79/1958

79/1958

G.P.-S.103675—1954-5—1,000. U.D.J. 219.

In the Supreme Court of South Africa
In die Hooggeregshof van Suid-Afrika

(APPELLATE Division).
Afdeling).

Appeal in Civil Case.
Appèl in Siviele Saak.

REGINALD SHAW RIGG Appellant,

versus

S. A. R. + H. Respondent.

Appellant's Attorney / Prokureur vir Appellant Goodrick + Franklin *Respondent's Attorney / Prokureur vir Respondent* Govt. Atty.

Appellant's Advocate / Advokaat vir Appellant B. A. Ettlinger, Q.C. G. P. Kotze. *Respondent's Advocate / Advokaat vir Respondent* W. McEwan

Set down for hearing on / Op die rol geplaas vir verhoor op Tuesday, 16th Sept, 1958.

(WLD)

~~1, 3, 6, 8, 10~~ (A)

9.45 – 12.50
2.15 – 3.40

– Appeal allowed, Appellant to have costs in both Courts. (See judgment).

Schreiner, A.C.J., Steyn, ~~Malan~~, Ogilvie Thompson, ~~Price~~ (Ag.) – JJ.A.

[signature] Regr. 26/9/58

Record.

IN DIE HOOGGEREGSHOF VAN SUID-AFRIKA

(Appélafdeling)

Insake:

REGINALD SHAW RIGG Appellant

en

SUID-AFRIKAANSE SPOORWEE
en HAWENS ADMINISTRASIE Respondent

Verhoor deur: Schreiner W.H.R., Steyn, Malan, Ogilvie Thompson RR.A. en Price W.R.A.

Verhoordatum: 16 September, 1958. Lewerингsdatum: 26 - 9 - 58

U I T S P R A A K

STEYN R.A. :- Artikel 7(2) van Wet No. 37 van 1955 lui as volg :-

"Indien uit hoofde van die bou van 'n spoorweg of ander werke oor of op grond, daardie grond so deursny en verdeel is of sal word dat daar aan weerskante of aan een kant van die spoorweg of ander werke 'n stuk grond minder as een akker groot gelaat is of sal word, is die Administrasie verplig, indien die eienaar van sodanige stuk of stukke grond dit van hom vereis, om daardie stuk of stukke grond saam met die ander grond wat benodig word, te verkry."

In sy toepassing op die feite in hierdie saak is hierdie sub-artikel 'n duistere bepaling. By die uitleg daarvan moet op die voorgrond gestel word

dat/.....

dat dit direk verband hou met onteiening van privaatregte, d.w.s. met beswarende bepalings wat streng ten gunste van die beswaarde uitgelê moet word. Soos Maestertius, Tractatuum bls. 30 sê : alicui suum adimere, bono et aequo contrarium est; en dit kan nie veronderstel word nie dat die wetgewer, algeld dit ook die onteieningsbevoegdheid van die Staat self in die openbare belang, groter of meer beswarende inbreuk op gevestigde regte wil doen of magtig as wat met duidelikheid uit sy woorde blyk nie (Vgl. Dadoo Ltd. and Others v. Krugersdorp Municipal Council, 1920 A.D. 530 op bladsy 552; Wellworths Bazaars Ltd. v. Chandler's Ltd. 1947 (2) S.A. 37 op bls. 43; Rose's Car Hire (Pty) Ltd v. Grant, 1948 (2) S.A.466 op bls. 471 i.f.). Hoewel artikel 7(2) die Spoorwegadministrasie belas met die verpligting om in die daarin vermelde omstandighede grond wat nie onteien is nie, oor te neem, en 'n ooreenstemmende reg aan die eienaar verleen, is hierdie verpligting en reg 'n uitvloeisel van die onteiening, en moet aan die reg, omdat dit slegs 'n bykomstigheid by die ontneming van die eienaar se grond is, ten spyte van die daarmee gepaard gaande las op die onteienaar, 'n toeskietlike konstruksie verleen word wat die las op die eienaar, binne die perke wat die wet toelaat,

soveel/.....

soveel doenlik sal verlig. 'n Analoge benadering sou van pas wees by 'n begunstigende Wet wat 'n bykomstige verpligting skep (Vgl. Rechter v. Assistant Master and Bloemfontein Town Council, 1941 O.P.D. 19 op bls. 22). Hierdie benadering bring mee dat aan artikel 7(2), indien dit redelikerwyse in meer dan een sin verstaan kan word, die betekenis gegee moet word wat vir die eienaar die gunstigste sou wees.

Die eerste indruk wat die woorde wek, meer bepaald weëns die gebruik van die woord "deursny", d.w.s. aan die binnekant sny van kant tot kant, is seker dat die wetgewer hier slegs die geval beoog waarin grond van 'n eienaar so kan vir die bou van 'n spoorweg of ander werke deursny en verdeel is, dat daar aan weerskante van die spoorweg of ander werke grondstukke oorbly waarvan een of albei minder dan 'n akker beslaan. Die toepaslikheid van die subartikel sou dan beperk wees tot 'n verdeling van die betrokke grond in drie stukke: die onteiende gedeelte en aan weerskant daarvan 'n oorblywende stuk grond. Hierdie uitleg sou op anomalieë uitloop. By dié deur SCHREINER W.H.R. genoem, kan die volgende gevoeg word: Indien die onteiende strook die gemeenskaplike grens van aangrensende persele kruis, sodat van elke perseel aan weerskante van die strook minder

dan/.....

dan 'n akker oorbly, sou die Spoorwegadministrasie deur die eienaars verplig kan word om alvier van die oorblywende stukke grond oor te neem, maar indien die onteiende strook op die gemeenskaplike grens van dieselfde persele lê, sodat elke eienaar slegs een stuk grond van minder dan 'n akker langs die strook oorhou, dan sou hy geen aanspraak op tegemoetkoming ingevolge hierdie sub-artikel hê nie. 'n Toevallige dekking van die gemeenskaplike grens deur die onteiende strook sou die eienaars die reg ontneem wat hul ongetwyfeld anders sou gehad het. Dergelike op die oog af willekeurige gevolge wek twyfel of die wetgewer dit so kon bedoel het. Die ander uitleg, nl. dat die sub-artikel handel ook oor die geval waarin die grond deur die onteiening in twee val, nl, die onteiende en die resterende gedeelte, sou, sover ek kan oordeel, nie dergelike anomalieë skep nie; en die advokaat vir die respondent kon, toe dit aan hom gestel was, ook nie soortgelyke ongerymde resultate aanwys nie. Na my mening is dit 'n uitleg waarvoor die woorde wel vatbaar is. Die sub-artikel lui nie dat die grond "deur" die hou van 'n spoorweg of ander werke", maar uit hoofde, d.w.s. ter oorsake daarvan ("by reason of") deursny en verdeel is of sal word. Waar geboue of ander werke opgerig word, sou

moeilik/.....

moeilik van 'n deursnyding en verdeling van die grond deur die geboue of werke in eigenlike sin gepraat kan word, tensy hulle die grond van die een grens tot op die ander volstaan, iets wat vermoedelik slegs by [redacted] uitsondering sal gebeur. Aan weerskante van die spoorweg ("line of railway") as sulks, sal daar ook streng genome in die gewone loop van sake onteiende grond lê, en nie die oorblywende stuk of stukke privaatgrond waarna die sub-artikel verwys nie. Omdat die uitdrukking "deursny of verdeel.....sal word" op 'n toekomstige werking slaan, terwyl die onteiening normaalweg indien nie noodwendig nie die bou van die spoorweg of werke sal voorafgaan en in elk geval nie 'n deursnyding deur die onteiening kan voorafgaan nie, kan dit meer gevoeglik met die bou van die spoorweg of werke verbind word. Ook dit egter sou, gesien die reedsgenoemde oorwegings, eerder daarop dui dat die woorde nie letterlik opgevat kan word nie. In werklikheid sal dit altyd die gevolg van die onteiening wees, en nie van die bou van die spoorweg of werke nie, dat die grond so deursny en verdeel word dat daar in 'n losser sin, aan weerskante of aan die een kant van die spoorweg of werke privaatgrond van genoemde grootte oorbly. Dit laat vermoed dat die eintlike hoewel minder goed uitgedrukte bedoeling was om te verwys na die deursnyding en verdeling

van/.....

van die grond by die onteiening wat vir die bou van die spoorweg nodig geword het. Ook dit breng nog nie noodwendig mee dat die wetgewer 'n deursnyding en verdeling deur die onteiende strook grond, met gevolglike resterende gedeeltes aan weerskante daarvan, in gedagte gehad het nie. Al wat uit die sub-artikel spreek is 'n deursnyding en verdeling van die grond, sonder duidelike aanwysing dat dit óf deur die spoorweg of werke, óf deur 'n onteiende strook teweeggebring word. By 'n onteiening soos die huidige sou daar ook 'n deursnyding en verdeling van die grond wees langs die grens tussen die onteiende en resterende gedeeltes en daar sou, soos in die sub-artikel in die alternatief gestel, aan een kant van die spoorweg of werke (dit wil eintlik sê aan een kant van die onteiende gedeelte) 'n stuk grond oorbly wat minder as 'n akker groot is. Waar 'n onteiende strook wat van baken tot baken binne langs 'n buitegrens van grond lê, sou die eienaar sonder bedenklike onjuistheid van uitdrukking selfs kan sê dat die strook as sulks deur die grond sny en dat die grond ter oorsake daarvan verdoel is. Die bewoording van die sub-artikel is dus bestaanbaar met die bedoeling om ook die geval te dek waarin die eienaar, as gevolg van die onteiening, 'n -

enkele/.....

enkele stuk grond van minder dan 'n akker oorhou. In dié sin uitgelê kry die sub-artikel 'n minder letterlike betekenis, maar omdat so'n betekenis die meeste altans van genoemde ongerymdhede vermy en vir die eienaar die gunstigste sou wees, en omdat die meer letterlike betekenis, soos reeds verduidelik, teen werklikhede indruis, kom dit my voor die meer waarskynlike betekenis te wees.

Die verdere vraag wat ontstaan is of die woorde "'n stuk grond minder as een akker groot", wat in die sub-artikel voorkom met betrekking tot die grond wat na 'n onteiening oorbly, slegs slaan op die resterende gedeelte van die enkele afsonderlike grondstuk waarvan 'n deel onteien is, of ook op die gesamentlike oorblywende deel van verskillende aaneengrensende grondstukke wat aan dieselfde eienaar behoort, waar van een of meer van hulle 'n deel onteien is. Die antwoord op hierdie vraag hang af van die betekenis van die woord "grond", in die sinsnede "Indien "uit hoofde van die bou van 'n spoorweg of ander werke oor "grond of op grond, daardie grond so deursny en verdeel is "of sal word". Prima facie beteken "grond" hier na my mening die enkele afsonderlike stuk grond. Wat die sub-artikel noem is die grond waaroor of waarop die spoorweg of

ander/.....

ander werke gebou gaan word. Indien iemand wat weet dat daar verskeie aangrensende grondstukke met dieselfde eienaar is, gevra sou word om die grond waaroor of waarop die spoorweg of ander werke gebou gaan word, te identifiseer, sou ek, waar dit op slegs een van die grondstukke gedoen gaan word, verwag dat hy die enkele betrokke grondstuk eerder dan die geheel van die gesamentlike grondstukke sou aanwys. Wat aangrensende plase betref, met onderskeidende name, is dit haas ondenkbaar dat hy anders sou handel. By groot gronde sal die besondere onderhawige vraag weliswaar nie ontstaan nie, maar die sub-artikel is op alle gronde van toepassing, landelike sowel as stedelike, en die betekenis van "grond" in genoemde sinsnede kan nie net in sy aanwending op kleine hoewes of stedelike persele gesoek word nie. Maar selfs by aangrensende erwe in dieselfde hand in 'n beboude gebied, en veral waar dit omheinde erwe is met aparte wonings en buitegeboue, is dit onwaarskynlik dat enig iemand met kennis van die feite meer sal aanwys dan die besondere erf waarvan 'n deel onteien word, as die grond waaroor of waarop die spoorweg of werke gebou gaan word. As blote aaneenliggendheid die toets is - en in die wet is daar geen ander toets te vind nie - dan sou ook die feit dat die direk betrokke erf een van 'n aantal onge-

bruikte/.....

-bruikte erwe is, of 'n oop erf is wat in geen enkele opsig saam met die ander beboude erwe gebruik word nie, geen verskil kan maak nie. As die oorblywende gedeelte tesame met die ander erwe kleiner dan 'n akker is, sou die eienaar die Administrasie kan aansê om almal, onverskillig of daar een of meer onder hulle is wat nie in gebruik of waarde deur die spoorweg of werke nadelig geraak sal word nie, oor te neem. Ek twyfel of die wetgewer sulke resultate kon beoog het. Beswarende gevolge wat die ander uitleg sou kan oplewer, sou versag word deur die eienaar se reg om ingevolge artikel 6(2) vergoeding te eis vir enige vermindering in waarde wat sy aangrensende erwe mag ondergaan.

"Grond" word nie in die Wet omskryf nie maar die eienaar "met betrekking tot grond" word omskryf as die persoon op wie se naam die grond geregistreer is, met spesiale voorsiening vir ander gevalle spos waar die eienaar oorlede is of sy boedel gesekwestreer is. In die gewone loop van sake, dus, het die Administrasie by onteiening met een of meer afsonderlike grondstukke en met die geregistreerde eienaar daarvan te doen. Indien dit die bedoeling van die Wet is om met aangrensende gronde, wat in besit van dieselfde persoon is, as 'n eenheid te handel,

sou/.....

sou 'n duidelike bepaling te dien effekte verwag kan word, soos dan ook te vind is in Artikel 6(2). Genoemde subartikel stel die vergoeding vir onteiende grond op die markwaarde daarvan, met 'n spesiale reëling, by wyse van 'n voorbehoudsbepaling, ten aansien van die onteiening van 'n gedeelte van grond wat deur die eienaar in een blok besit word, " ongeag of dit kragtens een titelbewys besit word "al dan die." Uit die uitdruklike en afsonderlike voorskrif ten aansien van sulke grond in artikel 6(2), is af te lei dat dit in ander bepalings waar 'n dergelike voorskrif ontbreek, nie die bedoeling is om soortgelyke gevalle in te sluit nie, maar om slegs met die enkele geregistreerde eenheid te handel. Dit is die soort van afleiding wat by die uitleg van 'n wet met omsigtigheid gemaak moet word (Vgl. S.A.Estates and Finance Corporation v. Commissioner for Inland Revenue, 1927 A.D. 230 op bls. 236). Ek kan egter niks in die Wet vind wat hierdie prima facie aanduiding sou weerlê nie. Daar is verwysings, soos in Artikel 5, na "grond", wat net op die onteiende gedeelte sou slaan, maar dan is dit ook duidelik uit die samehang en nadere omskrywing dat slegs 'n gedeelte en nie die grondstuk as 'n geheel bedoel word nie. Daaruit is nie af te lei dat "grond"

in/.....

in ander bepalings, vir sover dit nie op die onteiende gedeelte slaan nie, aangrensende grondstukke met dieselfde eienaar insluit nie. Dit is my ook nie duidelik nie dat die insluiting daarvan ten gunste van die eienaar sou strek. Indien "grond" in die geval van sulke grondstukke, die gesamentlike geheel beteken, sou dit die eienaar kan verhinder om hom ten aansien van 'n gedeelte van 'n grondstuk wat deur die verdeling vir hom waardeloos geword het, op die sub-artikel te beroep, sonder om ook die ander aangrensende grondstukke wat nie deur die verdeling geraak word nie en wat hy sou wil behou, aan die Administrasie aan te bied. Dit kan kwalik gesê word dat hy, waar dit 'n enkele grondstuk geld, soveel van die oorblywende gedeelte as wat hy verkies, aan die Administrasie kan aanbied; en as hy dit nie kan doen nie, is dit moeilik in te sien waarom hy, by aangrensende grondstukke, na goeddunke sou kan bepaal hoeveel van die oorblywende grond hy deur die Administrasie wil laat oorneem. Dit sou ook kan gebeur dat oorblywende gedeeltes van aangrensende gronde tesame meer dan 'n akker beslaan, terwyl elke gedeelte afsonderlik kleiner dan 'n akker is. Ook in so'n geval sou die eienaar die middel wat die sub-artikel tot sy beskikking stel, kwyt wees. Dit

wil/.....

wil my dus voorkom dat hierdie nie 'n geval is waar die oorweging dat die een uitleg die beswaarde persoon meer dan die ander uitleg sou begunstig, gewig kan dra nie.

Na my mening moet die sub-artikel om genoemde redes uitgelê word in die sin dat dit slegs op die oorblywende gedeelte of gedeeltes van 'n afsonderlike stuk grond betrekking het, en nie ook op dié van gesamentlike aangrensende grondstukke wat deur dieselfde eienaar besit word nie.

Die appél moet gevolglik slaag wat die eerste vraag betref, en van die hand gewys word wat die tweede vraag betref. Aangesien hierdie 'n minderheidsuitspraak is, sou dit geen doel dien om die paslike bevel te formuleer nie.

L. v. Steyn.

Record.

IN THE SUPREME COURT OF SOUTH AFRICA

(Appellate Division)

In the matter between:-

REGINALD SHAW RIGG Appellant

and

THE SOUTH AFRICAN RAILWAYS AND HARBOURS ADMINISTRATION. Respondent

Coram: Schreiner A.C.J., Steyn, Malan, Ogilvie Thompson JJ.A. et Price A.J.A.

Heard: 16th September, 1958. Delivered: 26-9-1958

J U D G M E N T

SCHREINER A.C.J. :- The appellant was the registered owner of a block of land consisting of stands 52, 53, 54, 55 and 22 and portion of stand 24 in the Township of Boksburg, the total area of the block being about half an acre. On the 14th November 1955 the respondent Administration expropriated a small triangular portion of stand 52, one angle of the triangle coinciding with one angle of the rectangular stand. On the 22nd December 1956 the respondent expropriated a further portion of stand 52, the effect being to enlarge the triangle taken by shifting its hypotenuse nine feet further into the stand. The first expropriation took place under powers contained in Ordinance 20 of 1903 (Transvaal), but the second

took/.....

took place under the Railway Expropriation Act (No.37 of 1955), which I shall call "the Act".

Section 6 (1) of the Act provides for the payment of compensation for property taken and for injurious affection to rights or intefests in or over land. Section 6 (2) provides that the compensation is not to exceed the market value of the property expropriated and a proviso follows which reads :-

"Provided that where the property expropriated consists of a portion only of any land held by the owner in one block (whether or not it be held under one title), and the value of the portion expropriated, determined as aforesaid, is less than the difference between the value of the owner's land as it was immediately prior to the expropriation and the value of the remaining piece or pieces of land immediately thereafter (such values being also determined as aforesaid) the compensation payable may be equal to the amount of such difference."

The gist of section 7 (1) of the Act is that an owner cannot be compelled to part with a portion only of a building unless the court assessing the compensation decides that it can be severed without material detriment to the remainder. Then section 7(2), the crucial provision for the purposes of this appeal, reads :-

"(2) If, by reason of the construction of any line of railway or other works across or on any land, that land is or will be so cut through and divided as to leave, either on both sides

or/.....

or on one side of the railway or other works, a piece of land smaller in extent than one acre, the Administration shall be obliged, if thereto required by the owner of such piece or pieces of land, to acquire such piece or pieces along with the other land required."

When confronted with the notice of expropriation the appellant took up the attitude that, since the whole of his property, even before the expropriation, was less than an acre in extent, he was entitled to require the Administration to take the whole block of nearly six stands held by him. As the Administration did not agree that in terms of section 7 (2) it was obliged to take the whole block of stands, or even the whole of stand 52, the appellant set down an application in the Witwatersrand Local Division for an order declaring that the Administration was obliged in terms of the subsection to take the whole block of stands. The Administration opposed the application, contending that it was not obliged to acquire any more than the small portion of stand 52 which it required, and, alternatively, that it could not be compelled to take more than stand 52. An issue was originally raised on the documents as to whether the position was affected by the fact that the first expropriation, in November 1955, was not governed by the provisions of the Act, but in view of the second expropriation the point was of no practical importance and was not persisted in. Another

contention at one time advanced by the Administration was that section 7(2) does not apply to cases where the landowner's holding was even before expropriation less than one acre. This contention too was not adduced in this Court. The application came before HIEMSTRA J., who held that the expropriation was not affected by section 7(2) because the land was not "cut "through and divided" within the meaning of the sub-section. This conclusion made it unnecessary for the learned judge to decide whether only stand 52 or the whole block of stands had to be acquired by the Administration. He dismissed the application with costs and from this order the appellant now appeals to this Court, the parties having consented in writing to omit the intermediate appeal to the Transvaal Provincial Division.

In reaching his conclusion the learned judge, after finding that consideration of somewhat similar English provisions in the Land Clauses Consolidation Act 1845 was unhelpful owing to the differences in the language, proceeded :-

"The question remains whether land can be said to be cut through and divided if merely a corner is cut off. Prima facie the expression immediately suggests intersection or bisection of the land. If a man says: 'My land is cut through and divided by the construction of railway works,' he can only mean that a piece of his land is left on either side of the works. That

is the plain grammatical meaning, which according to the principles of construction of statutes must be given effect to unless it would lead to an absurdity so glaring that it could never have been contemplated by the legislature, or to a result contrary to the intention of Parliament as shown by the context".

After stating that there was no repugnancy or inconsistency with the rest of the Statute in what he regarded as the plain meaning, HIEMSTRA J. conceded that there was some degree of absurdity in it, and he proceeded to furnish illustrations of absurd consequences that might follow from the application of that meaning to particular situations. The learned judge concluded, however, that the absurdities or anomalies to which he had referred were not so glaring as to require him to depart from the plain meaning, as he saw it.

A difficulty that I have in agreeing with this approach is that it appears to concentrate unduly on the words "cut through and divided", taken by themselves and without regard to the rest of the subsection. Those words are undoubtedly of great importance but in order to ascertain the scope of the subsection it must, of course, be considered as a whole. It should initially be observed that although at first sight the language of the subsection might suggest that the works or their construction are to be

regarded/.....

regarded as cutting through and dividing the land, it is really the expropriation that brings this about, and not anything physically done on the land. The purpose of the expropriation is to enable the works to be constructed, but the rights to compensation and to the benefit of section 7 (2) do not depend upon the actual construction of the works. The words "or will be" in terms only provide an alternative, but in truth they represent the normal case, where the land is expropriated in order that works may thereafter be constructed on it. In advence of expropriation the Administration has certain powers of exploration (section 5), but except in urgent cases, where a special notice must be given, work can only begin sixty days after expropriation (section 4(2)). Since the cutting through and dividing is notional rather than physical the meaning given by the learned judge to the hypothetical landowner's remark that his land is "cut through and divided by the construction of railway works" does not appear to ~~be very helpful~~ assist materially in the interpretation of the subsection.

In relation to the expression "cut through and divided" a question arises whether it represents two distinct ideas or whether in this context "cut through" means substantially the same thing as "divided". A construction that can give them different acceptable

meanings/.....

meanings would pro tanto be preferable. Counsel for the Administration submitted that, while cutting through involves the existence of a strip running from one boundary to another, such a strip might be said to cut through the land even though it ran along another boundary of the land, so as to leave only the one piece of /un-expropriated land and not two. But this kind of case, he submitted, would be excluded by the words "and divided". But once it is assumed that a strip taken along the whole length of one side of, say, a rectangular piece of land, leaving an unexpropriated portion only on one side of it, may be said to cut through the land, it does not seem to be a major step to say that it may also be said to divide the land. No doubt the most obvious case of cutting through and dividing is where there is an expropriated strip right across, leaving pieces of unexpropriated land on each side. But, assuming that to be so, counsel for the appellant contended that the phrase could also be used to cover any partition of the land so as to leave an expropriated and an unexpropriated part. In his submission where the Administration takes only part there will always in a sense be a division and in a sense a cutting through. Substantially, he submitted, the two notions were not distinguishable.

It seems to me that cutting through and/.....

and dividing in this context mean much the same thing. I have difficulty in seeing how the effect of the subsection could be different if either "cut through" or "divided" were omitted. The whole expression tends towards the notion of intersection but does not provide an insuperable obstacle to the adoption of another construction, if such is to be gathered from the rest of the subsection and from the consequences of accepting one view rather than the other.

In a slightly different setting "cut through and divided" would clearly not carry the meaning advanced on behalf of the Administration. Thus if one leaves out the references in the subsection to both sides or one side (of the railway or other works) and to pieces of land in the plural, one is left with, "If.....that land.....will be so "cut through and divided as to leave a piece of land smaller "in extent than one acre, the Administration shall be obliged , " if required by the owner of such piece of land, to acquire "such piece along with the other land required." If that were the wording there would, I apprehend, be no difficulty in holding that "cut through and divided" simply means partitioned between the owner and the Administration, and there would then be no reason to limit the application of the subsection to cases where the portion required by the Administration goes

across/.....

across the land, leaving pieces of land on each side of it. In other words the expression "cut through and divided", though at first sight it may suggest an intersecting or traversing of the land, is susceptible, depending on the context, of the notion of partition, a piece of land being left, in the sense of "left unexpropriated".

Now in fact the subsection has, after the word "leave", the phrase "either on both sides or on one side of the railway or other works" and after the word "piece", in its penultimate and ultimate positions, the words "or pieces". These elements make it abundantly clear that the subsection covers the case of the strip running across the land and leaving a piece of land on each side of it. But they do not point with clearness to the conclusion that only that type of case is covered. It is no doubt awkward to speak of one or both sides of the works when you are dealing with a partition in which the Administration seeks to take a slice off the land, at a corner or along a side, or a portion jutting into the land. But on any view the subsection is not pellucid and some awkwardness is inescapable. Where you have an expropriated strip which intersects the land you will have pieces of unexpropriated land on both sides of the works, and where you have any other kind of partition you may be said to

have/.....

have a piece of unexpropriated land on one side of the works. In all cases other than that of intersection there is only one piece of unexpropriated land, which can be said to be on one side, namely the outside, or the landowner's side, of the works.

I am sensible of the fact that the rejection of the learned judge's view may be thought to involve an actual straining of ~~the~~ part of the language of the subsection. But there is another linguistic element which must also be taken into account and which seems to me to outweigh this consideration and to point strongly away from the conclusion reached by HIEMSTRA J. That element consists of the words "across or on" in the phrase "by reason of the construc-
" tion of any line of railway or other works across or on any
" land". These words seem to show that Parliament was distinguishing between (a) cases of the strip type, going right across and leaving two pieces, one on each side, and (b) other cases. Both types of case are apparently contemplated and provided for by the subsection. The typical, though not the only, case of the strip would be the railway line, which is catered for by "across"; other cases are covered by "or on". It is natural to suppose that the latter words were introduced to meet those very cases where there is no crossing.

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That the words "across or on" were deliberately put in by Parliament to cover all cases of expropriation of part of an owner's land receives confirmation from a comparison of section 7 of the Act with the abovementioned provisions of the English Lands Clauses Consolidation Act, 1845. The relevant sections of the latter are sections 92, 93 and 94. In a modified form they are reproduced in sections 53, 54 and 55 of the Land Clauses Consolidation Law (No. 16 of 1872) of Natal. The resemblances between the English and Natal provisions on the one hand and section 7 on the other are noteworthy and make it highly probable that the scheme and much of the wording of the latter is derived from one or both of the earlier statutes. The expression "cut off and divided" appears in all three. But the differences are for present purposes of more significance. The English and Natal statutes speak of "works", meaning the works and undertakings authorised by a special Act. They give landowners the right to compel the acquisition of small pieces of land only when the land is not in a town and is not built upon, while section 7(2) of the Act is not so restricted. In 1955 the Union Perliament spoke of "any "line of railway or other works" and applied section 7(2) to town as well as country areas. The English act spoke in this connection/.....

-nection of small portions of intersected land. The Natal law also spoke of intersection, though not in the provision corresponding precisely with section 7 (2). In ~~the latter~~ section 7(2) the word "intersection" is not used, and for the first time the expression "across or on" appears. It seems likely that, when it adopted the principle of giving the landowner special protection against being left with relatively useless small pieces of land, Parliament modified the language to meet what it considered to be the requirements of the Union in 1955. It included land in towns and analysed "works" into "railway lines "and other works". In harmony with these changes it introduced the expression "across or on", presumably in order to make it clear that, despite the retention of the expression "cut through and divided", not only intersection cases were to fall within the subsection.

Upon the view taken by HIEMSTRA J no effect at all is given to the words "or on". On that view they must be regarded as surplusage, calculated to confuse unless reduced to insignificance by the dominating expression "cut through and divided". But the words "or on" cannot be treated as merely repeating or reinforcing the notion of "across" and if possible some effect should be given to them. It is quite possible to give them effect and if this is done they bear strongly

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upon the meaning to be given to "cut through and divided", and consequently upon the scope of the subsection taken as a whole.

The view that the scope of the subsection extends to cases of partition other than intersection is strengthened by consideration of the anomalies which follow the view adopted by HIEMSTRA J. and to which the learned judge himself made reference. A good example was furnished by counsel. Suppose that the original area of land was 2 acres and the Administration wished to expropriate a strip through the middle leaving 7/8ths of an acre on each side of the strip; on any view of the effect of the subsection the Administration could be compelled to acquire the whole 2 acres. But on the Administration's contention it could expropriate the strip plus the 7/8ths of an acre on one side and leave the owner with the other 7/8ths of an acre.

It is natural to suppose that Parliament, acting fairly, intended to give the remedy under section 7(2) to all owners faced with being left with a small piece of land that might be useless to them. The size would naturally be regarded as the decisive factor, not the exact location in relation to the part expropriated. Taking account of the language and ancestry of section 7(2) and considering

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the consequences of adopting the one view rather than the other, I reach the conclusion that the provision does not bear the restricted meaning given to it by HIEMSTRA J. and that it applies to a case like the present one. The appellant was accordingly entitled to require the Administration to take more of his land than the small section actually needed by it.

This brings me to the second question, whether the Administration had to acquire the whole of the appellant's block of stands, or whether it could only be compelled to take the whole of the remainder of stand 52. If section 7(2) is taken by itself it does not seem to me to import the notion of units of land held as such in the deeds registry. I know of no presumption that when reference is made in a statute to land or pieces of land units in the deeds registry are contemplated. We were not referred to any authority on the point but the language of FEETHAM J.A. in Randfontein Estates G.M.Co.Ltd. v. Randfontein Town Council (1943 A.D.475 at pages 479 to 485) seems to be against the existence of any such presumption.

If section 7(2) does not operate in terms of units in the deeds registry this would be to the disadvantage of the Administration in the present case, but it

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could operate to its advantage in other cases. For supposing that a man holds two adjoining acre lots and the Administration leaving the remainders still adjoining, expropriates a quarter of each, if registered units are to be regarded the remaining 3/4ths of each acre will have to be acquired if the owner so wishes, while if the whole of his holding is taken into account what is left is more than an acre and section 7(2) has no application.

In the absence of any indication that section 7(2) is based on deeds registry units I see no reason for concluding that it is so based. Parliament was concerned with the smallness of the physical pieces of land left to the owner, not with the fortuitous factor of his title or titles to the land.

Both counsel relied upon the words "in one block (whether or not it be held under one title)" in section 6(2). For the Administration it was argued that, if it had been intended that the form of title should not matter in section 7(2), similar language would have been used there. For the appellant it was contended that it was unlikely that Parliament would have dealt with the subject-matter of section 7(2) differently from the subject-matter of section 6(2), there being apparently no greater reason for making deeds registry units the test in the former than in the latter.

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It is unnecessary to say more in this regard than that I cannot infer from the presence of the words in question in section 6(2) that Parliament intended section 7(2) to operate on the basis of deeds registry units.

The only other provision to which we were referred was section 11, which deals with the noting of an expropriation of land on the title deeds and the transfer of ownership of expropriated land. I am unable to see that this section or any other part of the Act bears upon the question to be decided.

It seems to me that section 7(2) deals with land held in one block regardless of the title or titles under which it is held. Accordingly the appellant was entitled to compel the Administration to acquire the whole block of stands.

The appeal is allowed and an order is made that the Administration is obliged to acquire stands 53, 54, 55, 22 and the remaining portion of stand 52, together with portion A of stand 24, in the township of Boksburg, along with the land required by the Administration. The appellant is entitled to his costs in both Courts.

~~Steyn, J.A.~~

Malan, J.A.
Ogilvie Thompson, J.A.
Price, A.J.A.
} Concur

O.D. Schreiner
25.9.58