

Explanatory Note

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.

1. This is an appeal about the constitutionality of a rate collection procedure permitted in the Greater Durban Metropolitan Area by section 105 of the Durban Extended Powers Ordinance No. 18 of 1976 (Natal). It was contended before the Natal High Court and the Constitutional Court that the section did not afford the fair hearing required by section 34 of the Constitution and was accordingly unconstitutional because it:

- a) dispenses with the service of notice of proceedings ordinarily required by the Rules of Court; and
- b) permits an order for the sale in execution of immovable property without any prior sale of movables being required and without any writ of execution being served on the owner before the sale.

The High Court rejected the appellant's argument.

2. According to the section, a court may summarily order immovable property on which rates are owing to be sold by public auction if certain notices had been given to the ratepayer concerned. Three notices had to be given to the ratepayer: the first must tell the ratepayer, amongst other things, of the amount of rates owing and the final date for payment; the second, to be given if a balance is owing on the final date, must call for payment of that balance and inform the ratepayer that an application will be made to court for an order for the sale of the property if the amount is not paid by a certain date; the third must inform the ratepayer of the time, date and place of the court hearing. The section requires the first notice to be sent by post and the second and third by registered post to an address chosen by the ratepayer or, if the ratepayer has not chosen any address to the address of the property. If however, the property has no address and the ratepayer has not chosen one, appropriate notices must be posted at the city hall. The court order authorising the property to be sold dispenses with the need for any writ of execution to be issued and served after the order but before the judgment.

3. The Constitutional Court said that, for a hearing to be fair, the notice provisions must be reasonable in all the circumstances and that the circumstances that must be taken into account in the case under consideration include the following:

- a) a municipality is constitutionally entitled to impose rates which must be raised as speedily as possible so that the council can use it to deliver services;
- b) the procedure is concerned with the collection of tax the property owner is obliged to pay;
- c) property owners benefit from the services provided by the council which are essential for the collective good of all within the area of that municipality and must take reasonable steps to apprise themselves of their obligations.

4. In relation to whether the notice provisions were reasonable, the Court concluded that:-

- a) the aim of the notice provisions is to bring the claim and later the hearing to the attention of the people affected;
- b) the notice provisions that require posting are reasonably capable of bringing the hearing to the attention of the person affected;
- c) the provisions requiring the notices to be posted at the city hall are aimed at covering extraordinary circumstances where the property has no address and the property owner has not provided one;
- d) a court considering whether to grant an order for the sale of the property is not obliged to grant the order merely because all three notices have been given but has the duty to consider whether the hearing is unfair because of the way in which the notice was in fact given. A court has the power not to grant the order if the hearing has been rendered unfair;
- e) it is in the final analysis this judicial control that renders the hearing fair.

5. The Court also held that the sale of the property without the prior sale of movables and without a writ of execution being served does not render the hearing unfair. This is because the rates are owing on the property concerned and because the property owner must be informed in advance that an order for the sale of the property will be sought.

6. The appeal was dismissed.