

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1462/17

In the matter of :-

Mahadev Persand

Appellant

v/s

The District Council of Flacq

Respondent

DETERMINATION

1. The present appeal is against a decision taken by the District Council ("the Council"), for having refused permission for excision of a plot of land of an extent of 147.5 sq.m from a larger plot of an extent of 295 sq.m as per title deed for residential purpose at Lot 313, Morcellement VRS, Plaine Des Gersigny, Central Flacq. The reason for refusal as stipulated by the Council in a letter dated 23rd May 2017 is that
"As per conditions of the title deed, no further subdivision should be allowed"

2. The Appellant, not legally represented, deponed and was cross-examined by Counsel for the Respondent. The Council's representative deponed but the appellant chose not to cross-examine him. The Appellant's case is essentially based on the fact that it is the only property he owns and he wishes to subdivide it so that he can allow his daughter to build her house and legally own half of the property and the other part can be in his name. The Council's case essentially rests on the fact that one of the conditions attached to the title deed does not allow for subdivision and that the Council cannot go against the condition as laid down in the title deed.

3. We have duly considered the evidence placed before us. The Council's stand is clear: it went directly on the condition attached to the Appellant's title deed. We believe that while the Council should take into account the title deed in its totality, and since there is a covenant, that is, a condition attached to the title deed, the Council is entitled to take note of it. However, whether the Council is right to have concluded that it is bound by the restrictive covenant and thereby precluded from considering the merits of the application, we do not believe that this is the case. The Council is not a party to the contract of sale between Constance La Gaiete Co. Ltd and the Appellant, Mr. Mahadev Persand. Yet in view of the wide powers vested in it by law, it has a supervisory and regulatory jurisdiction over all development whether private or public. The Council decides on applications using planning law principles. Being the local authority it is vested with statutory powers to allow development in accordance with planning permission, cannot fetter its own discretion by invoking a condition to a contract that has not been raised by a party benefitting from the restrictive covenant. It would be contrary to policy, and also absurd, if planning laws and regulations were to be restricted by private rights and obligations.

4. The duty of the Council specifically to carry out a proper planning assessment to see whether the VRS Morcellement where the subject site lies has been developed and whether allowing such an excision would constitute overdevelopment of the site or not bearing in mind the current state of affairs on the locus, whether the proposed development can be allowed without putting undue pressure on the infrastructure, waste disposal system or environment at this given point in time. The request for excision within the morcellement coming from the proponent does allow an overall assessment by the Council of the impacts associated with it but this was not done. If the EIA licence of the morcellement mentions there should be no subdivision, could there be an amendment of the EIA licence upon request by the individual plot owners?

5. This question, we believe, is pertinent especially as the Title deed stipulates that the plot of land is to be used and disposed as the purchaser deems fit. Although the title deed mentions one of the conditions of the EIA being that there should be no further subdivision, at page 4 of the Title deed,

“...l’acquireur declarant bien connaitre l’objet de la presente acquisition et en etre satisfait-

Pour l’acquireur en jouir faire et disposer comme bon lui semblera et comme chose lui appartenant en toute propriete au moyen des presentes a compter de ce jour...”

6. The Tribunal needs to be apprised of whether there was likely to be overdevelopment of the sites, and whether allowing the subdivision would put pressure on the infrastructure, environment and water disposal system. This is crucial evidence for the Tribunal to make an assessment on the planning merits of the case, which has not been forthcoming from the Council. Therefore in the absence of such crucial evidence, a final conclusion cannot be reached by this Tribunal. We accordingly find that in order to meet the ends of justice the matter is remitted back to the Council to make an assessment as per planning guidelines after effective analysis of the matters that are raised.

Determination delivered on 29th March 2018 by

Mrs. J. RAMFUL
Vice Chairperson

Mr. Le Poigneur
Assessor

Mrs. Rawooteea
Assessor