

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No. : ELAT 920/15

In the matter of:

MR. JEAN ROGERS ANDRE CHAUVIN & ORS.

Appellants

v.

DISTRICT COUNCIL OF FLACQ

Respondent

In the presence of:

- 1. MR. OUTAM PURGASS**
- 2. MAHANAGAR TELEPHONE (MAURITIUS) LTD.**

RULING

The appeal is against the decision of the Respondent for having granted a Building and Land Use Permit to Co-Respondent No.2 to erect a telecommunication tower on the property belonging to Co-Respondent No.1. A Notice of appeal was filed at this Tribunal on the 6th July 2015.

Co-Respondent No.1 has stated that he will abide by the decision of the Tribunal. The Respondent and Co-Respondent No. 2 have filed their respective Statements of defence to the Statement of case of the Appellants.

As part of its Statement of Defence filed on 26 January 2016, Co-Respondent No.2 raised a preliminary objection to the effect that Appellants No.2 to 16 have no locus standii to appeal and their appeal should be set aside. In addition, a second preliminary objection was made on the 10th October 2016 to the effect that no other ground should be canvassed apart from the one canvassed in the notice of appeal.

In response to the first objection, counsel for the Appellants filed a proxy authorizing Appellant No.1 to represent all the other Appellants before this Tribunal and depose on

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their behalf. We note that there was no objection from the Respondent, nor Co-Respondent No.2, to the filing of the proxy which is now part of the record. Co-Respondent No.2 moved for arguments on the ground that the signatory, as per the notice of appeal, is only Mr. Chauvin and he should be the only person to have a locus standii to appeal, irrespective of the proxy filed. The second point raised by counsel for the Co-Respondent is that the Appellant, Mr. Chauvin, should be limited to the grounds as contained in the notice of appeal only. Any other ground, as those contained in the statement of case, would amount to introducing new elements outside the statutory delay to lodge appeals before this Tribunal.

We have considered the submissions of counsel for the Appellant and Co-Respondent No.2 (The Respondent did not offer any submission and chose to concur with the submission of Co-Respondent No.2).

As regards the issue of locus standii, we note that the Notice of Appeal filed on the 6th July 2015 contains a second page (as per the prescribed form which provides that a separate sheet be attached if additional space is required) which clearly states that all the persons listed in the letter are objecting to the proposed project. The letter referred to is the one annexed to the Notice of appeal which relates to the objection made to the Citizens' Advice Bureau of Bel Air Riviere Seche containing the signatures of sixteen persons. The power of attorney that was subsequently filed at the Tribunal on the 9th November 2016 is confirmation of the authority given to Appellant No.1, Mr. Jean Rogers Andre Chauvin, to represent the other fifteen Appellants before the Tribunal.

Having perused this document, we find no difficulty in accepting this authorization as the 'mandat' to proceed with the appeal in the name of all the signatories.

We take note that the notification of the decision of the Respondent was made to Appellant No.1, Mr. Chauvin, only. In the Statement of Defence, the Respondent stated that Appellant No.1 and others had been duly convened to attend the hearing at the District Council. It further averred that Appellants No. 2 to 16 were not interested parties before the Permits and Business Monitoring Committee (PBMC), nor had they made any representations or objections thereat. Yet, from the letter annexed to the notice of appeal, it is clear that Appellants No. 2 to 16 had formulated strong opposition to the project at the level of the Citizens advice Bureau.

The Council deemed it fit to convene all the objectors for a hearing. Being given that we are not in presence of the minutes of proceedings of the meeting of the PBMC, we can only summarize that Appellants No.2 to 16 had been absent from the meeting, which could possibly explain as to why the Respondent referred to them as 'not being interested parties'. We fail to understand how the Respondent could conclude that they were not interested parties whilst they convened those persons to the meeting.

Their absence from the meeting, if such was the case, is not a reason to decide that they were not interested parties. In the absence of any submission from the Respondent, we can only rely on the mandate which Appellant No.1 holds from Appellants No.2 to 16 to lodge the appeal.

Co-Respondent No. 2 relies on the fact that the Notice of Appeal is signed by Appellant No.1 only. An objection based on this amounts to asking this Tribunal to be utterly technical in disregarding all the other elements that point to the locus standii of all the Appellants. We find that it is necessary to take a wider approach, especially taking into account that the Appellants were inops consilii at the time of lodging the appeal. We find that the locus standii of all the Appellants is established. The first limb of the objection raised is set aside.

As regards the second objection, in its Statement of Defence, Co-Respondent No.2 has deemed fit to traverse the grounds as contained in the Statement of Case of the Appellants. By so doing, Co-Respondent No. 2 has shown no cause to dispute that these are the grounds on which the appeal is to be heard. As such, the jurisdiction of this Tribunal on these grounds is seized. The Respondent has also traversed paragraph 13.5 of the Statement of Case relating to the 'Design Guidance for Siting and Design of Radio Telecommunications Equipment'. At any rate, the grounds of appeal as set out in the Notice of Appeal relate to issues of health, security and development within residential areas. These aspects are covered and expatiated in the Statement of Case, although the drafting differs for the reason mentioned above, i.e. the Appellants being inops consilii at the initial stage of the appeal procedure. For this reason, we do not support the second limb of the objection.

The plea in limine litis raised by Co-Respondent No.2 is accordingly set aside and the appeal is to proceed on the merits.

Ruling delivered on 16th January 2018 by:

Mrs. V. Phoolchund-Bhadain, Chairperson

Miss. R. Seetohul, Assessor

Mr. P. Manna, Assessor