

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No. : ELAT 161/12

In the matter of:

Mr. ANDRE OLIVIER HUGUES REY & OTHERS

Appellants

v.

RIVIERE DU REMPART DISTRICT COUNCIL

Respondent

In the presence of:

SANATAN VEDIC TRUST

Co-Respondent

RULING

Submissions have been made following a request from the Tribunal to be enlightened on whether the local authority is bound by the decision of the Ministry of Housing and Lands in granting planning permission to the Co-Respondent in connection with the proposed development, which is subject matter of the present appeal.

Counsel for the Appellant lengthily submitted on the reasons as to why the local authority should not have been bound by the decision of the Ministry. It relied on the provisions of the Local Government Act and the Town and Country Planning Act, which give the local authority the sole decision making power in so far as the issue of BLUP is concerned.

The submission made on behalf of the Respondent is to the effect that the Planning Policy Guidance (PPG) is a planning instrument issued by the Ministry. It is the same Ministry which has issued the planning clearance to the Co-Respondent. The local authority found no reason to challenge the planning assessment of the Ministry, being given that there was a presumption that the project was PPG compliant, thus the approval of the Permits and Business Monitoring Committee (PBMC) was given.

This is precisely what the Appellants have challenged, on the ground that the Respondent has fettered its discretion in following the Ministry without taking into account its own planning criteria.

We note that there is no evidence adduced so far in relation to the process by which the decision had been reached by the Respondent. The Appellants have yet to establish in evidence what they are averring, namely, if and how the Respondent has fettered its discretion. We find that it would be premature to decide on this issue based on statements made by counsel only.

Having said this, even if evidence to be adduced would eventually tend to show that the local authority has fettered its discretion, the issue to be considered will be the jurisdiction of this Tribunal to hear this point. Indeed, both by the Respondent and Co-Respondent have raised objection in connection with this issue by challenging the course of action followed by the Appellants. The contention of the Respondent and Co-Respondent is that the Appellant is purporting to challenge of the decision making process, which, in their opinion, is tantamount to a judicial review process.

There are strict procedural rules that govern an application for judicial review before the appropriate forum. It has been submitted that by allowing the present proceedings to continue would amount to condoning an application for judicial review of the Respondent's decision without abiding to those procedural steps, delay being a decisive one.

From the submissions of the respective parties, we take note of the stand taken by the Respondent, which is that it was not bound by the decision of the Ministry of Housing

and Lands. Yet, it acted on the presumption that the planning clearance was PPG compliant, which explains for the position taken by the PBMC. We await the evidence, yet to be adduced, in order to decide on the propriety of this presumption.

On the other hand, we note the contention of counsel for the Co-Respondent that evidence in support of the above may tread into the realm of judicial review. The present jurisdiction is concerned with appeals against the final decision of the Respondent, namely whether it was rightly taken or not, having regard to the relevant parameters.

The jurisdiction of this Tribunal is clearly spelt out in section 4 of the Environment and Land Use Appeal Tribunal Act 2012, which states that **the Tribunal shall hear and determine appeals** under the relevant Acts, as listed in section 4 sub-sections (i) to (iv). In so doing, the process by which this Tribunal will make its determination should not be ultra vires its powers.

It is against this background that we order that the case to proceed on the merits, bearing in mind the above-mentioned observations as to its jurisdiction.

Delivered by:

Mrs. V. Bhadain

Chairperson

Mrs. A. Jeewa

Assessor

Mr. V. Reddi

Assessor

Date: 7 October 2015