

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

**Cause No. : ELAT 1178/16**

**In the matter of:**

**MR. ROODRADUTH BOYJOONAUTH**

**Appellant**

**v.**

**DISTRICT COUNCIL OF SAVANNE**

**Respondent**

**In the presence of:**

**MR. CHANDRADEO MATOO**

**Co-Respondent**

**DETERMINATION**

The Appellant has lodged an appeal against the decision of the District Council of Savanne for having, on the 23<sup>rd</sup> March 2016, granted a Building and Land Use Permit to the Co-Respondent for the construction of a gymnasium and fitness centre at School Road La Flora. The grounds of appeal as contained in the notice of appeal filed on the 4<sup>th</sup> June 2016 and are the following: (i) No space for parking, (ii) Noise and (iii) Narrow road.

Although the Appellant initially stated that he was acting on behalf of other neighbours, it came out that he was acting alone and he finally decided to proceed in his own name. Several postponements were granted to the Appellant to secure the required proxy for him to act on behalf of his daughter, who was abroad and in whose name he had been acting. The Appellant was finally allowed to proceed with his appeal.

At the very outset, the statement of defence filed on behalf of the Respondent is to the effect that prior to approving the application it had ensured that the parking facilities

provided on site were adequate for the proposed activity, the council had imposed conditions for the developer to take measures to avoid disturbance and noise nuisance in the neighbourhood.

The Appellant deposed to explain the nuisance that he is allegedly facing due to the presence of a gymnasium in the close proximity of his house and of a school. He expressed serious concern on the impact of such activities on school children as well as on the activities that he proposes to hold in a 'meditation centre' that he will set up in the house behind his. Tribunal noted that he was not consistent in his testimony of the actual incidents that caused nuisance. He was also not consistent on the operation of the 'meditation centre'. The explanations given by the Appellant on the setting up of such a meditation centre were most inconsistent. It came out, following a site visit effected by the Respondent and in the presence of the Appellant and Co-Respondent, that the premises which was referred to as a meditation centre was in fact a house which was unoccupied and unfinished, where there was no amenity that reflected the existence/or potential existence of such a centre. The report of the site visit dated 28 September 2017 was produced as Document C. This report also states that the building referred to by the Appellant as being his daughter's building, had not been issued with a building and land use permit and had no characteristic of a meditation centre.

The Co-Respondent called as a witness the registered usher, Mr. Iyempermall, who produced a 'memorandum of constat' (Document D) which is to the effect that the entrance to the Appellant's house is found along Kutwaroo lane and not along School lane, where the Gymnasium is found. The daily activities of the Appellant are to be done from Kutwaroo lane. The development that is objected to is situated along School lane and the building opposite the Gym is an empty and unfinished construction. The gym as constructed is a soundproof building. This memorandum also shows that the premises where the gym is to be housed caters for a parking space for at least four vehicles.

The Co-Respondent, Mr. Matoo, deposed and produced several documents showing that he had obtained the green light from all persons concerned, namely, Miss Anoosha Ramkorun, owner of the building opposite the gymnasium (Document H), the head master of "la Flora Government School" stating that the gym is not a source of nuisance to his school (Document G), a list of neighbours residing at School Lane, la Flora (Document F). The Co-Respondent also produced Document E, an architect's report drawn following a site visit, which established that the construction of the gym had been done as per approved plans and a certificate from a civil engineer, drawn following a site visit, and which certified that the building where the gym operated was soundproof.

In view of all the above elements, and more specifically the evidence of the representative of the Respondent following his site, and based on the evidence put forward by the Co-Respondent, we find that the Respondent's decision to grant the

permit to the Co-Respondent is not flawed. The grounds of appeal as listed by the Appellant in his notice of appeal have not been substantiated and are only expressions of his apprehension. The Appellant's locus standii in the matter has been seriously shaken as he has been unable to establish that he is the neighbor who is affected by the daily activities of the gym. His whole version on the setting up of a meditation centre in the premises belonging to his daughter has been seriously shaken by the evidence of the representative of the District Council who visited the premises at the request of the Tribunal. He reported that there was no indication of any such activity conducted there, nor proposed to be conducted. No permit applied for, nor issued for same. The building was not even completed. The letter produced by the Co-Respondent on the authorization given by the owner of the premises speaks for itself. The Appellant, who claimed to be acting in the name of his daughter changed his version as the case unfolded and conceded that the owner of the premises where the so-called meditation centre was to be run was in fact not his daughter. The Appellant has not been found to be a credible witness and his whole evidence cannot be relied upon.

The Respondent has imposed special conditions in the Building and Land Use Permit (Document A) for the operation of the proposed development. We have found no reason to interfere with this decision. We accordingly set aside the appeal.

Delivered by:

**Mrs. V. Phoolchund-Bhadain, Chairperson**

**Mr. M. R Guiton, Assessor**

**Mr. B. Rajee, Assessor**

Date:

24 July 2018