

IN THE SUPREME COURT OF MAURITIUS

Judges' Secretaries' Office
20 September 2017

***S Moorar & 2 Ors. v The Ministry of Public Infrastructure and Land Transport &
Anor. - Serial No. 1452/2017***

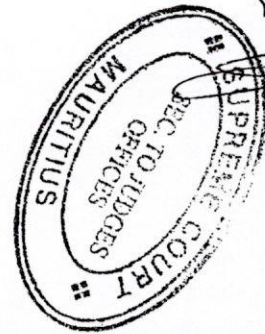
Take notice that the Order in the above-mentioned case has been, this day, made by Hon. R Teelock, Judge, the declarative part of which is as follows:

"I order accordingly and the interim order shall continue and lapse on Thursday 5 October 2017.

The application is otherwise set aside.

With costs."

Yours faithfully,



(P Hurnaum)
Secretary

To:-

1. **Mr. Attorney K Bokhoree**
2. **Mr. R Valayden, of Counsel**
3. **Mr. S Veeramundar, of Counsel**
4. **Mrs. F Maudarbocus-Moolna**
5. **Mr. N Pillay, of Counsel**
6. **Mrs. R Camiah, Principal State Attorney**
7. **Mr. L Aujayeb, Ag Asst Solicitor General**
8. **Ms. K Domah, State Counsel**
9. **Ms. V Nirsimloo, Deputy Chief State Attorney**
10. **Mrs. J Lau Yuk Poon, Asst Solicitor General**
11. **Mrs. D Sewpal, State Counsel**
12. **Ms. N Pem, State Counsel**

Serial No. 1452/2017

IN THE SUPREME COURT OF MAURITIUS

In the matter of:-

1. Sharma Moorar
2. Atmanand Moorar
3. Vipin Moorar

Applicants

versus

1. The Ministry of Public Infrastructure and Land Transport
2. The Ministry of Housing and Lands

Respondents

ORDER

On 15.09.2017, upon hearing submissions of Mr. S Veeramundar, of Counsel instructed by Mr. Attorney K Bokhoree for applicants nos. 1 and 3, Mrs. F Maudarbocus-Moolna, SA instructing Mr. N Pillay, of Counsel for applicant no. 2, Mr. L Aujayeb, Ag Asst Solicitor General, instructed by Mrs. R Camiah, Principal State Attorney for respondent no. 1, and Mrs. J Lau Yuk Poon, Asst Solicitor General, instructed by Ms. V Nirsimloo, Deputy Chief State Attorney for respondent no. 2, I took time to consider.

And this day, after having considered the affidavit dated 31.08.2017 filed in support of the application to make interlocutory the interim order, in the nature of an injunction issued on 01.09.2017 issued in view of exceptional circumstances in the absence of supporting lease agreements, ordering the respondents not to go ahead with the pulling down of the front elevation or any part of the buildings of the applicants, situate at Residence Barkly, in the district of Plaines Wilhems, all other affidavits filed on behalf of the three applicants on 01.09.2017, 04.09.2017, 07.09.2017 and 08.09.2017, the affidavit filed on behalf of applicant no. 2 only on 14.09.2017, all the affidavits filed on behalf of respondent no. 1 on 04.09.2017 and 07.09.2017 and all the affidavits filed on behalf of respondent no. 2 on 04.09.2017, 05.09.2017, 07.09.2017 and 11.09.2017 and after having also taken into consideration the submissions made by legal advisers on behalf of the parties as well as written submissions filed by them,

I take note that the applicants are not contesting the Metro Express Project and are now relying only on the following in support of their application for an interlocutory order:

- (i) The State is demolishing the properties illegally without compensation and against the Constitution which provides a right to property and life;
- (ii) The pulling down without any building survey will jeopardise the foundation and security of their houses;



- (iii) There is no feasibility study to determine the condition of existing buildings, identify and analyse defects including proposals for repairs;
- (iv) The respondents have not ensured the preservation and conservation of buildings remaining after the selected part of house/s, namely front elevation, is demolished;
- (v) There is a lack of a structural impact assessment.

The respondents assert that the applicants' buildings have encroached onto State Land and have put up a plan in support of same (Annex A of respondent no. 2's affidavit dated 05.09.2017). They aver that the applicants' present situation is attributable to their own illegal encroachment onto State Land.

It is significant to note that the applicants have failed to make a full and frank disclosure of material facts at the outset of the application, or even at the first opportunity after they remained as applicants, namely that:

- (a) The three applicants are heirs of a previous lease-holder;
- (b) The applicants have not entered into a formal lease with respondent no. 2 as heirs, the lease having expired in 2011;
- (c) There has been correspondence between respondent no. 2 and the applicants as heirs of late Derjwindurnath Moorar;
- (d) The Notice under section 22 of the State Lands Act has been served since 20 July 2017 by respondent no. 2, giving 7 days' notice to quit and vacate the land *in lite*;
- (e) There has been an admission of the encroachment onto State Land by way of letter dated 22 July 2017 on behalf of all the heirs (Annex 2 of applicant no. 2's affidavit dated 14.09.2017);
- (f) The applicants were aware of the intention to demolish by the respondents.
- (g) Applicant no. 2 had entered into negotiations with the respondents and had agreed at one stage to vacate and leave.

Applicant no. 2 acting on behalf of the heirs of late D. Moorar, accepted by way of the letter dated 22.07.2017, that there is encroachment on the State Land. Furthermore, applicants nos. 1 and 3 have utterly failed to establish their contention that there is no encroachment on the State Land by the buildings in question, so that respondent no. 2's plan has remained uncontroverted.



In view of all the above facts, I accordingly conclude:

- 1) that the applicants have failed to establish that there is a serious question to be tried in respect of any of their legal rights or alleged constitutional rights to property or life.
- 2) prejudice, if any, can be adequately compensated by damages through a civil action.

I therefore decline to convert the order into an interlocutory one.

However, given all the circumstances and in the light of the averment of respondent no. 2 that "all adequate measures and precautions have been taken prior to, and during the removal of the said illegal encroachments on State Land ...". I find it fair and equitable that the applicants be given adequate opportunity to take all necessary steps they may deem fit in the circumstances, in order to safeguard part of the buildings they are lawfully entitled to occupy as per plan produced by respondent no. 2, before the respondents carry out any works.

I order accordingly and the interim order shall continue and lapse on Thursday 5 October 2017.

The application is otherwise set aside.

With costs.

Chambers, this Wednesday 20 September, 2017.

 R Teelock
JUDGE

CERTIFIED A TRUE COPY

Secretary to Judge
Supreme Court
Date 20/09/17

