

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

ELAT 1486/17

In the matter of :-

Mr. and Mrs. John Clayton Leopold Elvis Norbert

Appellants

v/s

Municipal Council of Vacoas/Phoenix

Respondent

DETERMINATION

1. The present appeal is against a decision taken by the Council for having rejected the application of the Appellants as represented by Mr. Presram Sookur for a Building and Land Use Permit ["BLUP"] for the construction of an extension at ground floor to an existing residential building to be used as store for personal use, at Avenue Swami Vivekananda, Vacoas. The sole ground for rejection communicated to the Appellants in a letter dated 16th August 2017 is set out below:

"THE OWNERSHIP OF PLOT OF LAND PROPOSED FOR DEVELOPMENT IS UNDER DISPUTE BEFORE THE SUPREME COURT."

2. Mr. Presram Sookur, as representative of the Appellants, deponed under solemn affirmation and was cross-examined by Respondent's counsel. Mrs Juwaheer, of the Land Use and Planning Department, deponed on behalf of the Council and was cross-examined by the Appellants' representative. We have duly considered all the evidence placed before us as well as the submissions.

3. The background to the case, as per evidence on record, is that there was an initial application made to the Council previously in respect of the same development proposal for which the Council had granted a BLUP in 2013 after assessing the merits of the application. The BLUP lapsed due to non-execution. A second application was made with respect to the same development in 2016 which was rejected by the Council and subsequently the Appellants made a third application regarding the same development in 2017 which was again rejected by the Council and is the subject matter of the present appeal.

4. It is the contention of the Respondent that since the Council was apprised of the fact that the issue of legal ownership of the property *in lite* is being contested before the Supreme Court, the Council would rather not grant the BLUP on the basis that the ownership was not "clair et certain". The Council's representative produced a copy of a Plaint with summons of case lodged before the Supreme Court, annex 1 to their statement of defence and Doc F, in support of their contention. According to the Council the case is still ongoing before the Supreme Court.

5. After perusing the Plaint with Summons, it appears that the case was lodged by one Mrs. Petchaye Murdaye against Mrs. Soonita Sookur and Mr. Presram Sookur whereby the former is contesting the sale of property to the Sookurs. The sale has been registered and transcribed in Vol. 6808 No.17. The evidence on record, as we find it, shows a valid title deed duly registered and transcribed. It is not the duty of the Council to investigate or explore the issue of disputed ownership. It is the duty of the applicant to provide evidence of a valid title deed where the status as regards ownership can be verified from the records of the Conservator of Mortgages. In the present instance, if the records of the Conservator of Mortgages show that the applicants are the holders of a title deed duly registered and transcribed, this is the end of the matter. In case of a dispute of ownership or of boundaries, the Council has no jurisdiction to determine or consider the merits of such dispute except to work on the basis of the title deed transcription and registration which should be taken as definitive.

6. In the present case, the evidence on record shows that the title deed produced to the Council by the applicants as proof of ownership, is on the face of it, a valid notarial deed, which has been duly registered and transcribed. We do not believe that the Council was justified in rejecting the application simply on the basis that legal ownership is now being disputed before the Supreme Court as stated in their refusal letter dated 16th August 2017. The litigation before the Supreme Court is a separate issue which may or may not at the end of the day have an incidence on the proprietary rights of the Appellants. The Supreme Court may decide in favour of the heirs of late Mrs. Murdaye, in which case the Appellants in the present case will not have good title or the Supreme Court may decide in favour of the Sookurs, which if it is the case the Council would have unnecessarily or unjustifiably withheld the planning approval of the Appellants. We therefore believe that the Council was wrong to have rejected the application for the BLUP on the ground stated in the refusal letter.

7. As far as the planning merits of the application for BLUP is concerned, no evidence has been adduced in that respect by the Council except for the fact that it was briefly stated by the representative of the Council that some objections were received against the development proposal. The evidence on record is insufficient for the Tribunal to decide on the merits of the application.

8. For all the reasons set out above, the appeal is allowed. No order as to costs.

Determination delivered on 26th August 2020 by

Mrs. J. RAMFUL

Dr. Y. MIHILALL

Mr. MONAFF

Vice Chairperson

Member

Member