

Belles Des Iles Ltée v Municipal Council of Quatre Bornes

2006 SCJ 212

IN CHAMBERS

IN THE SUPREME COURT OF MAURITIUS

In the matter of:

Belles des Iles Ltée

Applicant

V

Municipal Council of Quatre Bornes

Respondent

JUDGMENT

In August 2005 the applicant applied to the respondent for a development permit to make an extension of the existing Hotel/Guest House in respect of which it holds a Tourist Enterprise Licence. It intended to extend the kitchen found on the ground floor and to put up more bedrooms on the first and second floors of the building. The respondent turned down the application on the ground that the proposed development would be detrimental to the amenities of the residential area and also in view of strong objections received from immediate neighbours. The applicant has now applied under section 106 (3) of the Local Government Act 2003 for a summons calling upon the respondent to show cause why his application for the development permit should not be processed and granted. The applicant contends that in rejecting its application the respondent acted arbitrarily and unreasonably, taking into consideration extraneous reasons and/or justifications, and in violation of the law.

According to the applicant, the major grievances of the only objector, a couple, namely Mr. and Mrs. Nunloll, concerned the allegation that water from the swimming pool came to their premises and that persons standing on the external staircase of the applicant's building could see into their yard. In the affidavit filed on its behalf, the respondent contended that the objecting couple had alleged that the applicant's clients made noise, especially when they jumped into the swimming pool, and played loud music after 10 p.m. The couple also alleged that they had complained to the police on several occasions regarding the noise made by the

applicant's clients. However, the applicant asserted that it was not aware of such complaints since the police had never contacted the applicant in that respect. It was also the applicant's case that there had never been any complaint made by any of the neighbours regarding any alleged noise. Mr. and Mrs. Nundloll also complained that a noisy water pump was being used day and night, which the applicant denied, and the spot light fixed to the building was lit all night preventing them from sleeping. The applicant contended that the spot light was for security purpose and that the Nunloll family had never complained about it. The applicant further averred that the complaints had nothing to do with its application for an extension and denied that the proposed extension would have been detrimental to the residential area. The applicant also put in a document in the form of a petition signed by a number of neighbours along the same street; they deny that the activities of the applicant were causing any inconvenience either during the day or night. At the hearing of the objection the applicant showed to the respondent its willingness to raise the wall of the premises in its propositions to satisfy the Nunloll family.

In its affidavit the respondent mentioned that the applicant had started an extension on the ground floor without permit. In reply, the applicant denied that allegation and explained that it had caused four concrete columns to be installed so that a canvas cover could be placed on them on rainy days. The fact that the columns were made for that purpose has not been gainsaid by the respondent. It is however not denied by the applicant that there is now a complaint from the respondent against it, following the noise complaint received from the Nunloll family, that when in 2001 and 2002 a development permit and a building permit, respectively, were issued to the applicant, its project did not contain any provision for a dancing hall or swimming pool. The fact however remains that none of the above two complaints, that is, for having allegedly caused the extension to be started before obtaining the permit and for having provided for a dancing hall and a swimming pool without approval, were invoked by the respondent in refusing the application for extension. Besides, these are matters for the relevant authorities, if so advised, to deal with, and means are certainly available to them to make sure that there is no noise made which is beyond the permissible level. It is further not disputed that there has been no objection from the Government Fire Services with regard to the proposed extension.

I have given due consideration to the contentions of the parties in the light of the documentary evidence annexed to their respective affidavits. It is, in my view, an important factor that the applicant enterprise has been in operation since a while ago, and it is significant that the respondent has not made it clear whether, in refusing the application in such a circumstance, it was acting in accordance with the provision of any guidelines made under section 98 (4) of the Act in terms of the requirement of the law. Further, the respondent has not given any indication whether such an extension would have an adverse impact on

the environment contrary to any rules laid down by the Ministry of Environment or the Ministry of Health.

In the light of the observations made above, I take the view that the respondent did not give to the application the considerations that it required before taking its decision. Given that the applicant was already the holder of a development permit to operate in a residential area, the respondent had to properly balance the two considerations, the interest of the applicant as an ongoing tourist development on the one hand and the adverse impact on the environment likely to be caused by the proposed extension. However, in this particular case, the respondent has been obviously unduly influenced by the objection of the Nunloll family since the reason given by the respondent, in view of the lack of precision as pointed out above, is vague and unconvincing.

For the reasons given above, I grant the application on the condition that the applicant raises the wall of its premises as it had proposed to the respondent, with costs.