PARTIES:	MPWETYERRE ABORIGINAL CORPORATION, ANTHEPE HOUSING ASSOCIATION INC, LYPERENYA ASSOCIATION INC, YARRENYTY ALTERE ASSOCIATION INC, APER ALWERRKNGE ASSOCIATION INC, ILPERLE TYATHE ASSOCIATION INC, MT NANCY HOUSING ASSOCIATION INC, KARNTE ABORIGINAL CORPORATION, AKNGWERTNARRE ASSOCIATION INC, EWYENPER ATWATYE ASSOCIATION INC, ILPARPA ABORIGINAL CORPORATION, NYEWENTE ASSOCIATION INC, and ILPIYE-ILPIYE ASSOCIATION INC v ALICE SPRINGS TOWN COUNCIL
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT EXERCISING TERRITORY JURISDICTION
FILE NO:	No. 28 of 1994
DELIVERED:	5 September 1996
HEARING DATES:	30 August 1996
JUDGMENT OF:	Kearney J

REPRESENTATION:

Counsel:

Appellant:	A. R. Harris
Respondent:	J. E. Reeves

Solicitors:

Appellant:	Turner & Deane
Respondent:	Poveys

Judgment category classification:	A
Judgment ID Number:	kea96021
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kea96021

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

No. 28 of 1994

BETWEEN:

MPWETYERRE ABORIGINAL CORPORATION, ANTHEPE HOUSING ASSOCIATION INC, ILYPERENYA ASSOCIATION INC, YARRENYTY ALTERE ASSOCIATION INC, APER ALWERRKNGE ASSOCIATION INC, ILPERLE TYATHE ASSOCIATION INC, MT NANCY HOUSING ASSOCIATION INC, KARNTE ABORIGINAL CORPORATION, AKNGWERTNARRE ASSOCIATION INC, EWYENPER ATWATYE ASSOCIATION INC, ILPARPA ABORIGINAL CORPORATION, NYEWENTE ASSOCIATION INC, and ILPIYE-ILPIYE ASSOCIATION INC
Appellants

AND:

ALICE SPRINGS TOWN COUNCIL
Respondent

CORAM: KEARNEY J

REASONS FOR RULING

(Delivered 5 September 1996)

By summons dated 27 August 1996 the appellants sought certain orders, contending that they constituted relief consequential to the judgment herein of

9 April 1996. A copy of the "consequential" orders, in the form in which they were ultimately sought, appears at Annexure "A". The application was argued on 30 August; I rule on it today.

Background

On 9 April 1996 I allowed the appellants' appeal against a decision of 14 March 1994 of the Local Government Tribunal. Reasons for that decision were published on 14 May. At p3 of those reasons I described the issue before the Tribunal as:

> "… whether certain lands separately occupied by the 14 appellants in the Alice Springs Town Council area, are ratable lands for the purposes of the old Act [the Local Government Act 1985]. The respondent [Council] had rated the appellants' lands, and [on 10 September 1991] disallowed their appeal [under s107(1)(c) of the old Act]. The Tribunal disallowed the appellants' appeal [under s109(2) of the old Act], because it considered none of them were public charities or public benevolent institutions [within the meaning of s97(1)(d) of the old Act]."

Having allowed the appeal, I ordered on 9 April that the Tribunal's decision of 14 March 1994 be quashed and set aside; I stated that any orders consequential upon that order would be made after reasons for decision were published. On 14 May I published the reasons for the decision of 9 April; at p43 I said that I would hear the parties as to the terms of any consequential orders which should now be made. This invitation eventually resulted in the filing of the summons of 27 August.

The respondent opposed the making of the orders initially sought in the summons of 27 August, and in the form ultimately sought in Annexure "A". I should say that the relief ultimately sought differs significantly from that

initially sought. Notably, it does not seek that the date for the operation of the relief sought in orders 1(b), 2 and 5 be further back than the dates on which the appellants respectively amended their constitutions (between January and April 1992). I turn first to the appellants'case for of the making of the orders it seeks.

The appellants' initial submissions

Mr Harris of counsel for the appellants submitted that it was clear that had the Tribunal not made the two errors of law identified on appeal at pp34-38 of the reasons of 14 May - that the sole beneficiaries of the appellants' activities were their members, a restricted class of persons, and that whether or not the appellants were public charities or benevolent institutions was to be determined by the source of their funds and not by the objects of their expenditure - it would have found that the appellants used or occupied their respective lands for public benevolent or charitable purposes. It followed that there was no reason for the case now to be remitted to the Tribunal to decide questions of fact which it had not decided, a course Mr Reeves of counsel for the respondent had suggested at the hearing of the appeal; see p39 of the reasons of 14 May. This Court had decided that the appellants used or occupied their lands for the purposes of a public benevolent institution or public charity; hence the appellants' lands were not ratable; and hence the declarations sought in orders 1(a) and (b) in Annexure "A" should be made.

He submitted that orders 3 and 4 in Annexure "A" should also be made; order 3, because the costs of the appeal should follow its event; and order 4, because the appellants' success on appeal meant, as a consequence, that they

should now have their costs of the hearing before the Tribunal in which it was now held they should have succeeded.

As to order 5 in which it is sought that the respondent repay to the successful appellants the amounts which they had paid for rates, Mr Harris submitted that the respondent's solicitor Mr Schroter was correct when he acknowledged that "should your clients' appeal be successful, our client [the respondent] is bound by statute to refund all monies paid [by the appellants] to date"; see his letter of 11 July 1994, Annexure "G" to the affidavit of Mr Munro of 27 August 1996. The amount in toto paid by the appellants for rates totalled $211,930.81; this amount was paid on 18 April 1994 following the order of the Tribunal of 14 March 1994.

I note that it is not suggested by the respondent that the appellants would not in turn repay to the respondent any such monies ordered to be repaid by the respondent to them, if the pending appeal by the respondent from the decision of 9 April 1996 succeeds.

Mr Harris noted that until the decision of 9 April 1996 the Tribunal's decision of 14 March 1994 remained in force. That decision dismissed the appellants' appeal against the respondent's administrative decision of 10 September 1991 dismissing the appellants' appeal against the entry of their names in the rate book as owners of ratable lands. Mr Harris submitted that the effect of the quashing on 9 April 1996 of the decision of 14 March 1994 was that the appellants' names had never been properly entered in the rate

book, in the first place; this was because after 9 April it could be seen that their lands had never been ratable lands. That is to say, he submitted that the decision of 9 April 1996 had retrospective effect back to the time of initial entry of the appellants' names in the rate book.

In proposed order 5 the appellants also seek interest on the amounts they have paid as rates, and now seek to be repaid. Mr Harris conceded that there was no clear authority for interest to be paid. He later observed that s83 of the *Local Government Act* 1993, the current Act, makes specific and detailed provision for the payment of interest by the respondent where certain rates are refunded to a ratepayer, and relied on that provision.

The respondent's initial submissions

Mr Reeves of counsel for the respondent submitted that the appellants' submissions did not address four fundamental questions which required first to be answered.

First, there was the question whether this Court was empowered, when deciding the appeal against the Tribunal's decision of 14 March 1994, to make, as consequential orders, those of the type sought in the summons of 27 August. As an illustration (though the appellants did not seek to have the proceedings remitted to the Tribunal) it was questionable whether there was any power in this Court to remit.

Mr Reeves pointed by way of analogy to the restricted power of the appellate court in s116(2) of the *Work Health Act,* (where an appeal under s116(1) is similarly restricted to a question of law, as it is under s240(1) of the *Local Government Act* 1993). He submitted that the powers of this Court on the present appeal were more restricted than those under s116(2) of the *Work Health Act.* He contrasted s240 of the new Act (which applied to the present appeal) which confers no express powers on the Court, with s200(2)(a) of the old Act which contained an express power to remit. He noted that in s116(2) of the *Work Health Act* various Court powers are set out, but do not include a power to remit; he noted the authorities which indicated that in that situation there was no power to remit - see *Wormald International (Aust) Pty Ltd v Aherne* (unreported, Mildren J, 23 June 1995) and the authorities cited at p3 thereof.

As to s116(2) of the *Work Health Act* I note what was said in *Aherne v Wormald Australia Pty Ltd* (unreported, Martin CJ, 11 April 1995). I note that in *Wormald International* Mildren J said at pp3-4:

> "… the precise powers of this Court, pursuant to s116(2) of the Work Health Act, if the appeal succeeds, do not appear to have been previously discussed. Section 116(2) provides that the Court "may either dismiss the appeal or reverse or vary the decision or determination appealed against". The section does not go on to say "and may give such judgment as ought to have been given in the first instance …": cf. s37 of the Judiciary Act 1903 (Cth) as discussed in [*Da Costa v Cockburn Salvage and Trading Pty Ltd* (1970) 124 CLR 192 at 202 per Windeyer J]; nor is it provided that the court may substitute its own determination for that determination": cf. s86 of the Land Acquisition Act (NT) as discussed in Meyering v Nothern Territory of Australia [(1987) 47 NTR 21 at 23]; nor "make such order as it sees fit": cf. s66(7) of the Education Act, 1979 (NT), as discussed in Rabuntja v Minister for Education (1982-3) 19 NTR 5. Nevertheless, the words of s116(2) to which I have referred, have been

> judicially construed so as to give an appellate court "the fullest power to deal with the appeal from every point of view": see Stepney Borough Council v Joffe (1949) 1 KB 599 at 603, 604. Although in that case the appeal was not restricted to a question of law, I see no reason why the language of the section should be read down. The power to "vary" the decision appealed from gives to this Court, if necessary, the power to discharge the orders made below and to substitute for those orders, the orders which should have made: see Scott Pools Pty Ltd v Salisbury Corporation (1979) 22 SASR 406 at 412 per Jacobs J; The Queen v Industrial Court; Ex parte Mount Gunson Mines Pty Ltd (1982) 30 SASR 504 at 512-13 (Full Court); Douglass v Gillman (1990) 19 NSWLR 570. As there is no power to remit, the power must include, in a proper case, a power to make such findings on the evidence which ought to have been made and a power to exercise such discretions as sought to have been exercised in order to properly decide the appeal."

I accept Mr Reeves' submission that the powers of this Court under s240 of the new Act are not as extensive as its powers under s116(2) of the *Work Health Act*.

Second, assuming that an order could be made by this Court removing the appellants' names from the rate book, when would any such order take effect? (At the time of this submission, in their summons of 27 August the appellants were simply seeking the removal of their names from the rate book).
Mr Reeves submitted that such an order could not take effect from the date of the original entry of the names in the rate book. This was because the constitutions of the appellants had been deliberately changed between January and April 1992, after their names were entered in the rate book and after the respondent had dismissed their appeal in September 1991, to seek to ensure that they were within s97(1)(d) of the old Act. They had changed their constitutions after the appeal under s107, in relation to the entry of their names in the rate book, had been lodged with the Tribunal. It can be seen from

proposed order 2 as it stands in Annexure "A" that the appellants now appear to acknowledge the force of Mr Reeves' point; they seek to meet it by having their names removed from the rate book with effect from the times they respectively amended their constitutions (between January and April 1992). The question of dates, and the significance of the amendment of the respective constitutions after the appellants' names were entered in the rate book, had been agitated before the Tribunal; see pp17 and 18 of its decision of 14 March 1994 where it is recorded that the appellants agreed that the Tribunal's decision -

> "… would date from the time of the hearing [under s109(3) before the Tribunal] and not relate back to the date [September 1991] the appeal to the Council [under s107(1)(c)] was disallowed."

Third, on the question of the interest now sought in proposed order 5, Mr Reeves noted that while ss238 and 83 of the new Act specifically provided for the respondent to pay interest on rates required to be refunded following a Tribunal's determination that they were not "properly payable", s197 of the old Act - the provision corresponding to s238 of the new Act, providing for a refund of an amount paid as rates "which the Tribunal subsequently holds not to have been properly payable by him" - is silent on the question of payment of interest thereon.

Fourth, and linked to the first point relating to the powers of this Court on appeal, there was a question whether the relief sought in the proposed orders was relief which could be truly characterised as "consequential relief" flowing from the decision of 9 April 1996, as opposed to raising what were in substance new issues. Mr Reeves submitted that they involved substantive

matters. He submitted that, at least as regards proposed order 5 dealing with the repayment of amounts paid by the appellants as rates, the question of repayment fell within the category of case where a person had paid a rate or tax under a mistake of fact or law; the right to recover such a payment, and the question of interest thereon, had recently been dealt with by the High Court in *Commissioner of State Revenue v Royal Insurance Australia Ltd* (1994) 69 ALJR 51. I note that in that case the High Court held that s111 of the *Stamp Act* 1958 (Vic) conferred a discretionary power on the Commissioner to refund the amount of stamp duty which had been overpaid, but imposed no duty on him to do so. That is, s111 imposed no enforceable obligation on the Commissioner to refund overpaid duty. However, the High Court held that apart from s111 he was under a legal liability to make the refund, and mandamus had accordingly correctly issued requiring him to do so. I do not see how this decision bears upon Mr Reeves' submission that proposed order 5 raises substantive new issues, rather than consequential matters. I note that s197 of the old Act and s83 of the new Act are both expressed in mandatory terms of "shall refund".

As to proposed orders 2 and 5, Mr Reeves submitted that if (contrary to his submission) it was considered that this Court had power to declare that the respondent should now remove the appellants' names from the rate book, the effect of such a declaration would be that the appellants remained liable to pay rates until their names were removed. He submitted that any order to remove their names from the rate book with effect from some earlier date (as sought in order 2) should not be made until the facts had been further investigated

(assuming that there was power to remove a name from the rate book retrospectively).

Mr Reeves submitted that the most practicable course now appeared to be to send the case back to the Tribunal to determine any factual issues which still needed to be resolved. However, he submitted, there was no power to remit; he relied by way of analogy on what was said by Mildren J in *Wormald International (Aust) Pty Ltd v Aherne* (supra) at p3.

I think it is clear that since appeals are creatures of statute, it is generally necessary to ascertain the powers conferred on the appeal court by reference to the relevant statute. It appears from what Mildren J said in *Wormald International*, and the authorities there cited, that unless a power to remit is found in the statute creating the appeal, there is no power to do so. In this regard s240 of the new Act may be contrasted with the express power to remit in s200(2) of the old Act.

Mr Reeves reiterated that in the present case s240 of the new Act does not even go as far as the limited provisions of s116(2) of the *Work Health Act*. It said nothing about the extent of this Court's powers on appeal, except insofar as it referred to appeal being "in accordance with the rules of [the Supreme] Court". I note in passing that it was common ground that the appeal to this Court lay under the new Act (see p2 of reasons for decision of 14 May 1996). The provision in the new Act providing for appeal to this Court, s240, is expressed in very succinct terms, viz:

"(1) A party to a proceeding before the Tribunal aggrieved by a decision of the Tribunal may appeal against that decision, on a question of law only, to the Supreme Court in accordance with the rules of that Court.

(2) An appeal under subsection (1) shall be instituted within 28 days after the day the decision complained of was made."

The only relevant "rules of that Court" are the general rules contained in Orders 82 and 83 of the Rules of the Supreme Court. No special rules such as those in Order 87 regulating appeals from the Work Health Court, have been made. So, for instance, the Amended Notice of Appeal filed on 23 May 1994, which instituted the appeal to this Court, was founded on Order 83.
Mr Reeves submitted that neither s240 of the new Act or Order 83 made any provision empowering the making of consequential orders; Orders 82 and 83 dealt only with procedural matters. That is quite correct.

Mr Reeves noted this Court's general jurisdiction to hear and determine appeals from "inferior courts", as spelled out in s14(1)(e) of the Supreme Court Act; I do not think that that provision is presently relevant, as the Tribunal was not an "inferior court", though constituted by a Magistrate.

Mr Reeves submitted that at most this Court had power to quash and set aside the Tribunal's decision of 14 March 1994, as it had on 9 April 1996. If there were some inherent power to go further, it possibly had power to declare that the names of the appellants should be removed from the rate book. It followed, in his submission, that none of the other orders sought by the appellants could be made. He suggested that the quashing on 9 April 1996 of

the Tribunal's order of 14 March 1994 might have the effect that the Tribunal had not determined the proceedings before it, and the appellants could now go back to it to have their appeal determined.

If, contrary to his submissions, it was held that there was power to make some or all of the orders sought by the appellants in Annexure "A", he submitted that questions of the dates on which those orders should be effective (that is, issues of retrospectivity) were raised.

Mr Reeves noted that the new Act came into force on 1 June 1994; the appellants' payment of rates had been made while the old Act was in force. He submitted that it was the old Act which regulated their obligation to pay rates; see ss97(1)(d), which is in effect reproduced in s58(2)(d) of the new Act.

I mention again that the orders initially sought by the appellants in their summons of 27 August 1996 were not those set out in Annexure "A", which represent variations to the orders initially sought after Mr Harris had the benefit of hearing Mr Reeves' submissions as outlined above.

The appellants' submissions on Annexure "A"

Mr Harris referred to pp17 and 18 of the Tribunal's reasons for decision of 14 March 1994, where the effect of the change in the appellants' constitutions, and the agreed approach of both parties to the significance thereof was noted. It was there stated that the appellants agreed that the Tribunal's decision -

> "… would date from *the time of hearing* and not relate back to the date the appeal to the Council was disallowed [in September 1991]". (emphasis mine)

I note that the hearing before the Tribunal commenced on 17 August 1992, and concluded with his Worship's decision on 14 March 1994.

It was in light of that statement by the Tribunal and Mr Reeves' submissions that Mr Harris informed me during the hearing of the summons of 27 August that he no longer sought the orders set out in pars4 and 5 of that summons, and substituted for them order 5 in Annexure "A".

Mr Harris noted that the Tribunal had specifically found (p39 of its reasons of 14 March 1994) that none of the appellants under their amended constitutions were charities or benevolent institutions. That finding was the reason it had refused the appeals. It had been held on appeal (see reasons of 14 May 1996) that that finding was vitiated by errors of law.

He informed me that orders nos. 1(b), 2 and 5 in Annexure "A" were framed to take account of the significance of the amended constitutions of the appellants, and the concession of the appellants before the Tribunal as to the operative date of its decision.

Mr Harris addressed the question whether in light of the approach agreed by the appellants, referred to by the Tribunal at pp17-18 of its reasons of 14 March 1994 and set out above, it was now open to the appellants to seek a date earlier than "the time of hearing", for the coming into effect of proposed

orders 1(b), 2 and 5 in Annexure "A". He referred to the transcript of the proceedings before the Tribunal at pp20.5, 21, 27.5, 29 and 30.5. It appears to me that a fair reading of what was there advanced by the parties, particularly by the appellants, indicates that the Tribunal was correct in stating at pp17-18 of its reasons what the appellants had agreed to. The reference to "the time of hearing" and the various references in the transcript to "today", are fairly to be understood, in my opinion, as referring to the date on which the hearing of the appeal would be concluded; this was in fact 14 March 1994. The transcript is understandably not particularly consistent in its terminology, but I think his Worship made matters quite clear at p30 when deciding, contrary to his initial view, that the appellants could proceed with their appeal on the basis of their recently-altered constitutions, he noted as a proviso that that -

> "… cannot alter the situation or the status quo as it stood between the Council's original decision and whatever any ultimate decision may be."

While in the abstract there may be logical force in Mr Harris' submission that the relevant dates would be the dates of the changes in the various constitutions of the appellants (February - April 1992), that takes no account of the way the matter was raised and conceded before the Tribunal, and the situation which obtained when the concession was made. Parties are bound by what they concede in the course of a case, and in terms of the language which they then use.

The respondent's response to the orders proposed in Annexure "A"

Mr Reeves reiterated that the Court's power was simply to quash the decision of 14 March 1994, as it had on 9 April 1996. It was inappropriate to go into what had been put to the Tribunal in the course of the hearing, and seek to interpret it. The Court lacked power to make the orders sought by the appellants. The appellants should now proceed by way of instituting a substantive action or actions, to recover any monies they claimed they were now entitled to as wrongly withheld by the respondent.

Mr Reeves submitted that the only "consequential" order which could now be made, was an order relating to the costs of the appeal before this Court.

He referred to s19 of the *Supreme Court Act* which provides:

> "The Court shall, in every proceeding before it, grant, either absolutely or on such terms and conditions as it thinks just, all remedies to which any of the parties appears to be entitled in respect of a legal or equitable claim properly brought forward by him in the proceeding, so that, as far as possible, all matters in controversy between the parties may be completely and finally determined and all multiplicity of proceedings concerning any of those matters avoided."

Mr Reeves submitted that s19 did not widen the Court's powers; it did no more than express the limits of that power. He submitted that if the statute giving appellate jurisdiction did not itself clearly provide for what the Court could order by way of remedies, there were no remedies to which any of the parties were entitled. The relevant "proceeding" before the Court for the purposes of s19 was the appeal before it, and not the claim now sought in proposed order 5.

I note that s19 is a very important provision expressing a fundamental principle in the conduct of litigation - the avoidance of a multiplicity of proceedings. It enables the Court to grant relief to which a party may be entitled, even though no specific claim for it has been formally made. However, it cannot, I think, be relied on to extend the jurisdiction of this Court beyond matters which are properly classified as necessary consequences of the answer to the "question of law", the basis of the appeal under s240 of the new Act.

If the Court nevertheless considered that it had power to entertain any of the issues raised by the orders sought in Annexure "A", Mr Reeves submitted that the only issue before the Tribunal was simply whether the appellants should be in the rate book. I accept that that was the ultimate issue for resolution by the Tribunal. He submitted that that could possibly result in a declaration being made on that issue, in accordance with the first two lines of the proposed order 2, ending with the word "Appellants". However, any such declaration could not extend to a retrospective removal of their names from the rate book, as sought in the remainder of proposed order 2; evidence would be required before that question could be embarked upon. He referred to various possible dates at which any such declaration could take effect and submitted that no order could be made as to the date. Any declaration would be effective only as at the date it was made; the consequences of any such declaration was a matter for the parties.

As to proposed order 4, the costs of the hearing before the Tribunal, Mr Reeves submitted that there was no power to make such an order. The Court was competent to quash the order for costs which it appears was made by the Tribunal, but could go no further. He submitted that there was no power under s200(2) of the old Act for the (former) Appeal Tribunal to award costs. Section 200(2) was a restricted provision and related only to the making of orders "in relation to the appeal"; it should be contrasted with the express power of the Tribunal under s109(3) to make an order as to costs.

Mr Reeves conceded that the Court was competent to make the order for costs sought in proposed order 3, as a consequential matter, though there was no express power to do so.

He submitted that there was no power to make the order sought in proposed order 5. What was involved in that proposal was a substantive new matter, involving a claim for restitution. There was no provision in the old Act for repayment of money paid for rates, as there is in s83 of the new Act. Mr Reeves raised the possibility that s12(1)(d) of the *Limitation Act* might apply on the question of repayment, depending on when particular payments had been made. He also raised the fact that payments were made for both rates and garbage charges, as opposed to rates; there was an issue as to whether payments for charges were recoverable.

In summary, apart from the question of the costs of the appeal, Mr Reeves submitted that no further order should be made. If any were to be made, it

should be limited to a declaration that the appellants' names should be removed from the rate book, with effect from today. He submitted that none of the other orders sought in Annexure "A" should be made.

Mr Reeves further submitted that the respondent should have the costs of the summons of 27 August 1996, on the basis that it had raised with the appellants some time ago the fundamental issues it had argued.

The appellants' submissions in reply

Mr Harris submitted that there was no substance in the "fundamental issues" raised by Mr Reeves.

In summary, his submissions were as follows. The real issue before the Tribunal was whether the appellants were public benevolent institutions or charities. If they were, they could not be levied for rates; see s97(1)(d) of the old Act. The Tribunal concluded that the appellants were not public benevolent institutions or charities, and dismissed the appeal. This Court had found that the Tribunal had erred in law, that the appellants were in fact public benevolent institutions or charities, and that but for the errors of law it had made, the Tribunal would have (correctly) reached that conclusion. The result was that as from the time the appellants' constitutions were amended, between January and April 1992, as a matter of law there was no statutory power to enter the appellants' names in the rate book and levy rates upon them. As from that time they could not lawfully be levied for rates.

There remained at large, unargued and undecided, the question whether the appellants, under their earlier constitutional objects, were public benevolent institutions or charities.

The submission that this Court lacked power to make the orders sought in Annexure "A", did not take account of the powers in the *Supreme Court Act*, and did not accord with common sense. The silence in s240 as to the powers of this Court did not neuter it. There was power in s18(1) of the *Supreme Court Act* to make a declaration "in relation to any matter in which [the Court] has jurisdiction"; this permitted the making of order 1. Mr Harris referred to s14(1)(e) of the *Supreme Court Act*, stressing the words "hear and determine". Order 2 was consequential upon the outcome of the appeal; the appellants were not legally assessable to rates. There was power in s19 of the *Supreme Court Act* to make order 4; if the Court did not make that order, there was no mechanism by which such an order could be made, the Magistrate who comprised the relevant Tribunal having since retired. Mr Harris submitted that r63.09, read in conjunction with s240(1) of the new Act, warranted the making of an order for the costs before the Tribunal.

Conclusions

I noted at p2 of the reasons for decision of 14 May that it was common ground that in hearing the appeal I sat as the Supreme Court, in accordance with s240 of the new Act. This came about primarily by s267(1) of the new Act which provides, as far as relevant:

> "*Without limiting the generality of s12 of the Interpretation Act* … all matters in process under [the Acts repealed by s266, which include the old Act] shall continue as if … commenced or in process under the

relevant corresponding provisions of this Act and those provisions, *with the necessary changes*, shall be construed accordingly."
(emphasis mine)

Section 12 of the *Interpretation Act* provides, as far as relevant:

"The repeal of an Act … does not
…

(b) affect … anything duly done or suffered under the Act … so repealed;

(c) affect a right … acquired … under an Act … so repealed, or an … legal proceeding or remedy in respect of that right …;

…

and the … legal proceeding or remedy may be instituted … or enforced … as if the repealing Act had not been made."

It may be that the combined effect of s267(1) of the new Act and s12 of the *Interpretation Act* is to preserve the powers in s200(2) of the old Act, for the purposes of the disposition of this appeal, which was instituted in the Appeal Tribunal under the old Act before the new Act came into force. If this were the case, there would appear to be power to make the orders sought in Annexure "A". However, neither party sought to rely on this approach; it is doubtful if it is sound.

With considerable regret, I consider that the thrust of Mr Reeves' submissions is correct, and this Court is very severely restricted in the orders which it may make following a successful appeal under s240 of the new Act. I should point out that it is not the case that I found on 9 April 1996, as Mr Harris submitted, that the appellants were public benevolent institutions or

public charities; rather, I found that the Tribunal had erred in law in reaching its conclusion that they were not. That is not a positive finding that they were.

In the result, in addition to the orders made on 9 April quashing and setting aside the Tribunal's decision of 14 March 1994, I make order no.3 in Annexure "A". I quash the order as to costs, made by the Tribunal; this is a consequence of allowing the appeal. I direct that the appellants pay the respondent's costs of the summons of 27 August 1996, as the respondent has substantially succeeded on the issues raised in argument on that summons.

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ANNEXURE “A”

MPWETEYERRE ABORIGINAL CORPORATION & OTHERS

v

ALICE SPRINGS TOWN COUNCIL

1. A declaration that the land used or occupied by each of the Appellants is -

(a) land used or occupied for the purposes of a public benevolent institution or public charity within s97(1)(d) of the Local Government Act; and

(b) is not rateable under the Local Government Act 1993 as from the date of the amendment of the constitutions of each of the Appellants to include article 5 “Objects and Purposes” as set forth in the Reasons for Decision of the Local Government Tribunal at pages 19021.

2. An order requiring that the Respondent remove from the rate book all entries relating to land used or occupied by the Appellants which order is to have effect from the date of the amendment of the constitutions of each of the Appellants to include article 5 “Objects and Purposes” as set forth in the Reasons for Decision of the Local Government Tribunal at pages 19-21.

3. An order that the Respondent pay the Appellants’ costs of the appeal, to be agreed or taxed.

4. An order that the Respondent pay the Appellants’ costs of the original hearing in the Local Government Tribunal, to be agreed or taxed.

5. An order that the Respondent repay to the Appellants such amounts as have been paid by or on behalf of the Appellants in respect of rates payable after the date of the amendment of the constitutions of each of the Appellants to include article 5 “Objects and Purposes” as set forth in the Reasons for Decision of the Local Government Tribunal at pages

19021 together with interest on such amounts calculated in accordance with s83 of the Local Government Act 1993.

6. That the Respondent pay the Appellants' costs of and incidental to this summons on an indemnity basis.

7. That the parties have liberty to apply in relation to the calculation of the amounts referred to in orders 3-6 herein.

This is the Annexure "A" referred to in the judgment of Kearney J herein of

5 September 1996

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