

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No. : ELAT 343/13

In the matter of:

MR. NITIN KUMAR POOLAY & MR. RAJESH SINGH POOLAY

Appellants

v.

- 1. THE MINISTER OF LOCAL GOVERNMENT AND OUTER ISLANDS**
- 2. THE MINISTRY OF LOCAL GOVERNMENT AND OUTER ISLANDS**
- 3. MUNICIPAL COUNCIL OF QUATRE BORNES**

Respondents

In presence of:

FLUTE DE PAON LTD. REPRESENTED BY MR. D. SEVATHIAN

Co-Respondent

RULING:

The Respondents No. 1 and 2 have raised a plea in limine litis to the effect that this Tribunal has no jurisdiction to entertain the present appeal and that the appeal be set aside. This proposition rests on the following grounds: (1) The present Tribunal has no jurisdiction to look into decisions taken by the Minister, its jurisdiction having been conferred to it by section 117(14) of the Local Government Act 2011 (LGA) coupled with section 4(1)(a)(ii) of the Environment and Land Use Appeal Tribunal Act 2012 (ELUAT). (2) The Minister is empowered by section 117(12) of the Local Government Act to take decisions and that any person aggrieved or dissatisfied by this decision may seek the proper recourse by way of judicial review, but not by way of appeal before this Tribunal.

It is appropriate at stage to set out the legal provisions that govern the appellate jurisdiction of the ELUAT. This is contained in:

Section 4 of the ELUAT Act 2012, the relevant part being “*The Tribunal shall hear and determine appeals....from a decision of a Municipal City Council, Municipal Town Council or District Council under section 117(14) of the Local Government Act 2011*” (LGA).

Section 117(14) LGA 2011 which provides that “*any person aggrieved by a decision of a Municipal City Council, Town Council or District Council under subsections (7)(b), (8)(b) or (12) may within 21 days ...appeal...*”

Section 117(12)(b) LGA 2011 sets out the powers of the Minister: “*The Minister (i) shall have a droit de regard on any decision or recommendation made by the PBMC, and (ii) may direct a local authority to refer a particular application made to it for determination by him where he considers that it is necessary or expedient in the public interest to do so.*”

By virtue of the wording of section 117(14) LGA, it seems to extend the jurisdiction of the ELUAT to the Minister’s decision taken under section 117(12) LGA. However, a closer reading shows that the decision taken by the Minister under section 117(12) LGA is an exercise of his discretion and is based on his discretionary assessment of what public interest calls for. The plea in limine questions the power of the ELUAT to review such a decision taken by the Minister.

We are of the view that although the legislator has deemed it fit to include the decisions taken under section 117(12) LGA in those that may be subject to appeal under section 117(14) LGA, this does not extend to the decisions of the Minister. The rationale for this position is that it is not within the powers of the ELUAT to assess the discretionary power of the Minister. This is a matter that calls for a judicial review remedy for which this Tribunal has no jurisdiction. In the exercise of its appellate jurisdiction, the ELUAT, which is a specialized tribunal, makes an assessment of the decision taken by the local authority (or other authority as listed in the ELUAT Act 2012) taking into account the planning norms (i.e planning legislations and instruments in force) and environmental issues related to a development.

Therefore, although section 117(14) includes the decisions by the Minister taken under sub-section 12, we are of the view that this Tribunal cannot not tread into the realm of judicial review by assessing the discretionary powers of the Minister.

For this reason we allow the plea in limine litis raised for lack of jurisdiction of the ELUAT in so far as the appeal made against Respondent1 No.1 and 2 is concerned. The appeal against Respondents No.1 and 2 is therefore set aside.

As regards Respondent No.3, it is admitted that the decision under appeal emanates from the Minister, who referred it to the Council for the conditions to be imposed and eventually to issue the BLUP, the latter being the sole authority that can issue BLUP. It has also been stated on behalf of the Council that the latter is bound to abide by the directives issued by the Minister in accordance with the provisions of section 117(12) LGA 2011, so much so that they have no say in the decision itself. They only impose conditions and issue the BLUP.

The jurisdiction of the ELUAT is not questioned in relation to the BLUP issue by Respondent No.3. The appeal against Respondent No.3 can proceed in so far as it lies against the conditions imposed by it in the BLUP.

Delivered by:

Mrs. V. Bhadain, Chairperson ...

Mr. V. Reddi, Assessor

Mr. S. Karupudayan, Assessor

Date: 29th July 2016