

IN THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1470/17

In the matter of:

Chateau Benares Ottroumaye Kazagam

represented by Mr. M. Mardaymootoo

Appellant

v/s

District Council of Savanne

Respondent

IPO

- 1. Louis Sylvio Nanon**
- 2. Mootoosamy Deva**
- 3. Selvamane Marday**

Co-respondents

RULING

1. The present appeal is against a decision of the District Council of Savanne (hereinafter referred to as "the Council"), for having rejected an application made by the Appellant for a Building and Land Use Permit (hereinafter referred to as "BLUP") for the construction of a place of worship to be used as Kovil at Chateau Benares, Riviere des Anguilles. The grounds for refusal are set out in a letter dated 24th July 2017 but received by the Appellant on the 27th July 2017, as per the admission of Mr. M. Mardaymootoo, representative of the Appellant.

2. The Co-respondent raised a two-limbed plea *in limine* in their Amended Statement of Case but at the sitting of the 4th February 2021 decided to maintain only the first limb. The Respondent joined in the motion of the Co-Respondent. The motion is that the present appeal has been lodged outside the statutory time frame of 21 days provided by s.5(4) of the Environment and Land Use Appeal Tribunal Act in as much as the Appellant who was notified of the Respondent's refusal to grant a BLUP for the proposed place of worship on the 27th of July 2017 lodged the appeal on the 17th August 2017. The Co-Respondent therefore moved that the present appeal be set aside. It is not disputed by Counsel appearing for the Appellant that the appeal is out of time. He submitted that the appeal is out of time by one day and has urged the Tribunal to exercise its discretion to allow the appeal. We have duly considered the submissions of all Counsel.

3. The proceedings of the Tribunal are regulated under **section 5** of the **Environment and Land Use Appeal Tribunal Act 2012 ["ELAT Act"]**. **Section 5 (4) (a)** provides "*Every appeal under section 4 (1) shall, subject to paragraph (b), be brought before the Tribunal by depositing, with the Secretary, a notice of appeal in the form set out in the Schedule, setting out the grounds of appeal concisely and precisely, not later than 21 days from the date of the decision under reference being notified to the party wishing to appeal.*" [The stress is ours]

4. The notice of appeal clearly shows that the appeal was lodged on the 17th August 2017 and the date of notification of the decision as inserted by the Appellant at paragraph 4 of the statement of case is the 27th July 2017. The record shows that the Appellant has always been legally represented since its notice of appeal and statement of case have been drafted by the attorney. It is to be noted that it is not contested by the appellant's counsel that the appeal was lodged at the Tribunal 22 days after the Appellant received notification. Counsel appearing for the Appellant urged the Tribunal to exercise its discretion to accept the appeal in view of the fact that the representative of the Appellant is illiterate, that it was out of time by one day and that there are exceptions to the rule that an appeal has to be lodged within the prescribed timeframe.

5. The provisions of **Section 5(4) (a) of the ELAT Act** clearly state that all appeals are to be lodged not later than 21 days from the date of notification to the party wishing to appeal such that there can be no confusion as regards the time limit within which to lodge an appeal. This provision has been drafted in mandatory terms using the words “*shall...be brought*” and “*not later than 21 days*”, which show that the intention of the legislator was in fact to give to the Tribunal in this specific context no discretion to travel outside the time frame provided by the law. We believe that the drafting language used by the legislator under **section 5(4) of the ELAT Act** is mandatory and not directory.

6. Although the appeal is outside the prescribed time frame, and this is not contested by the Appellant, we note that there was never any motion for leave to appeal outside the time limit and this despite it being legally assisted. No valid reason has been provided as to why the Appellant is seeking the Tribunal to exercise its discretion to accept this appeal except it was submitted by counsel appearing for the Appellant presented us with an array of caselaw, mostly judgments of the Supreme Court, in support of the position that courts have been prepared to exercise their discretion and consider new exceptions to this “so-called established principle” and that the courts are also willing to look at the grounds that are being brought before the court. Learned counsel referred to the case of **Ramtohul v The State [1996] MR 207** in support of the contention that the Tribunal could exercise its discretion to consider certain new exceptions to the established principle. We do not believe that we have such wide discretion but even if we were to accept that we do have it, we are not provided with any ground as to why this case is to be treated with exception. It is in fact well settled that the golden rule regarding delays governing appeals is that time limits in such matters are peremptory unless an Appellant can show that the fault is not his, nor that of his legal advisor. The Appellant has been legally assisted right from the lodging of the appeal. The representative of the Appellant is one of the several members of that association. He stated before the Tribunal that he did not understand the contents of the letter since he does not understand English but gave no explanation as regards the other members he could or should have turned to.

7. It was submitted by Learned counsel appearing for the Respondent that the Tribunal strictly has no discretion to accept an appeal outside the statutory time frame. Under the **ELAT Act**, the Tribunal has the prerogative to regulate its proceedings. Although we agree that drafting language used in **Section 5(4) (a) of the ELAT Act** *supra* is clear, we believe that there may be some very exceptional circumstances which may justify allowing an appeal outside the time frame to meet the ends of justice, for example during the national confinement.

8. For all the reasons set out above, we find that the point has been rightly taken by the co-respondent and the respondent. The appeal is set aside. No order as to costs.

Ruling delivered on 4th May 2021 by

Mrs. J. RAMFUL-JHOWRY

Vice Chairperson

Mr. P. MANNA

Member

Mr. S. BUSGEETH

Member