BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No.: ELAT 747/14

In the matter of:

MR. & MRS. HASTANAND CAULEECHURN

C/O MR. SATISH BALCHURN

Appellants

v.

MINISTRY OF HOUSING AND LANDS

Respondent

DETERMINATION

The Appellants have been denied by the Respondent the permission to proceed with the subdivision of a plot of land situated at Mare d'Albert by a decision dated 7 June 2014. The ground of refusal is that the original Morcellement Permit in respect of the area contains a restriction, namely condition 5 contained therein which reads as follows: "*No further subdivision of lots should be allowed, including division in kind. In such cases, the affected lots should be sold as a whole and then proceed divided among heirs*'.

The background of this decision, as it came out in the course of the hearing, is that the Appellant had made a first application and, upon a refusal on the part of the Morcellement Board, he had made several attempts for a reconsideration of this decision. In the course of this process, the Morcellement Board had informed the Appellant of a change in the regulations, whereby the minimum size for such subdivisions had been increased to 50 perches. The Appellant was then requested to submit an amended plan showing each plot size to be of a minimum of 50 perches. The Appellant complied with this but the application was nonetheless declined.

The contention of the Appellant, set out as grounds of appeal in the notice of appeal, is that the Respondent has authorized the subdivision of a plot of land in the same zone

and in similar circumstances. He highlighted in the notice of appeal that the application was made as far back as the 8th June 2009 and great prejudice would be caused if the subdivision is not allowed.

Both parties agreed in the course of the hearing that the issue of the increase in requirement of the plot size from 20 to 50 perches would not be canvassed and the appeal focused on the specific condition contained in the original contract of morcellement relied upon by the Respondent.

The Appellants purchased the land *in lite* from one Mr. Sondagur, who had purchased his land from an entity known as SIT Land Holdings Limited. The title deed between these parties was produced as Document G and it specifies certain conditions that are applicable to the property, namely that the original land from which the plot, subject matter of the present appeal, emanated had been granted a morcellement permit by the Respondent on 31 May 2006 for agricultural purposes. Furthermore, the title deed lists out several conditions that were imposed by the Ministry of Housing and had been reproduced in the title deed of Mr. Sondagur (who is now the vendor) , the relevant one being: *"No further subdivision of lots should be allowed, including division in kind. In such cases, the affected lots should be sold as a whole and the proceed divided among heirs".*

The contract of sale between the vendor, Mr. Sondagur, and the Appellants was produced as Document A, wherein the abovementioned condition had not been included. It is the stand of the Appellants that they had not been made aware at any point of such a restrictive clause that applied to their plot. In addition, another plot of land belonging to one Mr. Juggoo had been granted a morcellement permit. The title deed of the said Mr. Juggoo (Document F) did not mention the above condition 5 as well and yet, the Morcellement Board had granted the approval for subdivision. The Appellants state that they are faced with a situation whereby there is has been a differential approach to these respective applications and they are *bona fide* purchasers.

We have considered the evidence adduced by the parties and their respective submissions. The original morcellement permit given by the Ministry of Housing and Lands to the SIT Land Holdings Ltd. (Document H) set out seven conditions that should apply for all subdivisions made in the said morcellement. This letter specifically lays down that "*All these conditions shall be incorporated in the title of each purchaser*". This explains for the inclusion of this specific clause in the title deed of the vendor, Mr. Sondagur.

It has been submitted that the Appellant had not been informed of the existence of such a clause in their title deed and being bona fide purchasers, such a condition should not

apply to them. We agree that their status as 'bona fide purchasers' does entitle them to some consideration. Nonetheless, the Respondent, being the authority that grants 'morcellement' permits is duty-bound to take into consideration the existence of condition 5 of the original permit, which had been issued by the very same Ministry. The conditions contained in the original permit (Document H) are applicable to an agricultural morcellement and they are based on planning considerations.

The fact that condition 5 was not included in the Appellants' title deed may entitle them to some kind of remedy. But this, *per se*, cannot be a ground for the Respondent to depart from its own policy and conditions. The differential treatment given to another applicant, who was granted a permit, is indeed questionable. Yet, this cannot be a basis that would justify a departure from its own policies. A 'wrong' cannot be a justification for another 'wrong' decision'. The inability of the Appellants to a 'peaceful enjoyment o their land' as per their title deed is a matter that can call for another remedy. The Respondent cannot be said to have faulted in its decision for the reasons given. We find no basis for interfering with the decision of the Respondent. The appeal is accordingly set aside.

Delivered by:

Mrs. V. Phoolchund-Bhadain, Chairperson

Mr. Basdeo Rajee, Assessor

Mr. Pravin Kumar Manna, Assessor

Date: 9th June 2020