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Judge of The Constitutional Court

Fundamental Rights to Property

I am writing to ask you for two big favours. You and your colleagues will soon be asked to judge whether the Constitutional Assembly (C.A.) have got their Property Clause right. It is clear to me, and to many others who are far better at explaining the issues (as you will see later) that the C.A. clause on property is completely inadequate for South Africa, if not the world.

My first request is, therefore, to ask you to read the two issues of land & Property which are enclosed. I think you will find sufficient evidence there to support the assertion that the right property clause in our Constitution con, and should, be a source of great inspiration to the poor and distressed. A lot of work has been done since your polite dismissal of this theme.

My second request is that as the C.A. have completely ignored my submissions, and as there is no effective redress or relief that I can seek from them, I would like to know what procedures exist for me, and others, to petition your Court, or argue the submission with you.

LAND & PROPERTY

A Quarterly Property Comment

By P.I. MEAKIN

[Editor's Note: Below: Articles from April and July 1995 Issues of 'Land & Property']

PRIVATE AND PUBLIC PROPERTY

THE SACPRIT SUBMISSION TO THE CONSTITUTIONAL ASSEMBLY

FUNDAMENTAL RIGHTS TO PROPERTY & THE NEW CONSTITUTION

INTRODUCTION

We have been instructed to raise a substantial matter relating to the 'Property' clause [sec 28] of the Constitution (Act 200 of 1993) on behalf of the South African Constitutional Property Trust, which is in the process of being registered. We will argue that [sec.28] neither addresses the question of Landless in S.A. nor does it protect the citizens of S.A. from arbitrary expropriation of their property by the State.

To rectify the matter we propose that a fundamental distinction is made in the Constitution between the properties that properly belongs to the State, in terms of common and traditional law, which we call common property and that property which is owned by the individual citizen, private property.

We want to propose that even though other Constitutions, to which lawyers will run for precedents, may contradict what we have to say, and may even argue that such matter must be left to the discretion of the Parliament, it is right and proper that S.A. establishes new norms in its Constitution regarding the word 'property' and the rights which are attached to property.

We submit that such an approach is desired by the entire population from the poorest to the richest.

A NEW PROPERTY CLAUSE

It is proposed therefore, that the Property Clause (sec 28) is replaced with two new clauses as follows:

COMMON PROPERTY

The common property of South Africa shall be defined as those gifts which nature has showered upon the Country, including: land, rivers, water, sea and minerals. These shall be managed on behalf of all South Africans by the Provincial and local Government authorities, and for the benefit of all South Africans.

This means that every South African citizen over eighteen years old shall be allocated as a fundamental rights, and on request, sufficient of the Country's resources as will enable him or her to sustain themselves and their families, which for the purpose of this clause shall be limited to five people, three of which are children under fifteen years of age.

Every person who controls a natural resource shall pay a monthly rent to the State for that privilege. Such land rent (or land tax as it is sometimes termed in economic calculations) shall be determined as the amount which anyone else would pay to secure access to the resource, whether it be a house plot in Newlands, a gold mine, a CBD site, a radio wave or a fishing licence. Such rent will be re-appraised every two years to account for the increase or decrease in the current value of the resource allocated.

Every person to whom land is allocated will be given registered title to such resource in perpetuity and shall be considered the owner of such resource. The owner will have the right to dispose of his or her title and any of the improvements he or she may make to the land. The owner must conserve the natural resources to which he or she has title and failure to do this will render his title, and his right of access to other resources, invalid.

In spite of the perpetual tenure granted to citizens, it may be in the broad interests of South Africans to terminate a tenure

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In spite of the above it is nevertheless the function of the Constitutional Assembly to identify and incorporate Fundamental Human Rights not to weigh up their practical effects, advantages and disadvantages. But it is clear that unless these changes to the Property Clause are made other Fundamental human Rights will be severely circumscribed:

1. For how 'equal' [section 8] can people be when some control sufficient resources to create dynasties and others have so little that they cannot even feed their family? Not that the State need divide up the Country between South Africans so that they each control the same value of Resources.

That will firstly require a re-allocation each year as new eighteen year olds apply for land. Secondly it disregards the fact that most people prefer living in the cities and or working for someone else and do not require land to sustain themselves. Thirdly there should be nothing in the Constitution which discourages citizens from building up the natural resources they control, provided they pay the market rent for them and provided that in doing so they do not prejudice other people's rights of access to land.

2. And what good is a 'right to life' [sec.9] if the tax and land tenure systems exclude the poor from getting to the resource that will sustain that life when they cannot find employment?
3. And to what extent can the State protect a man's 'dignity' [sec.10] when its tax and land tenure policies positively discourage the creation of jobs and leave jobless South Africans with the alternative only to beg or steal?
4. And how 'free' [sec.11] can a person be if the rewards of his efforts are beholden to the State, whether arbitrary or not. That is like saying a slave is free if he has three days' holiday a week.
5. And what 'privacy' does a person [clause 13] have if the tax laws require that his most intimate and private financial affairs are subjected to minute scrutiny by the Receiver of Revenue?
6. And what good is a 'right to leave the Republic' [sec.20] if one cannot take one's property with one. (Also in this matter of the Reserve Bank, how sacrosanct is private property if an official can de-debauch the currency or impose lending rates?)
7. And what good is 'right to freely engage in economic activity' [sec.26] when a man cannot afford to purchase the essential factor of production which will allow him to be so engaged?

CONCLUSION

We recommend the changes described above and request that any questions which the Constitutional Assembly may have are submitted in writing.

SYMONDE FISKE ON A SOUTH AFRICAN LAND TAX

....A sane land policy would acknowledge that exclusive freehold title to the occupation and use of land - the natural resource base which none of us created - is always a privilege, never a right.

Derek Hanekom was fumbling towards the truth when he suggested that some sort of an agricultural land tax might be considered to discourage the hoarding of farm land and raise money for government to redistribute. But he was wrong to envisage it solely as a rural proposition to penalise wealthy white landowners. And he was irresponsible in allowing others to alarm farmers and economists by portraying his proposal as a tax that would fall on capital (which can be chased away) as well as land (which can't).

It doesn't take a rocket scientist to understand that exclusive title to economic resources is essential to secure careful custody and efficient use. That is why everyone should have the exclusive right to the full value of his own labour and capital (without being forced to share with the state or deploy them to suit the whims of other individuals backed by the state).

But if exclusive private custody of land can be secured only by means of title deeds issued by, protected by and supported by the state, then the state should surely be reimbursed for its costs by those who are privileged to hold the title deeds and not by those excluded. Indeed, the landless should surely be entitled to some compensation for the denial of their natural rights. I politicians, economists and landlords want to monopolise the globe and carve up the natural resource base between them, they have no right to deny the rest of mankind what ought to be an equal interest in that land.

In practice, our politicians and land monopolists have done so. Then, unable to comprehend that mass unemployment is an inevitable consequence of the political isolation of the masses from the natural universe on which they could be working, they have compounded the problem by taxing labour, taxing capital and inflating the money supply - all on the pretext of 'stimulating the economy' and helping the poor, but always in reality to patronise the already privileged, drive up land prices and accentuate the contrived economic and sociological gulf between the haves and have-nots.

Having 'stolen the common from the goose' by pretending that exclusive land ownership is a right which should be granted by government without any commensurate responsibilities, the thieves have conspired to pluck the geese to indulge themselves and further regard those to whom they have allocated custody of the common.

Confounded now by a nation cruelly divided into spoilt brats and plucked geese, the oppressors seem incapable of devising any policy more imaginative than that of demanding more feathers from the naked majority in order to cover the few who cackle loudest.

A logical policy, for urban as well as rural land distribution and use, would:

- * Require the cancellation of all government programmes, subsidies, and tax incentives which, by favouring landowners, are being capitalised into the value of land. This would discourage the wealthy and idle from 'rent-seeking' and land hoarding - and encourage them to do something more useful with their time and money.

- * Impose a Site Value Tax (SVT) on the market value of all land (excluding the capital improvements thereon) in order to make landowners share their (unearned) rents with the rest of the population (which is excluded from its natural inheritance when exclusive title deeds are conferred). This would discourage people from clamouring for title to land that they either can't or won't use productively and profitably - leaving the field clear for those who are more use to their neighbours.

- * Abolish all taxes on honest industry, value-adding, and saving, so that the landless who choose to work and produce can more quickly accumulate the funds necessary to buy out previously privileged landowners who only consume and play.