

Mesnil Investments Co. Ltd. v Environment Appeal Tribunal

2000 SCJ 172 (172)/2000

RECORD NO. 66944

IN THE SUPREME COURT OF MAURITIUS

In the matter of:

Mesnil Investments Co. Ltd.

Appellant

v

1.1.

2.2. Minister of the Environment,

Human Resource, Development

and Employment

Respondents

JUDGMENT

The appellant is appealing to this Court, pursuant to section 49(1) of the Environment Protection Act 1991, (called "the Act") against the decision of the first respondent, as being erroneous in law, which affirmed on appeal that of the second respondent refusing the grant of an Environment Impact Assessment (EIA) licence to the appellant in respect of a morcellement project consisting of the subdivision of its portion of agricultural land under sugar cane cultivation of an extent of 44.8251 hectares situate at Trianon (called "the land in lite") into 96 plots for agricultural purposes.

It is not in dispute that the appellant had to obtain under the Act an EIA licence in respect of its morcellement project and that the second respondent's decision was reached on the sole ground that "it is contrary to the Government's Policy of dividing cane fields into smaller lots which will be owned/managed by a large number of persons and lead to counter productivity and adverse impact on national economy" after having found the following facts proved and/or admitted –

(a) The land in lite has been under cane plantation for 25 years and it

enjoys climatic conditions which are favourable for sugar cane cultivation.

(b) The land in lite is not rocky and there is no water problem being given that two rivers cross the land and it is situated in an area which benefits from rainfall.

(c) The proposed morcellement is environmentally friendly and the present infrastructures will not be affected at all.

(d) About 300 to 400 tons of sugar are obtained from cane cultivation on the land in lite.

(e) If the land is subdivided into 96 lots as per the proposed project and managed by small planters, the yield in sugar plantation will decrease approximately by some 15 to 25%.

(f) Government has to satisfy presently certain export commitments towards the European Union, the United States and under the Special Preferential Sugar Agreement.

(g) For some three years Mauritius has been importing about 40,000 tons of sugar for its local consumption as its sugar production can scarcely meet its export commitment.

(h) According to a survey carried out by the MSIRI, small plots of land are more vulnerable to socio-economic problems like inheritance, land speculation and housing developments. There has been a decline since 1990 in the area cultivated with canes and over the last 15 years some 7100 hectares of sugar cane land belonging to non- millers have been abandoned owing to, amongst other reasons, low returns, lack of interest, unavailability of irrigation, problems associated with inheritance, uneconomical plot sizes, conversion to residential use and a shift to financially more attractive agricultural activities.

(i) 60 of the 96 lots of the proposed project of the appellant are less than one arpent in size.

(j) Land Area Management Units (LAMUs) set up by the Ministry of Agriculture to help small planters have been slow in regrouping small planters because of problems of irrigation and derocking and of the fact that small plots of land are non-contiguous and as from 1999 a new system (BMS) has been introduced.

Learned Counsel for the appellant contended in substance that since the morcellement project of the appellant has been found to be environmentally friendly, then the decision of the second respondent is untenable in law, grounded as it is on a government policy, more fully described earlier, which has no relevance to the present case, the more so

as an EIA licence had been granted to Société Mohun Ramdonee and Co. in respect of a similar project.

Learned Counsel for both respondents referred to the preamble, and section 14(d) and (g) of the Act to argue that both respondents were fully justified in taking into account the policy of the government regarding the national economy in deciding whether or not to grant an EIA licence. Moreover, it is not known in what circumstances Société Ramdonee obtained its EIA licence. On the assumption that an EIA licence was wrongfully granted to Société Ramdonee in contravention of government policy, this does not mean that the respondents should compound the wrong already done by wrongfully granting an EIA licence to the appellant instead of pursuing the right path.

After a perusal of the Act, we observe that -

(1) in its preamble the Act provides "for the protection and management of the environmental assets of Mauritius so that their capacity to sustain the society and its development remains unimpaired and to foster harmony between quality of life, environmental protection and sustainable development for the present and future generations;

(2) in section 14 an EIA shall contain a true statement and description of the social, economic and cultural effects that undertaking is likely to have on people and society [paragraph (d)] and the irreversible and irretrievable commitments of resources which will be involved by the undertaking, if implemented in the matter proposed by the proponent [paragraph (g)];

(3) in section 18, the Minister may, where an EIA provides insufficient information to determine the scope or the impact of the undertaking on the environment, people or society, disapprove the EIA - vide paragraph (c);

(4) in section 19, it is stated that in considering approval of an EIA, account shall be taken -

(a) . . .

(b) . . .

(c) the measures proposed to avoid or minimise adverse effects on the environment, people or society (the underlining is ours).

It is clear, therefore, from the language and broad objects of the Act already mentioned, that the protection of the environment is an all-embracing concept which not only deals with environmental issues proper but also with public interest issues or issues affecting the welfare or economy of a state.

Consequently, both respondents were right in giving paramount consideration to the government's policy of not allowing large sugar canes fields to be divided into smaller lots because of its adverse impact on productivity and on the national economy, the more so as –

(a) already indicated in section 14 (d) of the Act, both respondents had to assess "the social and economic effects" the morcellement project of the appellant would have on the people and society of Mauritius; and

(b) pertinently stated in *La Compagnie Sucrière de Bel Ombre Ltée v Government of Mauritius* and 9 other cases [1994 MR 173] –

" It is well known that historically the sugar industry has been the main pillar of this country's economy, affecting the well-being not only of all the partners in the industry but also of almost everyone else. For this reason, the industry, as a whole, has been profoundly reorganised over the years with a view to achieving progressively the highest degree of efficiency, with equity and fairness for all partners in the industry, even if this entails the statutory regulation of its operations by, in particular, limiting and controlling individual contractual freedom".

With regard to the EIA licence granted to *Société Ramdonee*, in respect of a morcellement project similar to that of the appellant, we are in the dark, just like the first respondent, as to all the circumstances surrounding that project. Learned Counsel for the appellant who had appeared before the first respondent could have elicited relevant information about that project from Mr Heeramun posted at the EIA Division but he chose not to cross-examine him on that issue.

In any event, as correctly submitted by learned Counsel for the respondents, even on the assumption that there had been a mistake in granting an EIA licence to *Société Ramdonee* by the second respondent, the first respondent was right to have been on its guard against making a second mistake in granting the EIA licence sought by the appellant, in breach of the provisions of the Act.

For all the reasons given, we dismiss the appeal, with costs.

Judgment delivered by Hon. A.G. Pillay, Chief Justice

Keywords: protection, "morcellement" project Legislation: Environmental Protection Act, Environmental Impact Assessment