

RESPONSIBLE FOR TENANTS' WELFARE

Legal precedents expose municipality's' flawed position on city 'sweatshops'

THE plight of Durban's industrious, self-employed entrepreneurs living in so called sweatshops has made headlines again. This time round, a high profile individual who owns the property through a close corporation has dismissed knowledge of his tenant's activities.

In 2002, the Organisation of Civic rights (OCR) presented the eThekweni Municipality with a detailed study of 28 properties in the inner city that housed approximately 10 000 mainly self-employed women.

These tenants are self-employed and work and live in tiny cubicles, for which they pay exorbitant rentals.

The floor area of warehouses or offices is converted into a large number of small cubicles ("rooms") usually by means of masonite or wooden partitioning. The tenancies are not secure because of the high-handed approach of landlords; some resort to aggressive and violent behaviour to evict tenants who may have defaulted by even one day with rental payment.

The income from the tenants' micro businesses, such as sewing, repairing sewing machines, providing indigenous herbal remedies, "therapy" and other skills, belongs to the tenants. OCR's survey led to a task team that included the City's relevant departments and the OCR to compel landlords to invest their enormous rental income into ensuring compliance with a reasonable standard of safety and health requirements.

OCR's engagement with some landlords led to improved living conditions, as in Big Den in Anton Lembede (Smith) Street, where rentals were reduced. Eight years later, a harmonious relationship between the landlord and tenants' committee continues. In one high-rise building, a Mr. Khan demolished the cubicles, warning members of the OCR and the mainly women tenants that he could not guarantee their safety. A "warlord" threatened the occupiers that they would not live to see another day if they failed to vacate.

People watched in disbelief as the tenants fled with their belongings on Friday November 1, 2002. The only visible sign of life was a vehicle parked forebodingly across the road whose occupants monitored the forced evictions.

The vehicle's registration plate included the number '786', being the numerical contraction of the Arabic letters "in the name of God, most gracious, most merciful." During this shameful, merciless spectacle, members of the OCR were warned not to enter another property if they wished to remain alive.

The property that made headlines on June 28, owned by a close corporation whose sole member was Ashwin Trikamjee, was identified some eight years ago as sub-standard. After almost a decade of hibernation, the City's task team having excluded key players, suddenly realised the uninhabitable conditions.

The city's solution is simple: evict the tenants. A case of victims being victimised further.

The argument augmented by Hossen Moolla of the Urban Management Programme and city manager Michael Sutcliffe is that the municipality is not responsible for the welfare of tenants of private landlords. This is morally and legally flawed. They hold on to intractable interpretations, seemingly oblivious of the democratic changes post-apartheid, and the precedents set by numerous court cases that have overruled certain legislative provisions.

Judge Lewis Skweyiya of the Constitutional court, whose judgment was supported by all nine judges in one of the recent judgments involving tenants of a private landlord and the disconnection of electricity, stated:

'I am of the view that this case is similarly about the "special cluster of relationships" that exist between a municipality and citizens, which is fundamentally cemented by the public responsibilities that a municipality bears in terms of the Constitution and legislation in respect of the persons living in its jurisdiction. At this level, administrative law principles operate to govern these relations beyond the law of contract.'

The "special cluster of relationships" is what provides a legal link between tenants and occupiers of privately owned property and municipalities.

In the Blue Moonlight case, Judge Spilg harshly criticised the municipality for distancing itself from the plight of the poor occupiers for maintaining that they were not its responsibility. In his judgment delivered on February 4, 2010 Judge Spilg declared the city of Johannesburg Municipality's housing policy to be unconstitutional as it discriminated against evictees from private property.

The city was also ordered to: -

- Remedy defects in its housing policy that presently preclude tenants / occupiers of privately owned property from being provided suitable, alternate accommodation;
- Pay rentals for the occupiers for the period July 1, 2009, to March 31, 2010;
- By March 31, to provide at least temporary accommodation near the present property; alternatively, until suitable alternate accommodation is found, the municipality will have to pay each household's monthly rental of R850 by the 25th of each month, as well as a deposit, should that be required.

Judge Yacoob in the Grootboom case in a unanimous judgment (ten judges concurring) reminds the government, including municipalities:

"This case shows the desperation of hundreds of thousands of people living in deplorable conditions throughout the country. The Constitution obliges the state to ameliorate these conditions. "The obligation is to provide access to housing, health-care, sufficient food and water, and social security to those unable to support themselves and their dependants. The state must also foster conditions to enable citizens to gain access to land on an equitable basis.

"Those in need have a corresponding right to demand that this be done."

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