BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 2059/21

In the matter of:

1. **Mr. Sailesh Gokool**
2. **Mrs. Soobitra Gokool**
3. **Mrs. Kisan Gokool**

Appellants

v.

Ministry of Housing and Land Use Planning

Respondent

Ruling

The Appellants have appealed against the decision of the Respondent for having refused to grant the application for subdivision of a plot of land, situated at Palma, Quatre Bornes, for residential purposes. The sole ground of refusal, as contained in decision communicated through the National Electronic Licensing System (NELS) on the 8th September 2021, is that the "*Site lies within gazetted boundary of Palma SSIP*". (It is noted that the Notice of Appeal lodged at the Tribunal by the Appellant makes reference to the decision of the Ministry of Housing and Land Use Planning dated 6 October 2021). Two Co-Respondents in the case, the Ministry of Agro-Industry and Food Security on one hand, and the Irrigation Authority, on the other, were put out of cause, thus, there is no need to address the plea in limine raised by Co-Respondent No.1.

What remains to be thrashed out at this stage is the objection raised by the Appellants to the amendment proposed to be made by the Respondent to its Statement of Defence, which purports to add three sub-paragraphs 5 (a), 5 (b) and 5 (c) as follows:

(a) Under section 5(2)(b) of the Morcellement Act, no person shall make an application to the Morcellement Board for a morcellement permit unless, inter alia, where applicable, an authority for land conversion under the Sugar Industry Efficiency Act has been obtained in respect of the proposed morcellement;

(b) Appellant made an application for Land Conversion Permit for an extent of 1046m^2 at Palma for residential purposes (subdivision among co-owners); and

(c) The said application was rejected by the Land Conversion Committee held on 02 June 2022 as the site is found within gazetted irrigation zone.

The objection of the Appellants is, as per the submission of counsel, that the Respondent, by adding the above three sub-paragraphs, is trying to bring in new grounds of refusal through the backdoor, because at no point were the Appellants communicated with the fact that their

application was incomplete. Counsel submitted that, through the proposed amendment, the Tribunal is being asked to substitute itself to the Respondent and to assess the application anew to cure the lacuna in the process before the Respondent, and that there is a possibility of injustice to the party being subjected to the amendment.

Reliance was placed by the Appellant on the case of **Harel and Anor v Société Jean Claude Harel and Cie and ors and Société du Patrimoine 1993 MR 251** to submit that the proposed amendment should be refused based on the decision in Harel, in particular the part stating that *"The Court will not allow an amendment which will prejudice the rights of the opposite party.....since the other party will suffer an injustice or injury which could not be compensated..."* The Appellants' position is that the assessment of the appeal needs to be done on what is before the Tribunal only.

The Respondent, on the other hand, emphasised the fact that the hearing has not yet started, no evidence has been adduced and on Rule 17 of the Supreme Court Rules 2000 which provides as follows:

> *"The Master may grant the amendment of any pleading and the Court may at the hearing of a case grant an amendment of any pleading in such manner and on such terms as may be just and reasonable for the purpose of determining the real question in controversy between the parties."*

We have considered the submissions of counsel for the respective parties.

The material elements that need to be considered are whether the proposed amendment addresses a 'real issue in controversy which has to be determined' on one hand, and 'whether no prejudice would be caused' on the other hand.

In the case of **C. Marday & Ors v B. Marday i.p.o N. Marday & Ors 2008 SCJ 30**, The learned Judge made the following statement: *"I bear in mind that the primary object of the Court is to decide the rights of the parties and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights"*, and the Court allowed the proposed amendment on the ground that it was necessary and relevant for the purpose of resolving the real question in controversy between the parties and will help the Court in determining the issue.

The line of authorities cited by the Respondent and which are relevant for us to decide are set out hereunder:

In **Captain K. Bronsema v Mascareigne Shipping and trading Co. Ltd. 1985 MR 101**, the Court allowed an amendment by stating that: *"It is beyond dispute that the court will not refuse to allow an amendment simply because it introduces a new case but it will do so where the amendment would change the action into one of a substantially different character which would more conveniently be subject of a new action.... In the present case, the proposed amendment will introduce a new cause of action but not one of a totally different character. A new cause of action will arise but it will not be inconsistent with the issue raised in the original statement of case".*

In **Best Luck (Mauritius) Ltd v Murdhen N. & Anor 2013 SCJ 335,** the Court stated that: *"... The Court would not allow an amendment which is substantial and raises new issues which*

*are inconsistent with those found in the statement of claim (**Re Tive Hive & Ors. v Kam Tim 1953 MR 80**). In that context a distinction is to be made between an amendment which purports to clarify the issue for determination and one which raises a new or substantial issue for the first time...".*

In a ruling given in the case of **Earl Seymour Saks v Sunil M. Hassamal 2014 SCJ 291,** the guiding principles were reiterated: *"...the Court will exercise the discretion given under Rule 17 judiciously whilst taking into account the following: (a) the nature of the proposed amendment; (b) the stage at which the motion to amend is made; (c) the purpose for which it is made; and (d) whether it is likely to cause any prejudice to the other party which may not be compensated by an order for costs".*

In the present matter, the hearing has not started yet and no evidence has been adduced. The proposed amendment seeks to expatiate on the process that was followed and which led to the rejection of the application. It does not, in our view, amount to the introduction of new grounds of rejection *'per se'*, or at the very least, it is not inconsistent with the plea of the Respondent. The submission made on behalf of the Appellants that this will cause prejudice to them does not hold in as much as the proposed amendment is sought prior to the start of the hearing and no evidence has been adduced and, more importantly, the Appellants will have the opportunity to amend their statement of reply, if they deem it necessary, to rebut or explain their position on the issue raised.

True it is that the refusal letter refers to one ground of rejection of the application, which is that the site lies within the gazetted boundary of the Palma SSIP, and the appeal lies against that said decision. Yet, the contents of the proposed amendment bring before the Tribunal the process that the Respondent considered and the layers of authorisations, or lack thereof, that were considered. It is our view that these are matters that are relevant for the purpose of determining the real question in controversy between the parties. We do not subscribe to the position that the Respondent must be taken to task for omitting to state those elements in the statement of defence filed initially. It is apposite here to quote the dictum of **Bower L.J in Copper v Smith (1883) 26 Ch. D 700 pp 710-711** cited in the ruling delivered in **C. Marday & Ors v B. Marday ipo N. Marday & Ors 2008 SCJ 30:**

"I know no kind of error or mistake which, if not fraudulent or intended to overreach, the Court ought not correct, if it can be done without prejudice to the other party. Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy, and I do not regard such amendment as a matter of favour or grace.... It seems to me that as soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy, it is as much a matter of right on his part to have it corrected if it can be done without injustice, as anything else in the case is a matter of right."

Finally, what is sought to be amended here, is not the ground of refusal, but the statement of defence of the Respondent with a view to set out the process that led to the decision that is contained in the refusal letter.

In view of the above, we overrule the objection taken by learned counsel for the Appellant and exercise our discretion to allow the amendment of the statement of defence.

Delivered on 18 January 2024 by:

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

Mr. R. Acheemootoo, Member .....

Mr. S. Moothoosamy, Member .....

For Appellants: Mr. K. Ramasamy, of Counsel

For Respondent: Ms. P.D. Punchoo, State Counsel
Mrs A. Auchoybur, State Attorney