

CASE SUMMARY

Complaint against the Lands Department (Lands D) for delay in processing an application for building a small house and for mishandling the small house application

The Complaint

The complainant, an indigenous villager, applied to a District Lands Office (DLO) of the Lands D to build a small house on government land in January 1992. The application was processed by the DLO according to the usual procedure by posting up a notice of application in November 1992 to invite objections, if any. One objection was received and subsequently withdrawn after clarification by the Department with the objector. The complainant did not hear from the DLO and he thought his application was being processed. He wrote to the DLO in July 1994 requesting it to expedite the processing of his application.

2. However, the case file was lost and the complainant was asked by the DLO to make a fresh application in May 1996 on the same lot. Again a notice to invite objection was posted up by the DLO in June 1996 and an objection on 'fung shui' grounds was received from a group of villagers. The DLO subsequently informed the complainant that his application could not be further processed unless and until the objection had been resolved or withdrawn.

3. The complainant was dissatisfied and complained that his application had been unduly delayed due to no fault of his own. He felt aggrieved that the re-posting of notice was unnecessary and the objection on 'fung shui' grounds was unreasonable which had caused further delay to his application.

Findings and Conclusion

4. Upon investigation, this Office notes that the complainant's original application was approved by the District Lands Office Conference

(DLOC) in February 1993 subject to (a) site survey, (b) maintenance of a three feet wide passage for the adjacent lot and (c) informing the Housing Department as complainant is a housing estate tenant. However, the complainant was not informed of the DLOC' s decision.

5. When complainant wrote in urging for early processing of his application in July 1994, the DLO was unable to trace the main file and for some unknown reasons, the letter was unattended to until May 1995.

6. This Office is of the view that the cause for the initial delay stemmed from the missing of the case file since December 1993 which the DLO should be held managerially responsible. Furthermore, this Office finds it inconceivable that immediate remedial action was not taken by the DLO upon receipt of complainant' s letter in July 1994. It was until May 1995 that the complainant' s application was finally reactivated, i.e. 27 months after DLOC' s approval.

7. In the circumstances, The Ombudsman concludes that the complaint for delay in processing the application is substantiated.

8. As regards the mishandling of the application, this Office observes that, though the complainant' s application was approved by DLOC in February 1993, he had not been informed of the decision made by DLOC and the proposed offer of a land grant to him.

9. Further, this Office notes that the complainant was requested by DLO to re-submit a fresh small house application in May 1996 to provide up-to-date information for verification of his indigenous villager status. Furthermore the complainant' s application was required to go through similar "objection" procedure completed in November 1992.

10. This Office does not see the need for the complainant to submit a fresh application because his indigenous villager status was ascertained before

his original application was approved in 1993. Further, this Office sees no valid ground for the DLO to re-post the notice of application, given the fact that the complainant's application has already gone through the usual "objection" procedure and that his application was conditionally approved by DLOC in February 1993. If not because of the loss of the case file, which was not due to any fault on the part of the complainant, the processing of the small house application should have already been completed.

11. All points considered, The Ombudsman concludes that the complaint for mishandling the application is also substantiated.

Recommendations

12. The Ombudsman recommends the Director of Lands to -
- (a) issue a letter of apology to the complainant for the delay in processing his small house application;
 - (b) consider, if approval is given to the application, the charging of the administrative fee and premium in respect of the complainant's land grant at rates prevalent in 1993 in the event that the current rates are higher than the rates charged at that time, on the principle that he should be placed in the position he would have been in had the delay not occurred; and
 - (c) review the internal file management in Lands D to avoid similar occurrence.

Response from the Director of Lands

13. The Director of Lands did not accept the findings and conclusion of the investigation for mishandling the small house application. He supported the DLO' s decision to post the notice again as there might be changes of circumstances, e.g. a late objection on valid ground, that he was not aware of due to the loss of the case file and the lapse of time. It was only fair to all parties concerned that a fresh notice be posted and if objections were received, then the problems could be tackled immediately. Should the DLO go ahead without the posting of notice and objection was later received as was now the case, then the criticism would most likely be levelled against the Department for failure to post the notice in the knowledge that the original notice was basically out-of-date due to lapse of time and possible circumstantial changes which could have been buried in the lost file.

Final Remarks

14. The Ombudsman has carefully considered Director of Lands' comments in para. 13 and is concerned that the decision to re-post the notice was intended to avoid criticism which would be directed against the Department. This is because the Department was trying to safeguard its position at the expense of the complainant who has already suffered as a result of the loss of the file and hence the protracted delay in processing his application. He is of the view that the re-posting of the notice has caused further delay to the processing of the complainant' s application and was unreasonable and unfair to the complainant particularly when it is the Lands D' s publicly stated Small House Policy that late objections will not be considered.

15. There would be no question of a lapse of time if the DLO had taken remedial steps when the case file was found lost in December 1993 or at least in July 1994 to reactivate the case upon complainant' s request to expedite the processing of his application. The lapse of time, if any, is not the making of the

complainant but rather the DLO' s. Finally, it is unreasonable to take the time gap between the approval of application in 1993 and the less than voluntary re-submission of the application in 1996 to justify the re-posting of the notice when the normal building covenant period allowed for a new small house grant is 36 months.

16. The Ombudsman considers that there is no justifiable ground to change the findings, conclusion and recommendations of this report.

- END -

Office of The Ombudsman

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