



CONSTITUTIONAL COURT OF SOUTH AFRICA

Arun Property Development (Pty) Ltd v City of Cape Town

CCT 78/14

Date of hearing: 9 September 2014
Date of judgment: 15 December 2014

JUDGMENT MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

Today the Constitutional Court handed down judgment in an appeal against the order of the Supreme Court of Appeal, concerning the interpretation of section 28 of the Land Use Planning Ordinance 15 of 1985 (C) (LUPO).

The appellant, Arun Property Development (Pty) Ltd (Arun) sought to develop a residential property near Cape Town. It obtained various planning approvals from the City as required by LUPO. However, in 1988, before Arun purchased the property or began its development, a provincial structure plan was approved. The plan reserved land for constructing public roads intended to serve the area. The reserved land and the public roads traversed Arun's township development. LUPO provides that, subject to qualifications, land on which public streets or public places will be built vests in the local authority without compensation. Arun contended that the correct interpretation of LUPO entitles it to compensation for the vested public land which exceeds the normal needs of the development. The City maintained that Arun was not entitled to compensation.

The Western Cape High Court, Cape Town, held in favour of Arun, concluding that all the land reserved for public roads, including any land in excess of the development's needs, had vested in the City and that Arun was entitled to compensation for such excess land. It further held that compensation was to be calculated in terms of the Expropriation Act 63 of 1975. The City appealed to the Supreme Court of Appeal, which upheld the appeal and reversed the decision of the High Court, ruling that Arun was not entitled to compensation for the excess land.

In a unanimous judgment written by Moseneke DCJ, the Constitutional Court upheld the appeal. The Court found that, in terms of LUPO, ownership of all land on which public streets and public places are planned, vests in the local authority upon granting a subdivision application. The Court further found that the part of the vesting land that is based “on the normal need therefor arising from said subdivision”, or according to a normal need policy, vests without compensation. The Court held that an owner is, however, entitled to compensation for over-generously planned streets and public places. This, the Court held was an interpretation at peace with section 25(2) of the Constitution. The Court also rejected the City’s contention that the 1988 structure plan is a “policy” contemplated in LUPO, which would exclude compensation. In addition, the Court held that there was no duty for Arun to review the vesting of the land as per the structure plan, as there was no condition imposed by the City upon granting the subdivision, that the land would vest without compensation. Arun also need not have sought an amendment of the structure plan simply because it provided for roads in excess of what it required for its development. It was entitled to rely directly on its right to compensation flowing from a proper interpretation of LUPO.

The Constitutional Court set aside the order of the Supreme Court of Appeal and reinstated the High Court order in amended form. It declared that the excess land has vested in the City in terms of LUPO and that Arun is accordingly entitled to compensation in respect of the excess land. The Court held that compensation is to be calculated in terms of the provisions of the Expropriation Act.