

SOUTH AFRICA / JUDGMENT

FSV Properties CC v City of Johannesburg (09/22830) [2012] ZAGPJHC 44 (9 March 2012)

[2012] ZAGPJHC 44

COURT

South Gauteng High Court, Johannesburg

BEFORE

Satchwell

CASE / FILE NUMBER

09/22830

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IN THE SOUTH GAUTENG
HIGH COURT
(JOHANNESBURG)
CASE NO: 09/22830

In the matter between:

FSV
PROPERTIES CC
Plaintiff
and
CITY
OF JOHANNESBURG
Defendant

JUDGMENT

SATCHWELL J:

BACKGROUND

1. Plaintiff and defendant are in dispute over the amount of monies to be paid by defendant to plaintiff arising from the expropriation of two properties[1] owned by plaintiff. Plaintiff submits that it be paid compensation based upon the municipal valuation applicable at the time of expropriation whilst defendant tenders sums determined by a property valuer which differ from the municipal valuations.

2. Plaintiff was the registered owner of two adjoining properties in Lorentzville which had been valued by defendant on the 1st July 2007 in the amount of R240 000.00 (in respect of erf 8 situate at 52 Ascot Road) and R396 000.00 (in respect of erf 9 situate 51 Derby Road).
3. Defendant thereafter caused both properties to be valued in October 2008 and subsequently thereto issued notices of expropriation dated 17 February 2009 tendering compensation based on values of R150 000.00[2] for erf 8 and R120 000.00[3] for erf 9. Plaintiff issued summons for sums of money being the difference between the amounts tendered by the defendant as compensation and what the plaintiff claims to be the “open market value”[4] of the properties i.e. the financial loss allegedly sustained by plaintiff as a result of the expropriation.
4. At trial plaintiff reduced its claim from the amount set out in the summons, (based upon its own valuation) and relied upon the municipal valuation determined by the defendant on 1st July 2007 as the “market value” of each property. The defendant, taken by surprise but not in a position to object, led the evidence of a valuer, Ms Y Oelofse, as to the “market value”.

THE VALUATIONS

“Market Value”

5. The Municipal Property Rates Act 6 of 2004 (“Rates Act”) stipulates the power of the municipality to impose rates on immovable property based upon “market value” [5] which is “the amount the property would have realised if sold on the date of valuation in the open market by a willing seller to a willing buyer”. [6] The Rates Act regulates the power of the municipality to impose rates on immovable property in accordance section 229(2) of the Constitution. This entitles the municipality to multiply the “market value” of immovable property by a cent amount in each Rand. Such “cent amount” is determined by the municipal council. It is not expected that the municipality inspect each and every property – a sampling process is usually followed.
6. Clearly property rates are usually the most important source of revenue for municipalities, the funds being utilised, inter alia, for the provision of services ranging from the maintenance of streets to the operating of parks. Not only is this valuation roll a direct source of revenue through the levy of rates but it is also enables municipalities to raise funds, for example, on the bond market, through reliance on the value of the asset base (including immovable property) of the fundraising municipal authority.
7. The plaintiff led in evidence two tax invoices issued by the City of Johannesburg levying property rates on 52 Ascot Road and 51 Derby Road for the month of February 2009. Each tax invoice indicates the physical address, the stand number and township as also the stand size of the property. Indicated on both invoices is the date of valuation as the 1st July 2007 and the “municipal valuation” so identified as “market value” of each property. The invoices clarify that “the property rates are based on the market values of the property...”

8. These tax invoices referred indicate that the rates, based on the market values of each property, are calculated by multiplying the market values of R240 000.00 and R396 000.00 respectively by R0.0160/12, this being the cent in the Rand amount determined for rating purposes.

Expropriation valuation

9. Section 12(1) (a) of the Expropriation Act 63 of 1975 provides that the amount of compensation to be paid in respect of expropriated property shall not exceed the aggregate of (1) the amount which the property would have realised if sold on the date of notice in the open market by a willing seller to a willing buyer". [7] To this amount shall be added an amount equal to "five percent of the amount by which it exceeds R100 000.00." [8]
10. The base valuation for expropriation compensation, viz "the amount which the property would have realised if sold on the date of notice in the open market by a willing seller to a willing buyer" is exactly the same basis used for determination of "market value" for purpose of the Rates Act.
11. Defendant continued to and sought to rely upon "the market value" of R396 000.00 (in respect of erf 8) and R240 000.00 (in respect of erf 9) at February 2009 when it issued the aforesaid tax invoices requiring payments of rates based upon "municipal valuations" and "market values". The question immediately arises why the defendant seeks to expropriate each of these properties in the same month of the same year for a lesser amount?

Defendant valuation

12. The defendant led the evidence of Ms Y Oelofse, property valuer employed by Auction Alliance (Pty) Ltd. Her report adds valuations of both erven with "the effective date of valuation" being the 12th March 2009.
13. In the report, the following factors are identified as relevant for compensation purposes:
 - Site area;
 - Erven sharing same Title Deed;
 - Vacant land;
 - Municipal valuation;
 - Access;
 - Area is "lower income...bombarded with high crime levels and general state of urban decay";
 - Area forms part of "Urban Development Zone: inner city";
 - Modern amenities and close proximity; and

- Suitable for development.
- 14. Following the Comparable Sale Method, Ms Oelofse had regard to the sale prices reached in respect of two properties in the same area. The date of sales of these properties is unknown but the date of registration of transfer were respectively March and May 2008:
 - Two stands (916 m²) sold for R500 000.00 being R545.00 per m².
 - One stand (446 m²) sold for R150 000.00 being R340.00 per m².
- 15. Oelofse also commented on the limited availability of vacant land and queried the purpose for which these properties could be purchased.
- 16. Oelofse concluded that a reasonable market value for erf 8 was between R225 000.00 and R260 000.00 (a rate per m² ranging from R300 per square metre- 350 per square metre) and for erf 9 of between R200 000.000 and R230 000.00 (ranging between R300 and R350).
- 17. Ms Oelofse was questioned on whether or not and the extent to which she had regard to any of factors including the contiguous nature of the erven to one another[9], that access to these properties is available from two parallel streets, the the paucity of vacant land in this residential area considering that the land has now been developed by the defendant for community and recreation purposes.
- 18. In assessing Ms Oelofse's reasons for the valuations she has given I have concerns with the manner in which the below mentioned factors were or were not take into account and the apparently lack of explanation therefore:
- 19. Ms Oelofse compared sales of properties (sold or registered in March and May 2008) where a rate of R545.00 was achieved per square metre for a property of 916m² and a rate of R446.00 per square metre was achieved for a property for 340m². Ms Oelofse did not explain why property sold indicates that larger erven sell for a greater sum and why the combined erven 8 and 9 (held in one Title Deed) totalling 1396 m² should not also achieve a higher rate or value per square metre.
- 20. The comparable sales were in respect of properties sold in 2007 or early 2008 before they were then registered. These sales are therefore post the municipal valuation of the defendant in July 2007. No indication is given as to the correlation between the municipal valuations of these properties and their sale prices and whether or not these sale prices were greater or lesser than their municipal valuations and the reasons therefore.
- 21. The municipal valuations of 2007 for erven 8 and 9 continued to be relied upon and applied by the defendant in 2009 at the time of Oelofse's valuation. She gave no reason why the defendant's municipal valuation should be rejected. She did not indicate whether it was the methodology adopted or the results which failed to properly reflect "market value". She gave no indication why the "market value" had ceased to be exactly that. She knew that the municipality does bulk valuations as opposed to comparative sales valuations but was

unable to comment or explain why the municipal values for erven 8 and 9 could no longer be relied upon. When questioned on this aspect, Ms Oelofse indicated that she could not critique the defendant's municipal valuation.

CONCLUSION

22. I am concerned that the attitude of the defendant seems to be that “what is sauce for the goose is not sauce for the gander” in that when the defendant seeks to receive revenue it relies upon its own municipal valuation but when it is obliged to disburse funds it disavows its own municipal valuation without reason. If the municipal valuation is good enough to extract rates then it surely is good enough for payment of compensation for expropriation
23. Of course municipal valuations change over time - even over a short period of time. General valuations are required to take place, in terms of the Statute, at least once every four years. Valuations may be redone on an annual basis because values change both within neighbourhoods and in relation to other neighbourhoods. Supplementary valuations lead to the update of valuation rolls[10] to include such changes to property and hence new values.
24. I can appreciate that it is possible that, subsequent to the municipal valuation of July 2007 the suburb of Lorentzville may well have deteriorated as regards both residential and business occupation and that houses may be run down, there may be overcrowding and multi tenanted, the area may be perceived as more unsafe than other areas by reason of high crime rates. Obviously, general dereliction is a role in property values. However, the defendant would certainly not wish to rely upon an increase in pot holes in the street, disintegration of pavements, collapse of storm water drains, disappearance of manholes covers and a general failure to maintain public utilities. After all, these are the responsibility of the defendant and owners of immovable property cannot be expected to proffer a loss in value of immovable property by reason of a failure on the part of the defendant to meet its obligations.
25. Similarly, I can appreciate that with the advent of the World Cup there was, in many areas, an expectation that there would be general urban regeneration and improvement of certain areas- particularly those most closely linked with World Cup activities. Lorentzville is a suburb in the vicinity of the Ellis Park Stadium to which reference was made in the Oelofse reports. It is difficult to know, whether or not Ms Oelofse considered proximity to Ellis Park to be a positive or a negative factor.
26. At the end of the day the time of expropriation in February 2009 there was a municipal valuation operative in respect of both erven. No reason has been given to deviate therefrom. I have not been told which factors should play a greater or lesser role in determining “market value” in 2009 than in 2007. No indication has been given that the basis of valuation has changed.

27. I find that the March 2009 valuation^[11] is open to criticism as I have set out above. Accordingly, I can find no reason to differ, for expropriation purposes from the valuation prepared for revenue extraction and rating purposes.
28. I am indebted to both parties who prepared schedules indicating the valuations, the additional sum of 5 percent, deductions of the payments already made and calculations of interest. If I have, in anyway, misunderstood the calculations then I would ask that the parties contact my chambers before correction of the order.
29. My finding is that the compensation to be paid by the defendant to the plaintiff in respect of erf 8, Lorentzville, is the municipal valuation of R240 000.00 plus 5 % of R12 000.00 reaching a total R252 000.00. From this sum is to be deducted the payment already made of R162 500.00 leaving a balance payable of R90 000.00.
30. My finding is that the compensation to be paid by the defendant to the plaintiff in respect of erf 9, Lorentzville, is the municipal valuation of R396 000.00 plus 5 % of R19 800.00 reaching a total R415 000.00 from this sum is to be deducted the payment already made of R131 000.00 leaving a balance payable of R284 000.00.
31. It is not in dispute that interest of the aforesaid sums is to be paid from 18th February 2009. The parties appear to have agreed that the appropriate interest rate will be 8.5% per annum from that date to date of final payment.
32. Accordingly, judgment is granted against defendant in favour of plaintiff:
- 32.1 Payment of the total sum R374 800.00;
- 32.2 Interest of the aforesaid amount at the rate of 8.5% pa calculated from 18 February 2009 to date of final payment; and
- 32.3 Costs of suits.

DATED AT JOHANNESBURG ON THIS DAY OF FEBRUARY 2012

SATCHWELL J

Plaintiff: Adv WB Pye

Attorneys Lazzara Leicher

Defendant: Adv N Adams

Attorneys Tasneem Moosa

Date of hearing: 21st February 2012

Date of Judgment: 9th March 2012

^[1] Erven 8 & 9 Lorentzville, Gauteng.

- [2] In terms of section 12(1)(a) of the Expropriation Act “the amount of the property would have realised if sold on the date of notice in the open market by a willing seller to a willing buyer”. An additional sum based on this value is added on in terms of Section 12(2) of the Act..
- [3] In terms of section 12(1)(a) of the Expropriation Act plus R11 000.00 in terms of s12(2) of the Act.
- [4] As contemplated in section 12(1)(a)(i) of the Expropriation Act – see paragraphs 6 and 16 of Plaintiff’s particulars of claim.
- [5] Section 11(1) of the Rates Act.
- [6] Section 46(1) of the Rates Act
- [7] In this matter the issue of “actual financial loss” has not been raised and accordingly the compensation for expropriation
- is limited to the amount referred to in this section 12(1)(a)(i).
- [8] Section 12(2)(e).
- [9] See Volkstrust Bpk v Direkteur van Skattings en Andere 1980 (1) 760 CPD
- [10] Section 78 of Rates Act.
- [11] The report dated February 2012.

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