



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT**

Not reportable
Case No: 804/2015

In the matter between:

BREAKERS SHARE BLOCK LIMITED

APPELLANT

and

THE ETHEKWINI MUNICIPALITY

RESPONDENT

Neutral citation: *Breakers Share Block Limited v Ethekwini Municipality*
(804/2015) [2016] ZASCA 117 (14 September 2016)

Coram: Mpati AP, Shongwe, Swain and Mocumie JJA and Potterill AJA

Heard: 31 August 2016

Delivered: 14 September 2016

Summary: Local Government: Municipal Property Rates Act 6 of 2004: Sections 49 and 78(2): adequacy of notice of supplementary valuation: notice substantively compliant with Act.

ORDER

On appeal from: KwaZulu-Natal Local Division, Durban (Nkosi AJ sitting as court of first instance).

The appeal is dismissed with costs, such costs to include the costs of two counsel where employed.

JUDGMENT

Swain JA (Mpati AP, Shongwe and Mocumie JJA and Potterill AJA concurring):

[1] The appellant, Breakers Share Block Limited, leases an immovable property described as Erf 1066 of Umhlanga Rocks, from the respondent, the Ethekwini Municipality. The appellant erected an apartment block on the property, comprising apartments used in conjunction with a conventional share block scheme and others in terms of a time share scheme. In terms of the long term lease the appellant is obliged to pay the respondent the rates levied by the respondent, in respect of the property, in terms of the Local Government: Municipal Property Rates Act 6 of 2004 (the Rates Act).

[2] A dispute arose between the parties when the respondent determined that for the purpose of calculating the rates payable on the property by the appellant, it should fall within the category 'business and commercial' as defined in the respondent's rates policy which was effective for the respondent's 2013/2014 financial year. In previous years the property had been categorised as 'residential'.

[3] By virtue of the fact that business and commercial properties are rated by the respondent at a greater amount per rand of valuation than residential properties, the result was that the amount of the rates payable by the appellant, almost doubled.

[4] Aggrieved at this outcome the appellant launched an application before the KwaZulu-Natal Local Division, Durban (Nkosi AJ) in which a declaratory order was sought, that the property fell within the residential category of properties, as defined in terms of the respondent's rates policy. A further order, sought in the alternative, was that the notice dated 19 September 2013 addressed by the respondent to the appellant in terms of s 49(1)(a) read with s 78(2) of the Rates Act, to notify the appellant of the re-categorisation of the property, was invalid and of no force and effect.

[5] The court a quo decided the matter on the basis of a point in limine raised by the respondent, namely that the appellant had failed to exhaust the internal remedies available to it in terms of the Rates Act, before launching the application. The respondent alleged that the appellant was entitled to lodge an objection in terms of s 50(1)(c) of the Rates Act with the Municipal Manager of the respondent, against the changed categorisation of the property. If dissatisfied with the outcome of this procedure, the appellant was entitled to appeal to the Valuation Appeals Board, in terms of s 54 of the Rates Act. The court a quo accordingly dismissed the application with costs and thereafter granted leave to the appellant to appeal to this court.

[6] On appeal before us the appellant, however, restricted its challenge solely to the alternative relief claimed, namely that the notice in question did not comply with the requirements of s 49(1)(a) read with s 78(2) of the Rates Act. It was submitted that the notice was invalid, of no force and effect and the respondent was precluded from demanding increased rates based upon it.

[7] Section 49 of the Rates Act provides as follows:

‘(1) The valuer of a municipality must submit the certified valuation roll to the municipal manager, and the municipal manager must within 21 days of receipt of the roll –

(a) publish in the prescribed form in the *Provincial Gazette*, and once a week for two consecutive weeks advertise in the media, a notice -

(i) stating that the roll is open for public inspection for a period stated in the notice, which may not be less than 30 days from the date of publication of the last notice; and

(ii) inviting every person who wishes to lodge an objection in respect of any matter in, or omitted from, the roll to do so in the prescribed manner within the stated period;

(b) disseminate the substance of the notice referred to in paragraph (a) to the local community in terms of Chapter 4 of the Municipal Systems Act; and

(c) serve, by ordinary mail or, if appropriate in accordance with section 115 of the Municipal Systems Act, on every owner of property listed in the valuation roll a copy of the notice referred to in paragraph (a) together with an extract of the valuation roll pertaining to that owner's property.

(2) If the municipality has an official website or another website available to it, the notice and the valuation roll must also be published on that website.'

[8] The relevant provisions of s 78(2) of the Rates Act provide that in the case of a supplementary valuation (as in the present case) the provisions of s 49 inter alia are applicable 'read with the necessary changes as the context may require'.

[9] The notice in question read as follows:

'Section 49 Notice in respect of the Municipal Property Rates Act of 2004: 35760104

Dear Property Owner

This notice is served to you under the requirements of Section 49 of the Municipal Property Rates Act of 2004. The purpose of this notice is to advise you of the valuation placed on the above mentioned property as at 01 July 2012 as determined during the FIFTH Supplementary Valuation conducted under the provisions of the Municipal Property Rates Act of 2004. The details of this, as per the Valuation Roll, are as follows:

Property Description	ERF 1066 of UMHLANGA ROCKS					
Address	88 LAGOON DRIVE, UMHLANGA					
Usage	23 – Furnished Accommodation					
Category	5 – Business & Commercial					
Extent (m ²)	13903.00					
Rate Number	35760104					
Subcode	000					
Market Value	238,900,000.00					
Exemptions		Rebates		Phasing In		Exclusions

Set out below is a copy of the notice which was published on 20th September 2013.

“Notice is hereby given in terms of Section 49(1)(a)(i) read together with section 78(2) of the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004), hereinafter referred to as the “Act”, that the Fifth Supplementary Valuation roll (GV 2012) for the financial years 01 July 2012 to 30 June 2016 is open for public inspection at the office of the Municipal Manager, Valuation Roll, 13th Floor, 75 Dr Langalibalele Dube (Winder Street), Durban and the Sizakala Customer Centres during office hours 07:30 to 16:00 from 20 September 2013 to 31 October 2013.

In addition the General Valuation Roll is available at website:- www.durban.gov.za.

An invitation is hereby made in terms of section 49(1)(a)(ii) read together with section 78(2) of the Act that any owner of property or other person who so desires may lodge an objection with the municipal manager in respect of any matter reflected in, or omitted from, the Fifth Supplementary Valuation Roll within the abovementioned period. Attention is specifically drawn to the fact that in terms of section 50(2) of the Act an objection must be in relation to a specific individual property and not against the valuation roll as such. The form for lodging of an objection is obtainable at the following address:-Valuation Roll, Real Estate Unit, 13th Floor, 75 Winder Street, Durban or the Sizakala Customer Centres and Website:- www.durban.gov.za The completed forms must be returned to the following address: The Municipal Manager, eThekweni Municipality, Valuation Roll, 13th Floor, 75 Dr. Langalibalele

Dube Street (Winder Street), Durban, 4000. Completed forms can also be handed in at The Sizakala Customer Centres where they will be captured “on-line”.’

[10] It is quite clear that the notice contains what is required in terms of s 49(1)(c) of the Rates Act. A copy of the notice referred to in s 49(1)(a) is also included, stating that the valuation roll is open for public inspection, as well as the details of when and where it may be inspected. An invitation is also extended to any person who wishes to lodge an objection, together with how and where to do so. In addition, the notice contains an extract of the valuation roll pertaining to the appellant’s property.

[11] Counsel for the appellant, however, submitted that because the introductory paragraph to the notice stated that the ‘purpose of this notice is to advise you of the valuation placed on the above mentioned property as at 1 July 2012’, the reader’s attention was only drawn to the market value of the property, reflected in the table. It is, however, quite clear that the ‘category’ of the property is described as ‘5 – Business & Commercial’ and ‘Usage’ is described as ‘23 – Furnished Accommodation’. Both aspects are displayed with equal prominence to that of ‘market value’ in the table.

[12] When regard is had to the fact that the whole basis for the appellant’s complaint was that the category into which the property was placed should have been ‘residential’ (as had previously been the case) and not ‘business and commercial’, there is no basis for the submission that the notice did not clearly and adequately convey to the appellant, this change. Counsel for the appellant submitted that the change in the categorisation of the property should have been expressly drawn to the appellant’s attention. The enquiry, however, is whether the notice substantively complied with the requirements of s 49. In my view, it did.

[13] An additional submission made by counsel for the appellant was that the provision in s 78(2) of the Rates Act, that the same notice requirements in the case of a supplementary valuation, as in the original valuation had to be adhered to ‘with the necessary changes as the context may require’ meant that a change in any

aspect of the valuation of the property, had to be expressly brought to the attention of the ratepayer. The 'necessary changes' in context, simply means those changes which are necessary to indicate that what is being published is a supplementary valuation.

[14] In the result the appeal must accordingly fail. The following order is made:

The appeal is dismissed with costs, such costs to include the costs of two counsel where employed.

K G B Swain
Judge of Appeal

Appearances:

For the Appellant:

C J Pammenter SC (with M B Pitman)

Instructed by:

Tomlinson Mnguni James, Umhlanga

Claude Reid Inc, Bloemfontein

For the Respondents:

V I Gajoo SC (with G D Goddard SC)

Instructed by:

Gcolotela & Peter Inc, Durban

Lovius Block, Bloemfontein