BIZCOMMUNITY

Housing activists lose Tafelberg case

By Tania Broughton

15 Apr 2024

The Supreme Court of Appeal has ruled the sale of the site for private development was lawful.

Reclaim the City demonstrated outside the Western Cape High Court in 2020, calling for the Tafelberg site to be used as affordable housing.
Archive photo: James Stent / GroundUp

- The sale of the Tafelberg property in Sea Point for private development is lawful, the Supreme Court of Appeal has ruled.
- Housing activists wanted the site to be developed for social housing.
- The court said there was no law which dictated that social housing had to be provided at a specified location.
- Housing activists have lost what was described as a crucial case to redress apartheid spatial imbalance.
- The court said both the Western Cape Provincial Government and the City of Cape Town were complying with their obligations to provide social housing.

The Supreme Court of Appeal (SCA) has upheld an appeal by the Western Cape Provincial Government and the City of Cape Town, and set aside two previous High Court orders declaring the sale of a Sea Point property, known as the “Tafelberg” site, to be unlawful.

The activists, including Ndifuna Ukwazi (NU) and Reclaim the City (RTC) were fighting for the 1.2 hectare prime site to be used for social housing. They accused the City and the Province of not complying with an obligation to “reverse apartheid spatial design” and to provide social housing in central Cape Town.

In a ruling handed down on Friday, the SCA said the Province and the City had acted lawfully in wanting to sell the land for R135m to a private school, and confirmed that there was no obligation on government to provide social housing in a specific location.

The matter was heard by the SCA in February 2023. No explanation was given in the ruling as to the delay in handing down the judgment.

The attempt to sell the site, formerly the Tafelberg Remedial School, in 2015 was challenged by housing activists through protests and in the courts.

In 2020, the Western Cape High Court set aside the Province's decision to sell the property. The sale decision was again set aside in a separate challenge by the National Minister of Human Settlements, who complained that she should have been consulted and that the Province had not adhered to the Intergovernmental Relations Framework Act.

The Province and the City took both orders on appeal.

> Here is a timeline of the background case

Writing for the court, Judge Nambitha Dambuza said the site, which had been used for various schools since 1899, was owned by the Western Cape Department of Transport.

In 2010, a remedial school was closed down and later, tenants of a building on the site were given notice to vacate.

Following a lengthy process of provincial inter-governmental discussions, it was decided to sell the site to a private school for R135m in January 2016.

Heritage approval granted for social housing development at old Woodstock hospital

Matthew Hirsch 1 Aug 2023

What preceded this, Judge Dambuza said, was an invitation by the Department of Transport to other provincial departments to make submissions regarding the future of the site.

The provincial Department of Human Settlements said that the site was needed for social housing for people earning R1,500 and R7,500, that the site was well-suited for this purpose given its links to public transport, and the possibility of cross subsidisation retail use.

But the MEC of Transport did not agree and made it clear that it would not be considered for social housing. The provincial cabinet resolved to sell the property to fund a shortfall in an anticipated department of education office park development.

Housing activists, including Ndifuna Ukwazi and the Social Justice Coalition, objected to the sale, but these objections were dismissed and, after a bidding process, it was resolved to sell the property to the school for R135m.

The Department of Human Settlements, “albeit grudgingly”, withdrew its request for the site.

The Province, in its submissions to the high court, said that it could not be used for social housing because it did not fall within a “restructuring zone”, as defined by the Social Housing Act. Therefore no funding would be available.

It said construction costs would be high as would rates and taxes and any social housing scheme would be financially unviable.

“The Province contended it was doing its best with limited resources to provide affordable housing generally, and social housing in particular. It acknowledged that spatial apartheid was far from being redressed in Cape Town but highlighted that an appropriate balance had to be struck,” Judge Dambuza said.

She said activists (the respondents in appeal) had not identified any statutory provision that required the provision of social housing at a specified location.

“The Province and the City cannot be allowed to shun the obligation to consider racial, social, economic and physical integration and the location of the residents’ places of employment when implementing the social housing programmes.

“The respondents had to demonstrate that the Province and the City had failed to consider its obligations under both or either the Housing Act and the Social Housing Act.”

> Read the SCA judgment here

In relation to the Province, Judge Dambuza said the respondents had acknowledged that the provincial Spatial Design Framework addressed the relationship between planning for future land use and affordable housing strategies. They also acknowledge the shortage of state-owned land that can be used for affordable housing, especially social housing, in the city centre.

1,500ha of land in the process of being acquired, says human settlements minister

11 May 2023

She said the City had admitted that its housing delivery strategy had initially focussed on delivering as many houses as possible. This resulted in the implementation of social housing programmes on the periphery of the city where land was cheaper, with the unintended consequence of entrenching the old apartheid spatial patterns.

The City had to consider the higher cost of housing delivery in the inner city.

However, Judge Dambuza said that the high court had made no reference to evidence relating to the social housing metropolitan “pipeline programme” and evidence of a number of inner city social housing projects such as the Helen Bowden site and the Woodstock Hospital site.

“This factual context cannot be ignored. The respondents’ case was built around the unacceptability of the regeneration programme and an alleged total disregard by the Province and the City of their constitutional obligations. Against the detailed evidence tendered by the appellants on the ongoing provision of social housing within the city, I do not agree with the submissions made on behalf of the respondents.”

“The evidence of the appellants policy formulation and implementation disproved the allegations that they had no coherent housing delivery strategy and the Province remained intent on not providing any social housing the CBD,” the judge said.

“As demonstrated, the Province and the City have put in place policies that are consistent with the principles applicable to social housing under the relevant statutory framework.

“Our courts have approached the assessment of procedural fairness and flexibility on a case by case basis, taking into account the facts and circumstances peculiar to each. It is difficult to imagine a more fair and balanced procedure in terms of which an intended disposal of state land can be conducted,” Judge Dambuza said, upholding the appeals.

This article was originally published on GroundUp.