BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No. : ELAT 305/12

In the matter of:

LADY MARIE CLAUDE SERIES & OTHERS

Appellants

v.

MUNICIPAL COUNCIL OF CUREPIPE

Respondent

In presence of:

Mr. M. P A. ARNAUD DE BARITAULT

Co-Respondent

RULING:

The Co-Respondent in the present matter, Mr. Arnaud de Bariltaud, has raised a preliminary objection on the jurisdiction of this Tribunal to hear the matter inasmuch as the appeal has been brought by a person other than an aggrieved applicant for a BLUP (Building and Land Use Permit).

The Appellant has objected to this preliminary point on two grounds, firstly, that the Co-Respondent is not a party to this case. He cannot, as such, challenge the jurisdiction of this Tribunal, the more so that the stand of the Respondent (the Municipal Council) is not known and it is the Municipal Council that had informed the Appellants of their right of appeal against its decision.

The submission on behalf of the Appellants is on the following three grounds:

1. The status of the Co-Respondent (i.e. whether he can appear as a party)
2. Whether the 'Co-Respondent' can raise such an objection
3. Whether the objection is sustainable.

Counsel for the Co-Respondent based her submission on the lack of locus standii of the Appellants in this appeal.

We have considered the submissions made on behalf each party.

Incidentall, the Appellants also are challenging the locus standii of the Co-Respondent to raise the preliminary objection. It has been suggested that the Co-Respondent is not a 'party' to the appeal lodged by the Appellants against the decision of the Respondent., and even if the Tribunal has deemed fit that the Co-Respondent be brought in as a party, it cannot be a party that can raise objection so as to put a halt to the appeal. It can only be there as a party which has an interest in the matter.

The substance of the preliminary objection is a challenge of the jurisdiction of this Tribunal on the ground that the Appellants are not the 'aggrieved parties' to a decision of the Respondent. On the other hand, the Appellants are challenging the locus standii of the Co-Respondent to raise a preliminary point which purports to challenge their capacity.

I : Can the Co-Respondent appear and /or raise objection?

At this juncture it is important for us to lay down the procedure adopted by the Tribunal in dealing with appeals lodged before it. The practice has been for the Tribunal to see to it that all persons that may have an interest in an appeal lodged before it to be called and to record their stand on the appeal. We view that it is necessary that any decision taken by the Tribunal should not be done behind the back of interested parties because the outcome of the appeal will necessarily have a bearing on these interested parties. Hence, the Tribunal has adopted the practice of requesting the Appellant to put into cause the party who has benefited from the decision of the Respondent and whose activities are being challenged (here, the Co-Respondent). This position taken by the Tribunal finds support in the 'flexible and less technical approach' propounded by section 5 (3) (b) of the Environment and Land Use Appeal Tribunal Act 2012, hereinafter referred to as ELAT 2012). In the same spirit, the Tribunal has also, in some cases, deemed it fit to write to the permit holder to inform him of the appeal lodged.

This procedure is in conformity with the principle that holds in the jurisprudence of the Supreme Court, Re: **Public Service Commission v. The Public Bodies Appeal Tribunal 2011 SCJ 382,** where the obligation of the Tribunal (which acted in a quasi-judicial capacity) to observe the fundamental principles of natural justice, namely the 'audi alteram partem' rule (no man can be condemned unheard), was highlighted.

Now, having been put into cause, there is technically no reason why the party cannot raise a point in law, be it on jurisdiction or other point. The Appellant's stand on this point is in fact ambiguous when it is submitted that they have no difficulty in the permit

holder being represented, yet they have a different stand on whether they can raise a point as to jurisdiction.

We do not subscribe to this view. Being an interested party for having been granted a permit, which is now subject matter of a challenge, it would defeat all logic to deny the permit holder the right to put in his case before the Tribunal, even if this entails the raising of any point in law that he may find necessary for such purpose. Even if the appeal is one made by the objectors at the level of the Council against the decision of the Municipal Council this should not be a bar to the presence and stand of the permit holder on the matter, especially if he wants to put up a defence or add anything to support the Council's position. We therefore hold that the preliminary point as to the incapacity of the Co-Respondent cannot be supported. It is therefore set aside.

II: Do the Appellants have a right of appeal?

The position of the Co-Respondent is that the Appellants are not 'aggrieved parties' within the meaning of section 117(14) of the Local Government Act 2011 (hereinafter referred to as LGA 2011). As such they cannot appeal.

We have considered the submission made in support of this position. Section 117(14) of the LGA 2011 provides as follows:

" *Any person aggrieved by a decision of a Municipal Council, Municipal Town Council or District Council under section 7(b), 8(b) or 12 may within 21 days of receipt of the notification , appeal to the ELAT...*".

Section 7(b) of the LGA 2011 relates to the notification that is made by the Permits and Business Monitoring Committee (PBMC) to applicant. This sub-section states that the PBMC shall ...."*notify the applicant in writing that the application has not been approved and give the reasons thereof*".

The Co-Respondent relied on the above sub-sections 117 (7)(b) and (14) of the LGA 2011 to take a restrictive approach to the definition of an 'aggrieved' party'.

We do not subscribe to this restrictive view that the appeal can only be made by one whose application has been rejected. We find that the appellate process should not be restricted to Section 117 of the LGA only. Reference must also be made to other provisions, namely, sections 7 and 25 of the Town and Country Planning Act (hereinafter referred to as TCPA) which give a broader spectrum to the definition of an 'aggrieved party'.

Attempt was made to circumvent this broader approach by the submission made on behalf of the Co-respondent to the effect that section 7(6) of the TCPA should be read in the context of section 7(5) of the TCPA, namely in connection with the question as to whether the proposed development is in contravention with an outline detailed scheme being prepared in relation to an area concerned. These two sections are reproduced below:

Section 7(5) TCPA: ***"The local authority shall, in dealing with an application under section 117 of the LGA 2011, have regard to the question whether the proposed development is in any way likely to contravene an outline or detailed scheme being prepared in respect of the area concerned".***

Section 7(6) TCPA: "***Any person aggrieved by a decision of a local authority under section 117 of the LGA may appeal to the Tribunal in accordance with the ELAT Act 2012."***

Our reading of section 7 of the TCPA is that it gives the local authority the power to grant permits for the development of land. In dealing with applications for BLUP which are made under section 117 of the LGA, the local authority has the duty to have regard to any potential contravention to an outline or detailed scheme. Section 7(6) then goes on to allow "any person aggrieved by the decision of the local authority" to appeal.

We find that any attempt to stretch the above provisions to limit the term "any aggrieved person" to only those applications made in an area which is subject of an outline planning scheme would be restrictive. Nowhere does section 7 provide this limitative approach. Besides, **section 7(6) TCPA** itself refers to appeals made against decisions of a local authority **under section 117 of the LGA 2011**.

Furthermore, **section 4 of the ELAT Act 2012** gives this Tribunal jurisdiction to hear appeals made under both section 117(4) of the LGA 2011 as well as the TCPA. We therefore do not support the submission that section 7(6) is restricted to the circumstances that are provided under section 7(5) of the TCPA.

Finally, we bear in mind that the issue of land use and the granting of permits for land use, are matters that concern not only applicants for such permits but also those living in the surrounding environment. Notification procedures have been laid down for the particular purpose of allowing those persons to have a say in the matter. An 'aggrieved person' cannot be limited to the person who has been denied a permit by the local authority only. It can, and should, also concern those whose day to day lives can be affected by a particular development. Such an approach is not taken by reading more than what the law provides. It is taken by reading ***conjunctively*** all the legislations that govern land use, namely, the **LGA 2011,** the **TCPA,** as amended, and the **ELAT 2012**.

We therefore hold that the preliminary point raised, challenging the locus standii of the Appellants in lodging the appeal before this Tribunal cannot be upheld.

We rule that this Tribunal has jurisdiction to hear the present appeal. The plea in limine raised is set aside and we order that the case proceeds on its merits.

Delivered on 4th September 2015 by:

Mrs. V. Bhadain	**Mrs. A. Jeewa**	**Mr. V. Reddi**
Chairperson	**Assessor**	**Assessor**