



CONSTITUTIONAL COURT OF SOUTH AFRICA

City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal and Others

**CCT 89/09
[2010] ZACC 11**

Date of Judgment: 18 June 2010

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 delivered judgment in an application by the City of Johannesburg Metropolitan Municipality (the City) for the confirmation of an order made by the Supreme Court of Appeal, declaring Chapters V and VI of the Development Facilitation Act 67 of 1995 (the Act) unconstitutional and thus invalid. The City also sought leave to appeal against certain parts of the order of the Supreme Court of Appeal.

This matter arose from a dispute between the City and the Gauteng Development Tribunal (the Tribunal), a provincial organ created by the Act. The Act empowers the Tribunal to approve applications for the rezoning of land and the establishment of townships, whereas the Town-Planning and Townships Ordinance 15 of 1986 empowers the City to make a determination on the same subject matter. Aggrieved by this situation, the City instituted an application in the South Gauteng High Court, Johannesburg, challenging the constitutional validity of the Act and seeking a review of two of the Tribunal's decisions. The High Court dismissed the application and the City appealed to the Supreme Court of Appeal, which held that the relevant chapters of the Act were invalid and dismissed the appeal relating to the claims for review.

The City appealed to this Court. The primary issue for determination was whether the Constitution empowers the municipal or the provincial sphere of government, or both, to exercise powers relating to the rezoning of land and the establishment of townships.

The City contended that the powers to rezone land and to approve the establishment of townships are components of "municipal planning", a function assigned to municipalities by section 156(1) of the Constitution, read with Part B of Schedule 4 to the Constitution. They further contended

that the Tribunal committed a material error of law in approving two development applications and that these decisions should be set aside. The City's applications for confirmation and for leave to appeal were opposed by the Tribunal, the Gauteng Development Appeal Tribunal, the MEC for Development Planning and Local Government, Gauteng, and the Minister of Land Affairs (now the Minister for Rural Development and Land Reform). The respondents argued that the contested powers were elements of "urban and rural development" under Part A of Schedule 4 to the Constitution, a functional area falling outside the executive authority of municipalities. They also opposed the review application.

The MEC for Local Government and Traditional Affairs, KwaZulu-Natal, eThekweni Municipality, and the Department of Agriculture, Rural Development and Land Administration: Mpumalanga, were granted permission to join the proceedings. In addition, the South African Property Owners Association and South African Council for Consulting Professional Planners were admitted as *amici curiae*, and sided with the respondents.

Writing for a unanimous Court, Jafta J held that the Constitution envisages a degree of autonomy for the municipal sphere, in which municipalities exercise their original constitutional powers free from undue interference from the other spheres of government. He endorsed the Supreme Court of Appeal's finding that "planning" in the context of municipal affairs has assumed a particular, well-established meaning which includes the zoning of land and the establishment of townships. Therefore, Jafta J held that the powers to consider and approve applications for the rezoning of land and the establishment of townships are elements of "municipal planning", an exclusive municipal function assigned to municipalities by section 156(1) of the Constitution read with Part B of Schedule 4. Consequently, Chapters V and VI of the Act were found to be constitutionally invalid as they assign exclusive municipal powers to organs of the provincial sphere of government.

In order to mitigate any disruptive effect that an order of invalidity might have on past and future developments, the Court suspended the order of invalidity for 24 months to allow Parliament to rectify the defects in the Act, or to pass new legislation. Further, the order imposes a condition prohibiting development tribunals from hearing new applications for land developments within the jurisdictions of the City and the eThekweni Municipality, as these municipalities were shown to have the capacity to exercise the contested powers. However, the tribunals are entitled to finalise all pending applications in these jurisdictions. The declaration of invalidity will not have retrospective effect if it comes into force.

The Court also dismissed the application for leave to appeal against the dismissal of the review applications on the basis that the City had not established that the Tribunal committed a material error of law when it approved the two developments. No order of costs was made.