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CHAPTER 145

ALIENATED LAND

Act 12 of 1982
Act 18 of 1982

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ALIENATED LAND

To provide for dealings between owners of land and alienators and matters incidental thereto.

1. Interpretation

In this Act, unless the context otherwise requires –

"agreement" means an agreement for payment for improvements;

"alienator" shall have the same meaning as in the Land Reform Act [Cap. 123];

"improvements" means substantial improvement of a permanent character excluding –

(a) reclamation of land from the sea;

(b) clearing, levelling or grading of land, drainage or irrigation of land, reclamation of sewages, surveying and making boundaries if completed before 30 July 1970;

"registered mortgagee" means a mortgagee who has registered a mortgage in accordance with section 12;

"Valuer-General" means the Valuer-General appointed under the Valuation of Land Act.

2. Register of alienators

Notwithstanding the provisions of the Land Reform Act [Cap. 123], the Minister shall cause a register of alienators to be kept.

3. Applications to be registered as alienators

(1) Any person who claims to be an alienator shall apply either personally or through an agent to be registered as such within 3 months of the coming into force of this Act.

(2) A person who applies for registration as an alienator shall furnish the Minister with –

(a) a description of the land of which he claims to be the alienator;

(b) sufficient evidence to establish that the applicant is an alienator of such land;

(c) a statement setting out the options referred to in section 16(3) for which the applicant wishes to negotiate; and

(d) such other information including documents as the Minister may require to satisfy himself that the applicant is an alienator.

(3) Any person who has made an application before the coming into force of this Act on Form A for a certificate of registered negotiator under section 6 of the Land Reform Act [Cap. 123] shall be considered to have made an application under subsection (1) on the day of the coming into force of this Act.

4. Registration of alienator

(1) If the Minister is satisfied that an applicant under section 3 is an alienator he shall register him as an alienator.

(2) An alienator issued with a certificate of registered negotiator before the coming into force of this Act shall forthwith after its coming into force be registered as an alienator.

5. Refusal of application and referral to Court

(1) When the Minister is not satisfied that an applicant under section 3 is an alienator, he shall notify the applicant in writing that he refuses to register the applicant as an alienator, and in such notification shall give the reasons for his refusal.

(2) When the Minister has notified an applicant of his refusal in accordance with subsection (1) or failed to register an applicant within 60 days of the receipt of an application, the applicant may within 30 days of the refusal or the expiry of the 60 days as the case may be, refer the matter to the Supreme Court in accordance with section 4 of the Land Reform Act [Cap. 123].

6. Order by the Court in respect of status of applicant

When the Court has heard a referral under section 5(2) it shall either declare the applicant not to be the alienator or to be the alienator of the land referred to in the application and order the applicant to be so registered.

7. Application under section 3 to be application under section 6 of the Land Reform Act

An application under section 3 shall be considered to be an application also under section 6 of the Land Reform Act [Cap. 123].

8. Loss of rights of alienator

A person who does not make an application in accordance with section 3(1) shall not have any rights as an alienator in respect of any land.

9. Restriction of rights of certain persons

(1) A person who on the coming into force of this Act is –

(a) a person to whom paragraph (e), (f) or (g) of section 15(2) of the Immigration Act [Cap. 66] applies; or

(b) a person against whom an order under section 17 of the Immigration Act [Cap. 66] has been made; or

(c) a body corporate or unincorporate or partnership in which a person to whom subparagraphs (a) or (b) of this subsection applies has any beneficial interest or share,

shall not have the rights of an alienator in respect of any land except as provided in subsection (2).

(2) A person to whom subsection (1) applies shall be entitled to receive payment for improvements provided that he applies to be registered in accordance with section 3.

10. Substitution of registered alienators

Under this Act, the Minister may register a person in substitution for a registered alienator if such person is the lawful successor to the estate of a deceased registered alienator.

11. Register of mortgages

Notwithstanding the provisions of the Land Reform Act [Cap. 123] the Minister shall cause a register of mortgages of alienated land to be kept for the purposes of this Act.

12. Registration of mortgages

(1) Any person who has lent money with alienated land given as security may apply to have the loan registered in the register of mortgages within 3 months of the coming into force of this Act.

(2) For the purposes of section 11 and of this section "alienated land" means land in relation to which there was an alienator on the Day of Independence.

13. Information required on registration of mortgages

A person who applies to register a mortgage under section 12 shall furnish the Minister with –

(a) the document charging land as security for a loan which shall bear the signature of the borrower or the signature on his behalf by a person given power of attorney to so sign; and

(b) such other information including documents as may be reasonably required by the Minister to satisfy himself that the applicant is a mortgagee in respect of the land referred to in the application.

14. Registration of mortgagee

If the Minister after having been furnished with the documents and information required under section 13 is satisfied that an applicant under section 12 is the mortgagee of alienated land he shall register such person as mortgagee in respect of that land.

15. When mortgagees may be registered as alienators

(1) On the day after –

(a) the period provided for in section 3 if no person has applied to be registered as an alienator;

(b) the 30 day period provided for in section 5(2) if no applicant has made a referral to the Supreme Court; or

(c) a decision of the Supreme Court under section 6 declaring an applicant not to be an alienator where no other person has been registered as an alienator or has a pending application under section 3,

a registered mortgagee shall subject to subsection (2) become a registered alienator for the purposes of this Act.

(2) A registered mortgagee shall be entitled only to negotiate with the custom owners for payment to him of the lesser of the following –

(a) the amount due to him under the terms of the mortgage;

(b) the value of improvements.

16. Voluntary negotiations

(1) An application in accordance with section 3 of this Act shall receive consideration by the Minister before applications under section 6 of the Land Reform Act [Cap. 123] from persons who are not alienators.

(2) If the custom owners of the land referred to in an application by an alienator under section 3 either indicate to the Minister by a day stipulated by him a willingness to negotiate one or more of the options referred to in subsection (3) or do not notify him within that time of their refusal to negotiate the Minister shall issue a certificate to the alienator in accordance with section 6 of the Land Reform Act [Cap. 123].

(3) The alienator may be registered to negotiate for –

(a) a lease of the land in respect of which he is registered as alienator;

(b) a lease of part of such land;

(c) a lease of such land and other land in addition to it;

(d) payment for the improvements to such land; or

(e) a lease of such land and payment for the improvements on the land that are not included in the lease.

17. Payment for improvements

Where the value of the improvements as determined under the provisions of this Act or any other law is in excess of VT 1,000,000 and the custom owners are unable to pay the full value of the improvements on the making of the agreement, the custom owners shall be entitled to make payment for the improvements by equal instalments over a period not exceeding 10 years.

18. Fixing of day for conclusion of negotiations

(1) The Minister may –

(a) of his own motion; or

(b) on application from either the custom owners or the alienator,

serve notice on the custom owners and the alienator requiring them to indicate to him within a time stipulated in the notice the day by which they are able to submit a lease or agreement to him for approval.

(2) The Minister may after the end of the time stipulated by him under subsection (1) notify the custom owners and the alienator of the day by which a lease or agreement shall be submitted to him for approval.

(3) If a lease or agreement is not submitted to the Minister by the day stipulated under subsection (2) the Minister may extend the time for such submission.

19. Approval of lease or agreement

(1) Subject to subsection (3) if a lease or agreement is submitted to the Minister by the day stipulated under section 18(2), he shall within 21 days either approve the lease or agreement or refuse such approval.

(2) The Minister may if he considers it desirable, refer any term of the lease or agreement to the Valuer-General for his opinion before he exercises his powers under this section.

(3) The Minister may make his approval conditional on acceptance by the custom owners and the alienator of changes proposed by him in the lease or agreement.

20. Referral to Valuer-General during negotiations

(1) During the course of negotiations of the terms of a lease between an alienator and custom owners, if the Minister considers that the negotiations will be thereby expedited he may request the Valuer-General to give an opinion as to the rent that should be payable taking into account the circumstances and terms agreed at that stage of the negotiations.

(2) The Valuer-General may during the course of such negotiations, at the request of the parties thereto, assess the rent that would be payable if all other terms of the lease were to be agreed between the parties and approved by Minister.

21. Compulsory referral to Valuer-General

If –

(a) the custom owners do not indicate a willingness to negotiate in accordance with section 16(2); or

(b) a lease or agreement is not submitted either by the day stipulated under section 18 or within an extension of time granted under that section, the Minister shall make a reference to the Valuer-General requiring him to assess the value of improvements.

22. Criteria for valuation of improvements

(1) The Valuer-General shall value improvements for the purposes of this Act at such sum as would in his opinion fairly represent the market value of the improvements at the time of the valuation to a purchaser of the land on which the improvements are situated and shall take into consideration such other factors as the Minister may specify.

(2) From the sum arrived at by the Valuer-General under subsection (1), he shall deduct an amount equal to the value of reasonable rent for the use of the land between the Day of Independence and the vacation of the land by the alienator.

23. Decision of Valuer-General to be final

(1) The decision of the Valuer-General on the value of improvements shall be final and there shall be no appeal therefrom to any court except on a point of law.

(2) An appeal on a point of law shall be made to the Supreme Court within 30 days of notification by the Valuer-General of his decision to the party appealing therefrom.

24. Vacation of alienated land

(1) Subject to subsection (2) a person shall vacate and surrender to the Minister land occupied or claimed by him as an alienator either in person or through agents –

(a) if he does not make application under section 3(1) in which case he shall vacate and surrender up the land not later than 3 months after the coming into force of this Act; or

(b) if he is a person to whom section 5(2) applies but he does not make a reference thereunder in which case he shall vacate and surrender up the land immediately on the expiration of the 30 days referred to in that section; or

(c) if he is a person who makes a reference under section 5(2) in which case he shall vacate and surrender up the land within 30 days of the decision of the Court that he is not an alienator of the land;

(d) if the custom owners of the land indicate to the Minister in accordance with section 16(2) that they are willing only to negotiate payment for improvements to such land in which case he shall vacate and surrender up the land within 60 days of notification to him by the Minister of the wishes of the custom owners; or

(e) within 60 days of a referral by the Minister under section 20.

(2) Any person referred to in section 9 shall vacate and surrender up to the Minister all land of which he or it claims to be the alienator within 30 days of the coming into force of this Act.

(3) Where any person who has been required by the Minister to vacate or surrender land as required by the provisions of section 24(2) fails, neglects or refuses to do so, a warrant may be issued by a magistrate authorizing the police to use such force as is necessary to remove such person or persons from the property named or described in the order of the Minister.

25. Representation of unidentified custom owners

(1) If in the opinion of the Minister the custom owners of land referred to in an application under section 3(1) cannot be identified within a reasonable time the Minister may appoint a person to act as trustee for and represent the custom owners for the purpose of this Act.

(2) Except where the context otherwise requires a trustee appointed under subsection (1) shall be considered to be the custom owner for the purposes of this Act.

(3) A trustee appointed in accordance with subsection (1) shall not be personally liable for anything done by him in good faith on behalf of the custom owners for whom he is appointed to act as trustee.

26. Special fund for moneys

Any moneys payable to a custom owner under a lease made under this Act where the custom owner has not yet been identified shall be paid into a special fund established by the Treasury where they shall be held on behalf of the custom owner.

27. Regulations

The Minister may by Order make regulations for the better carrying into effect of the purposes of this Act and in particular may make regulations providing for –

(a) anything that may be prescribed under this Act;

(b) the manner in which any applications may be made under this Act;

(c) forms to be used for the purposes of this Act.

Table of Amendments

1, 19-23 Reference to Lands Referee changed to Valuer-General, per Act 22 of 2002