

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 799/14

In the matter of :

Mr. Jai Prakash Gobin & Others

Appellants

v.

Municipal Council of Vacoas Phoenix

Respondent

In the presence of:

Nageswarnath Mandir

Co-Respondent

Ruling

Counsel for the Co-Respondent has made a motion to the effect that pursuant to Supreme Court Judgment of Baumann v. District Council of Riviere du Remparti, p.o Syndicats des Co-Proprietaires de Savannah Sparrow Residence and Others [2019 SCJ 311], the Appellant cannot be considered an aggrieved person and therefore cannot appeal before this Tribunal. He moved that the appeal be set aside.

Counsel for the Respondent joined in this motion and furthermore added that the decision being contested is a ministerial decision in accordance with the power of the Minister under the Local Government Act. It should have been challenged by way of judicial review and the appeal should not have been raised before the ELUAT.

After several postponements the Appellant maintained that he wished to proceed with the appeal.

We have considered the motions of counsel for the Respondent and Co-Respondent. In the case of Baumann (supra), the Supreme Court made a pronouncement on who is an "aggrieved person" within the meaning of section 117(4) of the Local Government Act 2011 whereby their Lordships stated that "*The Tribunal does not have the jurisdiction to consider and determine complaints from persons who are not "aggrieved persons" within the definition of the Local Government Act 2011.*" This goes to the root of the jurisdiction of the Tribunal in respect of who can appeal. The Appellant in the present matter does not fall in the category of "aggrieved person" within the interpretation given by their Lordships.

Now, by proceeding to hear the matter with an Appellant who is not an "aggrieved person" within the definition of the law, this will tantamount to hearing an appeal from someone who did not have *locus standii* to lodge the appeal. The Tribunal cannot allow an abuse of its own process by proceeding with the hearing while the Supreme Court has already pronounced itself on who has *locus standii* to lodge an appeal before the ELUAT. The ELUAT being of inferior jurisdiction, is bound and must abide by the above pronouncement of the

Supreme Court. This position has been followed by the Tribunal in a ruling delivered by ELUAT in the case of Peerthy v. Municipal Council of Vacoas-Phoenix i.p.o A. ChinatambyCo.Ltd [ELAT 1671/18].

In the light of the above, we find no reason to dwell on the second limb of the Respondent's motion, namely on the power of the Minister to grant the BLUP. For the reasons given above, the respective motions made on behalf of the Respondent and Co-Respondent are granted. The appeal is set aside. No order as to costs.

Mrs. V. Phoolchand-Bhadain, Chairperson

Mr. Pravin K. Manna, Member

Dr. Geeta D. Soomaroo, Member

Date:

2nd July 2020