

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

873/15
ELAT ~~873/15~~ *J Rambe*

In the matter of :-

Devi Vijayantee Mala Ramduti *DR*

Appellant

v/s

District Council of Grand Port

Respondent

DETERMINATION

1. The present appeal is against a decision taken by the District Council of Grand Port (hereinafter referred to as "the Council"), for having rejected an application made by the Appellant for a Building and Land Use Permit (BLUP) for the construction of a two storeyed building over a plot of land of the extent of 1133.73 sq.m (27 perches) at Manilall Kistoo lane, Midlands. The decision of the Council was communicated to the Appellant by a letter dated 14th April 2015, which stipulated that the Council rejected the application on one ground "*The site lies outside settlement boundary at approximately 350 metres and is found within the catchment area of the Midlands Dam.*" The appeal was lodged before the Tribunal on the 5th May 2012. The Appellant, an elderly lady and *inops consili*, deponed under solemn affirmation before the Tribunal. Counsel for the respondent chose not to cross-examine her. The Planning and Development Officer deponed on behalf of the Council. We have duly considered all the evidence placed before us including submissions of Counsel for the respondent.

I. CONTEXT ANALYSIS

2. The proposed development site lies within an agricultural morcellement at Manilall Kistoo Lane, Midlands. It is of an extent of approximately 27 perches in a morcellement by Trio Investment which was approved by the Ministry of Works on 14th July 1983. As per the title deed, there are general conditions attached to the lot such as *“Que le dit terrain devra etre utiliser par l’acquereur, ses ayant droit, et ayant cause, pour l’agriculture.”* There are special conditions also attached to it, namely that the land is to be used **solely** for agricultural purposes, and that no further subdivision will be allowed below 25 perches. The site was acquired by the appellant on 11th June 1991.

II. THE PLANNING INSTRUMENTS AND THE LAW

3. The site being situated in Midlands the applicable outline scheme is **Planning Scheme of Grand Port** and the applicable Planning Policy Guidance is **PPG1** issued under the **Planning and Development Act 2004**. Under the **Outline Planning Scheme of Grand Port**, the following policies are of relevance:

(I) Policy SD4: Development on land Outside Settlement Boundaries

Development would be regulated by **Policy SD4** where there is presumption against development for site located outside settlement boundary unless on Hardship case and/or other specific criteria but the land, should not be located within duly approved agricultural morcellement and ought to have been acquired prior to 30th September 2005.

(II) Policy H1: Developments in or on the edge of minor settlements

In or on the edge of minor settlements for which no settlement boundaries have been defined, development should be permitted subject to the clustering principles and sequential approach outline in SD1, SD2 and SD3.

A minor settlement is defined as “one having more than fifteen houses in a more or less compact form and which shows potential in growing into proper settlement.”

(III) Policy EC2: Conservation of Water Resources

Development within 30 metres of the high water levels of the dams and adjacent to rivers, rivulets, streams, open canals or within the catchment areas should not *normally* be permitted, unless the developer has obtained written agreement from the Water Resources Unit/Ministry of Public Utilities and the Sanitary Authority.

III. THE ISSUES

4. The Appellant’s statement of case essentially makes averments to the effect that the plot of land was purchased by the Appellant 25 years ago with the intention of constructing a residential building to house her children when they return to the country after their university studies and that she has no alternative place to give to her children for residential purposes. It is also averred that there are residential buildings in the vicinity which would fall within the catchment area and that provision has been made for electricity and water supply.

5. It is not denied by the Appellant that her property lies within the catchment area of the Midlands Dam and that it lies outside the settlement boundary by 350 m. While her version from her statement of case referred to matters which are of little relevance to the present hearing which concerns the planning merits of the case, her bone of contention, from what we have understood her to mean, is that there are other residential properties in the vicinity and that services such as water and electricity are available. She did not however substantiate her case with any supporting document or witness.

6. Apart from the fact that the site lies within a residential morcellement, the Council's representative produced an extract of the Development Management Map of the Ministry of Housing and Lands to substantiate the case of the Council that the subject site is found outside settlement boundary by 350m and that it is found within the catchment area of the Midlands Dam. The representative of the Council explained that the Council is aware that there is a minor settlement there but that the Council has not given any BLUP for residential developments although there have been applications. She also explained that those few houses that may be having a BLUP must have received their permits before these policies came into force.

7. The policy **SD4** is applicable in this case as the land *in lite* is outside defined settlement boundaries but the proposed development cannot be allowed as the land is agricultural land. Policy **H1** also cannot be applied as it is applicable to areas where there is no defined settlement boundary. Policy **EC2** is applicable in this case but only to state that due to conservation of water resources, developments within 30 m of the high water level of dams should not be permitted unless the developer has certain clearances from the relevant bodies. To a question put by the Bench, the representative of the Council explained that even if the Council were to explain to the applicant the clearances that needed to be procured by her under Policy **EC2**, her application would not be considered favourably by the Council because of the fact that the proposed development was 350m outside the settlement boundary.

8. The Appellant not having contested the grounds of refusal raised by the Council and not having produced any other evidence in support of her case, the Tribunal accepts the un rebutted evidence of the Council. The Council has rightly applied the Policies **EC2** and **SD4** of the **OPS** to refuse the application for residential development since the site is well outside settlement boundary and found within the catchment area of the Midlands Dam. As far as the other residential buildings in the vicinity of the catchment area are concerned, the Council has deponed that no BLUP has been granted since the policies are in force.

9. The Tribunal takes on board the fact that there is already pre-existing settlement within the catchment area of the Dam, since this is not denied by the Council. This cannot motivate our finding in favour of the Appellant on account of this putting the appellant in a less favourable situation compared to those who have acquired a BLUP prior to the Policies being in force. The policies have been implemented for a reason and that is to regulate development according to planning norms. The justification for Policy EC2 is that the buffer of Dams is needed to ensure that the consumption of water is safe for human beings and that *“Deforestation of the catchment areas causes an increased “peakiness” in surface water run-off, as does increasingly dense development, with a consequential increase in the volume of water that will be lost to the sea and a reduced dry season flow rate.”* Therefore these policies are there to ensure the protection of groundwater so that it poses no threat to the health and quality of life of people.

10. For all the reasons set out above, we find that the decision of the Council was unchallenged and well-motivated. The appeal is set aside. No order as to costs.

Determination delivered on 31st October 2018 by

Mrs. J. RAMFUL

Vice Chairperson

Mr. B. Rajee

Member

Mr. P.Manna

Member