

**BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL**

**Cause No. : ELAT 747/14**

**In the matter of:**

**MR. & MRS. HASTANAND CAULEECHURN & OTHERS**

**Appellants**

**v.**

**MINISTRY OF HOUSING AND LANDS**

**Respondent**

**RULING**

An objection is raised by the Appellants to a proposed amendment to the Statement of Defence of the Respondent. The grounds of objection are that there has been considerable delay in proposing such an amendment, the more so that the matter had been postponed on a number of occasions before, without such amendment having been proposed. Furthermore, the Appellants contend that there has been no explanation given as to why this had not been done before. The Appellants have relied upon the case of Best Luck (Mauritius) Ltd. v. Murdhen N. & Anor 2013 SCJ 335 in support of their position.

What is the purport of the proposed amendment? The Respondent's proposed amendment purports to bring in a specific restrictive clause contained in a title deed of the person who had acquired the land from the Sugar Investment Trust (SIT) and from whom the vendor had himself acquired the land. Such restrictive clause would presumably be the rationale for the decision of the Respondent not to allow further subdivision of the lots.

It is on record that this aspect of the rationale for the Respondent's decision had not been relied upon by the Respondent in its original Statement of Defence. It is only in the course of the cross examination of the representative of the Appellants that this issue

has cropped up. Then the Respondent expressed the need to have this aspect of its decision brought to light by the proposed amendment.

We note from the record that the proposal that the Respondent should amend its statement of defence had been suggested by counsel for the Appellant himself at the time when the issue that the land had been sold by the SIT to the Appellant's vendor was raised.

At any rate what we have to consider is firstly the purpose of the proposed amendment and, secondly, whether any prejudice is likely to be caused if the amendment is made. Although we do not condone that the motion is being brought after ten times when the case was postpone (as stated by counsel for the Appellant), this cannot be a cause to refuse to entertain the motion as such. What is to be considered is the real purpose of this proposed amendment. What is material is whether the amendment purports to determine the real issue as opposed to raising a new or substantial issue for the first time. The judgment of Best Luck (supra) relied upon by the Appellant sets out the following:

*"The basic premise as appears from Rule 17 of our Supreme Court Rules 2000 is that the Court may "grant an amendment of any pleading, in such manner and on such terms as may be just and reasonable, for the purpose of determining the real question in controversy between the parties." However the Court will exercise such discretion judiciously taking into account inter alia, the nature of the proposed amendment, the stage of the proceedings at which, and the purpose for which it is made, whether there is bad faith or the intention to overreach on the part of the party making it, whether any prejudice is likely to be caused to the other party or parties which may not be compensated by an order for costs – vide Soobhany & Ors v. Soobhany & Ors 1989 MR 191, Unmar v. Lagesse 1994 MR 41, Maxo Products v. Swan Insurance Co. Ltd. 1996 MR 41.....*

*It is clear from the above authorities that since some decades the modern trend has been without doubt, to grant leave to amend even in a case where the motion is made at a late hour. However, the Court would be more strict in granting applications for amendment at the trial than before the trial in the absence of any explanation as to why it could not have been moved earlier and will generally not grant an amendment which will prejudice the right of the opposite party as existing at the time of the amendment (Joomun v. Kissoondharry 1977 MR 265 and B. Harel & Anor v. Societe Harel & Cie and Ors 1993 MR 251. The Court would also not allow an amendment which is substantial and raises new issues which are inconsistent with those found in the statement of claim (Tive Hive and Ors v. Kam Tim 1953 MR 80. In that context a*

*distinction is to be made between an amendment which purports to clarify the issue for determination and one which raises a new or substantial issue for the first time (vide Ketteman v. Hansel Properties Ltd 1987 AC 189, referred to in the case of Soobhany v. Soobhany (supra)).*

The proposed amendment in the present matter seeks to bring clarification on a condition contained in the title deed of the one Mr. Sondagur, who held title from the SIT and who is now the vendor to the Appellant, which specifically prohibited further subdivision of lots. Whether this clause has a bearing on the Appellants' title is a matter which will be thrashed out in evidence. In the same breath, the prejudice that this may cause to the Appellants is to be assessed in the light of the evidence that is yet to be adduced. It does not appear that the proposed amendment will have the effect of raising a new issue altogether but that of clarifying the issue to be determined, namely the conditions of the title of the Appellants. The impact of the pre-existing clause (subject matter of the proposed amendment) is yet to be determined. This does not dictate the issue of the amendment of the pleading.

For these reasons we set aside the objection raised and allow the motion to amend the Statement of Defence of the Respondent and order that the case proceeds.

Delivered by:

**Mrs. Vedalini Bhadain, Chairperson**

**Mr. Basdeo Rajee, Assessor**

**Mr. Pravin Manna, Assessor**

Date: 16 March 2018