

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 304/12

In the matter of :-

Randhir Deokeenanand Deelawon

Appellant

v/s

Municipality of Vacoas-Phoenix

Respondent

RULING

1. This matter was heard by the Tribunal previously, following which a final determination of the matter could not be reached and on the 15th May 2015 the Tribunal decided to have the matter remitted to the Council in order to make a proper assessment of the case with regard to the issue of "overdevelopment of the site would put pressure on infrastructure, environment and on wastewater disposal", which was one of the grounds on which the Council had refused to grant a BLUP to the appellant. The application was rejected again by the Council and this decision was communicated to the appellant *vide* a letter dated 19th October 2015. In fact, the matter was referred to the Ministry of Environment, Sustainable Development, Disaster and Beach Management by the Municipal Council of Vacoas-Phoenix as per the letter dated 19th October 2015 emanating from the latter. The letter, produced before the Tribunal, states at the last paragraph "As requested by the Environment and Land Use Appeal Tribunal, your application has been reassessed while taking into account the above views of the Ministry and the Executive Committee has again turned down your application."

2. Right at the outset, it is important to note that the matter was remitted to the Council specifically to carry out a proper assessment. In stating that it took into account the views of the Ministry, it remained totally silent as regards the basis upon which it decided to reject the application. An extract of the determination of this bench dated 15th May 2015 is reproduced hereunder

"In the absence of evidence, we cannot speculate on the extent to which morcellement Les Plaines de L'Hermitage has already been developed. The Tribunal is unable to make an assessment on whether by allowing the present application it will lead to overdevelopment of the sites and will put pressure on the infrastructure, environment and on the waste water disposal system.

Therefore in the absence of such crucial evidence, a final conclusion cannot be reached by this Tribunal. We accordingly find that in order to meet the ends of justice the matter be remitted back to the Council to make an assessment on the last ground having regards to the requirements of EIA licence and after effective analysis of the matters that are raised."

3. The second refusal letter dated 19th October 2015 emanating from the Council sets out the reasons given by the Ministry as follows:

"(i) Requests for excision or further subdivision of several lots within a morcellement should come from the proponent so as to allow an overall assessment of the impacts associated with same;

(ii) Land excision or further subdivision of lot may be considered in cases where land has been bought in co-ownership, where the objective of the sub-division is to enable the co-owners to have their individual title deeds and develop on their respective lots; and

(iii) The piecemeal request made by Mr. R. Deelawon for further subdivision of lots within the morcellement are not acceptable."

4. At the sitting of the 24th July 2017, when the matter was heard following the second refusal letter of the Council, in order to substantiate the case for the Repondent, Mr. Lobine appearing for the Council tendered only one witness for cross-examination, Mr. Yahyah Pathel, acting Deputy Director of the Department of Environment. He explained in essence that any request for subdivision would normally have to be made by the promoter of the morcellement and not the individual owners of the plots but that the procedure would be for the owner to ask for an amendment of the EIA licence. He explained that the individual plot owners cannot apply for subdivision, it should come from the promoter of the morcellement and that finally the individual plot owner should ask for an amendment of the EIA licence. He was referred to condition 19 of the title deed, to which he confirmed that there was nothing in the conditions of the EIA licence that precluded the appellant from making an application for subdivision and that the decision was to be taken by the Municipality. The witness also confirmed when put to him, that the appellant was right to have applied to the Council for a subdivision of his lot. Mr. Pathel was not examined in chief on the contents of the letter dated 19th October 2015 bearing the views of the Ministry and therefore did not provide any justification for the Council's refusal. He was also not re-examined after his cross-examination, thus leaving the Tribunal with no alternative than to accept the testimony of Mr. Pathel.

5. At the sitting of the 25th November 2013 Miss Ramroop produced a notice for lot.179, marked Doc B, which related to another plot of land owned by the Appellant within the same morcellement, subject matter of the present appeal, whereby the Council approved his application for subdivision. The Appellant testified to the effect that the Council had also allowed subdivision of other lots within this morcellement. The Council, then represented by Miss Ramroop, agreed that the Council had approved the subdivision of a few lots within the morcellement, including lot no. 179, which belongs to the appellant but explained that that Council subsequently stopped the practice.

6. Mr. Lobine, Counsel for the Respondent submitted that the Council was faced with a previous application of the same nature, same set of facts and same circumstances whereby the Town and Country Planning Board upheld the decision of the Council for having rejected the application and therefore there was no reason for the Council to depart from their previous stand. This does not answer the query of the Tribunal, for which a final conclusion could not be reached in May 2015. The Tribunal needed to be apprised of whether there was likely to be overdevelopment of the sites, and whether allowing the subdivision would put pressure on the infrastructure, environment and water disposal system. The reply from the Council was vague, to say the least.

7. Despite the Tribunal having reiterated that local authorities have to assess applications comprehensively and in the event that applications are rejected clear and precise motivations are given, the answer from the Council was again "*your application has been reassessed taking into account the above views of the Ministry...and the Executive Committee has again turned down your application.*" This does not explain the actual basis for rejection, because the views of the Ministry as explained by Mr. Pathel, does not in any way address the issue of overdevelopment of the site nor does it make an assessment of it, nor does it address the other points raised by the Tribunal. In fact, when the evidence of the witness is read in conjunction with the contents of the letter dated 19th October 2015 which was sent to the Appellant after reassessment of his application, there does not appear to be any reason put forward by the Council that justifies the application being rejected.

8. The evidence of Mr. Pathel was valuable and enlightening regarding the procedure. He came across as a credible witness whose main duty was to offer assistance to the Tribunal. His evidence did not, however, add anything in support of the case for the Council in anyway, albeit he explained the procedure, which the Tribunal accepted. What we have been enlightened on by Mr. Pathel's testimony is that there exists a procedure, whereby if there is to be a subdivision, it is for the promoter of the morcellement to make such an application and subsequently for the individual plot

owner to then apply for an amendment of the EIA licence. Therefore, we take this to mean that such a procedure can be done and this case is no exception, the moreso in the light of the testimony of Mr. Pathel. He agreed under cross that on the basis of condition 19 of the EIA licence, the Appellant was right to have applied for subdivision to the Council since "it is for the Municipality to take a decision". His testimony has remained unchallenged.

9. **Condition 19** of the EIA licence of the morcellement stipulates "*Construction or reconstruction of buildings and/or addition to existing building on the lots resulting from the subdivision, the requirements as regards clearance from boundary line and existing buildings shall be subject to the building control line of the Municipal Council of Vacoas/Phoenix.*" It appears from this condition that the EIA licence had already taken into account and addressed the issue of the possibility of subdivision of lots. When this is considered in the light of the testimony of Mr. Pathel and the fact that the Council has not put forward any evidence, nor any reason in their second refusal letter, to show how their assessment would be against allowing this subdivision for want of prohibiting any overdevelopment, pressure on the infrastructure, environment and on the waste water disposal system, we are of the view that this appeal is to be allowed. We have not been convinced of the argument that the Council should follow a previous decision upheld by the Town and Country Planning Board as put forward by Counsel for the Respondent. The explanation as to why the Council should not follow its own previous decision of allowing subdivisions within the same morcellement was weak. No witnesses were called by the Council to give the reasons for which the Executive Committee had "again turned down the application" after having reassessed it. The Council should not rubber stamp applications, each application must be assessed on its own merits.

10. There being no further live issues to be decided upon, for all the reasons set out above, more especially the fact that the EIA licence caters for subdivision which implies that this was within the knowledge of the promoter of the morcellement, we find that there is merit in this appeal. The appeal is therefore allowed.

Ruling delivered on 18th September 2017 by

Mrs. J. RAMFUL

Vice Chairperson

Me. V. Reddi

Assessor

Mr. M. Busawon

Assessor