BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1753/19

In the matter of:

Pradeep Ltd

Represented by Mr. Tuckmun Mugon

Appellant

v/s

Ministry of Social Security, National Solidarity, and Environment and Sustainable Development (Environment and Sustainable Development Division)

Respondent

RULING

1. This is an appeal initially against the decision of the Minister/Ministry of Social Security National Solidarity, and Environment and Sustainable Development (Environment and Sustainable Development Division) for having refused the granting of an EIA Licence to the Appellant for a proposed rock quarrying activity at Belle Vue, Albion. The refusal letter dated 26 December 2018 under the signature of the Acting Director of Environment from the Ministry of Social Security, National Solidarity, and Environment and Sustainable Development (Environment and Sustainable Development Division) informed the Appellant that his application was examined by the EIA Committee and *"in accordance with Section 23(2)(b) of the Environment Protection Act 2002 (as amended), the application has been rejected in view of locational criteria not being respected, as follows:*

   (i) The site is located at around 290m from the settlement boundary and the nearest residential area and according to the provisions of the Planning Policy Guidance, a rock quarry should observe a setback of upto 1 km from sensitive land uses; and

(ii) The Albion Master Plan provides that only agricultural and Industrial uses be allowed within the safety buffers for the identified projects at Albion."

2. The Respondent have raised a plea *in limine* in its Statement of Defence to the effect that the appeal should be set aside as it was wrongly directed towards it, that is, the Ministry of Social Security, National Solidarity, and Environment and Sustainable Development (Environment and Sustainable Development Division). Following the filing of the Statement of Defence, the Appellant's attorney moved to take a stand on the preliminary objection on the two sittings that followed and finally the matter was fixed for Arguments on the objection raised by the Respondent. We have duly considered the submissions of learned Counsel appearing for the Appellant and State Counsel. We shall address the issue at hand and will only make reference to the submissions of counsel where we deem it fit to do so.

3. Under **section 4 of the Environment and Land Use Appeal Tribunal Act 2012**, the Tribunal has the jurisdiction to hear and determine appeals under **Section 54 of the Environment Protection Act 2002.** This appeal was lodged pursuant to **Section 54 of the Environment Protection Act 2002** as amended, which provides

"54. Jurisdiction of Tribunal

(1) The Tribunal shall hear and determine appeals against—

(a) a decision of the Minister under section 16 (6), 17 (1), 23 (2), 23 (4), 24 (3) (a), 24 (3) or 25 (1)..." [the stress is ours]

4. On a strict interpretation of the above provision, the Tribunal shall determine appeals provided that the Tribunal has jurisdiction to hear the case.The Tribunal has jurisdiction to hear and determine appeals against the decision of the Minister responsible for the Environment not the Ministry. The Minister cannot be equated with the Ministry. Infact, the refusal letter sent to the Appellant informing it of the impugned decision makes reference to section 23 (2) (b) of the EPA 2002. The record shows that the Appellants have always been legally represented since their grounds of appeal and statement of case have been drafted by their attorney. No reason has been advanced for these laches in the pleadings of the Appellant.

5. More importantly, there was never any motion forthcoming from the legal representatives of the Appellant for an amendment of the pleadings filed on behalf of the Appellant to add as a clear and distinct party to the appeal the relevant Minister. Counsel appearing for the Appellant in essence submitted that there was no need to join the Minister as a party and urged the Tribunal to proceed with the hearing of the case as it is by submitting "We can simply proceed with it as it is, putting in the Minister would not have changed anything on the defence of the Ministry unless they come and prove prejudice." We do not agree with these submissions. The Tribunal cannot proceed with the hearing of a case where it has not been conferred the jurisdiction to hear and determine an appeal against the Ministry as per the **ELUAT Act 2012** and **EPA 2002**. We are a Tribunal, with powers clearly set out in the law. Ex-facie the pleadings the Tribunal has no jurisdiction to hear a decision which lies against the Ministry for the refusal of an EIA licence because the decision-maker is the Minister. The Tribunal will be acting *ultra vires* if it proceeds with the hearing of the appeal since it is tantamount to it conferring upon itself a jurisdiction that it does not have right from the outset.

6. At the heading of the Statement of Case, the Respondent is styled as the *"Ministry of Social Security, National Solidarity, and Environment and Sustainable Development (Environment and Sustainable Development Division)"* and similarly in the Notice of Appeal of the Appellant at paragraph 1 that the decision being appealed is inserted as that of the *"Ministry of Social Security, National Solidarity, and Environment and Sustainable Development (Environment and Sustainable Development Division)"*. We note, however, under the paragraph 3 of the Notice of Appeal where the Grounds of Appeal are set out reference is made by the Appellant to *"The decision of the Ministry/Minister"* and likewise, in the body of the Statement of Case it has been styled as *"The decision of the Ministry/Minister"*. From the tenor of the averments found in the pleadings of the Appellant, we are of the view that the Appellant could have intended to mean the Minister who took the decision, more especially in the Statement of Case under the paragraph entitled "Reasons for Challenge" wherein it is averred that the reason for contest of the decision is on the ground that "The Decision of the Ministry/Minister is:-".

7. We take note that there can be no body that exists by the name of "Minister/Ministry". This is a rather undesirable state of affairs which would imperatively have necessitated an amendment of the pleadings. The legal representative of the Appellant took time to consider the plea *in limine* raised but no motion for amendment of the pleadings was ever made before the Tribunal. Had the motion for amendment been made, the Tribunal would have had to exercise its discretion on whether to allow it or not. Since such a motion for was not forthcoming, the Tribunal cannot proceed with hearing the appeal on its merits.

8. For the above reasons and being given that the Tribunal is of the view that ex-facie the pleadings this is not a frivolous or vexatious appeal and can be heard on the merits coupled with the fact that the Tribunal is meant to function with as little formality and technicality, the Tribunal invites the Appellant to take a stand. The Tribunal also takes on board the fact that the Notice of Appeal and the Statement of Case makes mention of the Ministry and the Minister and this appeal has been entered within the prescribed statutory time frame under the **ELUAT Act 2012**.

Ruling delivered on the 22nd August 2019 by

Mrs. J. RAMFUL	**Mr. P. MANNA**	**Mr. H. MEETOO**
Vice Chairperson	**Member**	**Member**