

DEPARTMENT OF LAND AFFAIRS AND OTHERS V GOEDGELEGEN TROPICAL FRUITS (PTY) LTD

Constitutional Court of South Africa
6 June 2007
(CCT69/06) [2007] ZACC 12

Facts:

The applicants sought a declaration under section 2 of the *Restitution of Land Rights Act 22 of 1994* ('*Restitution Act*') that they had been dispossessed of land rights attached to the Boomplaats estate as a result of past racially discriminatory laws or practices. Applicants comprised the Department of Land Affairs, the Popela community, organised into the voluntary Communal Property Association ('CPA'), and nine individual applicants.

Applicants based their claim on the 1969 termination of labour tenancy rights by the extant owners of Boomplaats, the Altenroxels. This was necessary because Indigenous land rights were terminated prior to 1913 and under section 25(7) of the *South African Constitution* dispossession is only actionable if it occurred after 19 June 1913.

At first instance the Land Claims Court rejected the appellants' claims on the basis that the actions of the Altenroxels could not be said to have derived from 'a past racially discriminatory law or practice': *Popela Community v Department of Land Affairs and Another* LCC 52/00. The Supreme Court dismissed an appeal, finding that insufficient evidence existed to establish the requisite causal connection between the suite of legislation proclaiming the South African Government's 'intention to eradicate labour tenancy completely' and the Altenroxels' acts of dispossession. The applicants' losses were therefore the result of private acts of dispossession and consequently outside the ambit of the *Restitution Act*: *Popela Community & Others v Goedgelegen Tropical Fruits (Pty) Ltd* [2006] SCA 124 (RSA).

At issue in the Constitutional Court was the following: whether leave to appeal should be granted; whether the Popela community is a community for the purposes of section 2(1)(d)

of the *Restitution Act*; whether individual claimants were dispossessed of their rights as a result of past discriminatory practices or laws under section 2(1)(a) of the *Restitution Act*; and what the appropriate remedy should be.

Held, leave to appeal should be granted:

1. Claims made under section 2(1) of the *Restitution Act* give effect to section 25(7) of the *Constitution*, meaning that 'restitution of land rights and land reform are constitutional issues'. This, in combination with legitimate public interest in the resolution of such claims, meant leave to appeal was appropriate: [32].

Held, the Popela community does not constitute a 'community' for the purposes of the *Restitution Act*:

2. A community, for the purpose of the *Restitution Act*, is 'any group of persons whose rights in land are derived from shared rules determining access to land held in common by such group': [33]. This requires 'a sufficiently cohesive group of persons' and a degree of commonality between the claimant community and the community as it existed at the time of dispossession: [39]; *In Re Kranspoort Community* 2000 (2) SA 124 (LCC) affirmed. On this basis the Popela were a community at the time their labour rights were terminated: [44].

3. However, to establish community rights under the *Restitution Act* the applicants had to demonstrate that their possession and use of the land at the time of dispossession was derived from common rules: [45]. By 1969 each of the families within the community had been forced to establish individual relationships with the Altenroxels meaning that 'no rights in land remained vested in the labour tenants as a community': [47].

Held, individual claimants were dispossessed of their rights as a result of past discriminatory practices or laws:

4. The Supreme Court erred in rejecting the individual applicants' claims on the basis that the Altenroxels' actions constituted a private severance of rights separate from the matrix of discriminatory laws in existence in South Africa throughout the 20th century.

5. In deciding whether claimants were dispossessed 'as a result' of past discriminatory practices, a purposive interpretation of the *Constitution* is to be adopted: [51]; *R v Big M Drug Mart Ltd and Bato Star Fishing* (1985) 18 DLR (4th) affirmed. Accordingly, the *Restitution Act* must also be construed purposively 'because it is remedial legislation umbilically linked to the *Constitution*': [53].

6. The purpose of the *Restitution Act* is 'to provide redress to those individuals and communities who were dispossessed of their land rights by the Government because of the Government's racially discriminatory policies in respect of those very land rights': [54]; *Alexkor Ltd and Another v Richtersveld Community and Others* 2004 (5) SA 460 (CC) affirmed.

7. The 'grid of discriminatory laws and practices' comprised by the *Natives Land Act 1913*, the *Native Trust and Land Act 1936* and the *Bantu Laws Amendment Act 1964* 'rendered vulnerable the interests in land of black occupiers in general and of labour tenants, in particular': [60]. The central question therefore is whether the termination of a land right by a private owner 'may serve as a causal link required by the operative legislation': [64]. This means that if the dispossession is of the sort that the statute in question intended to provide a remedy for then all that needs to be shown is that such dispossession occurred: *In Re Kranspoort Community* 2000 (2) SA 124 (LCC) affirmed.

8. Mobilising a purposive approach to both the *Constitution* and the *Restitution Act*, the Court concluded that 'the racially discriminatory laws in force and the racially discriminatory practices that prevailed materially affected and favoured the ability of the Altenroxels to dispossess the applicants of their labour tenancy rights. In a normal society based on dignity and equality, a truly representative government would have had a duty to

protect and respect existing rights', meaning that 'without the effect of the apartheid laws, policies and practices on land rights of black people, the Altenroxels would never have had the power to do what they did': [71]. Severance of the applicants' labour tenancy rights was 'a consequence of laws or practices put in place by the state or other public functionary'; consequently, the applicants satisfied the requirements of section 2 of the *Restitution Act* for an order that the individual claimants were dispossessed of rights after 19 June 1913 as a result of past racially discriminatory laws or practices: [73]-[81].

Held, declaration in favour of the individual appellants granted:

9. The Court declared the individual claimants to be entitled to restitution of land rights (or equitable redress in lieu thereof) connected to the Boomplaats estate. Upon the application of the applicants the claim was not remitted to the Land Claims Court. However, in the event of no agreement being reached between parties, the Court held that either party may approach the Land Claims Court for an appropriate remedial order as envisaged in section 35 of the *Restitution Act*: [85].

DIGEST

