

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1620/18

In the matter of:

**Mr. Ahmad Swadeck Hosseney & Others,
Represented by Mr. Mulkraj Nuckchadee**

Appellants

v.

- 1. Ministry of Housing and Lands**
- 2. Morcellement Board**

Respondents

Determination

This is an appeal against the decision of the Morcellement Board for having rejected the application made by the Appellant for the subdivision of a plot of land of the extent of 4451 square metres into four lots, for residential purposes. The grounds of rejection, communicated to the Appellant in a letter dated 25 May 2018 are as follows:

1. The site lies at about 124 metres outside settlement boundary and growth zone as per the prevailing Outline Scheme of Pamplemousses/Riviere du Rempart;
2. The proposed site lies within a zone retained for Irrigation Project;
3. The site adjoins an existing poultry pen and lies within the 200 metres buffer of the poultry pen.

In a notice of appeal lodged on the 21st June 2018 before this Tribunal, the sole grounds to contest the decision is that 'In 2007, the Morcellement Board had already issued a letter [of intent] for residential purpose, and CEB and CWA clearances have already been obtained'.

At the outset, we observe that the above 'contentions' of the Appellant do not meet the requirements of section 5 sub section 4 (a) of the ELUAT Act, namely that the notice of appeal shall set out the grounds of appeal concisely and precisely. The notice of appeal, as drafted, merely sets out the information regarding a previous application for subdivision approved and the clearances obtained so far.

The Statement of Case filed in the context of this appeal also lists out chronologically two previous applications followed by the one being the subject matter of the present appeal, highlighting that the recommendations made in the previous applications have been complied with, namely the payments made to the CEB and CWA (Documents C and D). The Statement of Case also contains a submission to the effect that there are several existing residential features within a radius of 100 metres around the site location, which is why they move that the appeal be upheld.

In the Statement of Defence filed on behalf of both Respondents, it is averred that the first application submitted in 2007, the then applicant had failed to comply with the requirement

to submit further documents, thus leading to the setting aside of the application. The Respondents, whilst relying on Policy SD 4 in support of their stand, namely, the general presumption against the development of land outside settlement boundary, submitted that scattered residential developments have been observed during a site visit and it is for the relevant local authority, which is not a party to the present appeal to take relevant action at its end. The Respondents aver that the appeal is devoid of merits and move that it be set aside.

At the hearing before the Tribunal, the representative of the Appellants, Mr. Nuckchadee deposed to the effect that he had been appointed by the Supreme Court to act as appraiser for a division in kind of the land *in lite* (Document B). In this context, he made the payment and obtained relevant clearance from the Waste Water Management Authority (Document G), followed by a letter seeking the authorization from the Morcellement Board, Ministry of Housing and Lands. The latter informed him that the land *in lite* was situated within 200 metres buffer zone of a poultry pen (Document H). He then submitted the appeal on behalf of the Appellants. The contention of the Appellants is that there had initially been an approval granted to the applicants for the subdivision for residential purposes, but due to some family inconvenience, the procedures had to stop and it is only in the year 2016 that the property had been sold to the children, as evidenced by Document A. A subsequent application for subdivision has now met with a refusal, being the subject matter of the present appeal. Mr. Nuchchadee explained that the land *in lite* adjoins a poultry pen, yet there are other residential buildings adjoining the poultry pen. Document E was produced to show same. The context plan produced as Document F also shows the presence of other residential developments in close proximity to the said poultry pen.

In cross examination, he conceded that indeed, the site *in lite* was located at a distance of 124 metres from the settlement boundary but he had no knowledge of the fact that the site was in an irrigation zone as he had seen no irrigation equipment near the site.

Evidence was adduced in respect of the approval that had been obtained for an earlier application in the year 2006. We find no need to refer to same, being given that the subject matter of the present appeal is the refusal letter dated 25 May 2018. In respect of this refusal, the Appellant did not dispute that the site lies within an irrigation zone retained for an Irrigation project and did not dispute that the site lies outside settlement boundary by 124 metres. He even conceded that the site adjoins a poultry pen.

Copy of the Irrigation Zone map was produced by witness for the Respondent, Mr. Juggroo (Document L), who explained the rationale for the policy of protecting agricultural land located outside settlement boundary, as contained in the Outline Planning Scheme for Pamplemousses Riviere du Rempart District (Document M), as well as the underlying policy of having a buffer zone around poultry farms for biosecurity reasons, as per the Planning Policy Guidance (Document N). He confirmed that the development of the site *in lite* would not be acceptable as it would not follow the sequential approach.

The witness from the District Council deposed and confirmed that the poultry farm is operating under a license and has been duly renewed. He could not enlighten the Tribunal on the presence of other residential premises in the vicinity of the poultry farm, nor whether licences had been delivered to them.

Mrs. Seenarain, deputed by the Ministry of Environment deposed and produced a copy of the EIA license granted in respect of the poultry farm that adjoins the subject property (Document Q). She has lengthily explained the environmental nuisance caused by poultry pens, thus justifying the 200 metres buffer zones to be observed. Mr. Khodabaccus, representing the

Ministry of Health, also deposed to highlight the health hazards associated with residential developments within the buffer zone of a poultry pen. He confirmed that the poultry pen was operational following a site visit done by him.

We have given due consideration to the lengthy evidence adduced on behalf of the parties. At the outset, we note that the evidence that is relevant for us to consider is that which concerns the refusal to the application dated 25 May 2018. The considerations given to earlier applications are not before the Tribunal for it to assess.

We do not subscribe to the view that the earlier approval ought to have a bearing on the assessment by the Respondents in the application subject matter of the present appeal. The sole 'ground' of appeal as contained in the notice of appeal is, in our view, not a ground *per se*. Furthermore, we find that the reasons for refusing the application have been amply justified, be it from the planning perspective, or the environmental and health perspectives. We find no reason to interfere with the decision of the Morcellement Board and the Ministry of Housing and Lands.

The appeal is set aside. No order as to costs.

Delivered on the 10th May 2022 by:

Mrs. V. Phoolchund-Bhadain, Chairperson

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Mr. S. Moothoosamy, Member

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Mr. R. Acheemootoo, Member

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