



Land-use zoning schemes

Do they apply to land for which a mining right has been granted?

Maccsand (Pty) Ltd v City of Cape Town and Others (CCT 103/11) [2012] ZACC 7 (12 April 2012)

Land-use zoning schemes, which are part of municipal planning, cannot be superseded by administrative decisions made by the national government. In fact, the national government or beneficiaries of administrative decisions made by the national government may not implement decisions that conflict with a land-use zoning scheme without first seeking a use of departure or applying for rezoning from the municipality concerned. The granting of a mining right or license, for example, does not mean that mining operations may automatically take place, regardless of whether or not the land-use zoning scheme allows mining on that land.

The Constitutional Court in *Maccsand v City of Cape Town* affirmed the extent of the ambit of municipal planning with reference to mining activities. At the centre of the dispute between Maccsand and the City of Cape Town (the City) was the interface between the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) (which regulates mining) and the Land-Use Planning Ordinance 15 of 1985 (LUPO) (governing land-use management in the Western Cape). Section 39 (2) of LUPO prohibits the use of land for purposes other than the ones permitted in terms of the zoning scheme.

Facts

In 2007 and 2008, the Minister for Mineral Resources, acting in terms of section 27 of the MPRDA, granted mining permits to Maccsand for mining sand on the dunes in Mitchell's Plain, a residential area within the City's municipal area. On the basis of the permit Maccsand commenced mining operations, which the City opposed as the dunes were not zoned for mining. To ensure compliance with LUPO, the City sought an interdict from the Western Cape High Court restraining Maccsand from mining sand on the dunes until the dunes were rezoned to allow mining. The interdict was granted.

Maccsand appealed against the decision of the High Court to the Supreme Court of Appeal and then to the Constitutional Court.

Arguments

In the Constitutional Court, the City argued that LUPO applies to land in respect of which mining rights have been granted, although LUPO does not regulate mining. In turn, Maccsand, supported by the Minister for Mineral Resources and the Chamber of Mines, contended that LUPO does not apply to land in respect of which mining rights have been granted. Furthermore, they argued that the Supreme Court, by finding that mining is subject to compliance with LUPO, permitted the City to usurp the functions of national government.

Decision

The Constitutional Court agreed with the lower courts in saying that LUPO applies to the land to which a mining right has been granted. The mere granting of a mining right does not cancel the application of LUPO. Mining may only be undertaken on land if the zoning scheme permits it, or if a departure has been granted. For this reason, there is no conflict between LUPO and MPRDA. If the zoning scheme does not permit mining, rezoning of the land must be obtained before the commencement of mining operations.

Comment

A municipality does not encroach on the powers of other spheres of government when enforcing its zoning schemes.

It is merely undertaking municipal planning, a local government function that is constitutionally guaranteed. Municipalities play a central role in land-use planning in their areas of jurisdiction. This role is constitutionally enshrined. Therefore, an authorisation in terms of MPRDA also requires land-use planning authorisation in terms of LUPO.



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