

REPUBLIC OF SOUTH AFRICA



GAUTENG HIGH COURT
JOHANNESBURG LOCAL DIVISION

CASE NO: 2012/472

In the matter between:

Atholl Developments (Pty) Ltd

Applicant

and

**The Valuation Appeal Board for
the City of Johannesburg**

First Respondent

**City of Johannesburg
Metropolitan Municipality**

Second Respondent

SUMMARY

Section 229(1)(a) of the *Constitution of the Republic of South Africa Act 108 of 1996* empowers municipalities to impose property rates. The *Municipal Property Rates Act, Act 6 of 2004 (MPRA)* forms the basis for regulating the powers of municipalities to impose rates on property. Section 2 of the MPRA empowers a municipality to levy a rate on any property located within its area. Section 1 of the MPRA defines property to include: "(a) immovable property registered in the name of a person, including, in the case of a sectional title scheme, a sectional title unit registered in the name of a person; (b) a right registered against immovable property in the name of a person, excluding a mortgage bond registered against the property."

The second respondent decided to levy rates on the properties in its area. The applicant has registered leases against the properties in question and built a hotel on them. In terms of part (b) of the definition the leases are regarded as property upon which rates can be levied. The second respondent levied rates on the applicant's property but relied solely on part (a) of the definition above to determine the amount. The applicant appealed against that decision. The appeal came before the first respondent. Having regard to the objection of the applicant to the decision of the second respondent, the first respondent decided to determine the rates by imposing a value on the leases. It relied on part (b) of the definition. The applicant sought to have this determination of the first respondent reviewed and set aside. The applicant contended that by relying on the leases the first respondent took into account factors that were irrelevant and by relying on part (b) of the definition it lost perspective of its statutory duties and thereby committed an error of law. It relied on ss 6(2)(a)(i), 6(2)(d), 6(2)(e)(i) and 6(2)(h) of the *Promotion of Administrative Justice Act, No 3 of 2000 (PAJA)* to have the determination reviewed and set aside. The court held that the Applicant's contention that only the erven should be valued for purposes of determining the true value of the rateable property

is fallacious. The court found that the respondents were required to take account of the construction of a hotel on the erven as it constituted improvements to the property (erven). The court found that the first respondent committed no error of law by attempting to place a value on leases, but should only have done so if there was evidence before it that allowed it to be able to determine their fair values. The decision of the first respondent does not reveal what criteria it used to assign values on the registered leases, what evidence it relied upon to make the determination it did or what methodology it applied and why it came to the conclusions it did. There was no rational connection between the evidence before the first respondent and the conclusions it came to with regard to the values of the leases. Thus, the court held the decision stands to be reviewed and set aside.