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NvH

T M MNGOMEZULU & OTHERS / THE CITY COUNCIL OF SOWETO

SMALBERGER, JA :-

223/87
N v H

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter of

THEMBA MICHAEL MNGOMEZULU	First Appellant
ISAAC MZONDEKI RADEBE	Second Appellant
MXLOLISI ALFRED MPHUNGWA	Third Appellant

and

THE CITY COUNCIL OF SOWETO	Respondent

CORAM:	CORBETT, HOEXTER, GROSSKOPF, SMALBERGER, et VIVIER, JJA
HEARD:	30 AUGUST 1988
DELIVERED:	30 NOVEMBER 1988

J U G D M E N T

SMALBERGER, JA :-

The three appellants are residents of Jabulani, Soweto. The respondent, the City Council of Soweto, is, and has at all material times been, a local authority as contemplated in the Black Local Authorities Act, 102 of 1982. The appellants and their respective

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families have for many years been the registered tenants or lawful occupiers of houses in Jabulani owned by the respondent.

Section 65 of the Housing Act, 4 of 1966 (the 1966 Housing Act) affords certain remedies to a local authority against tenants who fail to pay the rental due by them. The section provides:-

> "If the tenant of a dwelling constructed by a local authority fails to pay the rental payable by him on the due date, the local authority may -
>
> (a) take steps to recover the amount of the rental due, by action in a competent court;
>
> (b) after having given seven day's notice by letter delivered either to the tenant personally or to some adult inmate of the dwelling or, if that letter cannot be so delivered, by letter affixed to the outer or principal door of the dwelling or by prepaid registered letter addressed to the tenant at the place where the

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> dwelling is situated, by an officer authorized in writing by it and without having obtained any judgment or order of the court, enter upon and take possession of the dwelling in respect of which the rental is owing."

(Any future reference to "s 65" is to the above-quoted section.)

On 26 August 1986 the appellants, together with their families and possessions, were ejected from their respective homes by officials of the respondent, purporting to act in terms of s 65 (b), for alleged non-payment of rental due. The appellants forthwith sought to have possession of their homes restored to them. To this end they brought an urgent application against the respondent in the Witwatersrand Local Division. By agreement between the parties possession of the appellants' homes was restored to them pending the hearing and determination of the application. In due course the application was heard

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by **GOLDBLATT, AJ.** He dismissed the application, but granted the appellants leave to appeal to this Court. As the matter was regarded as being in the nature of a test case the respondent sought no order as to costs, and none was made.

It will be convenient to commence by setting out certain relevant facts which are either common cause or not in dispute for the purposes of the present appeal. The houses occupied by the appellants were constructed in or about 1959 by the Johannesburg City Council, an urban local authority which at the time exercised jurisdiction over Soweto. The houses are situated in an area set apart as a location in terms of section 2(1) of the Blacks (Urban Areas) Consolidation Act, 25 of 1945. The construction of the houses was financed by means of a private loan granted to the Johannesburg City Council by certain mining houses. The powers and obligations of the Johannesburg City Council in respect of Soweto were subsequently assumed by the West

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Rand Administration Board under the Black Affairs Administration Act, 45 of 1971, and were later in turn assumed by the respondent by virtue of the provisions of Act 102 of 1982. The circumstances surrounding the granting of the loan used to construct the houses occupied by the appellants, and the legal provisions under which it was acquired, are matters peculiarly within the knowledge of the respondent as successor to the Johannesburg City Council as the controller of Soweto. Various affidavits were filed on behalf of the respondent by one Gerber, who is employed as the respondent's township manager in charge of the Jabulani area. In one of these affidavits Gerber sets out the position as follows:-

> "4.3 The Johannesburg City Council applied to the Administrator for authority to erect 15,000 dwellings on land owned by it, the erection of such dwellings to be funded by means of a private loan.

4.4 The Administrator granted such approval in terms of the Housing Act on or about 30 January 1957 subject to the concurrence of the then Minister of Native Affairs.

4.5 The then Minister of Native Affairs approved the Council's application for the £3 million loan in terms of Section 16 of Act 25 of 1945.

4.6 The rent for the houses in question (detached dwellings) was approved by the then Minister of Bantu Administration and Development in terms of Section 20 of Act 25 of 1945."

In an earlier affidavit Gerber had stated that the loan for the construction of the houses occupied by the appellants "was approved by the then Minister of Native Affairs in terms of Section 16 of Act No 25 of 1945 and accordingly I am advised and submit that the house in question does fall within the ambit of the Housing Act and in particular within the ambit of Section 65 of the present Housing Act". The relevance of the above assertions by Gerber will become apparent later in this judgment.

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At the time when the appellants were ejected from their homes they were required by the respondent to pay a monthly charge of R54-45. This represented the total of amounts levied in respect of house rental, site rental, electrification fund contribution, surcharge for water and sewerage and refuse removal. House rental was R3-25, as published in Government Notice No 703 in Government Gazette No 5529 of 29 April 1977. It was determined by the Minister of Bantu Administration and Development (as he then was) under the provisions of s 22(1)(b) of Act 45 of 1971. The site rental was R13-32 as published in Government Gazette No 9918 of 6 September 1985 in terms of by-laws of the respondent approved by the Minister of Co-operation, Development and Education under the powers vested in him by s 27 of Act 102 of 1982. The remaining charges are not relevant to the present appeal as it is conceded by the respondent that they do not form part of the rental per se. It is not disputed that the appellants

were in arrears in respect of the monthly charges levied by the respondent in the amounts of R357-20, R367-80 and R353-90 respectively.

It is common cause that the house occupied by each appellant falls within the definition of a "dwelling" in s 1(a) of the 1966 Housing Act, and that each appellant at all relevant times was a "tenant of a dwelling constructed by a local authority" within the meaning of s 65. (I shall henceforth refer to the appellants' houses as dwellings.) The respondent was only entitled to act in terms of s 65(b) on failure by the appellants to pay "the rental payable" by them (in the sense in which that term is used) by due date. It is also common cause that if the respondent has succeeded in establishing the appellants' failure to pay "the rental payable", the ejectments **in casu** were effected in the manner provided for in s 65(b), and after compliance with the necessary pre-requisites with regard to notice. Nor is it in dispute that the

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"rental" would not be "payable" unless some legal obligation to pay rental had been imposed. Amounts alleged to be payable as rental, which were not determined in the manner prescribed by the governing statutory provision would therefore not constitute "rental payable" in terms of s 65, and the failure to pay such amounts would not entitle the respondent to have recourse to the provisions of s 65(b). The word "rental" is not defined in the 1966 Housing Act. In its ordinary connotation it means an amount paid as rent, usually by a tenant to his landlord for the use and occupation of land and premises. The definition of "dwelling" in s 1 of the 1966 Housing Act includes the site on which any dwelling has been or is to be constructed. When s 61(b) of the 1966 Housing Act (to which I shall refer in more detail later) therefore speaks of letting any dwelling it includes both the house and the site, and a single rental could normally be expected for the two (**Duze v Eastern Cape Administration Board and Another** 1981(1) SA 827 (A) at 842

H - 843 A). For the purposes of the present appeal it is not necessary to decide what precisely is meant by the word "rental" in the phrase "the rental payable" in s 65. I shall assume that it refers to both house and site rentals, whether determined separately or together. It would not include service and availability charges.

In the court a quo GOLDBLATT, AJ held that in ejecting the appellants from their homes the respondent had acted lawfully under the powers conferred upon it by s 65. He came to the conclusion that the words "the rental payable" as used in s 65 applied to any rental which a local authority was entitled to charge, and a tenant obliged to pay, whether under the provisions of the 1966 Housing Act or in terms of any other legislation. He accordingly held that although the rental in respect of which the appellants were admittedly in arrears had not been determined under the 1966 Housing Act, as it had been lawfully determined under other applicable legislation it

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constituted "rental payable" as contemplated by s 65.

Three main arguments were raised on appeal on behalf of the appellants. The first related to the proper meaning to be ascribed to the words "rental payable" for the purposes of s 65. It was contended that in view of the extraordinary and drastic remedies afforded by s 65 (**cf** Magadi v West Rand Administration Board 1981 (2) SA 352 (T) at 355 A) the section should be restrictively interpreted, and that properly interpreted within their contextual setting the words mean rental fixed and payable pursuant to the provisions of s 61 of the 1966 Housing Act. It will be convenient to refer to s 61 at this stage. It provides:-

> "Any local authority may -
> (a) out of advances made to it or moneys borrowed by it under this Act, construct approved dwellings and carry out approved schemes -
> (i) within the area under its jurisdiction; or

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(ii) outside the area under its jurisdiction, on land acquired by it in terms of section 66 or approved by the Administrator concerned;

(b) sell or let any dwelling, constructed by it under the powers conferred by this Act, on such conditions as may be determined -

(i) in the case of dwellings in respect of the construction whereof an advance has been made out of the fund, by the Commission; or

(ii) in the case of other dwellings, by the Administrator concerned on the recommendation of the Commission."

It is common cause that the "conditions" that fall to be determined in terms of s 61(b)(i) and (ii) by either the Commission (the National Housing Commission), or the Administrator on the Commission's recommendation, as the case may be, include the fixing of rentals. Also, that there was no determination of rental by the Commission or the Administrator in respect of the dwellings occupied by the appellants.

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The second argument advanced on behalf of the appellants was that insofar as the house and site rentals claimed by the respondent to be due by the appellants were determined under s 22(1)(b) of Act 45 of 1971 and s 27 of Act 102 of 1982 respectively, on the authority of **Duze v Eastern Cape Administration Board (supra)** at 843 A - B such determinations had to satisfy the requirements of s 61(b) because the 1966 Housing Act is a special Act, whereas the other two are general ones. The appellants' third contention was that, in any event, s 65(b) only permits a local authority to re-possess a dwelling for non-payment of rental without an ejectment order where it has previously sought to recover the amount of the rental due by the ordinary process of law enjoined in terms of s 65(a).

There seems to be little substance in the appellants' third contention if one has regard to the apparent purpose and wording of s 65. As far as the first

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argument is concerned, there seem to be insufficient indications in s 65, or in the provisions of the 1966 Housing Act generally, to justify the limited meaning the appellants seek to place upon the words "the rental payable". They are words, given their ordinary grammatical meaning, of fairly wide import. It must be borne in mind that a local authority has the power to erect dwellings in addition to that conferred by the 1966 Housing Act (see e g s 23(1) of Act 102 of 1982 read with item 24 of the schedule thereto), and that there are various other legislative provisions under which rentals charged by local authorities for houses in Black residential areas could previously, and can now, be determined (see e g s 20(1) and s 38(3)(o) of Act 25 of 1945; s 22(1)(b) of Act 45 of 1971; s 43 of the Black Communities Development Act, 4 of 1984). There would therefore appear to be litte justifi= cation for restricting the application of the words "the rental payable" in s 65 only to instances of rental

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determined under s 61(b) of the 1966 Housing Act. The second argument is of doubtful validity in the unqualified form stated above. But it does have a bearing on a matter touched upon by Mr Mahomed, for the appellants, for the first time in reply.

After judgment was reserved this Court requested further written submissions from counsel in regard to certain issues arising from the matter touched upon by Mr Mahomed in reply. These were duly furnished, and we are grateful to counsel for their assistance. The view I take of these issues is such as to render it unnecessary to come to a firm conclusion on the three main arguments advanced on behalf of the appellants.

As I have mentioned previously, it is common cause that the dwellings occupied by the appellants were constructed in 1959 by one of the respondent's predecessors, the Johannesburg City Council, and that such construction was financed by means of a private loan

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granted by certain mining houses. Approval for the erection of the dwellings and the funding thereof in the manner aforesaid was, according to the deponent Gerber, granted by the Administrator on or about 30 January 1957 subject to the concurrence of the then Minister of Native Affairs. The latter's approval of the loan was duly given *under the provisions of s 16(1) of Act 25 of 1945. When* the loan was procured the provisions of the Housing Act, 35 of 1920 (the 1920 Housing Act) were operative; by the time the dwellings were erected the Housing Act, 10 of 1957 (the 1957 Housing Act) had come into operation. The 1957 Housing Act was the immediate predecessor of the 1966 Housing Act. The dwellings in question fall within the definition of a "dwelling" in s 1 of the 1920 Housing Act, as well as under the corresponding definitions in the 1957 and 1966 Housing Acts.

Both in 1957 (when the loan was procured) and 1959 (when the dwellings were constructed) the provisions

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of s 16(1)(b) of Act 25 of 1945 were in force. (The section has since been repealed by s 69(1) of Act 4 of 1984.) The section, as it read at the time, provided as follows:-

> "16(1) For the purpose of providing, setting apart, establishing, equipping and *maintaining any* location, native village or native hostel, whether under this Act or otherwise, any urban local authority may, subject to the approval of the Minister, after reference by him to the Administrator -
>
> (a) .....
>
> (b) borrow moneys on the security of the urban local authority's rates or on the security of any location, native village or native hostel or under any law to provide facilities for the construction of dwellings ..., subject to *repayment upon such terms and* conditions as may be approved."
>
> (My emphasis.)

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An urban local authority (such as the Johannesburg City Council) was therefore empowered by the provisions of s 16(1)(b) of Act 25 of 1945 to borrow moneys for the purpose of providing housing for Blacks. The loan had to be approved by the Minister of Native Affairs after reference by him to the Administrator. Approval of the loan by the Administrator was not required in terms of s 16(1)(b). Moneys could be borrowed in one of three ways. In the present instance it is not contended that the loan raised for the purpose of constructing the appellants' dwellings was obtained on the security of either the rates of the Johannesburg City Council (as the relevant urban local authority) or "of any location, native village or native hostel". Consequently, it must have been obtained "under any law to provide facilities for the construction of dwellings". The applicable law would have been the then operative Housing Act (the 1920 Housing Act). That the loan in question was obtained under the provisions of

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the 1920 Housing Act is confirmed by Gerber's affidavit where he states that the Administrator granted approval for the loan "in terms of the Housing Act". Such approval would have been granted under s 2 of the 1920 Housing Act which at the time read as follows:-

> "Anything to the contrary notwithstanding in any law prescribing or limiting the powers of any local authority, any local authority may borrow money for the purpose of enabling it, subject to the provisions of this Act -
>
> (a) to construct approved dwellings:
>
> (b) to lend money for the construction of approved dwellings;
>
> (c) to carry out approved schemes;
>
> (d) to lend money to enable approved schemes to be carried out;
>
> and such local authority may borrow the money for any of the purposes aforesaid either from the commission or the administrator in accordance with and on terms and conditions prescribed by this Act or from any other source whatever on terms and conditions prescribed by the administrator."

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Unlike the corresponding provisions in the 1957 and 1966 Housing Acts (s 48 and s 61 respectively), s 2 does not specifically provide for a loan obtained "from any other source" (such as the one we are dealing with) to be approved by the Administrator, but the need for such approval is implicit in the provisions of the section. Because of the provisions of s 16(1)(b) of Act 25 of 1945, before the Johannesburg City Council in 1957 could borrow money under s 2 of the 1920 Housing Act for the provision of housing for Blacks in Jabulani it also had to obtain the approval of the Minister of Native Affairs. While the authority to borrow money may initially have derived from Act 25 of 1945, the loan raised was obtained under the provisions of s 2 of the 1920 Housing Act. It was the proceeds of this loan that were utilised for the later construction of the appellants' dwellings. Such dwellings were accordingly constructed from the proceeds of a loan procured under the provisions of the 1920 Housing Act, and

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not under any other statutory provision.

As appears from s 2 of the 1920 Housing Act, the Johannesburg City Council was only empowered to borrow money for building purposes if such money was to be used for the construction of approved dwellings or to carry out approved schemes (a scheme, by definition, meant a proposal for the construction of several approved dwellings). Section 5(a) of the 1920 Housing Act specifically limited the power of a local authority to construct dwellings under the Act to approved dwellings. An "approved dwelling" in terms of the definition thereof in s 1 of the 1920 Housing Act meant a dwelling approved by the Administrator (except where the dwelling was funded by an advance made by the Commission, in which case an "approved dwelling" meant one approved by the Commission).

The 1957 Housing Act came into operation on 1 June 1957. When the appellants' dwellings were constructed in 1959 the provisions of that Act applied. Section 78(2)

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of the 1957 Housing Act contained a savings clause which read as follows:-

> "All advances made or loans granted or contracts entered into or moneys spent or anything done under any provision of any law repealed by sub-section (1) or under any provision of any regulation made under any such law, shall be deemed to have been made, granted, entered into, spent or done under the corresponding provisions of this Act: Provided that ..."

(The proviso that followed is not relevant to the present appeal.)

One of the laws repealed was the 1920 Housing Act. The corresponding provisions in the 1957 Housing Act to sections 2 and 5 of the 1920 Housing Act were sections 48 and 55 respectively. In terms of s 78(2) of the 1957 Housing Act the loan granted under s 2 of the 1920 Housing Act was deemed to have been granted under s 48 of the 1957 Housing Act. Money borrowed by a local authority under s 48 read with s 55 of the 1957 Housing Act could also only

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be used for the construction of approved dwellings. An "approved dwelling" in terms of s 1(ii) of the 1957 Housing Act meant a dwelling approved by the Commission. This could not alter the character of the appellants' dwellings. They had been approved by the Administrator under the 1920 Housing Act, and in terms of s 78(2) of the 1957 Housing Act, "anything done" under the 1920 Housing Act was deemed to have been done under the corresponding provision of the 1957 Housing Act. The necessary approval to constitute the appellants' dwellings approved dwellings was therefore deemed to have been given. The upshot of all this is that when the appellants' dwellings were constructed in 1959 they were constructed as approved dwellings and remained such under the 1957 Housing Act. And they retained their character as approved dwellings when the 1966 Housing Act came into operation, by virtue of the savings provisions of s 91(2) of that Act which is of similar import to s 78(2) of the 1957 Housing Act, although worded somewhat

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differently. It is not necessary to quote s 91(2). The effect thereof is quite clearly that an approved dwelling under the 1957 Housing Act remains such under the 1966 Housing Act.

The power of a local authority in terms of s 61(b) of the 1966 Housing Act to "sell or let any dwelling, constructed by it under the powers conferred by this Act" applies only to approved dwellings, for under the 1966 Housing Act (as under the corresponding provisions of the 1920 and 1957 Housing Acts) a local authority is only empowered to construct approved dwellings (see s 61(a)). The letting of approved dwellings not constructed from funds advanced by the National Housing Fund (which is the case here) is required to be on such conditions as may be determined (which by necessary implication would include the fixing of rental) by the Administrator on the recommendation of the Commission (s 61(b)(ii)). It follows that in the absence of any overriding statutory

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provisions to the contrary the rental for the appellants' dwellings, in view of the provisions of s 61(b)(ii), had to be determined by the Administrator on the recommendation of the Commission. It is common cause that no such determination was made.

Are there any such overriding statutory provisions? The respondent seeks to rely upon s 20(1) of Act 25 of 1945. (That section has also been repealed by s 69(1) of Act 4 of 1984, but there is a savings provision in s 69(2) which preserves anything previously done under it). Section 20(1) empowered the Minister, after consultation with the Commission, to determine a fair and reasonable rental for the occupation i a of any house in a location. (The section referred to the Black Housing Board, but the Commission took over the functions and duties originally conferred on the Black Housing Board under the 1966 Act. The latter Board was abolished by Act 109 of 1979 as from 1 October 1979 - see **Duze v Eastern Cape Administration**

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Board (**supra**) at 834 H). However, s 20(1) has no application in the present matter because neither the house nor site rentals currently being charged were determined under its provisions. Even if they had been so determined, such determination would not have been lawful as it is common cause that the Commission was not consulted when the rentals were fixed.

The house rental, as I have mentioned previously, was determined in 1977 by the Minister under the powers vested in him by section 22(1)(b) of Act 45 of 1971. Section 11(1) of that Act provided that an Administration Board shall, in addition to any other powers vested in it under the Act:

> "(e) within its administration area be vested and charged with -
>
> (i) all the rights, powers, functions, duties and obligations -
>
> (aa) of an urban local authority in terms of the Blacks (Urban Areas)

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Consolidation Act, 1945 (Act No 25 of 1945), the Black Services Levy Act, 1952 (Act No 64 of 1952), the Urban Black Councils Act, 1961 (Act No 79 of 1961), and Black Labour Act, 1964 (Act No 67 of 1964);

(bb) ...

(cc) ...

(dd) in so far as they relate to Blacks only, of an urban local authority or a local government body or a Commissioner in terms of such laws as may from time to time be specified by the Minister by notice in the Gazette, but subject to such conditions, modifications or exceptions as may be so specified;

(ii) such rights, powers, functions, duties and obligations, in so far as they relate to Blacks only, of an urban local authority or a local government body in terms of the relevant ordinance establishing local authority or in terms of any other ordinance as

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> the Minister may from time to time after consultation with the Administrator specify by notice in the Gazette, but subject to such conditions, modifications or exceptions as may be specified in the notice."

Notwithstanding the above-quoted provisions, s 22(1)(a) of Act 45 of 1971 deprived an Administration Board of the power to make regulations under any law mentioned or contemplated therein, and in terms of s 22(1)(b) vested such power in the Minister. The Minister was therefore given the power to make regulations which a local authority previously had under the provisions of s 11(1)(e) set out above (**Duze v Eastern Cape Administration Board (supra)** at 837 E; **Durban (Ningizuma) Community Council and Another v Minister of Co-operation and Development and Another** 1985(3) SA 667 (A) at 673 H - I.) Section 22(1)(b) of Act 45 of 1971 was also repealed by s 69(1) of Act 4 of 1984, but in terms of s 66(3) of the latter Act "(a)ny

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regulation made under a law repealed by this Act shall be deemed to have been made under subsection (1) and shall continue to apply notwithstanding the repeal of such law".

The respondent does not contend that there are any provisions in either the Black Services Levy Act, the Urban Black Councils Act or the Black Labour Act referred to in s 11(1)(e)(i)(aa), or in any of the laws referred to in s 11(1)(e)(i)(dd), or in the relevant Ordinance referred to in s 11(1)(e)(ii) (the Transvaal Local Government Ordinance, 17 of 1939) which either deal with rent determinations, or empower a local authority to make regulations (or by-laws) in respect of rent. This brings me back to Act 25 of 1945. It contains two provisions with regard to rental. The first of these is contained in s 20(1), to which reference has already been made. A local authority had no power to determine rental under that section. The powers conferred on the Minister under s 22(1)(b) of Act 45 of 1971 therefore did not encompass s

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20(1) of Act 25 of 1945. The second provision is contained in s 38(3)(o). That section entitled a local authority, upon compliance with certain prescribed requirements, to make regulations i a in respect of tariffs of fees and charges for rent for inhabitants of a Black residential area. The Minister's determination of house rental in 1977 was therefore purportedly made under the powers conferred on him by s 22(1)(b) of Act 45 of 1971 read with s 38(3)(o) of Act 25 of 1945. Insofar as the power to determine rentals under s 22(1)(b) in respect of Black residential areas generally differs or is inconsistent with that under s 61(b)(ii) of the 1966 Housing Act, which applies specifically to approved dwellings, the general powers in s 22(1)(b) of Act 45 of 1971 must yield to the special, particular powers in s 61(1)(b) of the 1966 Housing Act in respect of approved dwellings constructed under the latter Act (**Duze v Eastern Cape Administration Board** (**supra**) at 843 A - B. This is in keeping with the oft-referred to passage in **R v Gwantshu** 1931

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EDL 29 at 31 that "The general maxim is, **generalia specialibus non derogant**. 'When the Legislature has given attention to a separate subject and made provision for it the presumption is that a subsequent general enactment is not intended to interfere with the special provision, unless it manifests that intention very clearly ...' per **Lord HOBHOUSE** delivering the judgment of the Privy Council in **Barker v Edger** (1898) A C at p 754" and further "In such cases it is presumed to have only general cases in view and not particular cases which have been already otherwise provided for by the special Act". The same holds true in respect of the site rentals. The power of a local authority in terms of s 27(1) of Act 102 of 1982 to make by-laws with the approval of the Minister, under which power the site rental for the appellants' dwellings was determined, must also yield to the special powers of s 61(1)(b) of the 1966 Housing Act.

It follows that in respect of approved dwellings constructed under one or other of the Housing Acts there are

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no statutory provisions which override those of s 61(1)(b) of the 1966 Housing Act. As the rentals for the appellants' dwellings were not lawfully fixed and determined in the prescribed manner they did not constitute rental payable under s 65. In the circumstances the appellants' failure to pay the amounts the respondent required them to pay as rental did not entitle the respondent to have recourse to the provisions of s 65. The respondent's purported ejectment of the appellant was accordingly unlawful.

In the result the appeal succeeds, with costs, including the costs of two counsel. The order of the court **a quo** is set aside. As the appellants' possession of their dwellings was previously restored to them pending their application and subsequent appeal, there is substituted for the order of the court **a quo** the following order:-

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"1) It is hereby declared that the respondent was not entitled to eject the applicants from their respective dwellings on 26 August 1986 pursuant to section 65 of the Housing Act 4 of 1966.

2) The respondent is ordered to pay the applicants' costs, including the costs of two counsel."

J W SMALBERGER
JUDGE OF APPEAL

CORBETT, JA)
HOEXTER, JA)
GROSSKOPF, JA) CONCUR
VIVIER, JA)