IN THE SUPREME COURT OF SEYCHELLES

Civil Side: CS 16/2012

[2014] SCSC

GEORGE CAMILLE & ORS
Plaintiffs

versus

BAYVIEW ESTATE LIMITED & ORS
Defendants

Heard:

Counsel: Ms. Karen Domingue for plaintiffs

Mr. Hoareau/Mr. Ally for 1st and 2nd defendants
Mr. Esparon for 3rd defendant

Delivered: 16 May 2014

RULING

Karunakaran Acting Chief Justice

The plaintiffs in this action seek the Court for the following orders:

> *(1) An order that the 3rd Defendant compel the 1st Defendant to adhere to the initial approved permission and to*
>
> *(a) Demolish the second floor to Building A;*
>
> *(b) Demolish the first floor terrace on Building B;*

(c) Respecting distances to the high water mark and the minimum distances of buildings to neighboring property boundaries;

(d) Provide adequate sanitation facilities for the site and soak-away pits and septic tanks with the appropriate distance from the high water mark;

(e) Demolish the rock wall on the existing wall at the high water mark;

(f) Demolish or rectify the oversized swimming pool so that the backwash discharge does not go directly into the sea;

(g) Ensure that there is no excessive noise and dust pollution;

(h) Respect the environmental and building regulations.

(2) An order the 3rd Defendant gives the 1stDefendant a specific time period which shall be no later than 1 month from the date of the judgment of the Court for the 1st Defendant to carry out its demolition work and generally to comply with the orders of the Court;

(3) An order that the 2nd and 3rd Defendants are jointly and severally liable for the loss and damages of the 1st, 2nd and 3rd Plaintiffs and that they pay jointly and severally the sum of

• *€ 200,000 and SR 500,000 to the 1st Plaintiff with interests and* costs;

• *SR 250,000 to the 2nd Plaintiff with interests and costs;*

The defendants have raised *a plea in limine litis* on points of law contending in essence, that the suit against the 3rd defendant "Town and Country Planning Authority" is wrong as appropriate action is by way of a "judicial Review" in terms of Article 125 (c) of the Constitution.

Furthermore, the suit is bad in law since the plaintiffs have joined two distinct causes of action in one and the same suit against different defendants.

The facts of the plaintiffs' case as pleaded in the plaint are these:

The 1st, 2nd and 3rd Plaintiffs are owners of Parcels H 266, H 6254 and H 1967 respectively. The 1st Defendant is a company incorporated and registered in Seychelles. This company is currently undertaking development of Parcel H 402, which is owned by the 2nd Defendant. Parcel H 402 adjoins the 1st Plaintiff's property. The 2nd and 3rd Plaintiffs' properties are also quite near Parcel H 402, which the 1st Defendant is developing. The 3rd Defendant is the authority responsible for, inter alia, granting and revoking building permission and ensuring that the conditions of approval of planning permission are complied with. The 1st Defendant is also referred to as *"Nouvelle Vallee Resort"* as it is building a resort at Beau Vallon that will be known as "**Nouvelle Vallee Resort & Spa"** and any reference to ***"Nouvelle Vallee Resort"*** is a reference to the 1st Defendant.

The 1st Defendant under the name of *Nouvelle Vallee Resort* applied for a permit to construct a building on Parcel H 402 situated at Mare Anglaise, Mahé, which is owned by the 2nd Defendant, a company incorporated and registered in Seychelles. Initially the 3rd Defendant gave permission to the 1st Defendant's plans to develop Parcel H 402. According to the plaintiffs**, <u>in breach of the said permission given to it</u>** the 1st Defendant did not respect its initial plan and **<u>has contravened the permission granted by the 3rd Defendant</u>** as follows:

by placing a second floor onto the buildings, hereinafter referred to as Building A;

by placing a first floor terrace on one of the buildings, hereinafter referred to as Building B;

by exceeding the permitted heights of both buildings;

by constructing an underground bunker;

by not respecting distances to the high water mark;

by not respecting minimum distances of buildings to neighboring property boundaries;

by building an underground boat-house, which is on the high water mark itself;

by not providing adequate sanitation facilities for the site and soak-away pits and septic tanks are less than 14 meters from the high water mark;

by building a rock wall on the existing wall at the high water mark;

by building an oversized swimming pool, with backwash discharge going directly into the sea;

by creating excessive noise and dust pollution and generally not complying with environmental and building regulations.

Following the said breach, the 1st Defendant applied to the 3rd Defendant for retrospective planning permission to approve some of its contraventions. The 3rd Defendant refused to grant this retrospective permission. The 1stDefendant proceeded to appeal to the Minister of Land Use and Housing. By a letter dated the 31stAugust 2010, the Minister granted a building permit subject to various conditions being respected by the 1st Defendant.

The 1st Defendant again breached those conditions imposed on it by the 3rdDefendant. As a result by a letter dated the 27th October 2010, the Minister revoked the permit on appeal given on the 31st August 2010.

Despite such revocation of the permit the 1st Defendant now continues its development on Parcel H 402 with the 3rd Defendant not intervening to ensure compliance with its order.

The 1st, 2nd and 3rd Plaintiffs are aggrieved by the acts of the 1st and 3rd Defendants and from the outset of the development on Parcel H 402, the Plaintiffs have complained both orally and in writing to the 3rd Defendant on the following issues:

a. the non-compliance of the 15t Defendant with the approved permission as stated in Paragraph 4 (a) to (k) above;

b. the fact that the development of the 1st Defendant has devalued and continues to devalue the properties of the 1st , 2nd and 3rd Plaintiffs;

c. the fact that the 1st, 2nd and 3rd Plaintiffs' are inconvenienced by the acts of both the 1st and the 3 Defendants in that the 15t Defendant's work cause them discomfort,

distress, stress and anxiety and the fact that the 3' Defendant has continually failed and continues to fail to monitor and enforce its orders, the laws and regulations which it is mandated to do.

As a result of the nuisance of the 1st Defendant which has been condoned by the 2nd and 3rd Defendants, the 1st and 2nd Plaintiffs have been put to loss and damages.

It is the case of the1st Plaintiff that he suffered loss and damages as follows:

(1) Devaluation of Parcel H 266 Euros 200,000

(2) Discomfort, distress, stress and anxiety SR 500,000

The 2nd Plaintiff claims that he also suffered loss and damages as follows:

Discomfort, distress, stress and anxiety SR 250,000

The 3rd Plaintiff also claims that it has been renting out its house during the time when the 1st Defendant has been carrying on its development on Parcel H 402 and so, it has been put to loss and damages in the sum SR 150,000/- due to discomfort, distress, stress and anxiety it suffered.

The 1st, 2nd and 3rd Plaintiffs claims that the 3rd Defendant is bound to ensure that the 1st Defendant complies with the orders, laws and regulations which it administers and which it is mandated to ensure compliance with.

As a result of the foregoing the Plaintiffs claim that the Court must intervene and compel the 3rd Defendant to discharge its obligations under the law by compelling the 1st Defendant to adhere to the initial approved permission complying with the conditions attached thereto.

In view of all the above, the plaintiffs seek for the orders first-above mentioned.

I carefully examined the pleadings in the plaint; considered the written submissions made by counsel on both sides. I diligently perused the relevant provisions of law.

Obviously, the essence of the plaintiffs' grievance against the 3rd Defendant, namely the planning authority in this matter, is that it failed to ensure that the 1st and 2nd Defendants comply with the conditions attached to the planning permission granted to them for the construction of the building on their property. Undisputedly, the 3rd Defendant is **a public authority,** strictly speaking, **a statutory authority** created by Section 3 (1) of the Town and Country Planning Act, which authority forms part of the executive branch of the Government. The grant of planning approval with or without conditions is indeed, an administrative or executive decision. The Authority is entrusted with a public or statutory duty to issue such planning approvals to applicants and ensure that they are enforced in accordance with law. If the authority had failed to perform its *statutory duty* to apply the law in order to enforce their decisions, obviously, the remedy lies not in a regular suit - such as the instant one before this Court - but in proper application for a Judicial Review of the said administrative decision. For, this Court exercises only its original civil jurisdiction in this suit. This being a regular civil action, the Court has no authority to grant a relief in the nature of Mandamus. Indeed, Mandamus is an extraordinary remedy, which should only be granted in exceptional circumstances, when an administrative decision is challenged on the established grounds such as violation of the principles of natural justice, illegality, irrationality or procedural impropriety vide Wednesbury Principles. Needless to say, a writ of mandamus can be issued only in matters of Judicial Review, when the Court exercises it supervisory jurisdiction conferred by Article 125(1) (c) of the Constitution. Hence, I find that the instant proceeding is not properly before this Court for a remedy in the nature of mandamus. Moreover, this Court has no authority to grant a relief in the nature of mandamus in the instant suit, a normal civil action. Therefore, in my judgment, the instant action is not maintainable in law.

Besides, the plaintiffs in this matter have joined different causes of action in the same suit such as

(i) Failure by a statutory authority to perform its statutory duty

(ii) nuisance- a fault – committed by an adjoining land owner

(iii) Breach of conditions of planning permission by another adjoining land owner

(iv) Loss of rental income, an economic loss etc.

Although joinder of causes is permitted under Section 105 of the Seychelles Code of Civil Procedure, the proviso thereunder stipulates that it should satisfy three conditions. They are:

The causes of action should have arisen between the same parties;

The parties should sue and be sued in the same capacities; and

It should appear to the Court that such causes of action can conveniently tried or disposed of together in the same suit.

Evidently, in the instant suit, the alleged causes of action have arisen between three different parties, who seek different remedies against different defendants. The parties also sue and are being sued entirely in different capacities. Because of the mixing up of causes of actions, jurisdictions, remedies, parties and the difference in their capacities, it appears to me that the causes of action cannot conveniently be tried or disposed of together in the same suit.

For the reasons stated hereinbefore, I uphold the submission of counsel for the defendants on the ***plea in limine litis*** and conclude that the instant suit is not maintainable in law. The suit is therefore, dismissed. However, I make no orders as to costs.

Signed, dated and delivered at Ile du Port on 16 May 2014.

D Karunakaran
Acting Chief Justice