BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No.: ELAT 696/14

In the matter of:

MRS. MANEESIA NUNDLOLL

Appellant

v.

FLACQ DISTRICT COUNCIL

Respondent

In presence of:

VED JOORAWON CO. LTD

Co-Respondent

DETERMINATION

The Appellant has lodged the present appeal against the decision of the District Council of Flacq for having set aside an application for a Building and Land Use Permit (BLUP) for the conversion of an existing building into a general retailer's shop (excluding liquor) at Royal road, Lallmatie. The sole ground of refusal, as set out in a letter dated 20 May 2014, is that "*There is a judgment SCR No. 63653-1/97/00 dated 15 June 2011 from his Lordship the Hon. S Bhaukaurally, Judge, specifying that the complainant Ved Joorawon Co. Ltd., represented by Mr. Ramprakash Joorawon, ought to have the given priority for renting or acquiring the premises in lite'.*

The notice of appeal dated 4th June 2014 sets out the ground of appeal in the most unclear terms, namely, by stating that it is an "*Appeal for a BLUP and for an existing building into a general retailer's shop (excluding liquor) at Royal Road, Lallmatie*". It is in his Statement of Case that the Appellant went on to explain that the judgment of the Supreme Court could no longer be relied upon as the owner of the premises in lite, one Mr. Jankee, had given a '*droit de pre-emption*' to the complainant Ved Joorawon Ltd,

which the latter failed to exercise. As such, the agreement reached by the parties (Mr. Jankee and Ved Joorawon & Co. Ltd.), namely the '*droit de pre-emption*' no longer holds. The Appellant now wants to set up a shop in the premises *in lite*. The Appellant avers that the refusal of the Respondent to grant the BLUP based on a defunct agreement should be set aside.

The Statement of Defence filed by the Respondent merely reiterates the decision reached by it, namely, the '*droit de pre-emption*' (first option) in favour of the complainant, Ved Joorawon Ltd.

It has come out in the course of the proceedings that one Mr. Ramprakash Joorawon was party to a case before the Supreme Court where he objected against the application made by the Appellant to the Respondent. It is in this capacity that the Respondent had sent a letter dated 30 June 2014 to him informing him of its decision. He was later put into cause as Co- Respondent in the present matter.

In so far as the present proceedings are concerned, what this Tribunal has to adjudicate upon is whether the Respondent (the Council) was right to have based its assessment on the existence of a '*droit de pre-emption*' of the Co-Respondent.

At the outset, we could have seen this as being a restrictive assessment done by the Council and even as a fettering by the Council of its discretion. Yet, as it has been highlighted by the Respondent, one of the preconditions for the granting of a BLUP is that the applicant needs to have a 'clear title' and/or an authorization from the owner. The judgment of the Supreme Court is binding between Mr. Joorawon (the Co-Respondent) and one Mr. Mungur (who is the owner of the premises as it came out in the course of the proceedings). It has been suggested that the said Mr. Mungur is only a '*prete nom*' and he is not the real owner. This is an issue which has no relevance for the present appeal and we shall not dwell on this. What is of relevance is the consequence of the agreement which has been transcribed (Document B) and which is not only binding between the parties but also has the effect of being '*erga omnes*'. The Respondent, being a local authority, could not, in the face of this agreement, turn a blind eye to the obligation of the owner of the premises to give a '*droit de pre-emption*' to the Co-Respondent. The Appellant takes the stand that he has obtained an authorization from the owner of the premises to apply for a BLUP. In our view, this can tantamount an attempt to circumvent the obligation under the binding agreement, which the Respondent could not ignore. The Respondent cannot be faulted for having considered the Appellant's title to the property, which was clearly affected by an existing obligation of the owner to abide by the Supreme Court Judgment.

The Appellant attempted to bring in evidence that the Co-Respondent had failed to respond to the option that had been given to it and the agreement was thus no longer

applicable. Without going into the merits of the enforcement of the agreement between the parties, we note that a counter-valuation report was put in by the Respondent (Document R). This is an indication that the agreement reached before the Supreme Court was still a live matter between the parties. In such circumstances, the authorization given by the owner to the Appellant for the purposes of applying for a BLUP is in clear defiance of the agreement reached before the Supreme Court.

Being an authority that grants permits for land use within its territorial jurisdiction, the Respondent is duty-bound to look into the planning parameters that apply to a proposed development and, more importantly, at whether the legal parameters are observed. The Respondent cannot be faulted for having raised the lack of clear title of the Appellant as a ground to refuse the application for a BLUP. The appeal cannot be upheld in the circumstances and is accordingly set aside.

Delivered by:

Mrs. Vedalini Phoolchund-Bhadain, Chairperson

Dr. Yaswaree Mihilall, Member

Mr. Gerard M. L. Lepoigneur, Member

Date: 13 March 2020