

160/84/AV

IN THE SUPREME COURT OF SOUTH AFRICA
(APPELLATE DIVISION)

In the matter between:

WESSEL JOHANNES GREEFF N.O.

Appellant

THE REGISTRAR OF DEEDS,

CAPE TOWN

First Respondent

AND

THE MINISTER OF AGRICULTURE AND
FISHERIES

Second Respondent

CORAM: RABIE, CJ, CORBETT, MILLER, GROSSKOPF, JJA et
CILLIÉ, AJA

HEARD: 2 September 1985

DELIVERED: 26 September 1985

J U D G M E N T

GROSSKOPF, JA

During his lifetime the late. W.H. Greeff

(the

("the deceased") was the owner of three farms in the Somerset East district known as Springvale, Kuikendief-
fontein and Noorsdoornkraal. During 1971, as a result of prolonged droughts and depressed agricultural conditions, he found himself in financial difficulties. In August 1971 he applied for financial assistance pursuant to the Agricultural Credit Act, no. 28 of 1966 ("the Act"). The Department of Agriculture and Land Tenure replied to the application on 25 October 1971, intimating that the Agricultural Credit Board ("the Board") had decided to grant financial assistance to the deceased subject to conditions set out in their letter. The deceased duly accepted the offer of assistance and the conditions

conditions subject to which it was made. The assistance took the form of a loan of R50 000,00 secured by a second bond over the three farms. One of the conditions was that endorsements be effected on the title deeds of the three farms pursuant to section 35 of the Act, stipulating, inter alia, that the farms should not be alienated separately without the consent of the Minister of Agriculture. The advance was duly made, the bond was registered and the endorsements were effected.

The deceased died in August 1980. By

May 1981 the amount owing by the deceased's estate under the bond had been paid in full, and the bond

was

was cancelled. In terms of the deceased's will each of his three sons inherited one of the farms. When the appellant, who is the executor of the deceased's estate, sought to give effect to these bequests the Registrar of Deeds (the first respondent) refused to effect separate registrations of the farms without the consent of the Minister of Agriculture and Fisheries (the second respondent). In doing so the Registrar relied on the above-mentioned condition endorsed on the title deeds of the three farms. The second respondent was approached for his consent, but refused to grant it because, an official in his department stated, the farms Kuikendieffontein and Noorsdoornkraal were not considered

considered viable economic units. In an attempt to resolve matters the appellant applied to the Eastern Cape Division for an order declaring that he was entitled to transfer the three farms separately to the respective legatees and that the said condition was no longer valid. The application, which was opposed by the second respondent, was dismissed with costs. With the leave of the court a quo (MULLINS J) the appellant now appeals to this court.

The crisp question for decision is whether the restriction on separate alienation survived the repayment of the loan to the State. The answer to this question depends mainly on the proper interpretation of

the

the Act. It is necessary therefore to consider its relevant provisions in the context of the Act as a whole.

The Act is described in its long title as an Act "to provide for assistance to persons carrying on or undertaking to carry on farming operations, for the exercise of control in respect of assistance rendered, and for other incidental matters". Part I of the Act makes provision for the establishment and functioning of the Board. Part II defines the nature of the assistance which the Board and the Minister renders to farmers and would-be farmers. This assistance rendered by the Board takes three main forms laid down in section 10; viz., the granting of loans for any purpose tending to safeguard or stimulate the farming industry

industry; the selling or letting of immovable property of the State which in the opinion of the Board is suitable for farming operations; and assistance in effecting compromises between applicants and their creditors. The rendering of assistance in these ways is, in terms of the section, to be carried out subject to the other relevant provisions of the Act and the directions of the Minister and may be subject to such terms and conditions as the Board may determine. It is thus apparent from the provisions of section 10 that the granting of loans to farmers is by no means the only form of assistance rendered by the Board. Section 11 deals with assistance by the Minister. This section plays no role in the decision of this case and I need not refer to it again.

In

In the present case, where the assistance rendered to the deceased required the repayment of money, Part IV of the Act was applicable. This part is headed "Securities and Steps taken in Connecion Therewith. Immovable Property." Its first section (section 34) provides for the manner in which a bond is to be registered whenever such registration is required in terms of a condition imposed under the Act in respect of assistance rendered or any other amount recoverable under the Act. I should emphasize that the "assistance rendered" to which this section refers is not limited to advances to existing farmers. It would cover other forms of assistance falling within the ambit of section 10 such as advances to enable would-be farmers to acquire land, or the granting of credit in respect of the sale of land by the Board to an applicant.

It

It is against this background that sub-sections 35(1) and (2), which are the key provisions for the purposes of this case, fall to be interpreted. I quote them as they were in 1971 when the relevant transactions occurred. These sub-sections then read as follows:

- "(1) When any mortgage bond is registered in terms of section 34, the Minister may authorise the registrar of deeds concerned in writing to endorse on the title deeds of the immovable property in question and, in the case of a restriction referred to in paragraph (b) of this subsection, any other immovable property of the mortgagor, any one or more of the following conditions or restrictions, namely, that such property shall not without the consent of the Minister -
- (a) be subdivided;
 - (b) be alienated separately;
 - (c) be mortgaged or otherwise encumbered;

(d)

- (d) be attached or sold in execution, except at the instance of the holder of a mortgage bond on such property;
- (e) form part of the estate of the owner of such property, but shall, subject to the rights of the holder of the mortgage bond on such property, become the property of the State, if, while there is any amount in respect of assistance owing to the State by the said owner, his estate is sequestrated or is to be dealt with by an executor in terms of section 34 (5) of the Administration of Estates Act, 1965 (Act no. 66 of 1965), or is dealt with in terms of section 28 of this Act, or in the case where the said owner is a company or other juristic person, the company or other juristic person is placed in liquidation.

(2) The said registrar shall give effect to the said authorization in such manner as may to him appear to be most practicable and convenient, and thereupon any such condition or restriction shall be valid and effective against all persons except, in the case of a restriction referred to in subsection (1)(b), against any person (including the State) in whose favour a mortgage bond or other charge was registered against any immovable property prior to the endorsement of the said restriction on the title deeds of such property, but shall, with the exception of the restriction referred to in subsection (1)(a) or (b), lapse on registration of transfer of the property concerned in the name of another owner."

Sub-section (1) commences with the words "(w)hen any mortgage bond is registered". As I have shown a

mortgage bond could be registered not only where a loan was

granted

granted but also to secure payment of the purchase price

(or part thereof) of land sold by the Board, and

in respect of other amounts recoverable under the

Act. But section 35 has still wider application.

Section 16 of the Act provided then (and still does)

that if assistance is rendered to any person by selling

immovable property for cash, section 35(1)(a) and (b)

and (2) would mutatis mutandis apply as if a mortgage

bond over that property were to be registered under section

34 and as if the purchaser were the mortgagor.

To sum up: the Board may grant assistance

to farmers and prospective farmers. The assistance

may inter alia take the form of loans or of the sale of

land

land, either for cash or on credit. Where money is advanced to an applicant or he is granted credit, a bond may (and probably always will) be registered over his property to secure his debt, and the conditions or restrictions set out in section 35(1) may be endorsed on the title deeds of his property at the instance of the Minister. However, endorsement of the restrictions set out in paras (a) and (b) of that sub-section may be required by the Minister even when the Board sells property to the applicant for cash. And in terms of section 35(2) these conditions are valid against all persons (except, as far as the restriction on separate alienation is concerned, against a prior mortgagee). With the exception

exception. of the restrictions on sub-division and separate alienation all conditions and restrictions lapse on registration of transfer of the property in the name of another owner.

The first question which arises in this appeal is whether a restriction on separate alienation could, in terms of section 35 of the Act, lawfully be imposed so as to continue in force despite the extinction of the debt, which gave rise to the imposition of the restriction. And the second question is whether, on the facts of the present case, the restriction which was imposed did so continue in force.

I turn now to the first question. At

the

the outset it should be emphasized that section 35(1) deals with two different juristic acts, viz., on the one hand, a mortgage bond registered in favour of the State and, on the other hand, the endorsement on the applicant's title deeds of a condition or restriction imposed by the Minister. The mortgage bond, with all its terms and conditions, will clearly be liable to cancellation when the debt which it secured no longer exists. The endorsement, on the other hand, is not in terms coupled to the debt or to the bond. On the face of it the Act contemplates that the endorsement could continue indefinitely. The only express provision for its termination is found in section 35(4) of the Act, which authorizes the Minister to order the cancellation

cancellation of such an endorsement.

The language of section 35(1) consequently indicates that the duration of an endorsement on the title deeds of property need not be linked to the continued existence of a debt which is secured by a mortgage bond registered in terms of the Act. This interpretation is supported by other provisions in the Act. I have already referred to section 16 of the Act which provides that endorsements in terms of section 35(1)(a) and (b) could be authorized where the Board sells land to an applicant for cash. In such a case the applicant owes no debt to the State and the restrictions could accordingly not serve as security for money owing. The obvious purpose of

purpose of imposing, pursuant to such a sale, the restrictions mentioned in section 35(1)(a) and (b) would be to ensure that the applicant does not harm the economic value of his farm, which he purchased in whole or in part from the Board, by injudicious sub-division or alienation of parts held under separate title. And the same consideration would seem to underlie the power (granted by section 35(1)) to restrict separate alienation not only of mortgaged land but also of any other part of the mortgagor's immovable property. If the intention had been merely to provide greater security for the State the obvious course would have been to register the mortgage

gage bond also against such other immovable property.

What the section seems to contemplate is that a bond over one property might provide sufficient security, but that as a part of the quid pro quo for receiving assistance the applicant should be prevented from reducing the extent of his landholding without the consent of the Minister. Once again the ratio seems to be to ensure the preservation of an economic unit rather than the securing of a debt.

That an endorsement prohibiting separate alienation may outlive the debt which led to its imposition, appears also from sections 35(1)(e) and 35(2) of the Act. The endorsement sanctioned by section

35(1)(e) deals, broadly speaking, with the insolvency of an owner who has received financial assistance in terms of the Act. In such an event, "while there is any

amount in respect of assistance owing to the State by the said owner" the property in question does not form part of the estate of the owner but becomes the property of the State (subject to the rights of mortgagees).

This condition serves purely to provide security in respect of money owing to the State. For that reason,

its operation is limited to the period during which money is so owing. The omission of a

similar provision in respect of the restrictions mentioned in paragraphs (a) and (b) fortifies the conclusion

that

that they were not intended necessarily to come to an end when the owner's debt to the State is extinguished.

And the apparent reason for this distinction is the one already stated, viz., that they were intended to serve a purpose other than that of providing security for the payment of a debt.

I turn now to section 35(2) which is quoted in full above. When analysed this sub-section seems to give the following effect to conditions or restrictions endorsed pursuant to sub-section (1):

(a) The conditions and restrictions are valid against all persons, with one exception, viz.,

(b)

- (b) a restriction on separate alienation (sub-section 1(b)) is not valid against a person in whose favour a mortgage bond or other charge was registered prior to the endorsement of the restriction against the title deeds of the property concerned;

- (c) when transfer of the property is registered in the name of another owner:
 - (i) the restrictions on sub-division and separate alienation (sub-sections 1(a) and (b)) remain in force;
 - (ii) all other conditions and restrictions lapse.

The last part of the sub-section, which I have paraphrased in paragraph (c) above, makes it abundantly clear that the restrictions on sub-division and separate alienation were intended to survive even the registration

of

of transfer of the property to a new owner. Clearly this means that they would also survive the cancellation of any bond in favour of the State, inasmuch as cancellation of a bond is, with immaterial exceptions, a necessary prerequisite for registration of transfer of immovable property. See section 56 of the Deeds Registries Act, no. 47 of 1937.

Interpreting the Act as it stood in 1971, I therefore conclude that the legislature intended that a restriction on separate alienation could outlive the debt (and resultant mortgage) which led to its imposition. This conclusion would be fortified if regard were had to subsequent amendments to the Act, and, in particular, the introduction of sub-sections 35(3)(b) and (c) by Act

no. 42 of 1983. However, the question whether and to what extent subsequent legislation can be invoked as an aid to interpret earlier legislation is somewhat controversial.

See, for instance, George Divisional Council v Minister of Labour & Another 1954(3) SA 300(C) at p. 307 G-H; Patel v.

Minister of Interior & Another 1955(2) SA 485(A) at p.

493 A-E; Lymer Investments (Pty) Ltd v. South African

Railways & Harbours 1975(3) SA 905 (D) at p. 911; Steyn,

Die Uitleg van Wette, 5th ed., pp. 153 to 154 and

Craies on Statute Law, 7th ed., pp. 146 to 149.

Inasmuch as the meaning of the Act as it read in 1971 seems quite clear to me, I prefer not to place any reliance on amendments subsequent to that year.

In considering the meaning to be attached to

sec.

sec. 35 I have not overlooked the arguments advanced by Mr. Dison, who appeared for the appellant, in support of the proposition that the Minister did not have the power to impose a restriction which would endure after repayment of the debt to the State. He first contended that the long title of the Act, which I have quoted above, provided a strong indication that the Act was solely concerned with the granting of financial assistance to farmers, and that an endorsement in terms of section 35 should therefore be regarded as a form of security which would lapse when the farmer's loan is repaid. I do not agree. The interpretation which I have placed on section 35 seems to me to be entirely consonant with the long title, which records that

the

the Act is intended to provide for assistance to farmers and prospective farmers; for the exercise of control in respect of assistance rendered; and for other incidental matters. The kind of assistance which may be rendered by the Board is, as I have already stated, defined by section 10.

Section 35, on the other hand, is concerned with control in respect of certain types of assistance. More particularly, by making provision for the imposition of a restriction on separate alienation, the Act seeks to ensure that the applicant's property is not reduced to an uneconomic size which might cause the assistance rendered to him to become ineffective.

Mr. Dison also sought to rely on the heading of part IV of the Act which is quoted above. This heading

is

is however too vague to be of any value in interpreting section 35, particularly since it covers also "steps taken in connection" with securities. And I would add that the wording of section 35 read in its context is in any event so clear that, in my view, neither the long title nor the heading could have affected its interpretation.

Mr. Dison further invoked a number of well-known presumptions in favour of a more restricted interpretation of the section. In my view these presumptions cannot play any role when the meaning of a section is as clear as in the present case.

Finally Mr. Dison contended that the section, if interpreted as I think it should be, would lead to

absurdities

absurdities. Thus, he contended, an endorsement could be effected in terms of section 35(1)(c) to prevent an applicant from mortgaging his property without the consent of the Minister. On the interpretation which I have placed on the section this restriction could remain in force even after all loans to the State have been paid, and would lapse only when the Minister authorizes its cancellation (sub-section 4), or when the property is registered in the name of another owner (sub-section 2).

Moreover, Mr. Dison asked, why should a farmer who borrows from the State be in a worse position than one who borrows from the bank?

In considering the validity of these argu-

ments

ments one should always bear in mind that the restrictions imposed under section 35 are not absolute ones, but are subject to relaxation by the Minister. One should not assume that he would act unreasonably in granting or withholding consent to the mortgaging or alienation of the property concerned. Nevertheless, the restrictions do constitute a real diminution of the owner's common law freedom to deal with his property as he pleases. This diminution is, however, a part of the price he has to pay for State assistance, and it does not seem anomalous that the State should seek to ensure that assistance granted to an applicant would have a lasting beneficial effect. The restriction on the mortgaging

gaging of the property was presumably intended to counter financial irresponsibility on the part of farmers who had already found it necessary to approach the State for assistance. This restriction appropriately lapses when the property passes into other hands. In view of the nature and purpose of the legislation I do not consider that these limitations on ownership, burdensome as they may be, create any absurdity that would entitle me to depart

from

from the clear meaning of the section.

To sum up: in my judgment the Minister was entitled in terms of section 35 of the Act to impose a restriction on separate alienation that would remain valid after repayment of the debt to the State. The next question is whether he in fact did so.

It may be convenient at this stage to set out the factual background somewhat more fully. It will be recalled that the Department of Agriculture and Land Tenure informed the deceased on 25 October 1971 that his application for assistance had been granted. The relevant parts of their letter read as follows:

1.

- "1. Die Landboukredietraad het kragtens artikel 10 van die Wet op Landboukrediet, 1966, besluit om, onderworpe aan die bedinge en voorwaardes hierin uiteengesit, aan u bystand van hoogstens R50 000,00 (vyftigduisend rand) aan te bied vir die aflos van die verband ten gunste van S C de Klerk en die balans van die bystand dan nog beskikbaar vir betaling van die rente verskuldig onder die eerste verband.
2. Die aangebode bystand is onderworpe aan die volgende bedinge en voorwaardes, naamlik dat:
- (i) die Raad die reg voorbehou om ter enige tyd hierdie aanbod vir enige rede wat hy as voldoende mag ag, in te trek of te wysig;
 - (ii) geen bedrag hoegenaamd uit die bystand uitbetaal sal word alvorens daar aan al die vereistes van die Raad ter versekering van die terugbetaling van die bedrag van die bystand soos uiteengesit in paragraaf 3 hiervan, deur u voldoen is nie;

(iii)

- (iii) indien die eiendomme in paragraaf 3 genoem, aan 'n reg van vruggebruik onderworpe is, daarvan afstand gedoen moet word ten gunste van die verband wat ingevolge paragraaf 3 geregistreer moet word;
- (iv) u die bystand soos volg terugbetaal: die kapitaal in 25 (vyf-en-twintig) gelyke paaielemente waarvan die eerste betaalbaar is op 31 Maart 1973 en daarna jaarliks om 31 Maart. Rente teen 5% per jaar is op die kapitaal, soos van tyd tot tyd verskuldig, betaalbaar met ingang van die datum waarop die eerste uitbetaling onder die bystand gemaak is en sal jaarliks op 31 Maart agteruitbetaalbaar wees;
3. As verdere voorwaarde van die bystand het die Raad bepaal dat 'n tweede verband as dekkingsverband vir die bedrag van R50,000,00 deur u ten gunste van die Republiek van Suid-Afrika geregistreer word oor die onroerende eiendomme in u aansoek beskryf as:

(i)

- (i) Die plaas NOORSDOORNKRAAL geleë in die Afdeling Somerset-Oos, groot 1147,0008 morg;
- (ii) Die plaas SPRINGVALE, geleë in die Afdeling Somerset-Oos, groot 2963,55 morg; en
- (iii) Die plaas KUIKENDIEFFONTEIN, geleë in die Afdeling Somerset-Oos, groot 1431,4 morg.

en dat die volgende voorwaardes kragtens artikel 35 van die Wet op Landboukrediet, 1966 teen die titelbewyse van die voormelde eiendomme aangeteken word, naamlik dat dit nie sonder toestemming van die Minister of sy gevolmagtigde:

- (i) afsonderlik van mekaar vervreem mag word nie;
- (ii) met verband of andersins beswaar mag word nie;
- (iii) vir beslaglegging vatbaar is of uitgewin mag word nie, behalwe op aandrang van 'n verbandhouer;
- (iv) deel van u boedel sal uitmaak nie, indien u boedel gesekwestreer word of asof insolvent beredder word en daar dan nog 'n bedrag ten opsigte van

die

die bystand verskuldig is nie."

At the foot of the letter appear the words

"Hierby aanvaar ek die aanbod op die voorwaardes soos

hierbo uiteengesit". This acceptance was signed by

the deceased, witnessed and dated.

Thereafter matters took their course. The

money was advanced and a bond prepared for registration.

The Minister issued an authorization in terms of section

35(1) of the Act, which, in so far as it was relevant,

read as follows:

"MAGTIGING KRAGTENS ARTIKEL 35(1) VAN DIE WET
OP LANDBOUKREDIET , 1966.

Ek, die ondergetekende, MARTIN CORNELIUS
POTGIETER Administratiewe Beheerbeampte in
die Departement van Landboukrediet en

Grondbesit

Grondbesit, behoorlik daartoe gemagtig deur die Minister van Landbou MAGTIG die Registrateur van Aktes te KAAPSTAD kragtens artikel 35 van die Wet op Landboukrediet, 1966, HIERBY OM, gelyktydig met registrasie van 'n verband vir R50 000,00 deur WILLEM HENDRIK GREEFF ten gunste van die Republiek van Suid-Afrika, oor

(here follow the deeds office descriptions of the three farms)

DIE VOLGENDE VOORWAARDES OF BEPERKINGS op die titelbewyse van die voormelde eiendomme AAN TE TEKEN: naamlik, dat die gemelde eiendomme nie sonder die toestemming van die Minister van Landbou -

- (a) -----
- (b) afsonderlik van mekaar vervreem mag word nie;
- (c) met verband of andersins beswaar mag word nie;
- (d) vir beslaglegging vatbaar is of uitgewin mag word nie, behalwe op aandrang van 'n verbandhouer oor daardie goed;

(e)

(e) deel van die boedel van die eienaar van daardie goed uitmaak nie, maar behoudens die regte van die houer van 'n verband oor daardie goed, die eiendom van die Staat word, indien, terwyl daar nog 'n bedrag ten opsigte van bystand deur bedoelde eienaar aan die Staat verskuldig is, sy boedel gesekwestreer word of daarmee deur 'n eksekuteur ingevolge artikel 34(5) van die Boedelwet, 1965 (Wet No. 66 van 1965), gehandel moet word, of daarmee ingevolge artikel 28 van die Wet op Landboukrediet, 1966, gehandel word, of, in die geval waar bedoelde eienaar 'n maatskappy of ander regs persoon is, die maatskappy of ander regs persoon in likwidasië geplaas word."

The bond in favour of the State was duly

registered and, simultaneously with registration thereof,

the following endorsement was made on the title deeds:

"Artikel 35 van Wet Nr 28 van 1966

Section 35 of Act No. 28 of 1966

Die

Die binnegemelde eiendom is onderhewig aan die beperkings van sub-artikel 1(b) (c) (d) en (e) van bogemelde artikel. Hierdie beperkings met die uitsondering van die beperkings gemeld in sub-artikel 1(b) verval met registrasie van transport van die bogemelde eiendom op naam van 'n ander eienaar.

The within property is subject to the restrictions of sub-sections 1(b) (c) (d) and (e) of the above-mentioned section. These restrictions with the exception of the restrictions referred to in sub-section 1(b) lapse on registration of transfer of the within named property in the name of another owner."

The endorsement concludes by indicating where the Minister's authorization is filed, and is signed and dated on behalf of the Registrar of Deeds.

Mr. Dison's main argument on this part of the case was that, as appears from the written authorization,

the

the Minister authorized the Registrar of Deeds in terms of section 35 to endorse the relevant restrictions "gelyktydig met registrasie van h verband". Consequently, he contended, the restrictions were notionally and as a matter of language tied to the continued existence of the bond. I do not agree. Notionally there is a great difference between an endorsement on a title deed and a bond condition, as I have endeavoured to show above. And as a matter of language the "magtiging" authorizes the Registrar of Deeds to endorse ("aan te teken") the restrictions simultaneously with the registration of the bond. The bond and the endorsement were accordingly to come into effect at the same time.

Nothing

Nothing was said, however, about their termination.

As I have stated above, the Act contemplates that a restriction in terms of section 35(1)(b) could survive the bond which led to its imposition, and, indeed, that the purpose of the restriction is not to increase or improve the security which the bond provides, but to ensure that assistance granted in terms of the Act would not be dissipated by improvident conduct on the part of the applicant or his successors in title.

The sequence of events which I have described above, and the terms of the correspondence, the Minister's authorization and the endorsements on the title deeds of the deceased's farms, convince me that the Minister

intended

intended no more and no less than to give effect to
this purpose.

It follows that in my view an endorsement
pursuant to section 35(1)(b) of the Act can in law sur-
vive the cancellation of the bond which gave rise to
the endorsement; that in the present case the endorse-
ment did so survive, and that it is still of full force
and effect.

In the result the appeal is dismissed with costs.

E. M. Grosskopf

E M GROSSKOPF, JA

RABIE, CJ
CORBETT, JA
MILLER, JA
CILLIÉ, AJA

)
Concur