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 plea in limine raised by counsel for the Respondent is to the effect that:

1. This Tribunal has no jurisdiction to grant the relief sought, namely the making of a declaration as to whether the decision was lawful or not.
2. Even if it does grant the relief, the declaration will serve no purpose.

Counsel for Co-Respondent No.2 joined in the above motion and added that the telecommunication tower was operational since the year 2016. Co-Respondent No.1 stated at the very outset that he will abide by the decision of the Tribunal.

We have considered the submissions made on behalf of the respective parties. We concur with the submission of the Appellant that the prayer, as couched, is not a '*declaration*' as stated by the Respondent. The prayer sought as per paragraph 14 of the statement of case is that "*the Appellants move that the present appeal be allowed and that the decision of the Respondents be quashed, revoked, set aside and/or be dismissed*". What the Appellants are seeking before this Tribunal is to look into whether the BLUP was correctly granted or not. This prayer is couched in the usual wordings of

an appeal. The Appellant has lodged the appeal by virtue of section 117(14) of the Local Government Act, and this Tribunal is asked to hear and determine the appeal under section 4 (1) (a) of the Environment and Land Use Appeal Tribunal Act. The determination can lead to several options, that of setting aside the appeal, or the granting of any of the prayers sought by the Appellant. Indeed, as pointed out by the Appellant, nowhere do we read in this prayer that it amounts to a call for a Judicial Review remedy of a Declaration, as suggested by the Respondent. The ruling in the consolidated cases of Ujhooda and anor. v. District Council of Flacq (ELAT 775/14 and ELAT 776/14) is distinguished. As pointed out in that ruling, the Appellants had challenged the decision of the Council on the basis that the due process had not been followed, thus questioning the decision-making process. Here, ex-facie the pleadings, it is the merits of the decision that is challenged through an appeal and we reiterate that we do not read in the prayers that a declaration is sought. We find no merit in the first leg of the plea in limine raised and set it aside.

The second limb of the plea in limine is that even if the Tribunal grants the relief sought, it will serve no purpose. The response of the Appellant to this position is to differ from the standpoint that 'what has been done cannot be undone'. In respect to this, we are of the view that one should not limit the scope of judicial or quasi-judicial intervention to this statement. Indeed, if any harm has been committed, a relief can be looked for. Yet, it is our observation that we cannot take an academic position by expatiating on potential courses of action, and rope in any such action to the appeal process before the Tribunal. The process before the Tribunal cannot be used solely as a recourse to lay the basis of future courses of action.

Ex-facie the pleadings, and from the submission of counsel for the Appellants, what is sought to be obtained is a cancellation/revocation/reversal of the decision of the Council to grant a BLUP. The Appellants would then contemplate what action to take. It is our reading that the potential remedies that the Appellants say they are seeking are already laid down in the general conditions attached to the BLUP issued on the 16th June 2015, in particular, condition 9, which reads as follows: "*The Permit may be cancelled without any compensation at any time the Council feels it expedient as follows: a.) for any breach of the conditions, b.) in the interest of public health, public comfort, public order or public safety.*" The onus is on the Appellants to call for a monitoring of compliance with the BLUP conditions should they feel aggrieved by any breach. Other avenues for remedy, having separate causes of action, are available to the Appellants. It is our view that since the tower is operational since 2016, the questioning of the decision to grant it or not at this point in time will yield only academic results. Reference was rightly made to the case of Ramphul v. The Local Government Commission [1995] SCJ 79, where it was stated that '*Courts have to deal with live practical questions and not academic ones*'. Entertaining the appeal at this point in time would be, in our view, an academic

exercise, the more so that the remedies that are looked for already exist in the conditions attached to the BLUP. We therefore find the second limb of plea in limine (*that it will serve no purpose*) is justified, albeit for a different reason. We find that entertaining the appeal would amount to an abuse of the process of this Tribunal. We therefore set aside the appeal.

Delivered by:

Mrs. Vedalini Bhadain, Chairperson

Mr. Pravin Manna, Assessor

Ms. Roovisha Seetohul, Assessor

Date: 17th September 2019