

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 136/12

In the matter of:

ABDOOL FARUG BOODHUN

Appellant

v/s

THE GRAND-PORT SAVANNE DISTRICT COUNCIL

Respondent

Ruling

The present appeal relates to a decision taken by the respondent not to grant the appellant a Building and Land Use Permit for the conversion of the second floor of his apartment at Daurades Street, Blue Bay, into a guest house.

It should be noted that this is a case which was lodged before the Town and Country Planning Board [hereinafter referred to as the TCPB] but forwarded to the Environment and Land Use Appeal Tribunal with the coming into force of the Environment and Land Use Appeal Tribunal Act in October 2012. Pleadings have not been filed before this tribunal nor were they filed before the TCPB except for some documents.

At the sitting of the 29th January 2013 when the case was called pro-forma, there was a motion for disclosure of documents including copies of licences, which we believe are infact Building and Land Use Permits [BLUP], issued to persons in the vicinity. Attorney for respondent, at a later sitting, stated that this motion was too vague, to which counsel appearing for appellant stated that the request related to specific enterprises operating

in the vicinity. At the sitting of the 17th April the stand taken by the respondent was that it would not provide this information to the appellant and the latter's counsel moved to have the case fixed for arguments on the basis that the main ground of appeal relates to this information, that is the granting of BLUPs to other persons operating in the vicinity.

We note here that neither counsel for appellant nor attorney for respondent have filed on record a copy of a letter allegedly sent by appellant's counsel requesting amongst others, the local authority for the above information, nor at this stage are we aware of the nature of the BLUPs, whether they are permits relating to the same type of development, that is operating as guest house or whether those permits relate to other types of development. All that has been put before the tribunal is that BLUPs have been granted to others "operating in the vicinity."

The point was argued on a subsequent occasion. Reference was made to the letter sent to the Council by the appellant's counsel requesting communication of BLUPs granted to six persons and which is not on record. Furthermore, the information imparted to the tribunal is that the ground of appeal of the appellant is that there are several people and enterprises that have been issued with a BLUP each, to carry out the same activity as the appellant. No ground of appeal has been filed on record at this stage.

We have duly considered the arguments put forward by both parties. Bearing in mind that this is a civil case and therefore, every averment made in the pleading by a party should be substantiated by proof, it becomes incumbent on the appellant to substantiate his grounds of appeal. The question that arises is what are the grounds of appeal? We are at a stage when pleadings have not even been filed and the tribunal is therefore not privy to the grounds of appeal nor the letter requesting particulars sent by appellant's counsel. What is the relevance of such information? In the absence of such basic and yet important documents, making an order for disclosure of information would mean hitting in absolute pitch darkness. The tribunal cannot act on mere words without some evidence being adduced.

This being the position of the tribunal, we have taken note of what is on record. The file contains a letter sent by the appellant to the TCPB dated 10th February 2012 stating that

he wishes to appeal against the decision of the district council and he states "...more than 50% of the plots of the morcellement operate activities such as guesthouse, tourist residences etc...." which seems to be his main contention. This may be taken, at its best, to be a ground of appeal on the basis of unreasonableness for differential treatment because there are many others in the same morcellement operating as guest house. True it is that if a person or company is legally operating a guest house, no one would be best placed to provide this information but the district council. If the person or company holds a valid BLUP, the local authority should have a record. It was submitted by respondent's attorney that at some point in time permits were issued by the Tourism Authority before the prerogative was given to the district council. We believe this argument is neither here nor there. If the district council has a record of all those who have applied for BLUPs at the district council and who have been granted a valid BLUP to operate as guest house, then it should be ready to provide such information in so far as its record is concerned.

This tribunal is legally empowered to operate with more flexibility than a court. Hence, the procedure of "disclosure of documents" has come into existence so as to do away with lengthy procedures such as demand of particulars, answer to demand of particulars and the like, which we believe sometimes may result in the delivery of justice being delayed. The *raison d'être* of the procedure of "disclosure of documents" is to have full and frank disclosure of evidence by all the parties and this allows not only the parties to better prepare their case but also allows them to explore speedier avenues to justice, by way of mediation, for instance.

We therefore order the respondent to provide all relevant information requested by the appellant which is not of a confidential nature and which is contained in the record of the district council. The matter is otherwise to proceed and will be called proforma for statement of case of the appellant to be filed.

Ruling delivered on 7th August 2013 by

Mrs. J. RAMFUL

Vice President

Mr.G. SEETOHUL

Assessor

Mr. R.RAMDEWAR

Assessor