

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 2114/22

In the matter of:

**Mrs. Chandrajotee Persootheram, represented by
Mr. Viney Persootheram**

Appellant

v.

**Morcellement Board, Ministry of Housing and Land Use
Planning**

Respondent

Determination

The Appellant has lodged the present appeal against the decision of the Respondent for having refused to grant an application for the subdivision of a plot of land of an extent of 984.70 square metres into two lots in a place called Trèfles, Rose Hill. The sole ground of refusal, as communicated to the Appellant through the National e-Licensing System (NELS) on the 10th June 2022 is that the site is situated in a flood prone area. However, the Respondent also stated that “there is a major drainage infrastructure in the area to mitigate flooding issues and the applicant may submit a fresh application upon completion of the project”. Nonetheless the Respondent informed him of his right to appeal against this decision. The Appellant thus lodged a notice of appeal on the 29th June 2022 wherein he raised four grounds of appeal as follows:

- (a) The plan upon which the Board has assessed that the site is flood prone has not been specified. As such, we cannot ascertain that it is an approved plan.
- (b) There are existing buildings in the vicinity as per attached photos.
- (c) The site has never been flooded.
- (d) The adjacent public road has recently been widened and a drain constructed.

The Appellant's representative deposed to explain the hardship that his family has been facing by the fact that they are unable to construct their house on their plot of land. In his opinion, the Respondent's ground for declining the application is not justified being given that, firstly, his land is situated at a certain height from level of the road and thus, is not likely to be affected by flood issues. Secondly, there are several constructions in the vicinity and that his plot or area has never been the subject of any flood. Thirdly, he has been granted a Land Conversion Permit for the proposed development wherein eight specific conditions have been attached to the said permit. He agreed to comply to the conditions that have been set as well as any condition that

may otherwise be imposed. He explained that his plot of land is situated at a distance of two kilometers from the mountain. According to him, the topography of the land is such that it will not be affected by water emanating from the mountain slopes. Furthermore, the presence of a drain in the vicinity as well as a canal located at a distance of 1.5 km from the proposed site would cater for excess water flowing from the area in case of flood water.

The Respondent's representative explained that the decision of the Morcellement Board was based on the recommendations of the Land Drainage Authority (LDA), which had declared the area as being flood prone. In its statement of defence, the Respondent has elaborated on the views that were given to the Respondent by the Land Drainage Authority. These are as follows:

- (i) The subject site is found downstream of several flood prone areas and is also at the foot of mountain Corps de Garde;
- (ii) Further there is no major drainage network in the region;
- (iii) A major cut off drain has been earmarked for the region in the Flood Management Programme;
- (iv) The subject site is prone to flooding;
- (v) The public road found in the vicinity has been widened but the drain caters only for run off generated from the road and not the whole catchment area.

The contention of the Appellant is that the plan that had been referred to has not been released, so much so that there is no indication if it is an approved plan. This is in fact his first ground of appeal. This ground of appeal has not been elaborated upon by the Appellant in his statement of case, nor has it been addressed in the statement of defence. Be that as it may, Document B is an official copy produced by the representative of the Land Drainage Authority indicates the flood prone area in that particular region.

We have considered the evidence adduced by the representative of the Land Drainage Authority. He explained with details the characteristics of the land *in lite* and stated that the Land Drainage Authority is duty bound to take into account the potential of heavy rains and its impact in that area. He added that even if the specific land belonging to the Appellant is on a higher spot, and that the latter proposes to construct at a certain height, this cannot be recommended by the LDA being given that, for all intents and purposes, the land *in lite* falls within the catchment area of the flood water and furthermore, the proposed construction may constitute an obstruction for the flow of water. This will impact on plots which are at a lower spectrum. The decision to construct drains is to allow water flowing from Corps de Garde Mountain and its surroundings to be directed to the drains and flow away from habitations. He added that the constructions that are present in the vicinity of the Appellant's land may have been approved at a time when the LDA was not in existence. Besides, the drains that have been constructed in that area would not have met with the recommendations of the LDA, as they do not respond to the needs of the area, namely that they have the capacity to cater for run-off water generated from the roads and not the whole catchment area. He maintained that the area is a high risk one.

After having considered the evidence adduced on behalf of the Land Drainage Authority, it is our view that the Respondent, being a permit authority, has rightly

aligned its decision on the views of the Land Drainage Authority since the area is a flood prone one.

In addition, the Respondent has stated that there is a major drainage infrastructure project in the area to mitigate flooding issues and the Applicant may submit a fresh application upon completion of the project. We are alive to the concern expressed by the Appellant's representative with regard to the time that this may take. Yet it is our view that this is now a vital planning issue and has been declared as an emergency, the more so that we have taken judicial notice of the risk of flash floods that exist as a result of climate change.

In the light of all the above considerations, we are of the view that there is no reason for us to interfere with the Respondent's decision at this stage.

The appeal is accordingly set aside.

No order as to costs.

Delivered by:

Mrs. Vedalini Phoolchund-Bhadain, Chairperson

Mr. Shanmoogum Moothoosamy, Member

Mr. Ismet Mohamad Suffee, Member

Date : 9th March 2023