

**BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL**

**ELAT 136/12**

**In the matter of:**

**ANOOP KUMAR RAGHOONATH**

**Appellant**

**v/s**

**FLACQ DISTRICT COUNCIL**

**Respondent**

**Ruling**

The present appeal relates to a decision taken by the Council, and which is being contested by the appellant, for the granting of a Building and Land Use Permit (a 'BLUP') for the construction of a Kovil by the Tamil Dharma Sangham at Central Flacq.

A preliminary objection in law was raised by counsel appearing for the respondent that the appeal cannot be proceeded with in as much as the Appellant has not put all the interested parties into cause. The motion was resisted and argued.

We have duly considered the submissions of counsel and attorney. The gist of the argument of learned counsel for the respondent was that the Tamil Dharma Sangham of St. Anne not having been joined as a party to the case, the matter should purely and simply be set aside as same has not been done within the statutory delay. In terms of chronology of events, it appears that the appellant lodged an appeal against the decision taken by the Council which was duly received at the TCPB on the 18<sup>th</sup> April

2012. The case was not heard before the Town and Country Planning Board and was forwarded to the Environment and Land Use Appeal Tribunal with the coming into force of the Environment and Land Use Appeal Tribunal Act 2012.

### **The Law: statutory time frame**

The appeal having been lodged against the decision of the Council for having granted a BLUP, the applicable law is the **Local Government Act 2011** as it stood prior to the enactment of the **Environment and Land Use Appeal Tribunal Act 2012**. **Section 117(14)** states *“Any person aggrieved by the decision of a Municipal City Council, Municipal Town Council or District Council ... may, within 21 days of receipt of the notification appeal to the Town and Country Planning Board, and the appeal shall be dealt with in accordance with **section 7(6) to (8) of the Town and Country Planning Act.**”*

These sections of the **Town and Country Planning Act** have been reproduced below:

*“(6) Any person aggrieved by a decision of a local authority under section 117 of the Local Government Act 2011 may, within 2 months of receipt of the decision, appeal to the Board, which may hear a representative of any party to the appeal and, subject to the Minister’s approval, confirm, vary or revise the local authority’s decision.*

*(7) (a) The Board may, proprio motu, where a permit under section 117 of the Local Government Act 2011 has been granted by a local authority, inquire into the facts of the case and, if it is satisfied that the granting of the permit is contrary to any scheme that is being prepared, may, subject to the Minister’s approval, direct the local authority to cancel the permit.*

*(b) Any interested party may be represented at an inquiry under paragraph (a).*

*(8) Any person aggrieved by a decision of the Board under subsection (6) or (7) may appeal to the Judge in Chambers in accordance with the procedures of section 25(3) and (4).”*

**Section 25** is of no relevance since it relates to appeals with respect to contraventions of outline or detailed schemes.

There are no regulations made under the Town and Country Planning Act which set out the procedure for lodging an appeal before the Board. Therefore, from the wording of the above-mentioned sections, the law simply imposed on the appellant a time frame of 21 days or 2 months, as the case may be, to lodge an appeal before the Town and Country Planning Board. The law did not impose any legal requirement on the appellant to notify any other party. We cannot read more into the Acts than what has been clearly stipulated. To impose a requirement upon an appellant, in the absence of express language, that *all parties who may have an interest in proceedings* be notified within the time limit, would be to stretch the interpretation of the sections beyond reasonable bounds. This view supports the fact that a lay person should be able to initiate and prosecute an appeal without the assistance of a legal representative.

#### **Joinder of Parties**

Now, it cannot be denied that the Tamil Dharma Sangham has an interest in the matter, since the BLUP was granted in their favour. Counsel for the respondent rested his arguments mainly on the judgment in the case of **Nuckcheddy & Ors v/s Town and Country Planning Board & Ors (2012) SCJ 152**. He also briefly referred to the case of **Lagesse v/s Town and Country Planning Board (1997)**. The Tribunal is of the view that the authorities cited can be distinguished from the present appeal in that in those cases the decisionmaking body was never put into cause. The common thread running through the cases referred to above, principles that this Tribunal also supports, is that if a party is impugning a decisionmaking body's findings or decision, due process demands that as a matter of obligation the decisionmaking body be put into cause so that on appeal the latter can motivate the basis for its decision thereby allowing the appellate body to take an informed view on the merits of the appeal. Therefore, a failure to put a decisionmaking body into cause would be fatal to the proceedings.

Conversely, the Tribunal subscribes to the view that while out of procedural fairness an interested party be joined as a party in whose presence the appeal be heard, non joinder of such a party as co-respondent cannot outrightly result in the appeal being set

aside. In **The Public Service Commission v/s The Public Bodies Appeal Tribunal IPO Man Lan Wong Chow Ming (2011) SCJ 382**, the supreme court decided that the appeal be remitted back to the PBAT to be heard anew with an order directing the PBAT to allow an interested party be joined as a party. The appeal was not set aside.

For all the reasons set out above, the motion of the respondent is set aside and the amendment sought by the appellant is allowed. The matter will be called pro-forma on a convenient date for pleadings to be filed.

Ruling delivered on 21<sup>st</sup> January 2015 by

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**Mrs. J. RAMFUL**

**Vice President**

**Mr. P. Thandarayan**

**Assessor**

**Mr.S.Karupudayyen**

**Assessor**