

CASE SUMMARY

Complaint against the Lands Department for mishandling an application for relocation of a temple and the Housing Department for failure to make reprovisioning of the temple before cancelling its temporary licence.

THE COMPLAINT

Complainant was the in-charge of a temple. In 1991 she was informed by Government that she had to move the temple elsewhere due to clearance of the area. In the past years, the Lands Department (Lands D) had identified several sites for complainant to re-establish the temple but complainant's attempts for land grant were unsuccessful for one reason or another.

2. Complainant was finally advised by Lands D in November 1994 to consider Site A to re-establish her temple. As the area was due for clearance, the Housing Department (HD) issued a temporary licence to complainant in August 1996 to enable her to use Site A as complainant had applied to Lands D for a land grant to relocate the temple to Site A in January 1996. Despite all the efforts and money spent in the past years, complainant felt aggrieved that she was only informed in March 1997 by Lands D that her application for land grant to re-establish her temple was disapproved due to reasons which could have been ascertained by Lands D many years ago.

3. Complainant also felt aggrieved that the HD had unfairly terminated her temporary licence for the use of Site A in March 1997, without reprovisioning in the first place.

FINDINGS AND OBSERVATIONS

Complaint against the Lands D

4. According to the Director of Lands (D of L), the temple previously occupied an area of about 65 square meters. Lands D had since March 1992 been processing

complainant' s application for a private treaty grant of a site to re-establish the temple' s operation.

5. In November 1994, Lands D put forth Site A for complainant' s consideration and asked her to seek planning permission from the Town Planning Board which she did and approval was obtained in August 1995. In January 1996, complainant applied to Lands D for re-location of the temple to Site A by way of a land grant. However, Lands D later came to realize that Site A was almost 30 times larger than the previous site occupied by the temple and that its financial capability to complete the proposed development of such magnitude was uncertain. Lands D advised complainant in September 1996 that the proposal was not acceptable and asked her to scale down the development scheme to an area equal to the previous occupied site. Although complainant did adjust the size of the development, her application was eventually rejected by the District Lands Conference (DLC) in February 1997 on the following grounds -

- (a) the temple was only incorporated in 1996 as a legal body and not yet well-established;
- (b) the capacity of the temple in developing and managing such a large operation had not been tested and supported by past record; and
- (c) the uncertain financial capacity of the temple in developing the subject site in accordance with its proposed scheme.

The DLC also decided to offer a small site nearby to the temple by way of a Short Term Tenancy first.

6. While this Office would not comment on the decision of the DLC on the land grant, this Office is of the view that the Lands D had acted irresponsibly by proposing Site A to complainant even they themselves could not accept for relocation purposes. The crux of the matter is that the Lands D had all along been aware of the

small size of the old temple and hence its limited management' s scope and experience and they should never have proposed Site A to complainant in the first place without making preliminary examination into the temple' s financial and management capability in developing the subject site which is 30 times the original.

7. This Office considers that complainant' s case has been handled in a perfunctory manner, resulting in the waste of her effort and time as well as money incurred in employing a consultant in preparing various plans and schedules of accommodation. These could have been avoided if a more responsible approach had been taken by Lands D in examining the applicant' s eligibility, financial and management capability and any other requirements having regard to the Department' s policy and guidelines before proposing Site A to complainant. All points considered, The Ombudsman concludes that the complaint against the Lands D is substantiated.

Complaints against the HD

8. According to the Director of Housing (D of H), complainant' s request for re-provisioning of the temple had all along been dealt with by Lands D under the co-ordination of a Clearance Co-ordination Committee (Committee), which was chaired by the District Officer.

9. As far as re-provisioning of the temple was concerned, the role of the HD was to render assistance whenever possible as it is Government' s agent to clear land for redevelopment and other purposes. As the area had to be cleared by August/September 1996, the HD had issued a temporary licence in August 1996 to complainant to use Site A from 15 August 1996 to 31 December 1996 and later extended to 31 March 1997, on the understanding that her application for land grant for re-establishment of her temple at Site A would be submitted to DLC for approval in early 1997.

10. This Office notes that the HD had granted the temporary licence to the applicant due to the imminence of the clearance of the area taking into account the fact that it was still in possession of the area and on the understanding that complainant's application was still being processed by Lands D. However, by April 1997, the HD was no longer in possession of the site upon clearance of the area and was therefore not in a position to approve the extension of the temporary licence. Furthermore, the reprovisioning of affected community facilities and religious institutions had all along been co-ordinated by the Committee. In view of the above, The Ombudsman concludes that the complaint against the HD is unsubstantiated.

RECOMMENDATION

11. The Ombudsman recommends that the D of L should through its District Lands Office, help identify suitable site(s) for re-location of the temple for consideration of complainant by way of a land grant or a STT as soon as possible and enlist the District Office's assistance as necessary.

COMMENTS BY THE DIRECTOR OF LANDS AND DIRECTOR OF HOUSING

12. The D of L commented that his Department did check the financial capability of the temple in 1992 with the District Office. He pointed out that direct reprovisioning is outside the current policy and the Department is not obliged to offer any alternative premises to the temple because it was not operated on private land. In addition, ex-gratia payment for clearance had been made to complainant. The D of H had no comments on the report.

FINAL REMARKS

13. This Office has carefully considered D of L' s comments and is of the view that by relying on the advice of the District Office without actually verifying the applicant' s financial resources could not be regarded as a proper way of checking. The investigation by this Office revealed that, other than the financial consideration, the capability of the applicant in developing and operating a temple of the proposed size was also an important factor in considering the application by the DLC and this, again, had not been properly ascertained at the initial stage. Therefore, this Office considers that the Lands D has not acted properly and responsibly by suggesting complainant to apply for the proposed site on a project unlikely to be approved by the Authority.

14. On the question of direct reprovisioning, this Office has not suggested that the temple should be offered direct reprovisioning as payment of premium would be necessary for relocation of the temple by way of a land grant.

15. All points considered, The Ombudsman concludes that there are no justifiable grounds for changing the conclusion and recommendation of this report.

Office of The Ombudsman

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