BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 125A/12

In the matter of :

1. **Padam Prakash Punjabi**
2. **Mrs. Sarojini Punjabi**
3. **Mrs. Mokshadah Gopee**
4. **Ms. Shobha Devi Nirsimloo**

Appellants

v.

Municipal Council of Curepipe

Respondent

In the presence of:

1. **Societe Quatre Quatre Cinq represented by Mr. Guyhano Mungur**
2. **International Part Distributors Ltd.**

Co-Respondents

Ruling

The Appellants in the present matter are objectors to the proposed development for which the Respondent has granted a BLUP to the Co-Respondents. The parties were invited to take a stand in the light of the Supreme Court judgment of Baumann v. District Council of Riviere du Rempart i.p.o Syndicat des Co-Proprietaires de Savannah Sparrow Residence and Ors. [2019] SCJ 311 and the ruling of the ELUAT in the case of Peerthy v. Municipal Council of Vacoas Phoenix i.p.o A. Chinatamby Co. Ltd [ELAT] 1617/18. The Respondent and Co-Respondents took the stand that despite the fact that the present appeal being one referred to by the Town and Country Planning Board, the same principles that applied in the case of Baumann apply here, namely that the Appellants do not have locus standi to appeal before the ELUAT.

The Appellants have taken the following stand:

i. The point argued before the Judge of the Supreme Court concerned an appeal lodged under section 117(14) of the LGA 2011.

ii. The ratio decidendi of the case was limited to the case of the Appellant in the Baumann case and similar situations -namely that persons who are neighbours and who made an appeal, under section 117(14) of the LGA, to the Tribunal as an aggrieved person, in the capacity of an aggrieved neighbour.

iii. The Baumann case clearly showed the legislative intent with the words "any aggrieved person" rather than "any aggrieved applicant". The term "any aggrieved

person" has a wider ambit than the term "any aggrieved applicant". From an ordinary reading of the law, any objector who is aggrieved can also appeal against the decision of the Council, provided he can show to the Tribunal that he has 'locus standi'.

iv. No other situations were referred to by the SC, nor did the Learned Judges adjudicate on any other situation.

v. The Appellants in this particular case never appealed to the Tribunal through the LGA 2011, as in the case of Baumann. The Appellants had appealed to the Town and Country Planning Board (TCPB) on the 13th April 2012.

vi. The appeal was referred to the Tribunal under the provisions of the Transitional Provisions of the ELUAT Act: Section 9(3) of the Act, which provides that when the hearing of any matter has not started, but is pending at the commencement of this Act, before the TCPB or the Environment Appeal Tribunal, the matter shall, at the commencement of this Act, be taken and determined by the Tribunal.

After considering the above-mentioned points raised in the stand of the Appellants, we make the following observations:

1. In respect of points (i) and (iii), their Lordships have stated in the case of Baumann that: " *A proper construction of these provisions* [reference being made here to sections 117(14), 117(7)(b) and 12 of the Local Government Act 2011] *conveys the clear and plain intention of Parliament: only an aggrieved party can appeal to the Tribunal and an aggrieved party is one who has been notified that his application has not been approved [vide sections 117(7)(b) and 117(8)(b) of the LGA 2011). The legislator has not provided for any other person to have the possibility of challenging the granting of the BLUP to an applicant before the Tribunal."*

   Their Lordships furthermore stated that: *"Obviously, any other person, a neighbour, like the present appellant for instance, who feels aggrieved by the granting of the BLUP may have recourse before another court, but certainly not before the Tribunal which does not have jurisdiction to consider and to determine complaints from those who are not 'aggrieved persons' within the definition of the Local Government Act 2011."*

   This judgment takes a strict approach on who has locus standi to appeal to the Tribunal and on the jurisdiction of the Tribunal. The search for the ordinary meaning of the law to differentiate between 'aggrieved person' and 'aggrieved applicant', as suggested in paragraph (iii) of the stand of the Appellant, and the 'wider ambit' of the former, departs from the interpretation given in Baumann (supra). We cannot read more in this judgment than what it clearly states.

2. In respect to points (ii) and (iv), although the Appellants objected in their capacity of 'aggrieved persons' being 'aggrieved neighbours', nothing indicates that the *ratio decidendi* of the said judgment is limited to the status of the 'aggrieved persons' as being 'aggrieved neighbours' only. We do not subscribe to the restrictive interpretation of the judgment that is taken by the Appellants. Besides, we note that the Appellants in the present case have themselves lodged the appeal, being immediate neighbours to the proposed development.

3. In respect to points (v) and (vi), the appeal was transferred to the ELUAT from the Town and Country Planning Board under the provisions of section 9(3) of the ELUAT Act, which states that: "*Where the hearing of any matter has not started, but is pending at the commencement of this Act before the Town and Country Board (TCPB) or the Environment Appeal Tribunal (EAT), that matter shall, at the commencement of this Act, be taken up and determined by the Tribunal*". We are of the view that this sub-section should not be read in isolation but along with the other provisions of section 9. These are to the effect that cases that have already started before the TCPB, or EAT, or the Judge in Chambers shall continue to be heard before those respective jurisdictions despite the fact that the matter comes under the jurisdiction of the ELUAT.
   Clearly, section 9(3) of the ELUAT Act cannot mean that the ELUAT has a wider jurisdiction in respect of TCPB cases that have been 'inherited', than its original jurisdiction to hear appeals as conferred by the ELUAT Act and under the Local Government Act, among other legislations. As its name suggests, section 9(3) falls under 'Transitional Provisions' and is meant to effect a smooth and chronological transition of cases from the TCPB to the ELUAT, depending on the stage at which the cases have reached. Despite the mandatory language used ("*the matter shall ...be taken and determined by the Tribunal*"), the Tribunal is called upon to hear appeals for which it has jurisdiction, and the judgment in Baumann (supra) has laid down the parameters of its jurisdiction.

   We appreciate that in the 'Amended Stand of Appellants' filed on the 15th July 2020, the Appellants have stated that they respect the fact that the determination could not be otherwise than on the principles of '*stare decisis*' as the Baumann judgment in 2019 SCJ 311 was delivered by a Bench of 2 Judges of the Supreme Court and the Tribunal itself was bound by it.

   We must also make a remark on position taken by the Appellant at paragraph 4 of their 'Amended stand', where reference is made to the case of Jaunbaccus v. the TCPB and Ors. 2014 SCJ 372, a judicial review case which addressed the issue of locus standi of the applicant, who was deemed to be an aggrieved party although he was not one of those whose BLUP got rejected. At paragraph 4.1 of the same document, it has been submitted by counsel for the Appellants that:
   1. Jaunbaccus was not referred to in Baumann.
   2. There appears therefore a conflict of judgments at the level of the Supreme Court.
   3. This being the case, there may be further arguments and a fresh ruling in this case.

The issue of conflict of judgments at the level of the Supreme Court is a matter that is not for the ELUAT to adjudicate upon, nor the fact that Jaunbaccus had not been referred to by the Supreme Court in the judgment of Baumann. The ELUAT, being of inferior jurisdiction to the Supreme Court, is bound by the judgment of Baumann which is authoritative. In addition, the position of ELUAT (as taken in Peerthy (supra), which is currently the subject of an appeal, and also in several rulings given) is not to allow any abuse of its process by hearing further arguments on locus standi, and

consequently on its jurisdiction, as these matters have already been thrashed out by the Supreme Court.

For all the above reasons, and taking into account the respective stands of the Respondent and Co-Respondents, we rule that the present appeal cannot proceed before this jurisdiction.
The appeal is accordingly set aside. No order as to costs.

Delivered by:

Mrs. V. Phoolchund- Bhadain, Chairperson

Mr. Herveendeve Meetoo, Member

Mr. Juswansing Aubeeluck, Member

Date: 24th July 2020.