Provision of Land and Assistance Act 126 of 1993

[ASSENTED TO 9 JULY 1993] [DATE OF COMMENCEMENT: 23 JULY 1993]

(Afrikaans text signed by the State President)

as amended by

Development Facilitation Act 67 of 1995
Provision of Certain Land for Settlement Amendment Act 26 of 1998

ACT

To provide for the designation of certain land; to regulate the subdivision of such land and the settlement of persons thereon; to provide for the rendering of financial assistance for the acquisition of land and to secure tenure rights; and to provide for matters connected therewith.

[long title substituted by section 12 of Act 26 of 1998];

Definitions

1. In this Act, unless the context otherwise indicates-

'Administrator' ...;

[definition of "Administrator" deleted by section 1 of Act 26 of 1998]

'deeds registry' means a deeds registry as defined in section 102 of the Deeds Registries Act, 1937 (Act 47 of 1937);

'designated land' means land which is under section 2 designated for settlement;

'developer' means any person who under section 4 undertakes the development of designated land;

'development body' ...;
[definition of "development body" deleted by section 1 of Act 26 of 1998]

'Minister' means the Minister of Land Affairs;

[Definition of 'Minister' substituted by s. 68 of Act 67 of 1995.]

'partition plan' means a partition plan as referred to in section 6;

'prescribed' means prescribed by or under this Act;

'settlement' means the settlement of persons on designated land as referred to in section 7 (1);

'this Act' includes a regulation made under this Act.

Powers of Administrator with regard to certain land

2. (1) The Minister may, subject to the provisions of section 3, designate for the purposes of settlement-

(a) State land which is controlled by him or her and made available by him or her for those purposes;

(b) land which is purchased or acquired by him or her for those purposes and which is made available by him or her for those purposes;

(c) any land which has been made available for those purposes by the owner thereof.

(2) The Minister shall give notice in the *Gazette* of any land designated under subsection (1).

(3) The Minister may by notice in the *Gazette*, impose conditions for the use of the land designated under subsection (1).

(4) The laws governing the subdivision of agricultural land and the establishment of townships, shall not apply in respect of land referred to in subsection (1) unless the Minister directs otherwise in the notice in question.

[Section 2 substituted by section 2 of Act 26 of 1998]

Publication of notice in newspaper

3. (1) Taking into consideration the languages most commonly used in the district, the Minister shall cause to be published in at least one newspaper circulating in the district in which the designated land is situated, a notice calling upon interested parties to submit in writing to the Minister, within a period mentioned in the notice, which period may not be shorter than 21 days, following the day upon which the notice appeared in the newspaper, any representations which they wish to make in respect of the contemplated designation : Provided that if no substantial change in land use is likely to occur as a result of the proposed settlement in terms of this Act, the Minister may direct that no such publication shall be necessary.

(2) The Minister shall not designate any land before he or she has considered all the representations received by virtue of subsection (1).

[Section 3 substituted by section 3 of Act 26 of 1993]

Development of designated land

4. The development of designated land shall be undertaken-

(a) in the case of land referred to in section 2 (1) (a) or (b), by the Minister or by someone with whom he has concluded an agreement for that purpose; and

[par. (a) amended by sec. 11 of Act 126 of 1998]

(b) in the case of land referred to in section 2 (1) (c), by the owner of that land or by someone with whom he has concluded an agreement for that purpose.

Subdivision of designated land

5. The developer may, subject to the conditions contemplated in section 2 (3), subdivide the designated land or cause it to be subdivided in accordance with the provisions of this Act into pieces of land for small-scale farming, residential, public, community, business or similar purposes.

Partition plan

6. (1) The developer shall draw up or cause to be drawn up a partition plan indicating the intended subdivision of the designated land.

(2) If the Minister is not the developer, the developer shall submit such partition plan to the Minister, and if the Minister is satisfied with the intended subdivision of the designated land, he shall approve the partition plan.

[Subsection (2) amended by section 11 of Act 26 of 1998]

Surveying and approval of plans and diagrams

7. The developer shall-

(a) as indicated on the approved partition plan, cause plans and diagrams to be prepared for the designated land, and shall cause such plans and diagrams to be submitted to the surveyor-general for approval; and

(b) after the plans and diagrams have been approved or provisionally approved by the surveyor-general, file such plans and diagrams at the deeds registry for registration by the registrar of deeds.

Settlement of persons on designated land

8. (1) The developer may, subject to the provisions of subsection (2), alienate or lease a piece of land referred to in section 5 to any person.

(2) Settlement of a person shall take place only after a land surveyor has surveyed the designated land and placed the beacons: Provided that the Minister may in a particular case grant permission that such settlement may take place in a manner determined by him even though the beacons concerned have not been placed.

[subsection (2) amended by section 11 of Act 26 of 1993]

Registration of ownership

9. (1) If ownership in a piece of land referred to in section 5 is transferred, the developer shall, as soon as the surveying thereof is completed, lodge a deed of transfer, made out in the name of the person to which such piece of land has been alienated, on the form prescribed for that purpose under the Deeds Registries Act, 1937 (Act 47 of 1937), at the deeds registry, whereupon the registrar of deeds shall register such piece of land in the name of that person.

[Sub-s. (1) substituted by s. 68 of Act 67 of 1995.]

(2) A deed of transfer referred to in subsection (1) shall be prepared by-

(a) a conveyancer; or

(b) if the owner of the piece of land is the State or any local government body, any officer in the public service or person in the employ of such local government body, as the case

may be, who has been designated for the purpose by the Minister, a Premier or a local government body, as the case may be.

[Sub-s. (2) substituted by s. 68 of Act 67 of 1995.]

(3) A deed of transfer referred to in subsection (1) shall be in the form prescribed under the Deeds Registries Act, 1937, and shall be signed by the owner of the piece of land or his or her duly authorised agent in the presence of a conveyancer referred to in subsection (2) (a) or an officer or person referred to in subsection (2) (b) in the manner prescribed under that Act.

[Sub-s. (3) substituted by s. 68 of Act 67 of 1995.]

(4) An officer or person referred to in subsection (2) (b)-

(a) shall disclose the fact that the deed of transfer referred to in subsection (1), or any power of attorney, application or consent, which may be required by the registrar for the purposes of the registration of the transfer was prepared by him or her, by signing an endorsement to that effect on the deed of transfer, power of attorney, application or consent, as the case may be, and by virtue of such signing accepts, mutatis mutandis, in terms of section 15A (1) and (2) of the Deeds Registries Act, 1937, responsibility for the correctness of the facts stated in any such document; and

(b) may, despite anything to the contrary contained in any other law, perform all of the functions of conveyancer in relation to the registration of a deed of transfer as contemplated in this section.

[Sub-s. (4) substituted by s. 68 of Act 67 of 1995.]

(5) A conveyancer, officer or person referred to in subsection (2) shall lodge the deed of transfer together with the necessary supporting documents at a deeds registry in the manner prescribed under the Deeds Registries Act, 1937.

[Sub-s. (5) added by s. 68 of Act 67 of 1995.]

(6) The registrar shall deal with a deed of transfer and other documents referred to in subsection (5) as if such deed of transfer were executed in the presence of the registrar in terms of section 20 of the Deeds Registries Act, 1937.

[Sub-s. (6) added by s. 68 of Act 67 of 1995.]

(7) Ownership of the piece of land shall be deemed to have been transferred on the date of registration by the registrar of a deed of transfer referred to in subsection (1).

[Sub-s. (7) added by s. 68 of Act 67 of 1995.]

(8) Section 17 (1) and (2) of the Deeds Registries Act, 1937 (Act No. 47 of 1937), shall not apply to and no transfer or stamp duty shall be payable in respect of the -

(a) transfer of ownership of land referred to in section 2(1); or
(b) acquisition of land or a right in land by any person contemplated in section 10 : Provided that section 17(1) and (2) of the Deeds Registries Act, 1937, shall apply in respect of the acquisition of land contemplated in section 10(1)(d).

[Sub-s. (8) added by s. 68 of Act 67 of 1995 and amended by section 4 of Act 26 of 1998.]

Financial assistance for acquisition, development and improvement of land or to secure tenure rights

10. (1) The Minister may, from money appropriated by Parliament for this purpose -

(a) acquire land for the purposes of this Act;

(b) on such conditions as he or she may determine, grant an advance or a subsidy to any person contemplated in subsection (2) -

(i) for the acquisition of land for residential purposes, agricultural production or small business development;

(ii) for the acquisition of capital assets for the development of land contemplated in subparagragph (i);

(iii) for securing, upgrading and registering of tenure rights;

(iv) for the improvement of any land contemplated in subparagraphs (i) and (iii);

(v) to acquire an equity share in any existing agricultural enterprise;

(vi) to facilitate the planning of any development which may be necessary for the purposes of subparagraphs (i) to (v), including survey costs;

(vii) for the planning and development of land designated for settlement purposes under section 2(1);

(c) on such conditions as he or she may determine, grant an advance or a subsidy to a Municipal Council to acquire land -

(i) to be used as a commonage; or

(ii) to extend an existing commonage;

(d) acquire land on behalf of any person contemplated in subsection (2), in which case ownership of such land, notwithstanding section 14 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), may be transferred directly from the owner of the land to any such person;

(e) in writing, for the purposes of acquiring, planning or developing designated land or any other land contemplated in this subsection, and on such conditions as he or she may determine, authorise the transfer of funds contemplated in this section to -

(i) a provincial government;

(ii) a Municipal Council;

(iii) any other organ of state; or

(iv) any other body recognised by the Minister for such purposes.

(2) For the purposes of subsection (1), persons who may be granted an advance or a subsidy are -

(a) persons who have no land or who have limited access to land, and who wish to gain access to land or to additional land;

(b) persons who wish to secure or upgrade the conditions of tenure under which they live or who wish to develop the land with the consent of the owner;

(c) persons who have been dispossessed of land or of a right in land but who do not have a right to restitution in terms of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994).

(3) The laws governing the subdivision of agricultural land and the establishment of townships shall not apply in respect of land referred to in subsection (1) unless the Minister directs otherwise.

[S. 10 substituted by s. 68 of Act 67 of 1995 and section 5 of Act 26 of 1998.]

Minister's power to dispose of certain land

11. The Minister may, on such terms and conditions as he or she may deem fit, for the purposes of this Act, sell, exchange, donate or lease any land designated or acquired under this Act or, if the land is no longer required for the purposes of this Act, for any other purpose.

[S. 11 repealed by s. 68 of Act 67 of 1995 and added by section 6 of Act 26 of 1998.]

Expropriation Act

12. (1) Without derogating from the powers that a Minister may exercise under the Expropriation Act, 1975 (Act No. 63 of 1975), the Minister may for the purposes of this Act, exercise equivalent powers to the powers that such other Minister may exercise under the Expropriation Act, 1975.

(2) Notwithstanding the provisions of the Expropriation Act, 1975, the owner of the land in question shall be given a hearing before any land is expropriated in terms of this Act.

(3) In the event of expropriation, compensation shall be paid as prescribed by the Constitution, with due regard to the provisions of section 12(3), (4) and (5) of the Expropriation Act, 1975.

(4) Any right in land which derives from the provisions of this Act will be capable of expropriation in accordance with the provisions of any applicable legislation.

[section 12 substituted by section 7 of Act 26 of 1998]

13. .....

[section 13 repealed by section 8 of Act 126 of 1993]

Regulations

14. The Minister may make regulations regarding-

(a) any matter which in terms of this Act is required or permitted to be prescribed;

(b) the sizes of the pieces of land into which the designated land shall be subdivided;

(c) any steps which may be taken if the developer does not comply with the conditions contemplated in section 2 (3) or, if applicable, the developer does not comply with any term of an agreement referred to in section 4;

(d) the supply of services to persons who are settled on the designated land;

(e) the number of people who may inhabit a piece of land contemplated in section 5;

(f) the grant of financial or other assistance to a buyer or lessee of a piece of land contemplated in section 5,

and, generally, with regard to any other matter which he considers it necessary or expedient to prescribe in order to achieve or promote the objects of this Act, and the generality of this provision shall not be limited by the preceding paragraphs of this section.

Delegation

15. (1) The Minister may, on such conditions as he or she may determine -

(a) delegate to any officer in the Department of Land Affairs any power conferred upon the Minister by this Act, except the power under section 14 to make regulations;

(b) authorize any such officer to perform any duty imposed upon the Minister by this Act.

(2) The Minister may, either in general or in a particular case or in cases of a particular nature and on such conditions as he or she may determine -

(a) delegate to the Premier of a province or, with the concurrence of the Premier, to a member of the Executive Council of that province, any power conferred upon the Minister by this Act, except the power under section 14 to make regulations;

(b) authorize that Premier or member of the Executive Council to perform any duty imposed upon the Minister by this Act.

(3) The Premier or the member of the Executive Council contemplated in subsection (2) may, subject to such conditions as the Minister may determine -

(a) delegate to the Director-General of the province or any officer of the provincial administration in question any power delegated to that Premier or member under subsection (2);

(b) authorize that Director-General or any such officer to perform any duty which that Premier or member is authorized to perform under subsection (2).

(4) The Minister may, with the concurrence of a Municipal Council, either in general or in a particular case or in cases of a particular nature and on such conditions as he or she may determine -

(a) delegate to any officer of the Municipal Council any power conferred upon the Minister by this Act, except the power under section 14 to make regulations;

(b) authorize that officer of the Municipal Council to perform any duty imposed upon the Minister by this Act.

(5) Any delegation of a power or authorization to perform a duty under this section -

(a) shall be done in writing;

(b) shall not prevent the person who effected the delegation or granted the authorization from exercising that power of performing that duty himself or herself;

(c) may at any time be withdrawn in writing by that person.

[section 15 substituted by section 9 of Act 26 of 1998]

Short title

16. This Act shall be called the Provision of Land and Assistance Act, 1993.

[section 16 amended by section 10 of Act 26 of 1998]

Note :

The Act was made applicable throughout the Republic with effect from 27 April 1994 in terms of section 13 of the Provision of Certain Land for Settlement Amendment Act, 1998 (Act No. 26 of 1998).