



CONSTITUTIONAL COURT OF SOUTH AFRICA

Mohammed Yusuf Haffeejee N.O. and Others v eThekweni Municipality and Others

Case No: CCT 110/10

Date of Hearing: 19 May 2011

Date of Judgment: 25 August 2011

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.

On Thursday 25 August 2011 the Constitutional Court delivered judgment in an application for leave to appeal by the trustees of the YGM Haffeejee Family Trust (Trust) against an eviction order granted by the KwaZulu-Natal High Court, Durban (High Court), following the expropriation of the Trust's property on the banks of the Umgeni River in Durban by the eThekweni Municipality (Municipality). In the High Court the Trust unsuccessfully challenged the constitutionality of certain provisions of the Expropriation Act (Act). Leave to appeal was refused both in the High Court and the Supreme Court of Appeal.

In the Constitutional Court the Trust contended that various provisions of the Act were unconstitutional because they permit expropriation and dispossession of property before the amount of compensation and the time and manner of its payment are determined. It argued that the determination is a constitutional prerequisite for expropriation under the property clause, section 25 of the Constitution. The Municipality, the Minister for Public Works and the Premier of KwaZulu-Natal opposed the application.

The Court found that there could be circumstances where it would be unjust to evict people without prior determination of compensation, for example where people would lose their homes or livelihood as a result of the expropriation, but that there were also instances where prior determination would not be possible, as in the case of urgent expropriation in the face of natural disasters. Therefore, an inflexible requirement for

compensation before expropriation would offend the requirement in section 25(3) of the Constitution that the amount of compensation and the time and manner of its payment must reflect an equitable balance between the public interest and the interests of those affected by the expropriation.

The Court accordingly found that section 25(2)(b) of the Constitution does not require that the amount of compensation and the time and manner of its payment must always be determined before expropriation. Determination of compensation before expropriation will generally be just and equitable, but in those cases where it must be determined after expropriation, it must be done as soon as is reasonably possible. Eviction following expropriation may not take place unless agreed upon by the parties or, in the absence of agreement, under court supervision. In disputed cases of eviction the courts must ensure just and equitable outcomes in accordance with the property clause and section 26 of the Constitution, which protects the right of access to housing.

The Trust's attack on the constitutional validity of the provisions of the Act thus ultimately had to fail. Leave to appeal was granted, but the appeal itself was dismissed. Each party was ordered to pay its own costs.