

Tycoon loses to gated estate

A property tycoon has lost his legal battle to overthrow what he says are "draconian" rules - involving speed limits and fines and access for domestic workers and contractors - at the Mount Edgecombe housing estate where he lives and owns several properties.

In a judgment further entrenching the rights of homeowner associations on gated estates to make and enforce laws for good community living, Durban High Court Acting Judge Ian Topping ruled that Niemesh Singh had "contractually bound himself to live within a controlled environment" and the specific rules he complained about were lawful.

However, he ruled that the management association had no right to suspend Singh's computerised access card to the estate because of unpaid speeding fines which, in terms of the rules, had to be paid before they could be appealed against. This, he said, amounted to "self-help" and could only be done with a court order.

The lengthy judgment - which involved three related applications - came in the wake of a similar ruling by Durban High Court Judge Peter Olsen last year when he upheld the right of the management association to have a "pets policy", resulting in the rehoming of Theodore, a much-loved 75kg Saint Bernard belonging to a local attorney.

In his "rules" challenge, Singh - who has a R700 million property portfolio, including four houses on the estate - argued that the roads within the estate were "public property" and were governed by the National Road Traffic Act.

He said the general speed limit of such a road would be 60km/h, not 40 km/h as it was on the estate.

Speeding fines could only be issued by peace officers, "not the unlawful authority of the management association" which was also committing an offence by keeping the money and not handing it over to the relevant municipality.

The judge rejected these submissions, saying the rules were "private ones" and when looking at the objective of the lower speed limit - taking into consideration children, pedestrians and animals - they were not unreasonable.

In his challenge to the rule restricting the use of contractors to only those approved by the association, Singh said this was a "closed list" which was dictatorial and anticompetitive.

The judge said, however, that seen in the context of the association's seeking to ensure an agreed standard of construction and landscaping, it was not unreasonable to ensure that those doing the work were competent.

"I see no reason why there cannot be a list of accredited service providers. The rules do not provide for a closed list and the association says when an owner wishes to use a contractor not already on the list, he can apply and as long as the contractor is suitable, accreditation will be granted."

Similarly, rules for domestic workers, which dictated accreditation, hours of work and that they must use the bus transport provided by the association, "merely prescribe a set of procedures to ensure an orderly ingress and egress" of a very large volume of people working at the 890 homes on the estate.

In general, he said, while the rules "might irk one's individual sense of propriety and fairness because of their restrictive and regimented nature, they cannot be said to be contrary to public policy".

"They are there to regulate conduct between neighbours and, as necessity, must be restrictive to take into account the cumulative rights of use and enjoyment of the estate by all its residents."

The judge said because both parties had been both unsuccessful and successful in the applications it was appropriate for each party to pay their own costs.

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