

**BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL****Cause No.: ELAT 690/14****In the matter of:****MRS. HEWANTEE CHATORDARY & MRS. BISSESSUR BUNDHOO****Appellants****v.****DISTRICT COUNCIL OF PAMPLEMOUSSES****Respondent****In the presence of:****MONEBAHAL MAHMAD SHARIF CO. LTD.****Co-Respondent****RULING**

The Appellants have raised the point that the Building and Land Use Permit (hereinafter referred to as BLUP) issued to the Co-Respondent does not stand anymore and has lapsed being given that the date of issue was the 30<sup>th</sup> April 2014.

It came out in the course of the hearing that the building for which the BLUP was granted has already been constructed but the operation of the metal workshop has not started as the Co-Respondent is awaiting the outcome of the appeal before proceeding with same.

Counsel for the Appellants relied on the point that the BLUP had been issued along with, and on the same date as the licence for the installation of engines (issued under Section 31(1) of the Building Control Act 2012). This licence for the installation of engines contains eight conditions, of which condition 7 stipulates that "*The Licence shall lapse (a) where it has not been implemented within two years of its date of issue, or (b)*

where the operation under the licence is suspended for a period of two years, or (c) the BLUP referred to above is revoked". Counsel for the Appellants relied on this clause to find that the BLUP has equally lapsed. We have given due consideration to the submissions made by counsel for the respective parties.

Firstly, as regards the lifetime of the BLUP itself, condition 2(ii) contained in the BLUP stipulates that "*The permit has to be acted upon twenty-four months as from the date of issue failing which it shall be deemed to be null and void*". There is no dispute among the parties that this condition has been complied with, being given that the construction of the building had started (in accordance with section 18 sub section 2 of the Building Control Act 2012) and has now been completed. As such the BLUP has been 'acted upon', as provided. The bone of contention is the fate of the licence for installation of engines, in particular, condition 7 of this licence (supra). The Appellants contend that the construction, and even completion of the building, does not have a bearing on the provisions of the licence for the installation of engines, being given the express condition in this paragraph.

We do not subscribe to the submission of counsel for the Appellant that non-compliance with condition 7 (supra) has a direct and fatal impact on the BLUP itself. It is our view that, although having come into force on the same date and, presumably in the course of the same decision of the Respondent, the licence for the installation of engines cannot dictate whether the BLUP would exist or not, the more so that the BLUP has been issued for 'the construction of a building at Ground floor to be used as metal workshop'. (The installation of the electric engines is related to the operation of the workshop).

We however find substance in the Appellant's standpoint that the rigid conditions of the licence for the installation of engines calls for a cautious approach. Condition 7 (b) of the licence for installation of engines calls for it to lapse where the operation under the licence is suspended for two years. No further qualification nor criteria is set out to describe the manner in which this suspension ought to operate. For instance, nothing indicates that the period during which the appeal is pending before the Tribunal ought to have a suspensive effect.

We find a rationale in this approach, as the use of electrical engines is allowed by a licence but at the same time is curtailed by the conditions imposed therein. For the purposes of such engines, the circumstances, geographical and demographical realities in the area where such engines are to be placed may evolve. The two years given for the implementation of the licence, or the suspension of the operation for more than two years, calls for a revisiting of the decision to grant same. This is why we agree with the submission that the licence to install engines in this case has indeed lapsed. We do not however subscribe with the position that this will go to the length of cancelling the

BLUP. The BLUP, as stated above, is a live one. The Co-Respondent should be called upon to make a fresh application for a licence for installation of engines.

The above position differs from the preliminary point raised by counsel for the Appellants. For the abovementioned reasons, we do not find that the BLUP issued to the Co-Respondent has lapsed. We however find that in accordance with condition 7 of the licence for installation of engines, this licence has lapsed.

We are alive to the fact that the BLUP for the said activity cannot have a 'raison d'être' if the licence for the electric motors is not granted. This will have an impact by putting a halt to the activities of the business altogether. From an academic perspective, we cannot follow the position propounded by the Appellant in saying that the BLUP lapses, as it stands separately. Yet, we concur with the stand of the Appellant that the licence may need to be revisited by the Respondent for the above-mentioned reasons.

By virtue of the powers of the Tribunal under section 5 sub-section 10 of the Environment and Land Use Appeal Tribunal Act 2012, as amended, we order that the Co-Respondents submit a fresh application for the installation of electrical engines to the Respondent.

Delivered by:

**Mrs. Vedalini Phoolchand- Bhadain, Chairperson**

**Mr. Gerard Lepoigneur, Assessor**

**Mr. Pravin Manna, Assessor**

15<sup>th</sup> November 2019