

197/86/AV

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

SALANDIA (PROPRIETARY) LIMITED

APPELLANT

AND

VREDENBURG-SALDANHA MUNICIPALITY

RESPONDENT

CORAM: CORBETT, GROSSKOPF, SMALBERGER, VIVIER, JJA, et

BOSHOFF AJA

HEARD: 28 August 1987

DELIVERED: 29 September 1987

J U D G M E N T

GROSSKOPF,--JA

The appellant is the owner of land described as the
remainder of Erf 3461, Saldanha. This land is situated

within

within the area of jurisdiction of the respondent municipality. A township was laid out at some time in the past on this land, and a number of plots in the township have been sold and transferred over the years. During the period 1 January 1971 to 31 December 1977 the appellant paid rates in respect of the land. These rates were assessed, not on a valuation of the land as a unit, but on a valuation of the individual unsold erven. The rates were paid to the municipality of Saldanha until it merged with the municipality of Vredenburg to form the respondent. The respondent came into existence on 1st March 1975, after which date payments were made to it. Nothing turns on this succession of municipalities since it is common cause that the respondent is liable for the debts of its predecessors.

Similarly

Similarly the appellant paid, during the years 1974 to 1977, fixed annual basic minimum charges (availability charges) for the supply of water and electricity within the municipal area. These charges were levied in respect of the individual unsold erven which constituted the township, and not on the property as a unit. On 30 January 1981 the appellant issued summons in the Cape of Good Hope Provincial Division against the respondent, claiming repayment of the rates paid (amounting to R97 608,08) as well as of an amount of R85 878,31, being the difference between what was paid by way of availability charges and what would have been payable in respect of the property as a single unit. At the trial before SCHOCK J most of the relevant facts were admitted and only

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one witness gave evidence. SCHOCK J found for the defendant (respondent) in respect of the claim for repayment of rates but for the plaintiff (appellant) in respect of the availability charges. The judgment has been reported: vide

Salandia (Pty) Ltd v Vredenburg-Saldanha Municipality 1985

(3) SA 265 (C). With the leave of the Court a quo an appeal and a cross-appeal were noted. The cross-appeal was, however, withdrawn prior to the hearing, and all that remains to be done in respect of it is to make an appropriate order as to costs. Counsel for both parties agreed that the respondent should be ordered to pay the costs of the cross-appeal, and it will be ordered accordingly.

Before considering the merits of the appeal I have to

deal

deal with two preliminary matters. The first is a petition by the appellant asking for condonation of its failure to inform the registrar timeously that the respondent had waived its right to security in terms of AD Rule of Court 6(3).

The appellant's failure in this regard stemmed from its attorney's belief that a respondent was not entitled to security for his costs of appeal pursuant to Rule of Court 6(2) in cases where the appellant comes to this Court with the leave of the Court a quo or with leave granted on petition to the Chief Justice. This, in effect, had been the position before the amendment of the Supreme Court Act, no. 59 of 1959, by the Appeals Amendment Act, no. 105 of 1982 - vide Blou v Lampert and Chipkin NNO and Others 1973(1) SA 1 (A). However, the new regime introduced by the latter Act whereby

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the need to obtain leave to appeal was greatly extended, also had an effect on the provisions concerning security for costs. In particular, where leave is granted pursuant to the amended section 20(4)(b) of the Supreme Court Act (which covers trial matters like the present, the provisions of Rule 6(2) and 6(3) regarding security are applicable.

See Klipriviersoog Properties (Edms) Bpk v Gemeenskapsontwikkelingsraad 1987(2) SA 117 (A). The appellant's attorney was accordingly mistaken when he thought that it was not necessary to comply with Rule 6(3) in the present case. However, we know from experience that many practitioners and others shared this mistaken view (cf. also the Klipriviersoog case, supra, at p. 122 G-H).

A proper waiver of security has now been filed. The appellant moved the petition at the commencement of the hearing of this appeal, and respondent did not oppose. In the circumstances the condonation prayed in the petition was granted.

A second preliminary matter relates to joinder. As will be seen, the appellant's claim for the repayment of rates placed in issue the correctness of valuations of the property made pursuant to the Valuation Ordinance of the Cape of Good Hope, No 26 of 1944. The authority which is charged with the administration of that ordinance is the Director of Valuations, an official appointed by the Administrator.

See sec 3 of

the

the Ordinance. This Court consequently requested the parties to address argument on the question whether the Director of Valuations should not have been joined as a necessary party to the proceedings. At the commencement of the hearing Mr Dison, who appeared for the appellant, handed in a letter from the Director of Valuations to the Registrar of this Court which may, I consider, reasonably be interpreted as a consent to be bound by the judgment of this Court although the Director is not a party thereto. By reason of the filing of this consent it becomes unnecessary to consider whether the Director should or should not have been formally joined as a party (vide Amalgamated Engineering Union v Minister of Labour 1949(3) SA 637 (A) at

pp.

pp. 659-60 and 661-3) and I express no opinion on this question.

This brings me to the merits of the appeal. It will be necessary first to set out the relevant facts.

As I have indicated above, the appellant's property was laid out as a township at some time in the past. The record does not disclose any details about the township, such as when the general plan of the township was prepared or approved, or in what manner, if at all, it was dealt with in the Deeds Office. (See, by way of contrast, Steel-park Estate Co. Ltd. v Vereeniging Town Council 1963(2) SA 367 (T) at pp. 371D-373E. See also sec 46 of the Deeds Registries Act, No 47 of 1937). It is, however, common cause that the individual unsold erven have not been registered

separately

separately. Regarding the relevant valuations, the following facts were agreed between the parties:

- "1. The claim for repayment of rates relates to the years 1971 to 1977.
2. In 1969 a General Valuation was made which came into operation on 1st January 1971.
3. This General Valuation remained in force until 31st December 1976.
4. In 1975 there was a further General Valuation which came into operation on the 1st January 1977.
5. During both the aforesaid General Valuations the property in question was valued on the basis of individual unsold erven and not on the remainder as a unit.
6. During the period 1971 to 1977 the rates on the property were assessed on the basis of the two valuation rolls aforementioned.
7. On 1st April 1980 Plaintiff applied to the Director of Valuations to correct both valuation rolls relating

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to the aforementioned valuations.

8. Pursuant to the provisions of Section 63(1) of the Valuation Ordinance, 26 of 1944, the Director of Valuations then caused an interim valuation to be made of the remainder as a unit.
9. Thereafter the 1975 valuation roll which came into operation on 1st January 1977 was rectified as appears from the valuation form handed in by agreement.
10. The prior 1969 roll which had come into operation on 1st January 1971, could not be rectified by the Director of Valuations, because it was no longer in force in 1980."

The appellant's case for repayment of rates is based firstly on the condictio indebiti. In the particulars of claim this claim was formulated in the following manner.

The appellant contended that rates were improperly levied in that they were assessed, not on the valuation of the

property

property as a unit, but on the valuation of the individual unsold erven which constituted the township, and which were erroneously entered separately on the valuation roll. Since the rates were improperly levied, the contention proceeded, the accounts rendered for rates were rendered in respect of rates which were not owing by the appellant. The appellant, in the bona fide and reasonable but erroneous belief that the rates levied as aforesaid were in law payable, and that it was obliged to pay such rates, made payment of the accounts rendered as aforesaid. Consequently, the appellant concluded, a condictio indebiti lay for the recovery of the rates paid.

In reply to the appellant's case the respondent formally admitted that the amount claimed by the appellant was in fact

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the amount which had been paid in respect of rates, and that the appellant's belief that the rates were due in law, was reasonable and bona fide. The main matters placed in issue were whether the valuations had been incorrectly made, and, in any event, whether the municipality was entitled to assess rates on any valuation other than that appearing on the valuation roll. In addition the respondent contended that the appellant's error was one of law, which could not found a condictio indebiti, that the quantum of the over-payment had not been proved, and that the claim was in any event prescribed.

The court a quo held, on the authority of Volkstrust Bpk v Directeur van Skattings en Andere 1980(1) SA 760 (C),

by

by which it considered itself bound, that the valuations had not been correctly made. However, it decided this part of the case on the simple basis that the assessments were correct, even if the valuations were wrong, and that the payment of rates by the appellant was consequently not made indebite. The court a quo therefore did not have to decide the further defences raised by the respondent.

All these matters were again raised before us (some with more enthusiasm than others). We were firstly invited to hold that, despite cases such as Randfontein Estates Gold Mining Co. v Randfontein Municipality 1939 TPD 406; Florida Hills Township Ltd v Roodepoort-Maraisburg Town Council 1961 (2) SA 386 (T); Steelpark Estate Co Ltd v Vereeniging Town

Council

Council 1963(2) SA 367 (T); Du Plessis v Nortje en Andere

1965(3) SA 800 (C) and Volkstrust Bpk v Direkteur van Skat-

tings en Andere (supra) it was perfectly proper for the

valuation to have been made on the unsold erven individually

rather than on the remainder as a unit. In view of the

paucity of information about the nature and status of the

township I prefer, however, not to express any opinion on

this submission and to proceed direct to the further question

whether the assessments were not in any event correct even if

the method of valuation may have been wrong. The answer to

this question depends on the interpretation of the relevant

ordinances, to which I now turn.

The valuation of land for rating purposes is, as I

have mentioned above, governed by the Valuation Ordinance

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No 26 of 1944. Sec 39 provides that general valuations have to be held at least once in every period of ten years. Other sections provide for interim valuations (see eg. secs. 40 and 63(1)). Whenever a valuation is to be made, the Director of Valuations, acting in consultation with the local authority involved, appoints one or more valuers (sec. 28). The valuers value land (sec. 43) and buildings (sec. 44) in the manner laid down by

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the Ordinance. When this has been done, a valuation roll is prepared, setting forth in respect of each separate property the name of the owner of the land; the situation, description and area of the land; the value of the site, of the buildings and improvements; and certain other particulars (sec 51). Thereafter the roll is considered by a valuation court (or, in exceptional cases, the Director - sec 52) after proper notice to interested parties. (sec 52,53,55 and 56). The valuation court (or the Director, where he performs its functions) deals with objections to the valuation roll, but may consider and determine on the valuation of any property, irrespective of whether an objection has been lodged, and may confirm, increase or decrease any valuation

valuation, subject to certain provisions (sec. 55). When the valuation roll has been adopted by the court it is transmitted to the Director (sec. 59(2)) and is, in general final (sec. 61). Section 73(2) authorizes the Director to bring a roll into operation prior to its consideration or adoption by the valuation court or the Director. If the valuation court or the Director were then to effect amendments to the roll in the exercise of their powers summarized above, the amendments will operate retrospectively to the date on which the roll came into operation (sec. 73(3)).

The circumstances in which the valuation roll is not final pursuant to sec 61 are set out in sections 63 to 69. For convenience I deal with these sections now, although I shall have to return to them again later. Section 63 deals with the rectification of errors. Sub-
section

section 1 is of importance in this appeal and I quote it in full:

"63. (1) If at any time after the valuation roll has been brought into operation in terms of section 73 (2) or has been finally adopted by the valuation court the Director is, after consultation with the parties concerned, of opinion that any error has occurred or that the valuation of any particular property gives rise to inequable

treatment

treatment of owners, he may take all such steps as may be necessary for the rectification thereof or may cause an interim valuation to be made in respect of the property in question."

Sub-section 2 provides for the removal from the roll of the valuation of a building which has been totally demolished or destroyed.

Sec 63 bis authorizes the Director to remit the valuation roll for reconsideration by the valuation court if he is of opinion that the provisions of the law in regard to the making of a valuation or the consideration and adoption of a valuation roll have not been complied with. Sections 64 to 68 deal with appeals to the Supreme Court against decisions of the valuation court (or the Director under sec 57)

on

on points of law. Section 69 preserves the powers of review of the Supreme Court.

From the above summary it will be apparent that the Valuation Ordinance creates a self-contained system for the valuation of property for rating purposes. As a part of this system, interested parties are afforded ample opportunities to present their points of view on the valuation of property, and to have errors in valuations corrected.

The power of a municipality to levy rates is found in the successive Municipal Ordinances. The rates payable in the present matter in the years 1971 to 1974 were governed by the Municipal Ordinance, No 19 of 1951. This ordinance was replaced as from 1 January 1975 by the Municipal Ordinance

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nance, No 20 of 1974. The latter ordinance consequently governs the years 1975 to 1977.

Sec 96(1) of the 1951 Ordinance provided that, subject to an exception to be considered presently, "all rates made and levied by the council shall be assessed on the valuation as shown in the valuation roll in operation on the date on which such rates become due and payable ..."

The expression "valuation" in relation to immovable property was defined in sec 2 as "the valuation thereof as determined under the law relating to the valuation of immovable property ..."

The scheme of the two ordinances when read in combination thus seems clear. Valuations were effected under the Valuation

Ordinance

Ordinance; and when rates were assessed under the Municipal Ordinance, such valuations were used as bases for assessment. The Municipal Ordinance did not itself provide machinery for the making or altering of valuations. One exception to the general rule that rates were to be assessed on the valuation as shown in the valuation roll was, however, contained in sec 96. This was where ratable property formed a part of immovable property which had been valued as a whole. In such a case sec 96(3) provided for an ad hoc temporary valuation of the ratable property by the Director of Valuations, or alternatively, for the fixing of a value by means of a formula based on the rental payable in respect of the property. It will be noted that here, also, the municipality was

was not itself responsible for valuations.

The 1974 Municipal Ordinance is to the same general effect.. Section 86 (1) lays down that "the valuations on which any rates are assessed by a council ... shall be the valuations appearing in the valuation roll in operation in its municipal area on the date on which such rates become due and payable". Sec 86 (3) makes substantially the same provision as that found in sec 96 (3) of the 1951 Ordinance for the valuation of ratable property which forms part of immovable property valued as a whole. And the definition of "valuation" in sec 2 does not differ in any material respect from that in the 1951 Ordinance.

The above provisions render it abundantly clear, in

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my view, that, when assessing rates, a municipality must take the valuation roll as it finds it. The municipality is neither required nor entitled to enquire into the question whether a valuation appearing on the roll was properly made. An attack on a valuation (whether by the owner or by the municipality) can be made only by using the machinery created or recognised by the Valuation Ordinance in sections 63 to 69 which were summarized above. As will be seen, the invocation of these provisions could also have an effect on rates. However, it is in my view not open to a ratepayer to refuse to pay rates on the ground of some alleged defect in the valuation appearing on the roll. By the same token, rates which have been paid cannot be reclaimed by way of a condictio

indebiti

indebiti because of such an alleged defect. The reason for this is that rates which were properly assessed on the "valuations appearing in the valuation roll", (sec 86 (1) of the 1974 Municipal Ordinance) were owing, irrespective of whether the valuation had been correctly made. The ratepayer consequently cannot establish the prime requirement for a condictio indebiti, viz., that the payment was made indebite (see Le Riche v Hamman 1946 AD 648 at 656). I therefore agree with the following passages from the judgment of the court a quo (supra at p 273 F-G):

"From the terms of s 96(1) (of the 1951 Municipal Ordinance) aforequoted it is clear, in my view, that rates must be assessed and paid on the valuation shown on the valuation roll. This is what the subsection in terms provides."

and

and, at p 273 G-H:

"... the rates must be assessed and paid on the basis of the appropriate valuation on the valuation roll then in operation, which was what in fact in this case occurred. There can therefore be no question of plaintiff having paid indebite."

The position may be different - I express no view on it - where the valuation is a complete nullity, e.g., where it relates to non-existent property. Although the appellant has contended that the present is such a case, I do not agree. The land which was valued exists; the appellant is the owner thereof; and it is situated within the relevant municipal area. The fact that it was wrongly described as consisting of separate plots (and for present purposes I must assume that this description was incorrect) would not by itself

invalidate

invalidate the valuation. See sec 62 of the Valuation Ordinance. In the instant case there was no doubt or difficulty in ascertaining what the land was which had been valued. The appellant's only real criticism was that the wrong basis of valuation had been applied. Even if this criticism were to be well-founded, I cannot see why the application of a wrong basis of valuation would render the valuation a nullity.

My conclusion that the condictio indebiti is not available in the circumstances of the present case renders it unnecessary to decide the further matters raised by the respondent, viz., whether the appellant's mistake was one of law; whether a mistake of law can found a condictio indebiti, and whether the appellant's claim was not in any event prescribed.

In

In the alternative to its case based on the conductio
indebiti, the appellant claimed the return of a portion of
the rates paid in respect of the year 1977 by invoking
certain provisions of the Municipal Ordinance of 1974. The
background to this claim is as follows. It will be recalled
that there was a general valuation in 1975 which came into
operation on 1 January 1977. In this valuation the
appellant's property was again valued on the basis of the
individual unsold erven, and not on the remainder as a unit.
However, in 1980 the Director of Valuations caused an interim
valuation to be made of the property pursuant to sec 63(1)

of

of the Valuation Ordinance, which I have quoted above. On this occasion the property was valued as a unit, resulting in a substantially lower valuation. The appellant had paid rates in respect of 1977 which had been assessed on the original higher valuation. It now contends that it was entitled in terms of sec 91 (1) of the Municipal Ordinance to be repaid a part of the rates thus paid in respect of 1977. (It is common cause that the interim valuation had no effect on the 1969 general valuation which was no longer in force when the interim valuation was made). This subsection reads as follows:

"91 (1) If rates are assessed on the valuation of immovable property appearing in a valuation roll and such valuation is thereafter altered -

- (a) on appeal or review in terms of section 64 or 69 of the Valuation Ordinance, 1944 (Ordinance 26 of 1944);
- (b) as a result of the rectification of an error by the Director of Valuations in terms of section 63(1) of the said

Ordinance

Ordinance;

(c) in consequence of the remittal of a valuation roll to a valuation court in terms of section 63 bis of the said Ordinance, or

(d) as a result of such roll being adopted with amendments by a valuation court or the Director of Valuations after it was brought into operation in terms of section 73(2) of the said Ordinance, the council shall adjust the assessment of such rates and shall -

(i) refund rates paid in respect of any amount by which such valuation is decreased, and

(ii) recover rates in respect of any amount by which such valuation is increased."

The purpose of sec 91(1) is clear. Rates, as I have shown above, are assessed and paid on the valuations appearing in the valuation roll. However, these valuations may be changed pursuant to the

provisions

provisions of the Valuation Ordinance which I summarized above, and which are referred to in sec 91(1). What then happens to rates payable or paid on the basis of valuations which have been changed? The answer is provided by sec 91(1). In brief, the assessment of rates is adjusted, over-payments are refunded, and under-payments are recovered.

For present purposes the relevant item in sec 91 is that contained in sub-sec (1)(b). Although Mr Dison

did at some stage suggest that sub-section (1)

(c) might also be apposite, I did not understand him to persist with the suggestion, and, I consider, correctly so.

It is quite clear that the interim valuation in 1980 took

place pursuant to sec 63(1) of the Valuation Ordinance (re-

ferred

ferred to in sec 91(1)(b) of the Municipal Ordinance) and was not made in consequence of a remittal of the roll to a valuation court in terms of sec 63 bis of the Valuation Ordinance (to which sec 91(1)(c) of the Municipal Ordinance refers).

The parties' contentions concerning the applicability of sec 91(1)(b) of the Ordinance were defined as follows in a document entitled "Agreed List of Matters in Dispute" handed in at the commencement of the hearing in the court a quo:

"CLAIM FOR REPAYMENT OF RATES ON ERF 3461
ON THE BASIS OF SECTION 91 OF THE MUNICIPAL
ORDINANCE NO 20 OF 1974

2.1 In the event of this Honourable Court finding that the assessment of the rates on the valuation of the individual unsold erven constituting the remainder and not on the valuation of the re-

mainder

mainder as a unit constituted an error as envisaged by Section 63(1) of the Valuation Ordinance No 26 of 1944, then Defendant admits that the error was rectified by the Director of Valuations in terms of Section 63(1) of the Valuation Ordinance, No 26 of 1944 by causing an interim valuation to be made in respect of the property in question at which valuation the property was valued by the Court on the correct basis (i.e. as a unit) in order to rectify the said error;

2.2 Defendant, however, contends that notwithstanding this rectification of the error, Section 91(1)(b) of the Municipal Ordinance, No 20 of 1974 has no application to the rectification of this type of error and Defendant is therefore not bound to make a refund in terms of the said provision."

If I understand these paragraphs correctly, the only issue between the parties was whether the application of a

wrong

wrong method of valuation constituted an "error" within the meaning of section 63(1) of the Valuation Ordinance. If it was an error, so I understand the passage, the error was admittedly rectified by the Director pursuant to sec 63(1); and a repayment of a part of the rates should be ordered in terms of sec 91(1)(b) of the Municipal Ordinance. It was apparently on this basis that the court a quo decided in favour of the respondent. The relevant passage in its judgment reads as follows (at p 274 D):

"In my view, however, s 91 has no application in the circumstances of the present case. An incorrect method of valuation is, ^(sic - should be 'error') in my judgment, not a 'mistake' within the ambit of s 91(1)(b). It is rather a matter for appeal to the valuation court or, if this is not appropriate, for review by the Supreme Court in terms of s 91(1)(a).

Plaintiff's

Plaintiff's present application under s
91(1)(b) cannot therefore succeed."

I must confess that I find it difficult to follow this reasoning. Sec 63(1) of the Valuation Ordinance may be invoked "if ... the Director is ... of opinion that any error has occurred ...". When he forms such an opinion, the Director may either cause the valuation in question to be rectified, or cause an interim valuation to be made. There is nothing in the sub-section to suggest that the phrase "any error" is to be accorded anything other than its wide ordinary meaning. Indeed, the fact that two remedies are provided for the rectification of errors is by itself an indication that different types of errors were envisaged - some which could be administratively rectified by order of the Director, and others

others which required an interim valuation. The latter class, it would appear, must necessarily be errors which in some way bear on the manner in which the valuation was made, otherwise an interim valuation would not be an appropriate way of rectifying the error. In expressing this view I have not overlooked the possibility that the provision for an interim valuation may have been introduced into sec 63(1) to cater, not for the rectification of an error, but only for the correction of a valuation which "gave rise to inequable treatment of owners" within the meaning of the sub-section. However, in my view, the legislative history of the section effectively negatives this possibility. The section as originally promulgated did indeed provide only that an

error

error "may after due enquiry be rectified by the Director".

In 1977 a new sub-section 1 was introduced by sec 3 of Ordinance 10 of 1977. This sub-section still dealt only with "any error", but provided that "such error may after due enquiry be rectified by the Director or by an interim valuation"

(emphasis added). The provision for an interim valuation was accordingly introduced at a stage when the section dealt only with the rectification of errors and before any mention was made of "inequable treatment of owners". The latter concept was introduced by sec 1 of Ordinance 17 of 1978.

In these circumstances there can be no doubt that an interim valuation was considered by the provincial legislature to be an appropriate method of rectifying certain errors.

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For the reasons I have stated I consider that a wrong method of valuation falls within the meaning of the phrase "any error" in sec 63(1) of the Valuation Ordinance. Indeed, I did not understand Mr Seligson, who appeared for

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the respondent, to support the finding of the court a quo to the contrary. Mr Seligson's argument was rather that, in the present case, the rectification of the error was not "by the Director of Valuations" as required by sec 91(1)(b), but by the process of an interim valuation. An interim valuation, he contended, is not an act of the Director (although he may initiate it) but of others. This contention was based in part on the literal meaning of sec 91(1)(b), and in part on the provisions of sec 92 of the Municipal Ordinance. The last-mentioned section, Mr Seligson contended, makes provision for the adjustment of rates where interim valuations have taken place, and there is accordingly no need for sec 91 to deal with the matter at all.

Mr

Mr Seligson's argument involves a departure from the respondent's contention as set out in the above extract from the "Agreed List of Matters in Dispute". Indeed, sec 92 of the Municipal Ordinance was not mentioned in these proceedings prior to the oral argument in this Court. Nevertheless I propose dealing with the merits of this argument. I do so because I consider it desirable, in the circumstances of the present case, to decide the issue of substance between the parties. I leave open, however, whether the respondent was entitled to advance contentions inconsistent with those defined in what amounted to a stated case.

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I turn now to sec 92. Sub-section 1 deals with the case where the valuation of immovable property is reduced as a result of an interim valuation made in terms of sec 40(1) of the Valuation Ordinance at the request of the owner of the property. It is common cause that the interim valuation in the present case was made, not in terms of sec 40(1), but in terms of sec 63(1) of the Ordinance. It is accordingly also common cause that sec 92(1) of the Municipal Ordinance is not relevant to the present case.

Sec 92(2) reads as follows:

" Where the valuation of immovable property is altered as a result of an interim valuation (other than an interim valuation contemplated by subsection (1)) and rates are assessed thereon in accordance with the provisions of section 86(2), the council may grant a rebate on rates so assessed in respect of such property for any financial year in

respect

respect of which rates are assessed in accordance with the said provisions."

As will be noted, this subsection applies where the valuation of immovable property is altered as a result of an interim valuation, other than an interim valuation contemplated by sub-sec (1). Sub-sec (2) can accordingly, it seems, in principle apply to the present case. However, it is in terms limited to cases where rates are assessed in accordance with the provisions of sec 86(2) of the Municipal Ordinance. Sec 86(2) lays down, broadly speaking, that rates are to be assessed on the valuation appearing in an interim valuation roll even though the roll came into operation after the date on which such rates had become due and payable, provided that the interim valuation roll came into operation in

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the same financial year as that in which the rates had become payable, or the request for the interim valuation was received by the Director of Valuations during that financial year. (For present purposes I need not mention the exceptional case dealt with in the concluding part of sec 86(2)(b)).

The obligation to pay rates on an interim valuation pursuant to sec 86(2) is not, of course, limited to interim valuations which were made to rectify errors. It includes all interim valuations not covered by sec 92(1), i.e., all interim valuations other than those which were made in terms of sec 40(1) of the Valuation Ordinance at the request of the owner, and which resulted in a reduction of a valuation. It would therefore cover every interim valuation resulting in the increase

crease of a valuation, under whatever section it may have been made. This would include, for instance, interim valuations of property of which the value has been increased by "any addition or alteration ... or any improvement whatsoever" (sec 40(1)(ii)(b) of the Valuation Ordinance); or "by reason of the operation of a town-planning scheme or any municipal or public work or undertaking or the proclamation of a group area" (sec 40(1)(ii)(c)); or "through any other cause particular to such property" (sec 40(1)(ii)(e)).

Where the valuation of a property has been increased by an interim valuation, and an owner is compelled to pay rates assessed on the interim valuation pursuant to sec 86(2) of the Municipal Ordinance,

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a council may, in terms of sec 92(2) grant a rebate on rates so assessed. The reason for this can be readily appreciated. If rates are increased retrospectively by reason of a higher interim valuation (which may have been caused by some of the factors mentioned above), an affected ratepayer may reasonably feel entitled to some relief, and it is for this that the sub-section provides. Sec 92(2) thus deals generally with the effect of increased interim valuations on rates in specific years of assessment. It does not, as sec 91(1)(b) does, deal with the effect over an unspecified period of a particular type of interim valuation, namely one initiated by the Director pursuant to section 63(1) of the Valuation Ordinance in order to rectify an error. In other words, sec 92(2) deals

deals substantially with a different subject matter than sec 91(1)(b), and does not, in my view, provide any assistance in the interpretation of sec 91(1)(b).

I turn now to the wording of sub-section 1(b). It refers to the "rectification of an error by the Director of Valuations in terms of sec 63(1)" of the Valuation Ordinance. Sec 63(1), it will be recalled, authorizes the Director, if he is of the opinion that any error has occurred, either to "take all such steps as may be necessary for the rectification

tion thereof" or to "cause an interim valuation to be made".

The former power would be exercised by the Director himself,

acting through his officials, whereas an exercise of the

latter power would require him to set in motion the procedures

for an interim valuation. In both cases, however, he himself

must first form the opinion that an error has occurred; he

must decide that one or other of the two possible procedures

should be followed to rectify the error; and he must initiate

the procedure upon which he has decided. The initiative

for taking action, the decision on which action should be taken, and

the initiation of the action on which he has decided, thus all proceed from the

Director. Where sub-section 91(1)(b) of the Municipal

Ordinance speaks of "the rectification of an error by the

Director

Director of Valuations in terms of sec 63(1)" the language therefore seems to me to be entirely appropriate to encompass both types of action contemplated by the latter section. Even where the Director decides that an interim valuation would be an appropriate way to rectify an error, and takes the necessary steps to have such a valuation made, he is using his powers in terms of sec 63(1) to rectify an error, and his action can in my view properly be described as the rectification of an error by him.

This interpretation is fortified if one has regard to the scope and purpose of sec 91(1) of the Municipal Ordinance. Sec 91(1) deals generally with valuations which appeared on the valuation roll, but were subsequently altered. Thus

paragraph

paragraph (a) deals with an alteration on appeal or review; paragraph (b) deals with an alteration pursuant to sec 63(1) of the Valuation Ordinance; paragraph (c) with an alteration in consequence of a remittal pursuant to sec 63 bis of the Valuation Ordinance; and paragraph (d) with amendments introduced by a valuation court or the Director to a roll which had been brought into operation in terms of sec 73(2) of the Valuation Ordinance. The common feature in all these cases is that the valuation, which appeared on the roll, was found by some competent authority to require correction, not because of anything which happened subsequently, but because there was something wrong with it ab initio. Since rates would have been paid or payable on the valuation which has

now

now been shown to be wrong, it seems only right that an adjustment, up or down, should be made; and this is what the sub-section provides. In the context there is no apparent reason why paragraph (b) should be limited to errors which were administratively rectified, to the exclusion of errors which were rectified by means of an interim valuation. In both cases there was an error in the valuation roll which was rectified, and which should, in fairness, result in a corresponding adjustment to the assessment of rates, just as in the various other cases mentioned in the other paragraphs of the sub-section.

I conclude, therefore, that the interim valuation in 1980 amounted to the rectification of an error by the Director

of

of Valuations in terms of sec 63(1) of the Valuation Ordinance. Consequently sec 91(1) of the Municipal Ordinance required the respondent to "refund rates paid in respect of any amount by which such valuation is decreased". The parties agreed that, if the Court should find that sec 91 of the Municipal Ordinance was applicable, the respondent would be obliged to pay the appellant an amount of R31 239,95 with interest from the date on which the valuation roll was rectified. During argument before us counsel for the parties agreed that this date was 6 October 1980, and that an order for interest should be awarded at 11 percent per annum from that date, 20 percent per annum from 8 February 1985, and 15 percent per annum from 1 August 1986. Since this order is given by consent I need not consider

sider whether it is in accordance with the Prescribed Rate of Interest Act, No 55 of 1975.

In the result the appellant has failed in its claim based upon the condictio indebiti, but has succeeded in its alternative claim in terms of sec 91 of the Municipal Ordinance. In my view the appellant has achieved a sufficient degree of success to warrant being awarded the costs of appeal. Regarding the order for costs in the court a quo, Mr Dison accepted that the award originally made, viz., that the defendant (respondent) pay 90 percent of the costs, should stand if the appellant were to succeed in its alternative claim.

The Court's order is as follows:

- a) The appeal is allowed with costs, including the costs of two counsel.

b)

b) The order of the Cape of Good Hope Provincial Division

is amended by the insertion of the following new paragraphs:

"2 bis. The sum of R31 239,95.

2 ter. Interest on the said amount of R31 239,95 at the rate of 11% per annum from 6 October 1980 up to and including 8 February 1985; thereafter at the rate of 20% per annum up to and including 1 August 1986; and thereafter at the rate of 15% per annum to the date of payment."

c) The respondent is ordered to pay the costs of the cross-appeal including the costs of two counsel.

E M GROSSKOPF, JA

CORBETT, JA
SMALBERGER, JA
VIVIER, JA
BOSHOF, AJA

) Concur