



Urban LandMark

Law & Order in Metros: land invasions and building hijacking

Municipal Leadership Housing Forum
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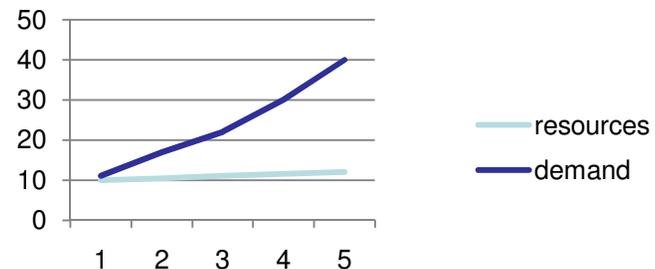
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MAKING URBAN LAND MARKETS WORK FOR THE POOR

The big picture for metros

Courts pushing rights of homeless people, municipalities' (unfunded) burden growing

-National housing policy largely ineffective in its response to this emerging crisis





Legal and constitutional context

Constitution

- Housing a Schedule 4A, concurrent function
- LG dependent on grants & transfers to provide housing
- S26: no arbitrary eviction
- S33: just administrative action

Housing Act

- s9 obligations on LG to ensure access to housing etc

PIE

- A growing body of case law
- Duties on LG in cases of eviction are growing
- Provide alternative/emergency housing
- Mediate/'engage meaningfully'
- Document evictee circumstances ('meaningful information')



Important Court cases

1. Olivia Road

- *Occupants of 51 Olivia Road & 197 Main Street Johannesburg v City of Johannesburg & others* 2008 (3) SA 208 (CC)

2. Joe Slovo

- *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes & others* [2009] ZACC 16

3. Also, *Blue Moonlight*, but it's not yet run its course through the courts



Salient features of the 2 ConCourt judgments

Olivia Road

- Introduces 'meaningful engagement' as a duty on municipalities
- Reinforces duty on municipality to provide alternative accommodation

Joe Slovo

- Purpose of eviction is relevant – low-income housing purpose lessens the meaningful engagement requirement
- Court specified the quality & nature of the temporary accommodation to be provided



How to move forward?

- Changing the Constitution?
 - not really an option
- Amend PIE?
 - 2008 proposed amendments help, but don't address fundamental issue
- Make the Housing Code work better?
 - on paper the Emergency Housing Programme does address many LG concerns
 - practically though a new approach is needed



Another option...?

- Presidential Coordinating Council is contemplating a co-ordinated review and revision of the following:
 - PIE
 - LUMB
 - Housing Act

But it's much too soon to tell whether this will happen and, if so, who will lead and how the process will unfold.



Making the EHP work better

1. Clarify the budgeting requirements: what should LG budget for, when can provincial funds be accessed and how quickly.
2. Clarify the scope of the EHP funding, especially for costs arising from court judgments
3. Ensure that costs of ‘meaningful engagement’ are adequately covered by EHP funds.
4. Ensure that LG accesses the EHP - only 6/9 provinces have accessed it, and then mainly for natural disasters

Source: ILRC report on PIE, 2010



Conclusion

Legal & policy terrain for urban development & housing is in flux

- taking SHS objectives to their logical conclusion must mean change in future land & housing policy/law
- DFA judgment has far-reaching implications for land use/development
- Increasing accreditation of municipalities suggests greater bargaining power for municipalities
- Uncertainty around PCC recommendations.

The underlying problem though won't disappear. The rate of occupations will only increase. The costs (financial & political) will only go up.

Councillors will have to be proactive to address this - combining political clout with technical detail; and combining efforts of the different cities. SALGA and SACN waking up to this but perhaps too late?

