BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No. : ELAT 492/13

In the matter of:

MISS IANEE RAMDIN

Appellant

v.

MUNICIPAL COUNCIL OF BEAU BASSIN/ ROSE HILL

Respondent

In the presence of:

MR. AUMEERALLY MONAF

Co-Respondent

RULING

The Co-Respondent has raised a plea in limine litis to the effect that the present appeal cannot proceed inasmuch as the Minister of Local Government & Outer Islands has not been put into cause by the Appellant. A first limb of the plea in limine litis raised by the Co-Respondent has been dropped. On the other hand, the plea in limine litis initially raised by the Respondent on the issue of delay was also dropped, position which was endorsed by the Co-Respondent.

The appeal has been entered against the decision of the Respondent (the Municipal Council) for having approved the issue of a Building and Land Use Permit (BLUP) to the Co-Respondent for the conversion of an existing residential building at ground floor to

be used as office for therapist, medical massage individual at 1 A Volcy Goupille Street, Beau Bassin.

The minutes of the executive committee of the 26th June 2013 (decision EC 26.06.13) show that the application had been referred to the Minister after rejection by the Permits and Business Monitoring Committee followed by approval by the Executive Committee. The Minister approved the decision of the Executive Committee. A letter dated 12 June 2013 issued to the Respondent conveyed this approval by the Minister in accordance with section 117(12) of the Local Government Act 2011, such approval containing a condition that no parking should be allowed on the road.

It has been submitted on behalf of the Co-Respondent that by approving the application for the issue of a BLUP, the Minister becomes a party to the decision making process, as such, the Appellant ought to put the Minister into cause and failure to do so is fatal to the appeal. The Co-Respondent relied on the jurisprudence of Arnaud Lagesse v. Town and Country Planning Board 2000 SCJ 235 and Nuckchady & Ors. v Town and Country Planning Board in support of his position. This position is contested by the Appellant.

We have considered the submissions made on behalf of the Appellant and the Co-Respondent on this point.

The decision to approve the application came from the Minister, but this was in the exercise of its powers under section 117(12) of the LGA. This section provides that:

(a) In the event that a decision or recommendation made by the Permits and Business Monitoring Committee is rejected by the Executive Committee, the matter shall be referred to the Minister for determination.

(b) The Minister-

(i) shall have a *droit de regard* on any decision or recommendation made by the Permits and Business Monitoring Committee

(ii) may direct a local authority to refer a particular application made to it for determination by him where he considers that it is necessary or expedient in the public interest to do so.

It is clear from the above provision that the Minister's intervention in the decision making process came following the divergence between the PBMC and Executive Committee, and is within the general 'supervisory'/ or 'directory' role of the Minister. Any application would not go directly to the Minister. The ultimate authority on whom is vested the power to grant a BLUP is the local authority. In this case also the BLUP, containing ten conditions was issued on the 28th June 2013 by the Respondent, where it is clearly stated that the BLUP was approved by the Executive Committee on the 26th June 2013 upon the recommendation of the PBMC of 25 June 2013. (Annex 5 to the statement of defence of the Co-Respondent).

In the case of **Lagesse v Town and Country Planning Board 2000 SCJ 235,** which was referred to by counsel for the Co-Respondent, the issue was the omission by the Appellant to put into cause the local authority which had granted a development permit. The Court of Appeal highlighted that it was necessary to put into cause the interested parties and clearly spelt that the interested parties throughout remain the applicants for the development permit and the local authority (described as the '*authority which wants to retain control of the qualitative and quantitative aspects of land development under its jurisdiction'*). It thus held that the failure to put into cause the Council within the delay provided by law was fatal to the Appellant's case. Similarly in the case of **Nuckcheddy and Others v. TCPB i.p.o Bhimajee Govinda 2012 SCJ 152** the Learned Judge stated that: '*the interested parties throughout remain the developer and the local authority and that the statutory delay to put them into cause must be observed. Failure to comply with the statutory delay is fatal...'*.

The interested parties have here been put into cause. As stated above, the Minister's involvement in the decision making process is of a supervisory/ directory nature. This does not, by any means, make him an 'interested party'.

On the other hand, it would be relevant at this juncture to refer to an earlier pronouncement made by this Tribunal in relation to the powers of the Minister under section 117(12) (in the appeal of Nitin Kumar Poolay & Anor. v. Minister of Local Government & Ors.- ELAT 343/13) where it was decided that those powers '*are discretionary powers which the decision taken by the Minister under section 117(12)*

LGA is an exercise of his discretion and is based on his discretionary assessment of what public interest calls for.....We are of the view that although the Legislator has deemed it fit to include the decisions taken under section 117(12) LGA in those that may be subject to appeal under section 117(14) LGA, this does not extend to the decisions of the Minister. The rationale for this position is that it is not within the powers of the ELUAT to assess the discretionary power of the Minister. This is a matter that calls for a judicial review remedy for which this Tribunal has no jurisdiction'.

In the light of the above, the plea in limine litis raised by the Co-Respondent cannot be upheld and is set aside. In addition, on the basis of the observations made in the case of Nitin Kumar Poolay & Anor. v. Minister of Local Government & Ors.- ELAT 343/13, the Tribunal rules that it has no jurisdiction to hear the appeal, being given that the appeal is against the granting of the BLUP (and not the conditions), for which the approval was given by the Minister. The remedy sought by the Appellant lies in a different jurisdiction. The appeal is therefore set aside.

Delivered by:

Mrs. V. Bhadain, Chairperson

Mr. V. Reddi, Assessor

Mr. S Karupudayyan, Assessor

Date: 16 June 2017

Environment and Land Use Appeal Tribunal