

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MC 51/2012

[2014] SCSC

ELLEN BOUCHEREAU

Petitioner

versus

MINISTER OF LAND USE AND HABITAT

Respondent

Counsel: Petitioner/not available
 Mr. Robert for respondent

Delivered: 11th July 2014

RULING

D. Karunakaran Acting Chief Justice

[1] This is a petition for Judicial Review. The Petitioner Ellen Bouchereau in this matter seeks this court for *writ of certiorari* to quash the decision of the respondent, the Minister of Land Use and Habitat dated the 11th of April 2012. Moreover, in the same petition the petitioner seeks this court for an order to issue a *writ of mandamus* compelling the respondent to take a decision in accordance with the law.

- [2] Besides, the petitioner seeks this court for an order directing the respondent to pay damages to the petitioner in sum of SR204,600.00. The facts of the case are simple and clear on record. So I need not go into the details of the facts.
- [3] Briefly, the Petitioner is the registered proprietor of a parcel of land situated at Pascal Village, Beau Vallon, Mahe known as parcel V7259 and of a house constructed there on. The Respondent is the Minister for Land Use and Habitat and as such has the power to hear and determine appeal in terms of Section 11 of the Town and Country Planning Act, hereinafter referred as the Act, from the decisions of the Planning Authority on land development issues.
- [4] By an application dated the 24th of November 2011 the Petitioner applied to the Planning Authority for permission to develop parcel V7269 namely to erect a temporary G.I Sheet fence on the Southside of the said parcel, from beacon JF366 to J687 hereinafter referred to as the development.
- [5] By virtue of a decision in a letter dated the 30th December 2011, the Planning Authority informed the petitioner that the Planning Authority refused the permission for the development for the reason that the development as proposed will partly block access to property located in the area of parcel V7259.
- [6] On the 22nd February 2012, the petitioner appealed to the respondent in terms to Section 11 of the Act, against the decision of the Planning Authority. However, the respondent did not allow the appeal but confirmed the decision of the Planning Authority in that the petitioner was not given permission to erect a temporary G.I Sheet fence of the Southside of his property.
- [7] Now, the petitioner has come before this court for a Judicial Review, primarily on the ground that the decision of the respondent is unreasonable and irrational having regard to all the circumstances of the case and in that no reasonable Tribunal or Authority would have reached the said decision.
- i) There is no right of way has been created over Parcel V7259 in law

- ii) Further, out of the alternative to one, the only parcel of land in the area V7259 which is enclosed and may possibly have a right to demand a right of way over V7959 the applicant's property.
- iii) Further the proposed location of the temporary G.I Sheet fence would not affect the possible right of way.
- iv) The defendant has denied in effect the petitioner of his right of enjoyment of his property.

[8] In this circumstance, it is the case of the petitioner that the decision is unreasonable or irrational. I carefully perused the file forwarded from the Ministry of Land Use and Habitat. I meticulously went through the pleadings, the affidavit filed in support of the defence as well as the submissions presented by counsel.

[9] First of all I note, the Planning Authority refused permission to erect G.I sheet fence on the petitioner's property because it was so apparent that erection of such fence might block the right of way on the property which might cause inconveniences and hardship to the neighbours. In any event the Planning Authority requested the petitioner to submit an accurate and detailed plan as to the erection of the G.I sheet fence.

[10] However, it failed to satisfy the Planning Authority by providing the necessary details and the accurate plan to the actual location where the fence were to be erected. In the circumstances, I do not find fault with the decision of the Planning Authority or of the Minister. They have indeed, acted reasonably in the absence of accurate details as to the location of the proposed fence. The only presumption any reasonable person would draw is that it would bloc the access or right of way.

[11] In the circumstances, I quite agree with the submission of the learned State Counsel Mr. George in that the decision of the Minister is not unreasonable or irrational in the giving circumstances and facts of this case.

[12] Moreover, the petitioner has raised that the decision is against the principles of natural justice. In fact I believe there are 3 rules which relate to natural justice:

- i) No one should be a judge in his own cause
- ii) *Audium spartum*, that is no one should be condemn unheard: and
- iii) The decision maker should give reasons for his decision.

In this particular case, it is evident that the respondent has give ample opportunity and time to the petitioner to present the documents which he relied upon but he did not. In the circumstance, I donot think that any of the principles of natural justice has been violated by the Respondent while arriving at his decision.

In the circumstances, I do not find any ground to issue a *writ of certiorari* to quash the decision of the Minister, in this matter. The petition for Judicial Review in devoid of merits.

Therefore I hereby dismiss the petition. I make no orders as to cost.

In the interest of Justice I direct the Registrar to furnish a copy of this Ruling to the petitioner namely Ellen Bourchereau of La Poudriere, Mahe.

Signed, dated and delivered at Ile du Port on 11th July 2014.

D Karunakaran
Acting Chief Justice