BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No. : ELAT/62/12

In the matter of:

ASSOCIATION DES PROPRIETAIRES DE CARLOS

Appellant

v.

THE BLACK RIVER DISTRICT COUNCIL

Respondent

In the presence of:

1. **SUNSETVIEW IN PARADISE LTD.**
2. **BHUNJUN &PARTNERS LTD.**
3. **THE MINISTER OF ENVIRONMENT AND SUSTAINABLE DEVELOPMENT**

Co-Respondents

RULING

The Appellants lodged an appeal before the Town and Country Planning Board (TCPB) on the 9th October 2010 against the Respondent for having issued a BLUP to Co-Respondents No.1 and 2, Sunsetview in Paradise Ltd. and Bhunjun & Partners Ltd. respectively. The appeal has been transferred to the Environment and Land Use Appeal Tribunal (ELAT) following the setting up if this Tribunal in 2012.

Co-Respondents No.1 and 2 have raised a preliminary point which reads as follows: *'this Tribunal has no jurisdiction to grant the relief sought, namely the making of a declaration as to whether the decision of the council was lawful or not and, even if it does grant the relief (which it should not), the declaration has no useful purpose'.*

The position of Co-Respondents No.1 and 2 (Sunsetview in Paradise Ltd. and Bhunjun & Partners Ltd.), which is concurred by Co-Respondent No.3, (the Minister of

Environment and Sustainable Development) as well as the Respondent (the Black River District Council), is that the construction has been completed and the property been sold to bona fide purchasers. As such, the prayer would not bring any relief at all. The relief sought by the Appellant, in effect, amounts to asking the Tribunal to make a declaration, which this Tribunal has no power to do. Even if it did, such a declaration would serve no purpose.

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

It is not disputed that this Tribunal has jurisdiction to hear the appeal directed against the decision of the Respondent for having, as per the averments of the Appellant, granted a permit without considering whether the Co-Respondent had been issued with a valid EIA licence or not. It is at the hearing of the merits of the appeal that the issue of the granting of the EIA licence and the propriety of this decision can be thrashed out.

The preliminary point raised at this stage is as regards the jurisdiction of this Tribunal to grant a 'declaratory relief' and the use of such declaration, if made.

It conceded by the Appellant that the construction for which the BLUP has been granted has been completed and the property has been sold. The outcome of the prayer sought by the Appellant is rightly questioned. The prayer sought is for the Tribunal to revise the decision of the Respondent and the approval granted by the latter to be cancelled for not having complied with the provisions of the law.

The intervention of this Tribunal will not set the clock back, the construction having been completed. The Tribunal is in effect being asked to make a declaration that the decision to grant the permit was wrong.

We agree with the submission that the declaratory relief is a 'judicial review remedy' that lies within the discretionary powers of the Supreme Court. Other lower jurisdictions, namely the District Courts and the Intermediate Court can only make such orders for the enforcement of the rights of the parties as pronounced by those jurisdictions, even if they are in the nature of an equitable remedy. The power to make such equitable relief is confined specifically to an ancillary order made by the Court (section 104(2) Courts Act). This power has not been extended to the ELAT by the ELAT Act 2012 although the legislator has deemed fit to extend certain powers that were originally within the sole jurisdiction of the Supreme Court to the ELAT, namely the orders provided in section 4(2) of the ELAT Act, which include an order in the nature of an injunction.

Secondly, the purpose of such a declaration calls for our attention. The averment that the construction has been completed and the property has been sold off to bona fide purchasers, as contained in the statement of defence of Co-respondents No.1 and 2 has not been disputed by the Appellant.

Indeed, neither can the construction nor the transfer of the property through sales agreements with third parties be undone. There would be no useful nor practical purpose to declare whether the permit that allowed the construction to be started was lawful or not, nor the revision or cancellation of the said permit be practical at this stage.

We take on board the position of the Appellant who expressed concern on the whether 'large entities can be held unaccountable and free from clear and important requirement of the law, namely that of and EIA licence'. However, it is premature for us to go into the assessment of whether there had been an EIA licence or checking the validity of the EIA licence or even assessing the legality of the permit at this stage. The preliminary point raised addresses the purpose of the appeal, being given the impracticality of any furtherance of its outcome.

Hence what has been questioned, and found to be the right approach, is that it serves no practical purpose and is thus an academic exercise.

The dictum of **Lord Justice Clerk Thomson in Mc Naughton v. Mc Naughton's Trs (1953) SC 387, 392**, considered in **Planche v. Public Service Commission & ors. 1993 SCJ128** is the guiding principle and is reproduced below: "*Our courts have consistently acted on the view that it is their function in the ordinary run of contentious litigation to decide only live, practical questions, and they have no concern with hypothetical, premature or academic question, nor do they exist to advise litigants as to the policy which they should adopt in the ordering of their affairs. The courts are neither a debating club nor an advisory bureau.*" This case was cited in **Ramphul v. The Local Government Service Commission 1995 SCJ 79:** "*Courts of law deal with live, practical questions not hypothetical, premature or academic ones'.*

We must also make one observation. The Appellant's reply to paragraph 15 is that it is imperative to revoke the BLUP issued to the Co-Respondents for the reason that the Appellant has reason to believe that they intend to undertake further construction on the same premises. We can only highlight that this reason does not stand, as any further construction would require an application for BLUP which the Respondent will have to assess on its own. The present appeal is in relation to the cancellation of a permit issued in respect of six residential blocks which have already been completed. Potential expansion which is apprehended by the Appellant is a matter which does not fall within the purview of this appeal.

We therefore uphold the point raised by the Co-Respondents at paragraph 15 of their statement of defence, namely that the appeal serves no purpose as the construction has been completed.

We do not exclude that the Appellant organization may consider other avenues to seek remedy. But the remedy sought by the Appellant in the present appeal is not within the

jurisdiction of this Tribunal. The preliminary point raised is upheld and the appeal cannot proceed.

Delivered on 12th January 2016 by:

Mrs. V. Bhadain	**Mrs. A. Jeewa**	**Mr. V. Reddi**
Chairperson	**Assessor**	**Assessor**