

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 2204/24

In the matter of:

Socilla Koondun (Represented by Mr. Bojo Babou Sarveshwar)

Appellant

v.

Ministry of Housing and Land Use Planning

Respondent

Ruling

This is an appeal against the decision of the Morcellement Board for having declined to grant an application for the subdivision of a plot of land of an extent of 1206 m² into three lots for residential purposes. The land is situated at off Mon Choisy, Cap Malheureux Road B13, Reunion Maurel.

The decision dated 15th November 2023 was communicated to the Appellant through the National Electronic Licensing System and the grounds of rejection were the *“There is a poultry pen at about 160 metres from the site. Site is found outside settlement boundary. It does not follow the sequential approach as recommended in the Outline Planning Scheme. There is a presumption against the proposed development under the applicable policy SD4 of the Outline Planning Scheme in as much as the site falls within the buffer radius of 200 m of an existing poultry pen”*.

The Appellant lodged the Notice of Appeal and the Statement of Case on the 10th January 2024, wherein the Appellant has raised five grounds of appeal.

In a Statement of Defence filed on the 5th February 2024, the Respondent raised preliminary objections in law which read as follows:

1. The Respondent avers that the said Notice of Appeal and the said Grounds of Appeal have been lodged outside the prescribed delay of 21 days in breach of Section 5(4)(a) of the Environment and Land Use Appeal Tribunal Act 2012 (The Act)
2. The Respondent avers that paragraphs 2-5 of the Grounds of Appeal are vague, unconcise and imprecise in breach of Section 5(4)(a) of the Act.

Arguments were submitted on behalf of both parties on the preliminary objection. On the date of the arguments, counsel for the Respondent informed the Tribunal that the second limb of the preliminary objection will not be insisted upon.

We have considered the submissions of counsel for the respective parties on the first limb of the preliminary objection.

Section 5(4)(a) of the ELUAT Act provides that *“Every appeal... 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”*.

It has not been disputed by the Appellant that the decision under appeal had been notified to her on the 19th December 2023 and the delay to appeal runs from that date. It was, thus, conceded that the statutory delay of 21 days to lodge the appeal expired on the 8th January 2024, the computation having been done in accordance with the provisions of the Interpretation and General Clauses Act.

It is submitted on behalf of the Appellant that the appeal was lodged on the 10th January 2024 (instead of 8th January, at latest) as there were three public holidays during the time frame to lodge an appeal. This should be taken into consideration in the interest of justice and the appellant should not be debarred from proceeding for this reason. It is also submitted on behalf of the Appellant that, in accordance with section 5(3)(b) of the ELUAT Act which provides that the proceedings of the Tribunal shall *‘be conducted with as little formality and technicality as possible’*, the Tribunal has a discretion to entertain an appeal outside delay.

The issue of computation of time:

Section 38(1)(d) of the Interpretation and general Clauses Act (hereinafter referred to as IGCA) provides that *‘where there is reference to a period of time specified to run from a given date, the period of time so specified shall be calculated so as to include the given day.’* The delay of 21 days therefore runs from the 19th December 2023, and expires on the 8th January 2024. This has not been disputed. What is disputed is whether the computation is suspended on a public holiday and continues on the following day.

A close reading of section 38 of the IGCA shows no provision for time to be extended in case there is a public holiday during the specified period. The only circumstance when the computation time takes into account any public holiday is specifically provided in sections 38 (1)(a) and (c) of the IGCA. These read as follows:

Section 38(1)(a): *‘where the time limited for the doing of an act expires or falls on a Saturday or a public holiday, the act may be done on the following day that is not a public holiday’*,

Section 38(1)(c): *‘where an act or proceeding is directed or allowed to be done or taken on a certain day, then, if that day is a Saturday or public holiday, the act or proceeding may be considered as done or taken in due time if it is done or taken on the following day that is not a public holiday’*.

The present appeal does not fall in the abovementioned exceptions. The IGCA provides for an 'extension' at the starting point (section 38(1)(c)) or at the expiry of the time period (section 38(1)(a)), but it does not provide for a suspension of the delay nor that the delay 'kicks off' after the public holiday in the course of the 21 days' period after a temporary suspension. The Tribunal cannot read more than what is provided in the clear provisions of the IGCA to extend the statutory delay.

The issue of discretion of the Tribunal:

Section 5(3)(b) of the ELUAT Act provides that the '*proceedings of the tribunal shall be conducted with as little formality and technicality as possible....*'

We take the view that this departure from 'formality and technicality' that is contemplated by section 5(3)(b) applies to the discretion of the Tribunal to conduct its proceedings. It cannot be attributed to a flexibility given to the Tribunal to depart from the provisions that the legislator has set in respect of the procedure to lodge an appeal under section 5(4)(a) of the ELUAT Act. This provision sets precision and finality in the process by which decisions can be challenged, and, is a mandatory provision (the use of the 'shall' must not be undermined).

For these reasons, we find that the issue of the interpretation of the statutory delay to appeal is not within the realm of the discretion of the Tribunal, nor within the powers of the Tribunal to conduct its proceedings.

Having been lodged outside the statutory delay to appeal, the preliminary objection raised by the Respondent has been well taken. The objection upheld and the appeal is set aside.

Delivered by:

Mrs. V. Phoolchand-Bhadain, Chairperson

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Mr. Assen Soogali, Member

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Mr. M. Reza Baareek, Member

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Date:

13 March 2025