

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 2134/22

In the matter of:

Mr. Teeluckraj Pokhot

Appellant

v.

The District Council of Pamplémousses

Respondent

In presence of:

Ministry of Housing and Land Use Planning

Co-Respondent

Determination

1. The present appeal has been lodged against the decision of the Respondent for having declined to grant the application made by the Appellant for a Building and Land Use Permit (BLUP) for the construction of a building for residential purposes.
2. The sole ground of refusal as contained in the refusal letter dated 23 September 2022 from the Respondent (Document A) is that *“the Council has been directed not to issue any Building and Land Use Permit on the subject site as same forms part of a ‘fake’ morcellement”*.
3. The grounds of appeal contained in the Notice of Appeal lodged by the Appellant, lumped together, is that there are already residential developments in the vicinity of the site, water and electricity supply already exist and the Appellant is among the last few to request for a building permit in this morcellement.
4. In his testimony, the explained the hardship that he is facing for having to live in the house of his in-laws along with his wife and growing children. He felt penalized by the fact that other owners of land in the morcellement had been granted building permits. He explained that at the time he purchased the land, he was not aware of the ‘fake’ nature of this morcellement, this having come to his knowledge later. He conceded however that, as per his knowledge, the other permits may have been delivered before the ‘fake’ characteristic of the morcellement had been discovered.
5. The representative of the Respondent, in addition to confirming the correctness of the contents of the statement of defence filed by the Respondent, relied on a letter

(Annex A) from the Ministry of Housing and Lands addressed to the Chief Executive of the Pamplemousses District Council, requesting (among other information sought) the latter to abide by the following:

- (i) *“In case BLUPs have been applied for plots of land in connection with fake morcellement permit, the said applications should not be processed pending further enquiry (see section 117(7)(b) of the Local Government Act); and*
- (ii) *In case BLUPs have been issued, but construction not yet started, to inform the holder of the permit that the BLUP was issued in connection with a fake Morcellement Permit.*

6. The witness stated that the District Council could not proceed otherwise in the light of this ‘directive’ received from the Ministry of Housing and Lands. He could, on the other hand, not provide any update as to the progress regarding the enquiry into the ‘fake morcellement’ issue. He produced as Document B a sketch plan of the area, showing the plots belonging to the Appellant and the other plots showing the presence of existing buildings in respect of which he was unable to confirm whether permits had been delivered. In cross examination, he explained that the application submitted by the Appellant had been sent to the Permits and Business Monitoring Committee. It had not been approved based on the above-mentioned ‘directive’ in spite of the application being compliant with the planning parameters. He added that the morcellement is already developed not only by existing houses but also by the roads being tarred and the provision of scavenging services by district council.

7. Was the Respondent right to rely on this letter in its decision?

From the perspective of the Co-Respondent, namely the Ministry of Housing and Lands, rather surprisingly, the stand is at a variance with the response of the local authority. The position of the Co-Respondent, as expressed in its submission is that *“there is nothing to indicate that this letter [Annex A to the statement of defence of the Respondent] originates from a policy decision or a guideline from the Ministry, it is, from the face of it, a letter of ‘informative’ nature, following a meeting of the Morcellement Board. Accordingly, there is nothing to suggest that this letter ought to have been considered binding on the Respondent”*. Furthermore, it was submitted that, *“vide section 115 and 117 of the Local Government Act 2011, any such application and decision to award or refuse permits fall exclusively within the powers of the local authority in question, and not the Ministry”*. The Co-Respondent informed the Tribunal that it will abide by its decision.

8. The Respondent local authority takes a different position. As per the submission of counsel, the Respondent is bound to comply with all enactments, not only the ones mentioned in the Local Government Act 2011 (the LGA, wherein there is no reference to the Morcellement Act 1990). It has been submitted that it would be preposterous and contrary to logic for the Respondent to limit itself to the enactments mentioned in section 117 of the LGA 2011 only and that any decision of a public body which is made contrary to law, is liable to review proceedings and is likely to be quashed for being based on an error of law or tainted with illegality.

We tend to agree that this approach, save that the granting (or not) of the BLUP is within the exclusive powers of the Respondent. It would not be acting contrary to law in exercising this power.

9. The issue of 'fake morcellement' was brought to the attention of the Respondent by the Co-Respondent. Although the latter is not its parent Ministry, it is our view that, being a public authority, the Respondent could not simply proceed with the assessment of the application without paying heed to the request from the Ministry of Housing and Lands.

Section 117 (6) of the LGA provides that "*The PBMC shall process every application for an OPP or a BLUP, having regard to the provisions of the Building Control Act, The Environment Protection Act, the Mauritius Fire and Rescue Service Act, the Planning and Development Act and the Town and Country Planning Act and the Planning and Development Act and any guidelines issued under those Acts*".

We agree with the submission made on behalf of the Respondent that it ought not be precluded from considering other aspects which could be material in its decision-making process. The Respondent cannot be taken to task for have taken into consideration the letter from the Co-Respondent, this being an important one, whether a directive or not, and the Respondent has deemed necessary to comply with. Besides, the said letter emanated from the Ministry having the responsibility for morcellements, where the alleged suspicious issue of fake morcellement permits would be enquired upon. The fact that it did not emanate from the Respondent's parent Ministry should not be a reason to overlook such a serious matter.

10. Emphasis was put on the powers of the Minister to issue Planning Policy Guidance to any local authority and on questioning whether the senior chief executive of the Ministry of Housing and Lands had been delegated by the Minister to issue such a request. We do not find it necessary to embark on this quest here, as we do not find it relevant for the purpose of the issue to be determined. In our view, the Respondent exercised caution in the exercise of its powers.
11. On the other hand, we find that the position taken by the Co-Respondent raises concern. Being the Ministry under whose aegis the issue of morcellements falls, and from which the letter addressed to the Respondent emanates, with the specific request not to proceed with applications for BLUP, it ought, in our view, to have enlightened us on the request made as well as the follow up. By stating that the directive was not binding and leaving the matters in the hands of the Tribunal, it did not shed much light on the outcome of that issue. We are thus left in the dark as to the outcome of police enquiry, if any, and any policy decision regarding applications for BLUP that are pending, as in the present case, the more so that this dates back to the year 2019.
12. The Appellant has raised alarm on the financial burden that this state of affairs is causing to him and the family constraints that he faces due to this decision. We are sensitive to this. However, for the reasons given above, we shall not interfere with the decision of the Respondent in declining the application for BLUP given the circumstances. We urge the relevant authorities to take appropriate action and policy

decisions so that '*bona fide*' purchasers are not penalised. In this respect, the Co-Respondent, in particular, has to exercise diligence in the matter so that the Respondent can be enlightened on the furtherance of the enquiry on suspicious issue of permits within its jurisdiction and take appropriate measures.

13. We shall, otherwise, not interfere with the decision of the Respondent to reject the application for the reason given. The appeal is set side. No order as to costs.

Delivered on 2nd April 2024 by:

Mrs. V. Phoolchund-Bhadain, Chairperson

Mr. Roshan H. Seeboo, Member

Mr. Shanmoogum Moothoosamy, Member

For Appellant: Mr. K Ramasamy, of counsel.

For Respondent: Mr. Y Bujun together with Mr. Ramanjooloo, of counsel, instructed by Attorney Ms D. Ghose Radhakeesoon.