Property rates on agricultural land

Facts

The Nkteoana Municipality advertised its intention to levy property rates on farms and subsequently proceeded to levy the rates. The applicant, a farm owner living within the jurisdiction of the municipality, applied to the Free State High Court to declare that the municipality's levying of property rates on farms was outside its authority (*ultra vires*) and illegal. Before this action was brought, the MEC for Local Government and Housing in the province had undertaken, at meetings with the Free State Agricultural Union, to find a solution to the problem but none was forthcoming.

Issue

The issue before the Court in *Boshoff v Nketoana Munisipaliteit* 1935/2003 FS was whether the municipality had the authority to levy rates on agricultural land and whether it followed the correct procedure in doing so.

key points

- Following procedural requirements is imperative when levying rates.
- The Property Rates Act will give clarity and uniformity on exactly what procedures municipalities must follow when levying rates.

Municipality's argument

The municipality argued that in terms of section 229 of the Constitution it has the power to levy property rates and that this power is affirmed by section 83 of the Structures Act, which states that municipalities have all powers and functions granted to them in terms of section 229 of the Constitution. Furthermore, section 10G of the Local Government Transitional Act gives municipalities the power to levy property rates in terms of a council resolution. The Free State Ordinance 8 of 1962 also gives municipalities the right to levy rates on all ratable property. The municipality also argued that it was entitled to levy rates on a provisional valuation roll because section 93(9) and (10) of the Structures Act gave a council the power to levy rates in terms of a provisional roll.

Applicant's argument

The applicant argued that the municipality did not follow the correct procedure for valuing the land and advertising its intention to levy property rates against farms.

In terms of the Free State Ordinance a municipality must advertise its valuation roll in the *Provincial Gazette* for 30 days and any objections to this roll will be dealt with by the valuation court that is established by the municipality.

There was no proof that the municipality did this. The only evidence before the Court was an advertisement placed in a commercial newspaper for 21 days.

The Court's decision

The Court held that Sections 93(9) and (10) of the Structures Act only came into operation in December 2002 and that the municipality tried to levy the rates prior to this date.

The municipality could thus not rely on this section.

The Court also found that the municipality did not adhere to the requirements of Ordinance in relation to the advertisement.

The Ordinance also makes provision for the composition of the valuation court. It must comprise a chairperson, who must be a magistrate or a person with at least five years legal experience, and a minimum of two other members. The court may have a maximum of five members. The municipality's valuation court, however, consisted of six people and there was no chairperson. The court therefore held that the municipality's valuation court was not correctly constituted.

It was clear from the facts that objections against the valuation roll were received from the farmer but they did not reach the valuation court.

The Court held that the municipality could not levy rates on agricultural land in this instance because of all the procedural flaws in the process it followed.

Comments

It is clear from this judgment that procedural requirements are critical when a municipality undertakes any action to levy rates. Courts will not tolerate any action that bypasses procedural requirements. There are still four Provincial Ordinances in place that regulate the levying of property rates by municipalities and the current system has a lack of uniformity. Though the levying of rates on agricultural land will remain hotly debated, the Property Rates Act will provide uniformity and much-needed clarity on exactly what procedures municipalities must follow when levying rates. In terms of the Property Rates Act municipalities are allowed to levy rates against agricultural land.

Geraldine Mettler
Transformation Manager
Drakenstein Municipality

Good governance at work?

As organs of state, municipalities are bound by the principles of good governance and sound administration entrenched in the Constitution. Undermining these principles will lead to ineffective and unfair government and will ultimately result in a bureaucratic culture that is contrary to the Constitutional ethos.

key points

- Municipalities are bound by the principles of good governance and sound administration.
- Courts will not hesitate to penalise organs of state for not using cooperative governance principles.

Facts

In the case of *Hardy Ventures CC v Tshwane Metropolitan Municipality* 2004(1) SA 199, the municipality failed to consider an application submitted to it on 6 December 2002 for the approval of outdoor advertising. In the normal course of business the application should have been either approved or rejected by the municipality by the end of February 2003. Although Hardy Ventures sent numerous letters to the municipality, it failed to respond. Various urgent attempts to communicate with the municipality met with no success.

Hardy Ventures then obtained a court order for the municipality to place its application for approval of outdoor advertising before the mayoral committee by a certain date. The municipality failed to comply with this order. Hardy Ventures re-enrolled the matter, asking the Court for a declaratory order that the municipality was in willful contempt of court and that the responsible municipal official be imprisoned for 90 days.

Issue

The issue before the Court was whether the municipality was in contempt of court.

The Court held that as an organ of state, the municipality is bound to the principles of co-operative governance, which stipulate that all spheres of government must provide effective, transparent, accountable and coherent government for the Republic as a whole. Furthermore, the Constitution provides for public administration that must be governed by democratic values and principles, including that peoples' needs must be responded to and transparency must be fostered to provide the public with timely, accessible and accurate information.

The Court held that the municipality did not adhere to the principles of good government and sound administrative principles and was at risk of generating inefficiency and unfairness. Professionalism, efficiency, fairness, accountability, transparency and accessibility are discreet values that ensure cost effective governance and administration. Further, none of the municipal officials were in court or available to the municipality's legal representatives.

The Court revised the previous interim order for the municipality or any other interested parties to show why the municipality was not in contempt of court and why the municipal manager, mayor or responsible official should not be imprisoned for 90 days. The municipality was further ordered to pay the costs of the application on an attorney/client scale and the mayoral committee was ordered to decide on the applicant's application before a certain date.

Comments

It is clear that the courts will not hesitate to penalise organs of state for not adhering to the principles of good governance as set out in the Constitution (see *LGB* Vol. 6 No1 p. 11). Municipalities should heed this warning and apply principles of good governance and sound administration when dealing with the public or other organs of state.

Geraldine Mettler
Transformation Manager
Drakenstein Municipality

Fair, equitable, transparent tenders

When awarding tenders councils should do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective.

These requirements flow from the Promotion of Administrative Justice Act, the Constitution, the Local Government Transitional Act and the Procurement Policy Framework Act. All tenders for goods and services should be approved in terms of a procurement policy that is adopted by councils in terms of the Procurement Policy Framework Act.

Facts

Metro Projects, a private company, tendered for the development of housing stands in the jurisdiction of the Klerksdorp Local Municipality. Klerksdorp received a grant amount from the North-West Provincial Government for the

development of housing stands and put the development, construction and handover of these stands out to tender. All tenders were analysed by the municipality's civil engineer and submitted to the committee. The figures submitted included the amount tendered for indirect costs, the amount for the top structure and the physical area of the top structure. The tenders submitted differed with regard to the size of the structure.

The successful tender proposed a structure of 30.2m², which was considerably smaller than the other tenders' proposals. The civil engineer nonetheless recommended that this tender be accepted and indicated that in relation to the building area of the top structure, the size of the houses would need to be discussed with the community. This comment clearly misrepresented what was required in the tender. He defended his decision on the grounds that the floor size of the houses was not an important element and that it had been indicated to him that the tender he recommended for acceptance by the committee would increase the floor size of the houses. The committee questioned that tender's omission of the exact house size and resolved to delay its decision until this information was available. The tender recommendation nonetheless made its way to the mayoral committee, which, in turn, refused to deal with it until the size of the house was clarified and the track record of the company that submitted the recommended tender was established. The engineer then gave a report to the committee but though he annexed a house plan of 34.3m², it was not the plan submitted by the tender he had recommended. A further plan of 38m² was submitted by the tender he recommended well after the deadline for submission of tenders had expired.

Issue

The issue in *Metro Projects cc v Klerksdorp Local Municipality* 2004 (1) SA 16 was whether a fair tender process was followed.

key points

- Tender processes should be fair, equitable, transparent and competitive.
- Courts will not hesitate to set aside those that are not.

The appellant, whose tender was one of those that was not recommended by the civil engineer, argued that the recommended tender did not meet the tender conditions and that it was not in line with the Preferential Procurement Policy Framework Act. The Court looked at the behaviour of the civil engineer, a high ranking municipal official, who had changed the tender he favoured so that it would be more acceptable to the committee. The Court held that this misrepresentation and deception stripped the tender process of the essential elements of fairness and equality. An acceptable tender should comply with all the specifications laid down and with the conditions of the tender document. It was clear that in this case, the offer put to the committee was not made by the recommended tender and was not elicited by the tender specifications and conditions. The tender was thus set aside.

Comment

It is clear that the courts will not hesitate to set aside tenders that do not adhere to the principles of fairness, equity and transparency. Municipalities should take care when awarding tenders and should also ensure that tender processes adhere to the principles of fairness. Another piece of legislation that has an impact on the tender process is the Municipal Finance Management Act (MFMA) (see *LGB* Vol. 6 No.1 p. 8), which prohibits the involvement of councillors in the tender process.

Geraldine Mettler
Transformation Manager
Drakenstein Municipality

Exemption from property rates for welfare organisations

Facts

The Association for the Aged, a registered welfare organisation, applied to the KwaZulu/Natal High Court for an order declaring certain properties exempted from rates. The organisation is registered as a non-profit organisation and its core business is the alleviation of distress among aged persons and the promotion of their welfare, security and happiness.

A dispute arose with the municipality when the Association began to sell some of its property to elderly people in its care, in terms of life rights agreements. The applicant used its resources to provide services to the aged, those in the greatest need in particular, with the goal of assisting the elderly to continue, as far as possible, an independent lifestyle in the sanctity of their own environment.

In terms of the life rights agreement, on an agreement's termination an elderly person who purchased a property must sell the rights back to the Association for an amount less than the amount paid for it.

Issue

The issue before the Court in *Association for the Aged v Ethekweni Municipality* 2004 (3) SA 81 was whether a rates exemption applies to all units on a property where, firstly, units were occupied in terms of life rights agreements and secondly, where all units were occupied in terms of a life rights and lease agreement, including lease agreements for commercial use.

Municipality's argument

The municipality disputed the nature of the applicant's different properties, their exact use and their rates status. This dispute originated from the applicant's actions in selling life rights agreements, which lead to the possibility of a profit being realised. In terms of section 153(1)(d)(dd) of the Local Authority Ordinance (KwaZulu/Natal), the applicant would not be entitled to a rates exemption if it was found to be generating a profit.

Applicant's argument

The applicant argued that the life rights agreements did not amount to any monetary benefit for any individual and that the profits derived from them were used to advance the needs of the poor. Further, it was forced to enter into life rights agreements to generate much-needed funds to cater to the needs of elderly indigent people.

Court's decision

The Court held that the applicant had to show that it qualified for the exemption in terms of section 153(1)(d) of the Local Authority Ordinance (KwaZulu/Natal) by proving that:

- it was a duly registered welfare organisation;
- buildings on the land were exclusively used for the organisation's purposes;
- there was no private monetary benefit to any individual; and
- no rent was paid to the applicant for any land or building on which the applicant sought the exemption.

The Court held that if the intended use of property is the test, then a question arises around the applicant's intended use and the

occupiers' actual use. The Court held that the applicant's intention in selling life rights agreements was twofold:

1. to provide the elderly who can afford it with a place to stay; and
2. to raise funds to help those elderly who cannot afford it.

The Court held that the applicant's intention with regard to the use of the premises did not change merely as a result of the income derived from the sale of the life rights agreements. Instead, such income enabled the applicant to achieve its larger objective.

Furthermore, the Court held that the word 'profit' had to be looked at in the context in which it was used. To do otherwise would mean that every measure use by the applicant to raise funds would be viewed as making a profit and would thus remove it from the ambit of the Ordinance. What was described by the Ordinance was not the making of a profit per se, but rather a private monetary profit made by an individual.

The Court held that the applicant's premises were exclusively used to alleviate distress among the aged. The life rights mechanism used thus did not change the use of premises.

Comment

The Property Rates Act now deals with exemptions from property rates in a uniform manner. This Court decision gives some clarity on the definitions of profits and of welfare organisations should a municipality decide to exempt welfare organisations from property rates.

Geraldine Mettler
Transformation Manager
Drakenstein Municipality