

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

**ELAT 810/14**

**In the matter of :-**

**MOHAMMAD NOOR-UL-AMEEN FAKIRA**

Appellant

v/s

**DISTRICT COUNCIL OF SAVANNE**

Respondent

**DETERMINATION**

1. The present appeal is against a decision taken by the District Council of Savanne (hereinafter referred to as "the Council"), for having rejected an application made by the Appellant for a Building and Land Use Permit (BLUP) for the construction of a singlestoreyed building for residential purposes at Royal Road, Chemin Grenier. The decision of the Council was communicated to the Appellant by a letter dated 11<sup>th</sup> November 2014, which stipulated that the Council rejected the application on the grounds that
  - "1. *Site is found outside settlement boundary as per Outline Planning Scheme for GrandPort/Savanne.*
  2. *Structural details of beams not appropriate."*
2. The Appellant, legally represented, deponed under solemn affirmation and was cross-examined. Mr. Saddul, Planning Officer, deponed on behalf of the Council and was cross-examined. We have duly considered all the evidence placed before us including submissions of Counsel.

3. We note with concern that while the Appellant's notice of appeal and letter of refusal and other documents produced refers to the name of "FAKIRA Noor-UI-Ameen" as Appellant and/or applicant, the title deed produced before us regarding the property *in lite* makes reference as buyer "Mohammad Noor-UI-Azeem Fakira" and the affidavit which has been produced and also annexed to the statement of case of the Appellant mentions the name of "Mohammad Noor-UI-Azeem Fakira" as declarant. There is no indication or clarification given from the proceedings before us as to how the property has passed hands since Mr. Mohammad Noor-UI-Ameen and Mr. Mohammad Noor-UI-Azeem are clearly two different people as can be noted from the National Identity Card numbers as evidence from the Notice of Appeal and the title deed of the property on record and the affidavit.
  
4. One of the main requirements has not been satisfied before us regarding the ownership of the land. We cannot surmise on the issue unless it was clearly borne out on the record if the property passed hands. At the start of the examination in chief, the Appellant stated that he was the owner of a property transcribed in Volume 9128 no.21. The title deed annexed to the Statement of Case in support of this was infact a title deed registered and transcribed on the 27<sup>th</sup> December 2013 at Volume 9128/5. What transpires from the record is that the property belongs to Mohammad Noor-UI-Azeem whereas the BLUP for residential building on the property as per the application and documents submitted, is being applied by Mohammad Noor-UI-Ameen. We will nevertheless consider the merits of the application.

#### **I. CONTEXT ANALYSIS**

5. The proposed development site lies within an agricultural morcellement at Royal Road, Chemin Grenier. It is of an extent, of approximately 447.73 sq.metres, which Mr. Mohammed Noor-UI-Azeem acquired in 2013. The evidence shows that the subject site lies outside the settlement boundary by 500 metres, which is not disputed by the Appellant. There is also a main road which runs approximately 100 metres from the site.

6. The google maps, marked Docs D and D1, produced by the Appellant also show that the area surrounding the subject site is predominantly agricultural with very few randomly scattered buildings. A context plan, prepared by Land Surveyor Mr. Hason Miyan, marked as Doc E, produced by the Appellant confirms the fact that within a 500 metre buffer from the subject site, the land is vastly agricultural.

## II. THE PLANNING INSTRUMENTS AND THE LAW

7. The site being situated in Chemin Grenier the applicable outline scheme is **Outline Planning Scheme of Savanne [“OPS”]**. The following policies are of relevance and being fully reproduced:

### (i) Policy SD4: Development on land Outside Settlement Boundaries

*There should be a general presumption against proposals for development outside settlement boundaries unless the proposal:*

- *Has been shown to have followed the sequential approach to the release of sites identified in SD 1, SD 2 and SD 3 and there are no suitable sites within or on the edge of settlement boundaries; and*
- *Is for the essential purposes of agriculture, forestry or other uses appropriate to a rural area; or*
- *Is for the re-use or refurbishment of existing buildings set in their own grounds; or*
- *Is considered a bad neighbour development as defined in PolicyID 4; or*
- *In cases of national interest when having regard to material considerations, locational preferences linked to employment creating uses and socio-economic policies of Government, development may have to be outside settlement boundaries and is acceptable on planning, traffic impact and environmental impact grounds; and*
- *Is capable of ready connection to existing utility supplies and transport networks or can be connected without unacceptable public expense;*

*Or where:*

- *The proposal is from a small owner seeking residential property for themselves and their close kin and can be considered as a hardship case, provided that in the opinion of the relevant authorities such release would not encourage large scale removal of land from agriculture; or*
- *There has been a formal commitment given by the Ministry responsible for Public Utilities, Local Authority, the Town and Country Planning Board, the Ministry responsible for Housing and Lands or other Government-approved scheme prior to the approval of this Outline Planning Scheme, provided such a commitment is duly supported by bona fide evidence i.e. original and authentic documents;*

*And the proposal:*

- *Is not located in an environmentally sensitive area nor in an area of landscape significance as notified by the Ministry responsible for Environment and National Development Unit; or*
- *Is not occupying a site of longterm suitability for agriculture, forestry or an irrigation zone as notified by the Ministry of Agro-Industry and Food Security;*
- *Broadly follows the design principles contained in Design Guidance outlined in SD5*

*Justification:* At the District level there is sufficient land available, committed or vacant within settlement boundaries for residential development and through approved morcellements, VRS and other land conversion schemes to accommodate future residential needs for the next 15-20 years. To conserve remaining land in the District, especially land required for long term agriculture, or land that has an ecological or landscape significance, a sequential approach to new development should be followed which first considers sites within or on the edge of built-up areas in existing settlements before greenfield sites outside settlement boundaries are selected. This presumption reinforces key NDS objectives for clustered growth and more efficient provision of transport and utility facilities and social and community services. It is recognised however that not all development can or should be accommodated within settlement boundaries and under well-defined circumstances some developments may be more appropriately located outside settlement clusters and the main built-up areas.

The definition of hardship case, small owner and close kin is as defined in SD 3.

### III. THE ISSUES

8. The Appellant's case in essence is that he has submitted an affidavit to the Council on the ground of Hardship as provided under **Policy SD4 of the Outline Planning Scheme of Grand Port- Savanne** to be exempted from having to abide by the criteria set out under the policy for obtention of a BLUP. He testified to the effect that the utilities such as water and electricity had already been applied for and can be readily connected to the site. He gave evidence that there were a few developments in the vicinity of his property for which BLUPs were granted. One such development is a wedding hall by the name of Domaine Bell Vue, which is also found outside settlement boundary. There are also other developments which are non-residential in nature that have obtained a BLUP such as an Engen Petrol Station, a hardware shop another multipurpose hall, and the Appellant also mentioned the presence of four other buildings which according to him were residential in nature and within the vicinity of his property. He produced photographs to show the presence of a few houses. The Tribunal requested information to be furnished by the Council regarding these. As argument in favour of his case that the Appellant specifically referred to a house which has been granted a BLUP for residential development and which is found outside the settlement boundary, belonging to one Mr. Ramsingh.
  
9. The case for the Council is that the application can only be considered under **Policy SD4** which regulates development outside the settlement boundary and as per this policy there is an exception to the rule whereby some applications for BLUP for residential development may be granted under the Hardship criterion but this can only be done provided that "*in opinion of the relevant authorities such release would not encourage large scale removal of land from agriculture*". We understand this to mean that by allowing the residential development it should not put the Council under pressure to release the surrounding land which is now under agriculture for residential development, which will increase pressure of providing infrastructure, requiring regular maintenance by the local authority such as for collection of refuse.

10. The “justification” paragraph of the policy also provides that there is sufficient land available within the settlement boundary still for residential development. This means that the Council will not readily release land randomly for residential development outside the settlement boundary for want of not setting a precedent.
11. The Appellant has produced a context plan, prepared by Mr. Hasan Miyan, Land Surveyor, marked Doc E, to show that within a 500 metre radius of the subject site, the presence of four buildings is noted. This plan in fact also corroborates the version of the Respondent’s representative that there are no other developments anywhere near the property of the Appellant, within this 500 metre radius with the exception of three scattered buildings which as per the explanations of the witness for the respondent are not buildings which have obtained BLUP for residential development save for the house of Mr. Ramsingh. The representative of the Council, Mr. Saddul, explained that the BLUP for the residential property of Mr. Ramsingh was granted under the exception of Hardship and it “dates long back” where as the house of Mr. Lumo was not granted any BLUP for residential building. It was a watchman’s quarters. As for the house of one Mr. Med, a photograph of which was also produced by the Appellant, the witness for the Council stated there was no information found regarding this development in the record at the Council. Mr. Saddul also testified as to the presence of Firemount Textile, which is a factory, and that there is also the proposed development of the St Felix smart city which is in the pipeline.
12. We note that apart from the property of Mr. Ramsingh, for which a BLUP was granted on satisfaction of the Council of the “Hardship” of the applicant, no other residential development has been approved by the Council within 500-metre radius of the subject site. This is indicative of the stand of the Council, which we do not find in anyway to be incorrect as there are developments outside the settlement boundary which are more akin to what is qualified as “bad neighbor” development in the planning jargon. An application for BLUP for residential development can only be approved provided the local authority can provide it with utilities, which has cost implications for the local authorities and for government.

13. As per the affidavit submitted by the Appellant, the declarant Mr. Mohammad Noor-Ul-Azeem is the sole owner of a property *in lite* and the latter is also a joint owner of a plot of land of an extent of 4515 sq.m situated in Bel Air/St. Felix. However, we have not been enlightened regarding the properties owned by Mr. Mohammad Noor-Ul-Ameen. We are therefore not prepared to act on this lack of information to grant this application for BLUP as falling within the exception, on the ground of "Hardship" when we do not know whether in fact Mr. Mohammad Noor-Ul-Ameen qualifies for it as provided under **Policy SD3** of the **OPS**.

14. For all the reasons set out above, we find that this appeal is devoid of merit and is accordingly set aside. No order as to costs.

Determination delivered on 4<sup>th</sup> December 2019 by

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**Mrs. J. RAMFUL-JHOWRY**

**Vice Chairperson**

**Mrs. A. JEEWA**

**Member**

**Mr. M. BUSAWOÑ**

**Member**