



Jacqueline Gooch
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Our Reference: 10/1/R – 2703 (Tafelberg)

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ATTENTION: MR/MS MANDISA SHANDU
PER EMAIL: Mandisa@nv.org.za

DISPOSAL OF LAND ON WHICH TAFELBERG REMEDIAL SCHOOL WAS PREVIOUSLY SITUATED

Your emailed letter of 23 March 2016 to Minister Grant and Premier Zille has reference.

1. At the outset, there are two preliminary points that fall to be emphasised:
 - 1.1. First, we must state that we are taken aback by your request for reasons at this stage despite the fact that your organisation has now repeatedly asserted publicly that in your view the sale of our land in Sea Point was unlawful and that you intend to proceed to court to obtain an order to this effect, having declined a mediation of the matter with us. You have made these allegations without first seeking to establish the factual or legal basis for such a challenge. Now, some two years after first becoming aware of our intention to sell this property, you have for the first time suggested that PAJA is of application and demanded our reasons for the disposal and an agreement that we again suspend transfer whilst you consider same. It is clear that your organisation's intention to litigate (as publicly articulated) was not underpinned by the Provincial Government's reasons for the impugned decisions, which are now sought for the first time.
 - 1.2. Second, the thirty day period of grace afforded to your organisation was granted on the basis of your previous representations that it intended to urgently launch a High Court application. Based on these representations, we assumed that you had determined the grounds of review that would underpin any such application and indeed, the factual basis for a review. It is apparent from your request for reasons that this was not the case. Be that as it may, we are not amenable to extending the agreed thirty day time

period for the transfer of the property. We emphasise, this was not the basis on which a period of grace of thirty days was agreed to. The agreed delay in the transfer of this property already caused grave prejudice to the Province in that: (a) the income in question has already been allocated to other infrastructure projects; (b) the property is being vandalised and now requires additional security so as to preserve the heritage aspects. In addition, the purchaser desires transfer as soon as possible.

2. As regards your request for reasons on the declaration of the aforesaid land as surplus, this does not derive from a decision, but rather by operation of law, more particularly GIAMA, with which legislation you are clearly familiar with having made reference thereto in your letter.

3. In this regard I point out that the definition of surplus, for the purposes of the application of this Act is :

"..in relation to an immovable asset, means that the immovable asset no longer supports the service delivery objectives of a user."

4. The user of this land – being the Provincial Department of Education- relocated the remedial school (both the primary and high school) previously operating in the premises on site, to a new purpose built remedial school in Bothasig during June 2010.

5. Since the date of vacation of the premises by the user the land has not supported the Department of Education's service delivery objectives. Accordingly the land in question became surplus, as defined in June 2010.

6. Once land is surplus, GIAMA dictates that a custodian thereof - in this case the Provincial Department of Transport and Public Works - may dispose thereof—

(a) by the allocation of that immovable asset to another user or jointly by different users; or


(b) subject to the State Land Disposal Act, 1961 and any provincial land administration law, by the sale, lease, exchange or donation of that immovable asset or the surrender of a lease.

7. In the circumstances the land in question became surplus by operation of law and PAJA does not find application.

8. You have been aware of the intention to sell the property in question since March 2014, when your organisation first engaged with us on this matter. In addition and in any event public notices of the intent to sell were confirmed by us in the local media on 11 December 2015 and comments solicited. In the circumstances you and your client have known, or can reasonably be expected to have known of the decision taken to dispose of this property for more than 90 days and section 5 of PAJA does not apply.

9. In addition, section 5 of PAJA does not find application to this decision given that it did not adversely affect the right of your client nor did it have a direct external legal effect. Your client's rights have been neither materially nor adversely affected by the decision of the Western Cape Provincial Department of Transport and Public Works to dispose of its immovable property, as owner and custodian thereof, in terms of the process dictated by GIAMA and other applicable legislation.
10. Notwithstanding the fact that PAJA does not apply to the impugned decision, we are willing to provide you with reasons for the decision. However, we are not in a position to do so in accordance with your timeframe of 30 March 2016. We will however endeavour to do so as soon as is reasonably possible.
11. We remain of the view that the decision to dispose of the land in question to the Phyllis Jowel Educational Trust is both rational and lawful and in the event of you continuing to be of a different view, your right to approach a court for a determination of this dispute remains. We reiterate, we are not prepared to extend the 30 day period of grace for you to institute proceedings, which period expires on 14 April 2016.

Yours sincerely


JACQUELINE GOOCH
HEAD OF DEPARTMENT
Date: 01-04-2016