

**BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL**

**Cause No. : 571/13**

**In the matter of:**

**MR. SIDICK SK HEERAH & MRS. FARIANAAZ SK HEERAH**

**Appellants**

**v.**

**MUNICIPAL COUNCIL OF VACOAS PHOENIX**

**Respondent**

**DETERMINATION**

The appeal is in respect of a Building and Land Use Permit (BLUP) which had been refused by the Municipal Council of Vacoas Phoenix in respect of a plot of land owned by the Appellants. The plot owned by the Appellants is of the extent of 4221 square metres situated at Solferino, Vacoas. The BLUP sought is for the excision of an extent of 1055.21 square metres ( 25 perches) from that bigger portion owned by the Appellants.

The Appellants aver, both in affidavits sworn by them and in the evidence adduced by Appellant No.2 (deposing on behalf of both Appellants), that they intend to sell the excised portion to a potential buyer being given that they are facing financial difficulties. In addition to the need to finance the education of their children and cater for their well-being, the Appellants aver that they are burdened with loans secured from the Development Bank of Mauritius and the Mauritius Housing Corporation. Documentary evidence on these financial commitments has been produced as annex to the affidavit produced with the notice of appeal. It also came out from the evidence adduced on behalf of the Appellants that that their property has been the subject matter of a sale by levy, following the inability to pay her loans as a result of an accident met by Appellant No.1, the sole breadwinner of the family. This averment is supported by Annex E to the affidavit annexed to the notice of appeal. Appellant No.2 stated that she has however been able to avoid a seizure with the help of her relatives. The excision of part of her land, an area of 25 perches, will greatly alleviate her financial difficulties.

The statement of defence filed by the Municipal Council of Vacoas-Phoenix relies on the provisions section 28 of the Sugar Industry Efficiency (SIE) Act 2001 whereby the minimum plot size for sub-division of land for agricultural purposes has been set out to be 50 perches. This is the sole ground for rejecting the application for BLUP submitted by the Appellant as contained in the letter dated 29 November 2013 (Annex C).

The representative of the Municipal Council deposed to explain that the proposed excision is situated outside the defined settlement boundary as per the Outline Planning Scheme for the town of Vacoas-Phoenix. In the year 2005, the Municipal Council had granted a permit to develop farming activities on the land in question. The BLUP applied for in the present case, as per the documents submitted by the Appellant (Annex A), relates to an excision for agricultural purposes. In her opinion, this applies to plantations and farming activities and, being given the nature of the proposed activity, the provisions of Section 28 of the Sugar Industry Efficiency (Amendment) Act 2013 are applicable. The new subsection (4AA) added to section 28 of the Act reads as follows:

***“For the purposes of subsection (4A), the minimum plot size for land subdivided for agricultural purposes shall be-***

***(a) Where the subdivision relates to a donation by an ascendant to a descendant and the site is:***

***(i) within settlement boundary, 10 perches***

***(ii) outside settlement boundary, 20 perches***

***(b) In any other case, 50 perches.”***

The Council therefore rested its decision for a refusal on the ground that the portion to be excised (25 perches) is below the minimum area as required by law.

The Appellant attempted to show that the land in question was not agricultural land. This is however contradicted by the fact that the documents produced for the application as well as the evidence adduced by the representative of the Council point towards the already existing agricultural nature of the land, namely that there has been an approval for farming/ rearing of ‘bovin’ approved in respect of the land in question. It also came out that even if there was a building which was provided with electricity and water supply, these were for the operation of the farming activities that had been approved. As such, the agricultural nature of the land cannot be disputed, hence the application of section 28 of the SIE Act.

It has been pointed out that the definition of ‘agricultural land’ in the SIE Act covers sugar, tobacco and tea plantation. There is no evidence of such activity on the land in lite. Yet, the Council has based itself on the very description given by the Appellant to

place the application within the parameters of the SIE Act. We note also that the evidence as to the earlier application made for 'elevage bovin' only came through the testimony of the witness for the Council. This has been left undisputed by the Appellant. Therefore, even if the Appellant now wants to challenge the exactitude of the information contained in her application, the version of the witness for the Council catches up with her on this aspect.

We have given sympathetic consideration to the Appellant's plea for a favourable consideration due to her financial situation. The application, subject matter of the appeal, has been entertained on the basis of the existing legislative provisions. The Respondent has not faulted in its decision to reject the BLUP applied for. The Appellant may consider subjecting her application within the parameters of the SIE Act, namely as to the minimum area that can be excised.

The present appeal is set aside.

Delivered on <sup>30<sup>th</sup></sup> ~~28~~ January 2015 by:

~~Mrs. V. Bhadain~~  
Chairperson

Mr. Busawon  
Member

~~Mrs. Kaniah~~  
Member