

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No. : 751/14

In the matter of:

MR. MARIO P. S. THELEMAQUE & OTHERS

Appellants

v.

MOKA FLACQ DISTRICT COUNCIL

Respondent

In presence of:

MRS. SHANNON LOUISE NURSIMULU

Co-Respondent

RULING

The appeal lodged by the Appellants is against the decision of the Respondent for having granted a BLUP to the Co-Respondent to run a pre-primary school and a nursery in the premises which the Appellants aver being a highly residential one. Several reasons have been put forward by the Appellants to object to the granting of the said BLUP.

The Co-Respondent has raised two preliminary objections to the appeal, the first one (subject matter of the present argument) being the lack of jurisdiction of this Tribunal to entertain the present appeal.

We have considered the submissions made on behalf of the respective parties.

1. We concur with the submission of counsel for the Co-Respondent as to the propriety of considering the plea in limine litis in respect of jurisdiction at the very outset.

2. The application for a Building and Land Use Permit has been made to the Respondent under section 117 of the Local Government Act 2011 (hereinafter referred to as LGA 2011).
3. The relevant sections of the LGA that we need to consider are :
 - (a) Section 117 (2) of the LGA 2011 which gives the power to grant a BLUP to the local authorities listed therein
 - (b) Section 117 (7) (b) of the same Act which provides that the local authority shall notify the applicant in writing in case the application has not been approved and give the reasons for this decision.
 - (c) Section 117 (14) of the LGA 2011 which provides that any person aggrieved by a decision of a Municipal Council..... 'under subsection (7)(b), (8)(b) or (12) may, within 21 days of the receipt of the notification, appeal to the ELAT..'.
4. It has been submitted on behalf of the Co-Respondent that, on the basis of the above sections, the only person (or persons) who can claim to fall in the category of 'aggrieved person' for the purposes of an appeal under section 117 (14) are those who have been notified under section 117 (7)(b) (i.e. an applicant who has been denied a BLUP). The Co-Respondent contends that such right of appeal does not extend to other persons, namely the objectors, as in this case, although they may have been informed of the decision of the local authority. We note here that a letter was sent by the Respondent to the Appellants, who were objectors at the level of the District Council, to notify them of the its decision and informing them of a right of appeal of any aggrieved party before the ELAT.
5. Counsel for the Appellants, whilst agreeing that section 117 (14) of the LGA 2011 relates to appeals lodged by an aggrieved applicant for a BLUP, stated that the Appellants rely on the provisions of sections 7 and 25 of the Town and Country Planning Act (hereinafter referred to as TCPA) for the appeal. He further submitted that the Town and Country Planning Act in its section 7 has a broader spectrum when it referred to 'any person aggrieved by a decision of a local authority under section 117 LGA 2011'. This encompasses appeals lodged by 'third parties' (e.g. objectors or any other person).
6. We observe here that section 25 relates to an appeal against the decision of a committee in relation to a work or building being in contravention of an outline scheme. This section is not relevant for the present argument, save that it extends locus standi to appeal to 'any person aggrieved by a decision of the committee'.

7. It is also noted that section 4 (1) of the ELAT Act 2012 gives jurisdiction to hear appeals under both legislations i.e. section 4(1)(a)(ii) targets appeals against decisions of local authorities pursuant to section 117(14) of the LGA 2011 as well as appeals under sections 7 and 25 of the Town and Country Planning Act.
8. It has been submitted by counsel for the Co-Respondent, that the purport of section 7(1) of the TCPA is to limit the application of this section to areas which are subject of an order under section 6 (i.e. order declaring an area to be a Planning Area for the purposes of an Outline Scheme).
9. The drafting of section 7(6) does not suggest this restrictive approach. 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 a 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.
10. 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.
11. It has also been suggested on behalf of the Co-Respondent that the relief sought cannot be based both on the LGA on one hand (for the interim relief) and the TCPA on the other (for the appeal). However, 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 Environment and Land Use Appeal Tribunal Act 2012 (hereinafter referred to as ELAT 2012) gives this Tribunal jurisdiction to hear appeals made under both section 117(4) of the LGA 2011 as well as the TCPA.
12. Finally, we need to highlight 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 only the person who has been denied a permit by the local authority. 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.

13. For the above reasons, the plea in limine litis raised in respect of jurisdiction is set aside. We rule that this Tribunal has jurisdiction to hear the present appeal. We therefore order that the case proceeds on its merits.

Delivered on: 10 July 2015

Mrs. V. Bhadain
Chairperson

Mr. V. Reddi
Member

Mr. S. Karupudayyan
Member