

BEFORE THE ENVIRONMENT AND LAND USE APPEAL TRIBUNAL

Cause No.: ELAT 770/14

In the matter of:

MR. ABOOBAKAR MUNGAR

Appellant

v.

CITY COUNCIL OF PORT-LOUIS

Respondent

In the presence of:

SABHANY IMPEX LTD.

Co-Respondent

DETERMINATION

The Appellant had lodged an objection at the City Council of Port-Louis (the Respondent) against the application made by Shabany Impex Ltd., the Co-Respondent, for the conversion of part of an existing building at first floor to be used as warehouse and storage at Avenue Perdrix 3, Morcellement Guibies Pailles. The Respondent approved the grant of a BLUP (Building and Land Use Permit) to Shabany Impex Ltd. and notified the Appellant of its decision and his right of appeal, hence the present appeal.

In his notice of appeal filed at the Tribunal on the 21st October 2014, three grounds of appeal are listed as follows: "(1) Advance age of person, (2) The location is a residential place and area, and the said business will cause many kinds of nuisance, (3) No parking for loading and unloading".

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In the course of the hearing of the appeal, the Appellant placed much emphasis on the fact that he had received the convocation letter from the Respondent after the hearing date. It came out from his testimony and the letters he received from the Postal Services that the post office had made several attempts to deliver the letter but his house was found closed. This explained for the delay in him receiving the said letter. Be that as it may, we note that the issue of delay is not part of the grounds of appeal contained in his notice of appeal dated 21 October 2014 nor in the amended statement of case dated 5th January 2016 and filed at the Tribunal on the 26th January 2016. In addition, this is a matter that, if canvassed, would question the decision making process and not the decision itself, and does not fall within the ambit of this Tribunal's jurisdiction. Counsel for the Appellant rightly moved to delete the prayer found at paragraph 18 of his statement of case, namely that of praying for a new hearing date to be fixed concerning the objections of the Appellant to the granting of the permit to the Co-Respondent.

The Appellant, in his testimony, came up with a version that the activities conducted by the Co-Respondent in the licenced premises differ substantially from the purpose for which the BLUP had been granted. He averred that instead of using the premises as a warehouse and for storage purposes, the premises were being used for the preparation of 'briani' on a large scale for sale and this activity was causing nuisance to him as he lives in close proximity to the said premises. He further averred that the presence of lorries for the purpose of this business causes nuisance as the parking space was inadequate and was a source of noise nuisance.

Apart from the 'ipse dixit' of the Appellant on these aspects, there was no documentary evidence, neither in the form of photos nor reports and not even solid evidence on the use of the premises for the purpose complained of. The Appellant was also unable to substantiate the complaints that he had allegedly made to the relevant authorities that had jurisdiction to attend to those complaints (e.g. the Ministry of health on the noise issue, the Ministry of environment on the pollution aspect and the Traffic Management authorities on the parking issue).

As opposed to that, the representative of the Respondent has given lengthy evidence on the parameters that were verified. ranging from the plan that had been provided for the BLUP application and the provision for parking, as shown, was adequate for the operation of a warehouse and store for computer peripherals. At the time of assessment of the application for BLUP, the Respondent had verified all the steps as provided by the BLUP guide and the application was approved in the light thereof. As regards the subsequent complaints made, the Respondent deputed an officer to verify those. Mr. Ragudu deposed before the Tribunal to state that he effected a site visit and the premises were found empty. There was no presence of computer peripherals nor any evidence of preparation of 'briani' as complained. In the light of this, we find no reason to disbelieve the officer who was deputed specifically to effect this check. This leaves room for doubt

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in the version of the Appellant. There was also not an iota of evidence in support of the first ground of appeal, which was loosely drafted and presumably meant that there was nuisance caused to elderly persons living there.

We have noted the submission made on the fact that the Co-Respondent chose not to adduce any evidence. It was stated that the Co-Respondent will go by its statement of defence. We draw attention to the fact that the statement of defence is part of the pleadings. The representative was not made to confirm under oath any part of it. As such, it was rightly pointed out on behalf of the Appellant that it is not part of the evidence. Be that as it may, the appeal is lodged against the decision of the Respondent, and the Respondent has amply substantiated its position. On the other hand, the Appellant has been unable to substantiate any of the complaints that he made the grounds as contained in his notice of appeal. We find that the Appellant's case fails on all the grounds of appeal. The appeal is therefore set aside.

Delivered by:

Mrs. Vedalini Bhadain, Chairperson

Mr. Reshad Monaff, Assessor

Mrs. Purnima Devi Rawoteea, Assessor

Date:

17th October 2019