Powers of municipalities to impose property rates

Constitutional Court speaks

City of Cape Town v Robertson and another
CCT19/04

A RECENT JUDGMENT BY THE CONSTITUTIONAL COURT clarifies the powers, duties and status of municipalities and pronounces, positively, on the powers of municipalities to impose property rates. This case is a significant victory for municipalities in their efforts to value property and levy property rates.

Facts

Shortly after its establishment in December 2000, the City of Cape Town (the City) compiled a metropolitan-wide provisional valuation roll of properties for the 2002/3 municipal financial year, under the Property Valuation Ordinance (the Ordinance) of 1993. The property valuations reflected on the roll were used to calculate rates levied against the affected properties.

Ratepayers' argument

Before the High Court, the validity of the provisional roll was challenged on three grounds. It was argued that the City could not rely on the Ordinance as it was not a law in force and that, in any event, the City could not impose rates because it was not a local authority as defined in the Ordinance. It was argued further that there was no other law empowering the City to charge property rates based on a provisional valuation roll. The High Court upheld the ratepayers' claim.

Issue

The issue on appeal before the Constitutional Court in *City of Cape Town v Robertson and another* CCT19/04 was the validity of the provisional valuation roll in question and the validity of property rates based on those valuations levied by the City for the 2002/3 municipal financial year.

key points

- **The Constitutional Court recognises local government as an interdependent and inviolable sphere of government.**
- **The Constitution, in particular section 229(1) and (2), authorises municipalities to impose property rates.**

Local authority

The Structures Act provides that from the date on which a municipal council is elected, section 10G of the Local Government Transition Act, 209 of 1993 (the LGTA) applies to such a municipality. Section 10G also extends to superseding municipalities in that a new 'final phase' municipal council assumes the powers, authority and obligations of the existing municipality or municipalities it is replacing. Clearly then, from 5 December 2000, the City became a municipality whose executive and legislative authority vested in a municipal council.

Provisional valuation roll

The Constitutional Court noted that section 10G(6) requires that a single valuation roll of all property be compiled and opened for public inspection and that nothing in this provision

restricts a municipality to using only a final, as opposed to a 'provisional', valuation roll.

Power to impose property rates

The Court found that section 10G obliges a municipality to ensure that property within its jurisdiction is valued or measured 'at intervals prescribed by law'; that a single valuation of property is compiled and that all property valuation 'procedures prescribed by law' are complied with. The Court held that the transitional scheme gives substantive powers to municipalities to measure or value property and, based on the valuation, to impose property rates. Clearly, the Ordinance is the law that regulates and defines the property valuation process by a municipality for rating purposes in the Western Cape. Accordingly, the property measurement and rating powers conferred by section 10G of the LGTA must be exercised within the procedural and other requirements of the Ordinance.

Local government autonomy

The High Court seemingly adopted the approach that a municipality has no power to act without empowering legislation. The Constitutional Court held that such an approach to powers, duties and status of local government is a relic of our pre-1994 past and is no longer permissible in a setting underpinned by constitutional supremacy. In the past, Parliament was sovereign and municipalities were creatures of statute. However, the Constitution has ushered in a new vision of government in which the local government sphere is interdependent, inviolable and possesses the power with which to define and express its unique character subject to constraints permissible under the Constitution. The Constitution itself, and in particular sections 229(1) and (2), authorises municipalities to impose property rates.

Comment

This decision clarifies and confirms the powers, duties and status of municipalities and, in particular, the power of the municipality to levy property rates. The Constitutional Court's recognition and affirmation of the new status of local government is welcomed.

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Expropriation of property

Right to be heard

Buffalo City Municipality v Will Gauss
SCA 5/04

THE EXPROPRIATION ACT OF 1975 (the Act) authorises and regulates the acquisition of property by the State. If a municipality has the power to expropriate property, then this power may only be exercised in accordance with the Act.

In terms of the Municipal Ordinance (Cape) No 20 of 1974 (the Ordinance), a local authority does not have the power to expropriate property except with the prior approval of the provincial Premier. The Premier's approval may only be sought after the local authority has followed a prescribed procedure. Only if the Premier approves the expropriation may the local authority proceed to expropriate in accordance with the Expropriation Act.

Facts

In this case, the municipality wanted to expropriate part of a privately-owned farm to accommodate the expansion of an existing residential rural settlement. The municipality decided, by way of special resolution, to expropriate the property. But it had overlooked the fact that the Ordinance requires the Premier's approval. When this procedural error was brought to its attention, the municipality withdrew the notice of expropriation and formally approached the Premier for approval.

However, before the Premier had either approved or disapproved the proposal, the farm owner alleged that the municipality's decision to expropriate was unlawful because the owner had not been given prior notice of this intention to expropriate, nor had the owner been given an opportunity to make representations. The Eastern Cape High Court ruled in favour of the farm owner and the matter was taken on appeal to the Supreme Court of Appeal.

Issue

The issue in *Buffalo City Municipality v Will Gauss* (SCA 5/04) was whether or not the respondent landowner was entitled to be heard before the municipality resolved to expropriate his property.

Decision

The Court held that the farm owner did not have a right to be heard before the municipality made a decision to expropriate. It held that it has long been a principle of our law that when a statute empowers a public official or body to make a decision prejudicially affecting an individual's liberty or property or existing rights, the latter has a right to be heard before the decision is taken, unless the statute expressly or by necessary implication indicates otherwise.

The Court noted that the farm owner had not as yet been deprived of his property. It was also not disputed that ample opportunity had been afforded to him to be heard before that occurred. The Ordinance made express provision for the landowner to be heard before that power was exercised.

The Court concluded that the Ordinance clearly does not envisage a hearing before the municipality's decision to expropriate is taken. The fact that the owner is invited to object only after the decision is taken necessarily means that no right to be heard before then is contemplated. This approach is not in conflict with the Constitution.

key point

- **An affected landowner does not have a statutory right to be heard before the municipality resolves to expropriate.**

Comment

It is clear from this decision that that the principle of *audi alteram partem* (to hear the other side) cannot operate in a vacuum. In this case, the farm owner was still going to be given an opportunity to present his side of the story. This was specifically provided for in the Ordinance. While the Court in this case declared the municipality's decision to be lawful, despite not following the prescribed procedure correctly, municipalities should take particular care to observe the procedural rules applicable when taking action in terms of enabling legislation.

It should also be noted that the requirement that a municipality may not expropriate without the Premier's approval, as provided in the Cape Municipal Ordinance, dating from the pre-1994 era, is most likely unconstitutional as it fails to respect the autonomy of a municipality.

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Unlawful occupation and eviction from land

Port Elizabeth Municipality v Various Occupiers
2005 (1) SA 217 (CC)

IN TERMS OF SECTION 6 of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19 of 1998 (PIE), an organ of state may institute proceedings for the eviction of unlawful occupiers of land within its jurisdiction. This case highlights the fact that courts are reluctant to order the eviction of unlawful occupiers of land if they are not satisfied that all reasonable steps were taken by a municipality to get an agreed, mediated solution before seeking an eviction order.

Facts

The applicant municipality secured an order for the eviction of some 68 unlawful occupiers of land within its area of jurisdiction in the High Court. However, the order was set aside on appeal to the Supreme Court of Appeal. The land in question was vacant land and the occupiers had been on the land for periods ranging from two to eight years. Prior to the granting of the order, they indicated to the municipality that they were prepared to vacate the land if it provided them with suitable alternative accommodation. They had not applied for housing under the municipality's housing development programme.

The municipality sought a restoration of the eviction order as well as a ruling from the Constitutional Court to the effect that, in seeking an eviction order, it was not constitutionally obliged to provide the occupiers with alternative accommodation or land.

Issue

The issue before the Court in *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC) was whether it was just and equitable in the circumstances to grant an eviction order.

Decision

The Constitutional Court held that under section six of PIE, a Court exercised discretion in granting an eviction order if it was just and equitable to do so. In making that decision the Court had to consider "all relevant circumstances".

key point

- **Courts will be reluctant to accept that it is just and equitable to order the eviction of unlawful occupiers of land if they are not satisfied that all reasonable steps were taken to reach a mediated solution.**

The Court held that there was no unqualified constitutional duty on municipalities to ensure that an eviction was not executed unless alternative accommodation or land was made available. However, courts should generally be reluctant to grant an eviction order against relatively settled occupiers unless a reasonable alternative was available, even if only as an interim measure pending access to housing in the municipality's formal housing programme. The Court held further that the existence of a formal housing programme was one of the considerations favouring a determination that the proposed eviction would be just and equitable.

The Court held, however, that given the special nature of the competing interests involved in eviction proceedings under section six of PIE, it would not ordinarily be just and equitable to order