respondent for approval of the application to be granted.
15. No order as to costs.

Delivered by:

Mrs. V. Phoolchund Bhadain, Chairperson

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Mr. Shanmoogum Moothoosamy, Member

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Mr. Assen Soogali, Member

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Date:

9th September 2024