

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 49/12

In the matter of:

Manviraj Singh Binda

Appellant

v/s

Moka/ Flacq District Council

Respondent

DETERMINATION

The present appeal dates back to 5th July 2010. It is against a decision taken by the then District Council of Moka/Flacq (hereinafter referred to as "the Council"), for having rejected an application made by the Appellant for a Building and Land Use Permit (hereinafter referred to as "BLUP") for the construction of a residential building consisting of ground and first floors. In a letter dated 11th June 2010 emanating from the Council, which refers in very vague terms to an "*application for Ground and First Floors at Shanti Nagar, Mare du Puits, Quatre Cocos*", the reason given for refusal was that the "Site lies outside settlement boundary and adjoins a wet land".

The appeal was initially lodged before the Town and Country Planning Board (TCPB). Following the enactment of the Environment and Land Use Appeal Tribunal Act 2012, this appeal was forwarded to the Tribunal in October 2012, which explains the presence of a bundle of documents already in the file. Pleadings were filed before the Tribunal. Both parties were legally represented at the hearing. The Appellant deponed under solemn affirmation and was cross-examined by Respondent's counsel. Mr. Goonjar deponed on behalf of the Council and was also subject to cross-examination.

We have duly considered the evidence adduced by both parties. From the outset it appears that the appeal is not defended. The case for the appellant, in essence, is that he should have been granted a BLUP for the construction of his house because his brother, Manbeeraj Singh Binda, was granted a BLUP by the same Council five years earlier and had already constructed his house on the adjoining plot, which is in fact the same plot of land as per the version of the Council and that the house is even closer to the wetlands. The appellant's case is also that the reason given by the Council for the refusal of the BLUP is not a valid one because the Council has granted BLUPs for other developments some as close or even closer to the wet lands. The Council for its part has not only filed a statement of defence which erroneously refers to another application altogether, albeit that of the appellant's brother, but at no point did it amend its statement of defence nor file a defence which related to this appeal despite the fact that the appellant's statement of case which was filed on record since 30th January 2013 makes a clear distinction between the appellant and his brother who are owners of a portion of land at Mare du Puits, Quatre Cocos . One would have thought that this should have prompted the Council to take a stand on their defence filed. Instead it was only in the course of the hearing that the representative of the Council candidly agreed that the defence of the Council had no connection whatsoever with the application made by the appellant. The salient points made by this witness however were that the appellant's property though being about 30 metres from the wetlands is still further away from the latter in comparison to his brother, Manbeeraj Singh Binda's property. He also confirmed that there is one such case of a new residential development which obtained a BLUP from the Council despite being, according to him, adjacent to the appellant's property but some 100 metres away from the wetlands.

To a question put by his counsel, the witness for the respondent stated that the appellant had no clearance from the Ministry of Environment. We believe that this evidence is of no value being given that this was not the reason given in the refusal letter. Therefore, whether there is a clearance from the Ministry of Environment albeit would have been a good point, adducing this evidence has no bearing since the Council has not been able to satisfy this Tribunal whether it has made any assessment of the merits of the present application which is the subject matter of this appeal. At no point in his deposition has the witness stated whether the refusal letter dated 11th June 2010 in fact relates to the application made by the appellant. This would have clarified matters as to whether the Council had considered the merits of the appellant's application, and after having considered the application, it took an informed decision to reject the application. Instead he demonstrated further to the Tribunal the state of confusion at the level of the Council in assessing the application of this appellant. To questions put to him by his own counsel, he stated that the refusal letter dated 11th June 2010 mentions the name Manviraj Singh Binda but that at the material time Manviraj Singh Binda did not own any building with ground and first floor. We pause here to analyze the refusal letter dated 11th June 2010. The way in which the letter has been drafted is not only unclear but has raised serious

doubts in our minds as to whether the Council had in fact been considering the application of Manviraj Singh Binda who had applied for a BLUP of a residential building or that it had been entertaining the application of Manbeeraj Singh Binda who had also applied for a BLUP but for the conversion of a residential building into a commercial, both being at Shanti Nagar. The Tribunal cannot surmise on these issues and the witness has not only failed to convince us that the Council considered the application and decided in its wisdom to reject it but he has not even attempted to clarify matters for us so that this Tribunal can make a proper assessment as to whether the Council has given due consideration to the application of the appellant at all. It was for the respondent to demonstrate to the Tribunal how it motivated its decision and prove its case, which we find that it failed to do. Even if we were to assume for one moment that the Council has considered the application of the appellant, the witness for the Council could not justify the stand of the Council when confronted with the disparity with which the Council considered the application for BLUP for residential building of Manviraj Singh Binda and that of Manbeeraj Singh Binda. He confirmed, to a question put to him by the Tribunal that the plots of both the appellant and that of his brother are outside settlement boundary and that the boundary has been existent as far back as 2008 (time when Manbeeraj Singh Binda applied for and obtained a BLUP for residential building) but yet again he was unable to provide an explanation as regards the inconsistent stand of the Council with regards the two applications.

What transpired throughout the hearing of this case is the total state of confusion at the Council surrounding the applications of the appellant and that of his brother. The Council's statement of defence, which unfortunately amounted to no defence, has left matters unresolved. The Council has not only failed convince us, from a procedural aspect, that it had given due consideration to the application made by the appellant but also from a legal aspect, the Council has failed to justify its stand for having taken diverging decisions with respect to application of the appellant and that of his brother.

Being given that the uncontested evidence reveals that the appellant's plot is about 30 metres from the wetlands, distance permissible for development as per the law and the existence of other legally constructed residential buildings in the immediate neighbourhood of the site *in lite*, we find no impediment in the appellant being allowed to construct his house. For all the reasons set out above, we allow the appeal and order the Council to grant the appellant the relevant BLUP.

Determination delivered on 5th November 2014 by

Mrs. J. RAMFUL

Vice President

Mr. V. Reddi

Assessor

Mr. S. Karupudayyan

Assessor