

THE MUNICIPALITY OF THE CITY OF
CAPE TOWN.....Appellant

and

I M CAIRNS IN HIS CAPACITY AS CHAIRMAN
OF THE VALUATION COURT, CAPE TOWN.....1st Respondent

THE DIRECTOR OF VALUATIONS.....2nd Respondent

GOUE AKKER (EDMS) BPK.....3rd Respondent

HEFER JA

IN THE SUPREME COURT OF SOUTH AFRICA

APPELLATE DIVISION

In the matter between

THE MUNICIPALITY OF THE CITY OF
CAPE TOWNAppellant

and

I M CAIRNS IN HIS CAPACITY AS CHAIRMAN
OF THE VALUATION COURT, CAPE TOWN.....1st Respondent

THE DIRECTOR OF VALUATIONS2nd Respondent

GOUE AKKER (EDMS) BPK3rd Respondent

CORAM : JOUBERT, HEFER, MILNE, EKSTEEN JJA et
KRIEGLER AJA.

HEARD : 20 MAY 1991.

DELIVERED : 23 AUGUST 1991.

J U D G M E N T

HEFER JA.

HEFER JA :

Section 39(1) of the Valuation Ordinance 26 of 1944 (C) (" the Ordinance") requires a general valuation to be made at least once in every ten years of all immovable property in every local authority. The valuation process entails, apart from the actual valuation by a valuer appointed in terms of sec 28, the preparation of a valuation roll in terms of sec 51, the adjudication by a valuation court on objections thereto in terms of sec 55 and the certification in terms of sec 59(2) of the roll finally adopted by that court.

The question posed by the present appeal relates to the application of the provisions of the Ordinance to the business and shopping centre in Cape Town commonly referred to as the Golden Acre which was con-

structed partly below the surface of Adderley, Castle, Strand and Plein Streets. (The relevant part of Plein Street will be referred to as area 1, that of Strand Street as area 2 and that of Adderley and Castle Streets as area 3.) The streets vest in the appellant in terms of sec 122(1) of the Municipal Ordinance, 1974 and the underground areas where third respondent has constructed a shopping mall is occupied by the latter, in the case of area 1, by virtue of a servitude and, in the case of areas 2 and 3, as lessee under a lease with the appellant.

Practically speaking, what we are concerned with is the valuation, in the course of a general valuation, of the underground areas. The dispute arose from an objection filed on third respondent's behalf with the secretary of the valuation court in the following terms:

"1. Eiendomsverwysing : WA 021B019

Lys Nr. 45

Kaart Nr. 11

Wyk Nr. 6

GRONDE VAN BESWAAR

- (a) Die betrokke 'eiendom' is 'n ondergrondse ontwikkeling onder Pleinstraat, en word foutiewelik op die veldvorm beskryf as Erf 107745.
- (b) Die betrokke 'eiendom' is nie 'n entiteit in die registers van die Akteskantoor nie en is nie 'grond' soos bedoel in die Skattingsordonnansie nie.
- (c) Gevolglik moet die 'eiendom' geheel en al van die skattingslys geskrap word.

2.. Eiendomsverwysing : WA 021B027

Lys Nr. 50

Kaart Nr. 11

Wyk 6

GRONDE VAN BESWAAR

- (a) Die betrokke 'eiendom' is 'n ondergrondse ontwikkeling onder Strandstraat, en word as 'ERf Nr. 0' beskryf op die veldvorm.
- (b) Soos in geval van die 'eiendom' in 1 hierbo, is dit ook nie 'n entiteit in die registers van die Akteskantoor nie en is dit nie 'grond' soos bedoel

in die Skattingsordonnansie nie.

- (c) Gevolglik moet hierdie 'eiendom' ook geheel en al van die skattingslys geskrap word.

3. Eiendomsverwysing : WA 021B029

Lys nr. 51

Kaart Nr. 11

Wyk 6

GRONDE VAN BESWAAR

- (a) Die betrokke 'eiendom' is 'n ondergrondse ontwikkeling geleë gedeeltelik onder Adderleystraat en gedeeltelik onder Kasteelstraat en word ook as 'Erf Nr. 0' beskryf in die veldvorm.
- (b) Soos in geval van die 'eiendomme' beskryf in 1 en 2 hierbo, is dit ook nie 'n entiteit in die registers van die Akteskantoor nie en is dit nie 'grond' soos bedoel in die Skattingsordonnansie nie.
- (c) Gevolglik moet hierdie 'eiendom' ook geheel en al van die skattingslys geskrap word."

The valuation court heard oral argument on the objection and decided that-

"(the) underground areas, shown as No's 1, 2 + 3 on Map A, P45 should be deleted from the roll."

This decision led to an application by the appellant to the Cape of Good Hope Provincial Division to review and set it aside. The following three grounds for review were advanced:

- "1. The valuation court has no power, authority, jurisdiction or competence to remove properties and their valuations from the valuation roll and that the said decision of the valuation court is therefore ultra vires and should be set aside.
2. Alternatively the valuation court misdirected itself on the facts and failed to apply its mind to its statutory task and thus fatally misconceived its function.
3. Alternatively and in any event there is no basis in law or in fact for the decision that the underground areas be deleted from the valuation roll and that such decision is therefore grossly irregular."

The court a quo (CONRADIE J and COMRIE AJ)

refused the application but granted the appellant leave

to appeal to this court.

In support of the contention in the first ground of review appellant's counsel referred to Hager and Others v Windhoek Municipal Council 1961(3) SA 806

(A) in which sec 181 of the then South-West African Municipal Ordinance 3 of 1949 as amended was considered.

Sec 181(5) contained provisions somewhat similar to sec 55 of the Ordinance to which reference will be made later. In that case the valuer did not personally inspect the majority of the properties he had to value and, in the cases of those he did inspect, he had incomplete data before him. This led the valuation court to believe that he had not applied his mind to the valuations, and to declare the entire roll invalid. This court confirmed the ruling of the trial court that it was not competent for the valuation court to do so. Relying on the similarity between sec 55 of the Ordinance and sec 181 (5) (b) of the South-West African ordinance and on certain

remarks in STEYN CJ's judgment in Hager's case appellant's counsel submitted that the first ground of review is a sound one. For the reasons which follow I do not agree.

Since it does not deal with the same legislation the decision in Hager's case is not directly in point. Nor can any material assistance for the determination of the present matter be derived from the judgment. The ratio decidendi was simply that the valuation court - a tribunal created by a statute - had no power in terms of the enabling legislation to set aside the entire valuation roll on the ground that in law the valuer had not applied his mind to the valuations appearing therein. That the powers of statutory bodies are confined to those expressly or impliedly conferred on them in the enabling legislation is a truism. But the enquiry in every case of an allegedly excessive exercise of jurisdiction is whether the act complained

of is authorised by the express or implied provisions of the statute whence the power is derived. Therefore, although some of the dicta in the judgment in Hager's case will have to be examined in order to gauge their persuasive force, what must be considered in the present matter, are the provisions of the Ordinance. I turn to do so.

As mentioned earlier a general valuation must in terms of sec 39(1) be done at least once in every ten years. Sec 52 enjoins the valuation court, as soon as a general valuation roll has been prepared, to publish a notice containing certain prescribed particulars. It must inter alia (in terms of paragraph (b) call

"upon any owner or occupier of immovable property in the local authority area who has any objection to the valuation roll to lodge

his objection with the secretary of the valuation court ..."

Sec 55 deals with the proceedings of the valuation court.

Subject to certain provisions not presently relevant it prescribes that -

"(t)he valuation court shall on the date and at the place notified under paragraph (d) of sec fifty-two proceed to consider the objections to the valuation roll and to determine thereon, provided that the valuation court shall not be precluded from considering and determining on the valuation of any other property.

The valuation court may make such amendments in the valuation roll in respect of separate individual properties as to the court may seem expedient and may confirm, increase or decrease any valuation whether it be objected to or not ..."

Reference should finally be made to sec 5(1). It reads as follows:

" There shall be constituted for every division one or more courts, to be known as valuation courts, to deal with the valuation roll, or any portion thereof, framed for each local authority area in such division, and to hear and determine on any objection to the roll. Such courts shall have concurrent jurisdiction."

Having regard particularly to secs 5(1), 52(b) and 55 the following is clear:

- (a) A valuation court may amend the roll in respect of individual properties.
- (b) The power to amend-
 - (i) exists independently from the power to increase or decrease any valuation and
 - (ii) is not circumscribed in any manner; on the contrary, the court may make any amendment which to it may seem expedient.
- (c) The type of objection which may be raised by a particular owner or occupier is not circumscribed either; in particular it need not relate to the amount of the valuation.
- (d) The valuation court is obliged to consider and determine on every objection.

Viewed as a whole these provisions bring about that, whatever the ground of an objection may be, the

court is bound to consider and determine on it. If it is overruled there is, of course, an end to the matter but, if it be upheld, any suitable amendment to the roll may be made. In the event of an objection to the amount of the valuation only it is the amount that will be amended; sec 55 confers the specific power to do so. And realising, no doubt, that an invitation in terms of sec 52(b) may result in a variety of other objections being lodged, the legislature conferred on the valuation court an unfettered general power of amendment which is to be exercised according to the demands of any particular situation depending on the nature of the objection in question. That it is competent for a court under its general power of amendment to remove individual properties from the roll is therefore beyond question. This is indeed the only way in which a well-founded objection to the inclusion of an individual property can be met. The owner of property exempted from valuation in terms of

sec 46 is eg plainly entitled to object to its inclusion and his objection can only be met by removing the property from the roll. Or it may emerge that separate pieces of land appearing on the roll have been consolidated and that the consolidated property has also been included in the roll. Again the removal of the individual pieces is the only possible solution.

The judgment in Hager's case does not militate against this view. As appears from 813 B of the judgment, the court did not in that case consider the power of amendment sufficiently wide to authorise the setting aside of the entire roll. But there is a vast and obvious difference between expunging the entire roll and the deletion of individual properties therefrom. The question of the removal of individual properties did not arise and was not considered. All that STEYN CJ said in in this regard was that

"(i)n terms of the Ordinance, the primary function of the valuation court in its consideration of a valuation roll , is to determine the correct figures at which properties are to be valued for municipal purposes. It is not apparent why it should be necessary for the effective performance of this function, or even reasonably incidental thereto, for a valuation court to be able itself, in addition to or instead of a court of law, to set aside the whole valuation roll and by the same reasoning, also individual valuations, on account of the methods and mental processes by which the valuer has arrived at his figures, regardless of whether or not those figures are in fact correct."

This passage appears at 814 B-D in that part of the judgment where the learned Chief Justice, having found that the Ordinance did not expressly empower a valuation court in South-West Africa to set aside the entire roll, explored the possibility of implying such a power. It is interesting to note that a valuation court's function to determine the correct figures at which properties were to be valued was described here as its primary function; and not its only function as was said in another passage to which reference will presently be made. Be that as it

may the important words are the concluding ones. What was being examined was the valuation court's power to set aside the roll - or individual valuations - "on account of the methods and mental processes by which the valuer has arrived at his figures, regardless of whether or not those figures are in fact correct". That such an implied power was found not to exist is perfectly understandable: if, in the case of an individual valuation, it be found that the valuer's methods were incorrect the valuation cannot, and will obviously not, simply be deleted for it is the valuation court's function to finally determine the value of the property concerned. But what if the objection is not to the valuer's figures but to the inclusion of the property in the roll which, if well-founded, brings about that the valuation court cannot perform its function of determining the value? To this question the judgment in Hager's case offers no answer because it did not arise and was not considered.

The only other passage in the judgment which needs to be mentioned appears at 812 G-H and reads as follows:

"Although a valuation court is described as a court, it is quite clearly not a court of law with any inherent jurisdiction which may be associated with such a court. It is a special body constituted for a special limited purpose, viz. to determine the values of rateable municipal properties for the purposes of local government. That is its true and only function, and in the performance of that function it cannot exercise any powers beyond those conferred by the Ordinance, either expressly or by implication.

In regard to the relevant express powers, it may, subject to the stated limitations, alter or amend the roll as it sees fit, and decrease or increase any valuation whether or not an objection has been lodged against the valuation. It may, therefore, mero motu correct what it considers to be a wrong valuation. In doing these things it may be said to set aside the valuation of the valuer and to substitute

its own valuation, but it has not been argued, and it cannot be argued, that in exercising this power, it may set aside without any such substitution."

(The reference to rateable municipal properties has no bearing on the present matter; in terms of sec 39(1) all immovable property must be valued whether rateable or not.)

The observation that the true and only function of a valuation court is to determine the values of rateable municipal properties should not be misunderstood. As appears from the quoted passage and from the rest of the judgment STEYN CJ carefully distinguished between the valuation court's function and its powers. He clearly did not intend to convey that its powers are limited to the determination of the values of properties reflected in the roll.

The last sentence of the quotation seems to relate to the valuation court's powers in respect of the amount of a valuation. If it was intended to convey that the court's power to amend the roll is limited to

the amendment of the amount it is not in accordance with the provisions of the ordinance.

I turn now to deal with the second and third grounds of review which may conveniently be considered together.

A strange and unexplained feature of the appellant's case is that there is no factual basis in the founding affidavit for the contention in the second ground of review. Nowhere is it alleged what the true facts were or what the valuation court regarded them to be. The founding affidavit leaves one entirely in the dark as to the misdirection imputed to the valuation court. However, in view of the manner in which appellant's case was argued in this court, the flaw in its papers may be overlooked.

One of third respondent's arguments in the valuation court and in the court a quo was that the only properties that may validly be included in a valuation roll

are those with a so-called Deeds Office identity ie properties which appear as separate entities in the Deeds Office records. This argument which was based on decisions such as Steelpark Estate Co Ltd v Vereniging Town Council 1963(2) SA 367 (T) and Volkstrust Bpk v Directeur van Skattings en Andere 1980(1) SA 760 (C) found favour with COMRIE AJ but not with CONRADIE J in the court a quo. CONRADIE J found in third respondent's favour basically on the ground that what was reflected in the valuation roll was the underground areas thereof notionally detached from the surface. This, the learned judge held, is not permissible in terms of the Ordinance.

Third respondent's case was argued in this court mainly along the lines of CONRADIE J's judgment. Appellant's counsel countered that CONRADIE J had misconstrued the relevant entries in the valuation roll since they relate, not to underground entities, but to the street surface and the underground structures in each of the

areas. The valuation court construed them in the same manner that CONRADIE J did and this, he said, was the misdirection complained of in the second ground of review.

The dispute in this court is thus, not about what it is that should be valued in a case like the present one, but about what precisely it is that appears in the valuation roll. I say in this court because counsel had different versions of the argument advanced to the court a quo on appellant's behalf. All that need be said in this regard is that, had appellant's case been argued in the court a quo on the same basis on which it was presented to this court, it is difficult to understand how it came about that neither of the judges who heard the matter dealt with the real dispute in their judgments and why both of them proceeded without enquiry on the basis that the street surfaces had not been valued. Be that as it may what remains to be done now is to try and resolve the dispute with which this court has been pre-

sented. I will first indicate what my understanding of the present dispute is.

The parties are agreed that the valuation court was under the impression that the valuer had valued the underground areas separately from the land surface above them. Although there is a suggestion in the written heads of argument that it was permissible for him to do so I understood appellant's counsel to accept in his oral argument that it was not. It is accordingly not necessary to decide how a situation like the present one is to be handled for purposes of valuation. The only question is whether it has been shown that the valuation court's impression of what precisely it was that the valuer had valued was erroneous.

A full discussion of the argument on this question would serve no useful purpose. The onus is on the appellant to demonstrate the valuation court's error and the absence of positive averments of fact in the founding

affidavit has left its counsel clutching at straws. He referred us to the documents that were before the valuation court from which he submitted it can be inferred that the underground areas had not been valued separately but what "evidence" he found there to support his submission is entirely unconvincing. What does emerge clearly from the documents is that third respondent was firmly under the impression that the entries in the valuation roll related to the underground passages as such; that this impression was conveyed to the valuation court; and that it was not removed by appellant's attorney. The very ground for the objection was that "die betrokke'eien- dom' is ondergrondse ontwikkeling " which is not " 'grond' soos bedoel in die Skattingsordonansie nie". In the proceedings before the valuation court the attorney representing third respondent filed written heads of argument in which he specifically stated that -

"(die) Aktekantoor werk slegs met oppervlakte-

eenhede as geregistreerde entiteite en is dit nie moontlik om ondergrondse strata afsonderlik te registreer nie. Dus kan 'n ondergrondse wandelhal nie in die Akteskantoor geregistreer word afsonderlik van die oppervlakte waaronder dit lê nie en gevolglik kan 'n ondergrondse wandelhal nie op die skattingslys voorkom afsonderlik van die oppervlakte-eenheid nie."

In addition he confronted the valuation court with counsel's opinion wherein it was stated :

" Die vraag is dus of 'n skatter geregtig sou wees om 'n tunnel (oftewel ondergrondse wandelhal) onder die straat as sulks te skat en op die skattingslys te plaas. Na my mening kan soiets beslis nie gedoen word nie."

In further heads of argument third respondent's attorney stated to the valuation court that it was common cause that -

"(die) eiendom wat in die drie besware geskat word is nie as registrasie-eenhede in die Aktekantoor geregistreer nie want dit is onder die oppervlakte van onderskeidelik Plein, Kas-teel en Strandstrate geleë en as deel van die Goue Akker kompleks."

Appellant's attorney addressed the valuation court on the requirement of a so-called Deeds Office

description but nowhere did he indicate that what third respondent's attorney had stated to be common cause was in fact not so. Nor did he ever correct the impression (if it needed correction) that the properties appearing on the roll were the underground areas only. It is beyond comprehension why he did not do so and why he did not call the valuer as a witness if the present submission is correct.

The conclusion can only be that the second and third grounds of review were not established and that the court a quo rightly refused the application.

The appeal is dismissed with costs including the costs of two counsel.

A handwritten signature in dark ink, appearing to read 'Hefer', is written over a horizontal line.

J J F HEFER JA.

JOUBERT JA: CONCUR
EKSTEEN JA: CONCUR

Case No 641/89
/wlb

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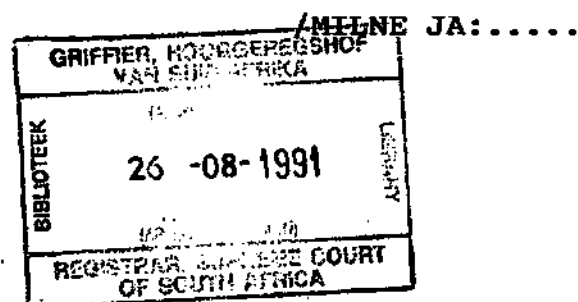
THE DIRECTOR OF VALUATIONS

Second Respondent

GOUE AKKER (EDMS) BPK

Third RespondentCORAM:JOUBERT, HEFER, MILNE, EKSTEEN JJA et
KRIEGLER AJADATE OF HEARING: 20 May 1991DATE OF DELIVERY: 23 August 1991

J U D G M E N T



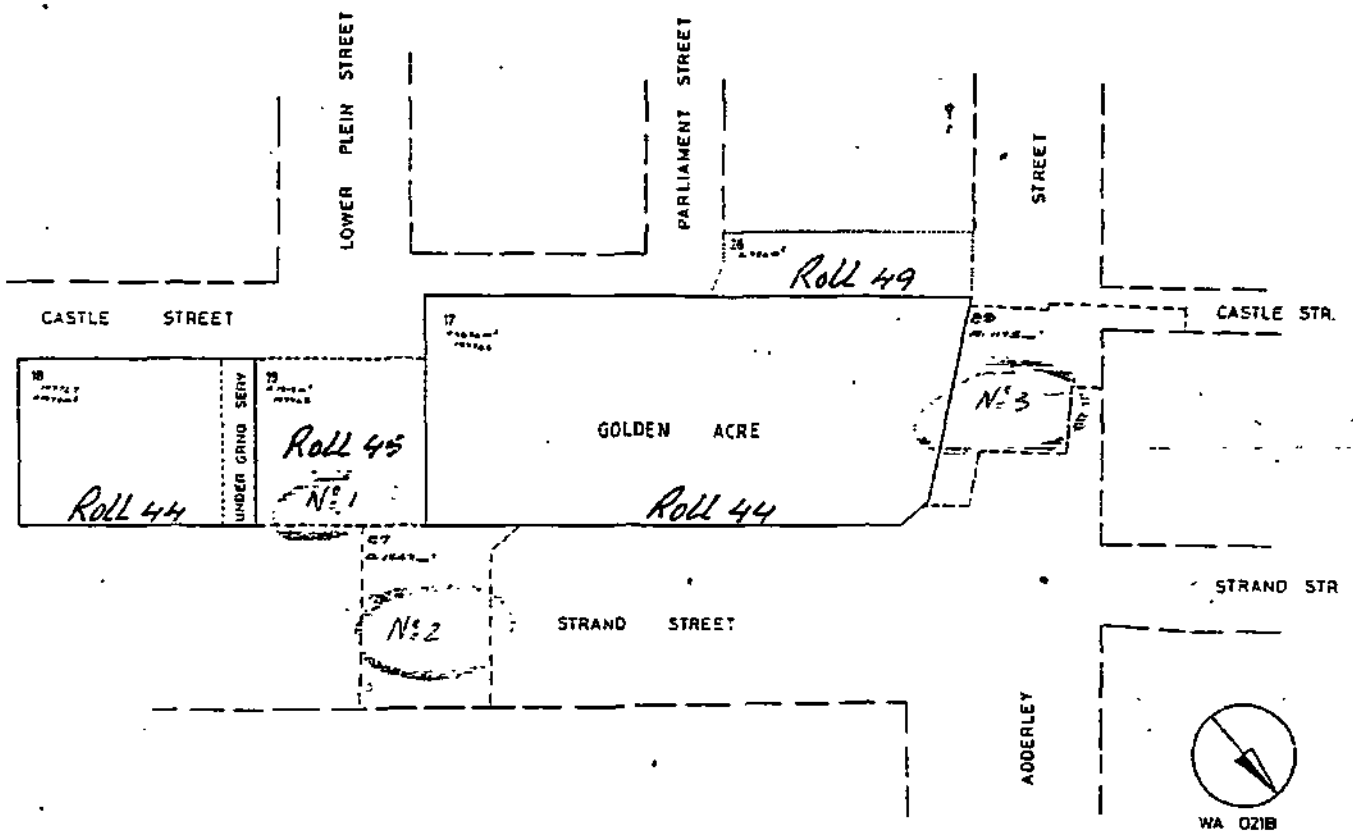
MILNE JA:

I have had the privilege of reading the judgment of my Brother Hefer but, with respect, I am unable to agree with it.

The general background to the dispute in this matter is set out in Hefer JA's judgment and it is unnecessary to repeat it. For the sake of clarity, however, I recapitulate briefly certain salient points. The decision which the appellant sought to set aside on review was a decision of one of the bodies described in section 5(1) of the Valuation Ordinance, 26 of 1944 (C) ("the Ordinance") as "valuation courts". This is not a happy choice of words since the "valuation court" is not a court in the legal sense. Be that as it may, the valuation court purported to

delete "(the) underground areas shown as Nos 1, 2 and 3 on Map A, P.45" from the valuation roll prepared by the valuer in terms of section 51 of the Ordinance. A copy of this map appears below.

53



I understand it to be common cause that if what appeared in the valuation roll were valuations of

underground strata of land together with the buildings on such strata apart from the value of the portions of the streets immediately above such strata, it would be invalid in law. This flows from the fact that, in terms of section 45(a) read with section 39(1) of the Ordinance, what had to be valued was, in this case, "land". Since "land" is not defined it must be taken to refer to what is meant by "land" at common law namely, a part of the earth's surface which also extends downwards, notionally, to the centre of the earth. I also understood it to be conceded by counsel for the third respondent that there was no objection to the fact that the valuer had valued the buildings forming part of the underground development. Mr Snitcher, for the appellant, submitted however that the valuer had not merely valued a stratum in the case of the three "properties". What appeared on the valuation roll was, so he submitted, a portion of the street surface as a surveyed area and a site

valuation thereof, a total building value separate from the total site value and a total site and building value. Mr Burger, for the third respondent, submitted that on the record it was clear that what the valuer had valued was, in each case, an underground stratum entirely separate and distinct from the surface. There is an extraordinary lack of clarity on this point. The relevant entries on the valuation roll were the following:

In the case of the first property:

V430		30/05/84	MAP 11	PROPERTY REFERENCE					WA	G21	8	G19	
ITEM NUMBERS	DESCRIPTION		F.	AREA	RATE	GROSS VALUE	ITEM DEPR TOTAL PERCT	NET VALUE					
ENF REF NO.	019	ENF NO.	107745	1518	127.79	194300							
							TOTAL SITE VALUE		194300				
001 000	BAR/KROEG		0	1502	321.99	483640							
001 001	ESCALATORS/ROLTRAPPE		0	0	0.00	85800	569440	0.0	569440				
							TOTAL BUILDING VALUE		569440				
							TOTAL SITE & BUILDING VALUE		763740				

Nothing in these documents suggests to me that the valuer did not value the street surface over the underground structures. What the valuer actually did could, of course, have been easily ascertained from him but, although he was present at the relevant sittings of the valuation court, there is nothing to indicate that the question was raised with him by the members of the court or the legal representatives of the parties. Nor did he file an affidavit in the review proceedings. The valuation court might have elucidated the matter but no affidavit was filed by any of the members of that court. When the review application was served upon the valuation court "the minutes" of the two relevant "meetings" of the valuation court were filed. These minutes contain a record, *inter alia*, of various submissions made to the valuation court on behalf of the appellant and the third respondent, but they do not really assist in the elucidation of the problem,

partly because the argument was bedevilled by confusion as to what issue was before the valuation court. A material part of the arguments seems to have been concerned with whether the "properties" in question were rateable. In the Cape Province rateability is dealt with separately from valuation, the former being dealt with in Ordinance No 20 of 1974 and the latter in Ordinance No 26 of 1944. Be that as it may, I agree with the view of the majority that on the record the appellant did not establish that the valuer valued the relevant parts of the streets together with the underground structures. In para.4 of the affidavit filed on behalf of the third respondent it is alleged that the street surfaces in question did not appear on the valuation roll and that "Die posisie kan dus opgesom word deur te sê dat applikant (appellant) ondergrondse strata op die skattingsrol wil hê hoewel die oppervlakte nie op die

skattingsrol verskyn nie." In its replying affidavit the only point made on behalf of the appellant is that the streets in question vest in the appellant because they are public streets, and the passage quoted above is not dealt with.

It follows that it must be accepted for the purposes of this appeal that the valuer purported to value the underground developments separate from the streets vertically adjacent to them. It is necessary to consider what precisely this means in practical terms. I have already referred to the fact that on the argument of the third respondent there was no objection to the fact that the valuer had valued the buildings underground. It was furthermore conceded by Mr Burger that the area underground on which the buildings which were valued were situated (which I shall call the "floor area") must of necessity

coincide exactly with the surface area which it is said the valuer should have valued but did not value. Thus, for example, it is common cause that the floor area of property No 2 under portion of Strand Street coincided with the surface area of Strand Street which it is said the valuer should have valued. It is not, therefore, the value of the buildings which is attacked nor the size of the site but the fact that what was valued was an underground area whereas what should have been valued was the surface area. The value of these two areas i.e. the floor area and the surface area, might be but would not necessarily be, the same.

On this basis, the valuer arrived at his valuation by a consideration of the value of the land and improvements in a manner which rendered his valuation invalid in law. This is precisely what occurred in Hager & Others v Windhoek Municipal Council 1961(3) SA 806 (A).

In my judgment

- (a) It was part of the *ratio decidendi* in that case that a valuation court acting in terms of section 181(5)(b) of the Municipal Ordinance No 3 of 1949 of South West Africa as substituted by section 29 of Ordinance 32 of 1959 had no power to set aside individual valuations

"... on account of the methods and mental processes by which the valuer has arrived at his figures, regardless of whether or not those figures are in fact correct."

Per Steyn CJ at p 814 C-D.

- (b) There is no material difference between the provisions of the Ordinance there under consideration and the relevant provisions of Ordinance 26 of 1944 (C).

I agree that the conclusion of the court in the Hager case was that the valuation court had no power in terms of the enabling legislation to set aside the entire valuation roll on the ground that in law the valuer had not applied his mind to the valuations appearing therein. That is, with respect, not the only *ratio decidendi*. What constitutes the *ratio decidendi* of a judgment appears from the following passage in the judgment of Schreiner JA in Pretoria City Council v Levinson 1949(3) SA 305 (A) at 317:

"As I understand the ordinary usage in this connection, where a single judgment is in question, the reasons given in the judgment, properly interpreted, do constitute the *ratio decidendi*, originating or following a legal rule, provided

- (a) that they do not appear from the judgment itself to have been merely subsidiary reasons for following the main principle or principles;
- (b) that they were not merely a course of reasoning on the facts (cf Tidy v Battman (1934, L.J.K.B. 158 at p 162)); and
- (c) (which may cover (a)) that they were

necessary for the decision, not in the sense that it could not have been reached along other lines, but in the sense that along the lines actually followed in the judgment the result would have been different but for the reasons."

I deal firstly with what I understand to be the reasons for the decision in the Hager case, secondly with whether they fall within the exceptions enunciated by Schreiner JA and thirdly, with the question of whether there is any material difference between the legislation under consideration in the Hager case and that under consideration in this case. The question which had to be decided in the Hager case was "... whether, accepting the valuation court's finding that in law the valuer did not apply his mind to the valuations on the roll, it was competent for that court to declare the roll invalid on that ground." (P 811-812). The court sought the answer to that question in the Ordinance

"by and under which the valuation court was brought into existence". Having set out the relevant provisions the learned Chief Justice said, at p 812G:

"Although a valuation court is described as a court, it is quite clearly not a court of law with any inherent jurisdiction which may be associated with such a court. It is a special body constituted for a special limited purpose, viz. to determine the values of rateable municipal properties for the purpose of local government. That is its true and only function, and in the performance of that function it cannot exercise any powers beyond those conferred by the Ordinance, either expressly or by implication."

I must confess that I do not, with respect, see, in this context, any significance in the distinction between the function of the statutory body and its powers. If its only function is to determine the values of property it can surely have no power to do anything else.

The court then considered the express powers conferred on the valuation court. It was held at p 812H

that the power to "alter or amend the roll as it sees fit and decrease or increase any valuation ..." did not include a power to set aside a valuation without substituting its own valuation. I interpose here that the valuation court in the instant case did not substitute its own valuation. The learned Chief Justice then went on to consider the effect of the words "proceed to consider" with reference to the valuation roll and the objections lodged thereto. It is true, as pointed out by Hefer JA, that Steyn CJ said in this context that he could find nothing in those words authorising a valuation court to set aside the whole valuation roll submitted to it and to decline consideration of the roll until another had been prepared. That is not an end of the reasoning, however, because the learned Chief Justice went on to say at p 813A

"That is not what the words 'proceed to consider' convey in this context of objections, alterations, amendments, increases, decreases and corrections

mero motu of valuations. What is contemplated is a consideration of the roll for the purpose of coming to decisions as to the correctness or otherwise of the valuations on the roll."

(My underlining)

The court then considered the argument that it would be competent for a valuation court to find that a roll presented to it was not a valuation roll contemplated by the Ordinance and expressed the view that it might be so that where a roll had been drawn, for example, by a person other than a valuer or disclosed valuations of improvements without any valuations of land, a valuation court might be entitled to say there was in fact no valuation roll at all. At p 813 that situation was distinguished from the situation where the complaint was not that there was no valuation roll at all or that there were no completed valuations on the roll "... but that the valuer had arrived at his valuations by consideration of the value of land and improvements in a manner which rendered his valuations invalid in law." The

court was therefore asked to rule that roll out of existence on the ground that the valuer had not properly applied his mind to his tasks.

"The valuation court could not do so without a jurisdiction ordinarily possessed only by a court of law and I can find no evidence in the Ordinance of the conferment of any such power or competence."

Consideration was then given to whether or not the power was impliedly conferred and it was in this regard it was said, at p 814C,

"It is not apparent why it should be necessary for the effective performance of this function, or even reasonably incidental thereto, for a valuation court to be able itself, in addition to or instead of a court of law, to set aside the whole valuation roll and by the same reasoning, also individual valuations on account of the methods and mental processes by which the valuer has arrived at his figures regardless of whether or not those figures are in fact correct."

It is quite clear in my view that the remarks of the Chief Justice are not confined to the setting aside of the whole

valuation roll but apply also to the setting aside of individual valuations. It was then pointed out that such a jurisdiction could serve to invite a multiplicity of enquiries which would hamper rather than assist the court in performing its primary function and that such indications as there were in the Ordinance rather seemed to point the other way. The absence of any express power, and the fact that two of the three members of the court may be laymen, and the absence of any provision in regard to owners who are not objectors, were referred to. All these considerations apply with equal force to the legislation under consideration in the instant case.

In my view it was a necessary part of the decision in the Hager case that the only function of a valuation court is to determine the values of the properties in question for the purposes of municipal government, and that

if a valuer arrives at his valuations either in respect of the whole roll or in respect of individual valuations by consideration of the land and improvements in a manner which rendered his valuations invalid in law, that is something which can only be set aside by a court of law and not by the so-called valuation court. This is subject to the qualification already referred to, namely, that a valuation court might, in certain circumstances, be able to say that there was in fact no valuation roll or that there were no completed valuations on the roll. Here the valuer did value both the improvements and "land" but the appellant did not establish that the land which was valued, namely "the floor area", had the same value as the surface area.

Far from being either subsidiary reasons or merely a course of reasoning on the facts these appear to have been the main principles followed in the judgment. The reasoning

referred to was therefore, in my judgment, part of the **ratio decidendi**.

In any event, even if the decision in the Hager case was not binding on this court, I am satisfied that the reasoning as to the construction to be placed upon the provisions of the South West African Ordinance is directly applicable to the proper interpretation of the powers of the valuation court under section 55 of Ordinance No 26 of 1944.

The provisions of the South West African Ordinance that were considered by Steyn CJ to be relevant are set out at p 812 of the judgment in the Hager case. I am quite unable to find any significant difference between those provisions and the provisions of section 55 of Ordinance No 26 of 1944.

The provisions of sections 51 and 52(b) of the Ordinance do not, to my mind, take the matter any further. The powers of the court are surely to be ascertained from the section

which deals with such powers and not from the section dealing with the duty to call for objections. In any event the equivalent of section 52 in the Ordinance is subsection (4) of section 181 of the South West African Ordinance which required a notice be published "setting out that the roll is available for public inspection and for the lodging of objections thereto" and required objections to be in writing and to state the grounds on which the objections were based.

Thus in the South West African Ordinance it was clear that

1. the valuation court was empowered to amend the roll - the fact that it is not expressly empowered to amend it in respect of individual properties is not material since that is clearly implied;

2. the power to amend

- (a) linguistically speaking, existed independently of the power to increase or decrease any valuation;

- (b) was not circumscribed in any manner; on the contrary the court was empowered to make such "alterations and amendments as it sees fit";
- (c) the type of objection which could be raised was not circumscribed nor was it laid down that it had to relate to the amount of the valuation; and
- (d) the valuation court was obliged on the appointed day to "proceed to consider the valuation roll and the objections lodged thereto".

I do not think it is necessary to consider whether the owner of property exempted from valuation in terms of section 46 would be entitled to object on that ground and entitled to have his objection met by the removal of the property from the roll; nor what the position might be where separate

pieces of land appearing in the roll have been consolidated and the consolidated property were to be included in the roll also. That is not the situation here and of course if the valuation court had no power to deal with such wrongful inclusions that would not be the only solution to the problem - the person affected would be entitled to go to court to have the entry set aside.

I would accordingly uphold the appeal and set aside the order of the court a quo with appropriate orders as to costs.

A. J. Milne

A J MILNE
Judge of Appeal

KRIEGLER AJA] Concur