

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MC 16/2013

[2015] SCSC 190

ELIAS RADEGONDE

La Passe

La Digue

Seychelles

Applicant

versus

**TOWN & COUNTRY PLANNING AUTHORITY
(HEREIN REPRESENTED BY ITS CEO MR GERARD HOAREAU**

C/O MINISTRY OF LAND USE & HOUSING

Independence House

Victoria

Mahe

Seychelles

1st Respondent

**MINISTER CHRISTIAN LIONNET
MINISTER OF LAND USE AND HOUSING**

PLANNING AUTHORITY

Office of the Chief Executive Officer

Independence House

Victoria
Mahe
Seychelles
2nd Respondent

Heard: 11th June 2015.

Counsel: Mr Frank Elizabeth for the Appellant
Mr George T.Tachett, Asst. Principal State Counsel for the Attorney
General of Seychelles for First and Second Respondents

Delivered: Friday 26th June 2015.

RULING

McKee J

[1] This Ruling relates to a Motion dated 14th January 2015 filed on behalf of the Plaintiff in this matter. In this Application the Applicant seeks an order of the Court to amend the originating Petition as per the Amended Petition attached to the Motion. The Application to amend the Petition is objected to by the Respondents on the grounds stated in the written Objections dated and filed in the Supreme Court on 12th May 2015.

[2] The originating Petition with supporting affidavit were attached to an Application for Leave to Seek a Judicial Review under Article 125[c] of The Constitution of Seychelles of a Decision of the First Respondent on 25th March 2013 to confirm the issue of an Enforcement Notice dated 7th February 2013 requiring the Applicant to demolish a structure erected on property registered as LD 1163 situated at La Passe, La Digue, Seychelles [hereinafter referred to as “the property”]. The Enforcement Notice issued under section 14 of the Town and Country Planning Act [Cap 237] stated that the Applicant in this matter had undertaken development, namely the erection of a structure,

on the property without the benefit of valid planning permission and in contravention of a Stop Order issued by the First Respondent. The Enforcement Notice thus required the Petitioner to demolish the structure and reinstate the land to its original state within 30 days of the service of the Notice. Counsel for the Applicant sought a Revision of this Decision by letter addressed to the Chief Executive of the Planning Authority dated 20th February 2013. The Chief Executive Officer of The Ministry of Land Use and Housing Planning Authority by letter dated 25th March 2013 replied advising Counsel that the application for revision was unsuccessful and that the Planning Authority was intending to take action to ensure compliance with the terms of the Enforcement Notice. It would have been reasonable for the Applicant to assume that the Planning Authority could now be prepared to take steps to demolish the offending structure if he did not do so.

[3] This decision of the Planning Authority dated 25th March 2013 resulted in the Application to the Supreme Court dated 4th and received by the Supreme Court on 5th April 2013 for it to exercise its supervisory jurisdiction under Article 125[c] of the Constitution and declare that this decision by the Planning Authority was illegal, unreasonable and in breach of the rules of natural justice. The Applicant also sought, inter alia, an interim injunction prohibiting the First Respondent from proceeding to put the Enforcement Notice into effect. The Application was by way of Motion and by Order dated 11th April 2013 leave was granted by the Supreme Court for the Applicant to apply for Judicial Review. The Order also granted an Interim Injunction against the First Respondent ordering it to desist from any demolition works and likewise ordering the Applicant to desist from any other development on the property until disposal of the substantive case.

[4] The Judicial Review proceedings went ahead on the basis of the originating Petition to which formal Objections had been lodged by the First Respondent dated 20th June 2013.

[5] New Counsel was appointed by the Applicant and Mr Elizabeth now seeks by Motion to amend the originating Petition. The amended Petition is attached to the Motion. It is fair to say that the amended Petition is a much lengthier and more detailed document.

Counsel for the Respondents lodged written objections to the Amended Petition dated 12th May 2015.

[6] Counsel for the Applicant and Counsel for the two Respondents also made oral submissions to the Court in respect of the Amended Petition.

[7] Briefly the position is this. Counsel for the Applicant in his Amended Petition seeks to expand the narrative of events leading to the issue of the Enforcement Order of 2013 and would ask the Court to look again at the earlier refusals of planning permission in the years 2006 and 2009 [hereinafter referred to “the 2006 application” and “the 2009 application”] and consider also the circumstances relating to a new planning application of 2012 [“the 2012 application”]. He also seeks to add as a second respondent and party to the Amended Petition the Minister of Land Use and Housing. He submits that the amendments are necessary to determine the real questions in controversy between the parties.

[8] Counsel for the Respondents argues that the application to admit the Amended Petition should be refused. Its admission would add new matter to the originating Petition, is irrelevant and changes the character of the originating Petition. He also refers the Court to the Supreme Court [Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities] Rules hereinafter referred to as “the Rules”. He submits that the main thrust of the Petition should be directed towards the circumstances surrounding the issue of the Enforcement Order of 2013 and a consideration of the status of the 2012 application but should exclude further consideration in respect of the prior decisions of the planning authority relating to the 2006 and 2009 applications. He also submitted it is inappropriate to consider any order for compensation. Furthermore it is inappropriate and unnecessary for the Minister to be added as a respondent in the Petition.

[9] I have carefully considered the written and oral submissions from both Counsel.

[10] I look to the originating Petition and the Amending Petition and to the relative prayers and relief sought as at this point in time.

[11] The Originating Petition.

The thrust of this Application is for this Court:

1. To issue a writ of *Certiorari* to quash the decision of the First Respondent to issue an Enforcement Order dated 7th February 2013 in respect of a structure or structures erected on the Parcel LD1163, and
2. To issue a writ of *Mandamus* compelling the First Respondent to grant the Petitioner planning permission to develop Parcel LD 1163.

[12] The Amended Petition.

The thrust of the amended Application is for this Court:

1. To issue a writ of *Certiorari* quashing the decision of the Second Respondent dated 15th March 2006 refusing planning permission to the Petitioner to develop Parcel LD 1163,
2. To issue a writ of *Certiorari* quashing the decision of the Second Respondent dated 12th May 2010 refusing planning permission to the Petitioner to develop Parcel LD 1163. And
3. To issue a Writ of *Certiorari* to quash the decision of the First Respondent to issue an Enforcement Order dated 7th February 2013 in respect of a structure or structures erected on the Parcel LD1163, and
4. To issue a writ of *Mandamus* compelling the First Respondent to consider and grant retrospective planning permission to the Petitioner to develop Parcel LD 1163 in conformity with his application for planning permission in DC/1509/12 [the 2012 Application], and

5. To make an Order for Compensation in favour of the Petitioner in the sum of SR 1,000,000, and
6. To order a *locus in quo* inspection of Parcel LD1163.

[13] Expressed in this manner it is apparent that the prayers in paragraphs 3 and 4 of the Amended Petition as listed above are similar to the prayers in the originating Petition as at paragraphs 1 and 2 above.

[14] I now look to the prayers listed at paragraphs 1 and 2 above of the Amended Petition dated 14th January 2015.

[15] This is also a convenient point to look to rule 4 of the Rules which I repeat below:

“ 4. A petition under rule 2 shall be made promptly and in any event within 3 months from the date of the order or decision sought to be canvassed in the petition unless the Supreme Court considers that there is good reason for extending the period within which the petition shall be made.”

[16] In respect of paragraph 1 of the prayer of the Amended Petition, it is immediately clear that this request for a writ of Certiorari relates to the first application for planning permission and the consequential refusal dated 15th March 2006. There is a period of some 9 years between the date of the Amended Petition and the date of the refusal to grant planning permission in respect of this application.

[17] Likewise in respect of paragraph 2 of the prayer of the Amended Petition there is a period of some 5 years between the date of the Amended Petition and the date of 12th May 2010 on which the decision was made to refuse planning permission in relation to the 2009 application.

[18] I consider these two applications for writs of Certiorari in the light of the provisions of rule 4 above. I find that the Amended Petition does not fall within the prescribed time limit of 3 months. Each of the applications are well in excess of this time limit. I now

consider whether, in terms of the proviso, there is good reason to extend this prescribed time limit and allow the Amended Petition to be admitted and substituted for the originating Petition.

[19] Firstly, I consider whether there was an earlier opportunity for the Petitioner to avail himself of this possible remedy and I find that there was such opportunity so to do but this was not done. I also consider as relevant and material the sheer length of the intervening periods of inaction of 9 years and 5 years between 2006 and 2010 and the date of the Amending Petition.

[20] I look at the terms of each Petition. In the originating Petition this Court is asked to consider the circumstances surrounding the third application for planning permission, namely the 2012 application, and the imposition of the Enforcement Order. In the Amended Petition the Court is again asked to consider the circumstances surrounding the third application for planning permission and the Enforcement Order *but also* to reopen and consider the circumstances surrounding the two earlier applications of 2006 and 2009, the subsequent refusals, and issue a writ of Certiorari in respect of each application. In addition, the Petitioner also seeks an award of compensation of Rs 1,000,000. An application is also made for a *locus in quo* but this has no real bearing on the substantive issue. I believe that Mr Elizabeth is correct when he states that the Court has to decide whether or not the allowing of the amendments would change the suit from one character to another of a substantially different character. The amendments would require the Court to look in detail at the two earlier applications, make rulings thereon and consider whether an order of compensation is required. Counsel for the Respondents submits that this leads to a multiplicity of issues.

[21] Mr Elizabeth also refers to section 146 of the Seychelles Code of Civil Procedure.

He submits that the amendments are necessary for determining the questions in controversy between the parties. I find that I disagree with Mr Elizabeth on this point. In my view the substantive issues in controversy are 1] whether the 2012 planning permission should be granted after fully taking into account the terms of that application but bearing in mind the imposition of the Enforcement Order and 2] whether it was right and proper for the First Respondent to issue the Enforcement Order. In my view these

issues can be determined without detailed consideration of the decision making process relating to the two earlier planning applications.

[22] On full consideration I do find that if the proposed amendments were allowed the character of the Petition would be substantially changed.

[23] Since a decision by the First Respondent in relation to the 2012 application has not been made and the appellate jurisdiction of the Minister has not been invoked and there is no prima facie evidence indicating that the Minister was a party to the decision to impose the Enforcement Order, I find that there is no reason why the Minister should be named as a Second Respondent in this matter and I reject that submission.

[24] CONSEQUENTLY, I find that there are insufficient reasons under rule 4 of the Rules to allow an extension of the period to lodge a petition, or in this case, the Amending Petition, beyond the subscribed period of 3 months, and

[25] I UPHOLD the written Objections for the First and Second Respondents dated 12th May 2015, and

[26] I DISMISS the Motion of the Applicant dated 14th January 2015 that the originating Petition be amended, and with Costs.

[27] The matter will proceed in terms of the original Petition dated 4th April 2013.

Signed, dated and delivered at Ile du Port on 26th June 2015.

C McKee

Judge of the Supreme Court