

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1719/18

In the matter of :-

Avinash Rao Luckhoo

Appellant

v/s

The City Council of Port Louis

Respondent

RULING

1. This is an appeal against a decision taken by the City Council of Port Louis [“the Council”], for having refused to the Appellant the granting of a Building and Land Use Permit [“BLUP”] for the conversion of an existing warehouse into an indoor facilities (operation of other sports facilities) at No. 1 (A), Praslin Street, Cassis, Port-Louis. The hearing of the case having already started, in the course of cross-examination, Counsel for the Respondent put it to the Appellant that the lease agreement as regards the warehouse is between Rey & Lenferna Ltd, the owner of the warehouse, and Soccer Five Company Ltd, the Appellant’s company’s name. The Appellant answered in the affirmative. The Appellant agreed that he did not enter into a contract in his personal name with Rey & Lenferna Ltd. He also agreed that the proposed activity of indoor soccer will be carried out not by the Appellant in his personal capacity but by his company. The Appellant also confirmed that he made the application for BLUP for the Council in his personal name.

2. The line of cross-examination was met with objections by the Appellant's counsel in that the issue of locus standi was not raised in the Respondent's Statement of Defence. Counsel for the Respondent, then moved that the present appeal be set aside in as much as the Appellant, at the time of the application to the Respondent, had made an application in his personal name, in lieu and instead of Soccer Five Company Ltd, which holds the lease agreement with Rey & Lenferna Ltd. and therefore, the Appellant does not have the locus standi neither in respect of the application to the Council as well as in respect of the present appeal. In the light of this, the present application is flawed and would amount to an abuse of process as well as being misconceived. The motion was resisted by the Appellant's counsel on the basis that this point is being raised at a late stage and should have been raised as a preliminary objection and that the application of the BLUP at the level of the Council was made in the personal name of the applicant and that he is therefore the correct party in the appeal. We have duly considered submissions of both counsel.

3. We agree with the point raised by the Appellant's Counsel that a point in law regarding *locus standi* of the Appellant should normally be raised at the outset as a plea in *limine litis* if the Council had the relevant documents in its possession to show that the Appellant had no *locus standi*. The reasoning being that the Appellant has no *locus* then he is not an "aggrieved party" within the meaning of **section 117(14) of the Local Government Act 2011**. Such a point should normally have been raised *ex-facie* the pleadings with the Council having raised it in its statement of defence and the relevant lease agreement annexed and referred therein. This being said, a point in law can be raised at any point in time and Counsel for the Respondent cannot be precluded from doing so although it was most desirable that this point be done at the beginning of the case.

4. The undisputed evidence is that the lease agreement is between Rey & Lenferna Ltd who is the owner of the warehouse wherein the proposed development is to take place and the Appellant's company known as Soccer Five Company Ltd. A company is a distinct legal entity from its owners, that is, shareholders. If the interest in the property which is the subject of the BLUP, in this case, Soccer Five Company Ltd as lessee of the property, it then follows that any application for a BLUP should have been made by the company itself, and likewise, any appeal to this Tribunal. This is supported by the principle that a BLUP is

attached to the land and therefore only a person, legal or natural, who has an interest in the property, can make an application. In this case the interest is that of Soccer Five Company Ltd as lessee of the property.

5. It is not contested that the Council was aware that the Soccer Five Company Ltd was the lessee of the property. The latter should have been the one seeking planning permission. Mr. Luckhoo should have been guided accordingly. We believe that the Council could and should have been alive to this fact when processing the application of Mr. Luckhoo by drawing his attention to the discrepancy between the party to the lease agreement and the applicant of the BLUP and not merely raise it at the eleventh hour at the appeal stage.
6. For all the reasons set out above, the present appeal is dismissed. Soccer Five Company Ltd can make the application anew in its own name, which the Council will have to consider as a fresh application. No order as to costs.

Ruling delivered on the 10th August 2021

Mrs. J. RAMFUL-JHOWRY

Vice Chairperson

Mr. S. MOOTHOSAMY

Member

Mr. S. SULTOO

Member

