

CONSENT TO SUBDIVIDE AGRICULTURAL LAND: NO EASY HURDLE

Maxrae Estates (Pty) Ltd v National Minister of Agriculture, Forestry and Fisheries and Another (13769/19) [2020] ZAGPPHC 58 (4 March 2020)

Many agricultural land owners know of the limitations imposed on development of their land by virtue of the Subdivision of Agricultural Land Act. This judgment illustrates the difficulties such owners face and highlights what facts must be shown to appeal the Minister's refusal of an application to subdivide. The owner can approach a court for review of the Minister's exercise of his discretion. To do this, one has to be able to show that the Minister failed to exercise his discretion rationally, reasonably and within the bounds of the law; a hefty onus.

The Judgment can be viewed [here](#).

FACTS

Maxrae Estates (Pty) Ltd ("Maxrae") is the registered owner of a farm in Gauteng. The property is located on both sides - i.e to the north and the south - of a provincial road, the R50.

On one of the portions, Maxrae operates a warehouse from where fresh produce from local farmers are received, sorted, packaged and distributed to different national markets. Maxrae sought to expand the warehouse to create a similar facility to cater for a wider market. Although this was agricultural property and hence subject to the provisions of the Subdivision of Agricultural Land Act 70 of 1970 ("the Act"), Maxrae was of the opinion that the existence of the warehouse has already disturbed the footprint of the property and a further extension should be allowed.

Maxrae applied to the Department of Agriculture, Forestry and Fisheries ("the Department") seeking permission to subdivide the property and establish a sectional title scheme on a portion of the property, on the one side of the R50 road. It submitted an application through its agent, Metroplan. The necessary environmental authorisation was obtained for the expansion of the agricultural products packaging facility and the construction of an access road.

The application for subdivision was then considered and declined by the National Minister of Agriculture, Forestry and Fisheries Department ("the Department"). Maxrae thereafter commissioned an agricultural study which found that in light of the alignment of road R50, the portions that form the subject of the proposed subdivision of the subject property were already functionally divided, operated independently of each other and that the establishment of the sectional title scheme on the area already used for warehousing and related purposes would not impact on the agricultural potential of the subdivided portions.

Maxrae then lodged an internal appeal with the Minister against the decision of the Department; again it was unsuccessful. The next step was a review application to the Minister, which was also unsuccessful.

Maxrae then approached the Court for an order reviewing and setting aside the decision of the Minister on the grounds that the Department and Minister ignored the relevant information which Maxrae had placed before it. The Department and the Minister opposed the application and argued that the proposed subdivision will perpetuate the creation of smaller portions in the area. The approval will set a precedent for similar applications in the area. The warehouse should remain as part of the entire farm as it is used for agricultural purposes.

HELD

- It was common cause that the property was indeed agricultural land and that subdivision was prohibited unless consent was granted by the Minister.

- The relevant provisions of the Act are found in sections 3 and 4. Section 3 states that, subject to the provisions of section 2, no agricultural land shall be subdivided unless the Minister has consented thereto in writing. Section 4 regulates applications for the Minister's consent and state:

"4. *Application for consent of Minister, and imposition, enforcement or withdrawal of conditions by him -*

1(a) Any application for the consent of the Minister for the purpose of section 3 shall -

(i) in the case where any Act referred to in paragraphs (a) to (e) of that section is contemplated, be made by the owner of that land concerned;

*(ii) be lodged in such a place and be in such form and be accompanied by such plans, documents and information as **may be determined by the Minister.***

(b) ...

2. The Minister may in his discretion refuse or-

(a) on such conditions, including conditions as to the purpose for or manner in which the land in question may be used, as it deems fit, grant any such application;

(b) if he is satisfied that the land in question is not to be used for agricultural purposes and after consultation with the administrator of the province on which such land is situated, on such conditions as such administrator may determine in regard to the purpose for or manner in which such land may be used, grant such application."

- Section 4(2) confers wide discretionary powers on the Minister, not limited to certain prescribed conditions or factors. The discretion must be exercised in line with the purpose that is sought to be achieved by the Act, being to control the subdivision and the use of agricultural land, essentially to prevent its fragmentation into small and uneconomic units. Where an Act confers wide powers on a decision maker, courts are reluctant to interfere with that discretionary power, especially in respect of the separation of powers doctrine. A court should therefore not ascribe to itself superior wisdom on matters which fall within the expertise and knowledge of other branches of government.
- The decision of the Minister in this matter constituted administrative action. In this regard, it must be noted that in the approval process, both the provincial department and the national, via the Minister, represent important functions and the one is not usurped by the other: the two spheres of control should coexist, even if they overlap to some extent and even if, in respect of the approval of subdivision of agricultural land, the one may in effect veto the decision of the other. It should be borne in mind that the one's sphere of control operates from a municipal perspective and the other from a national perspective, each having its own constitutional and policy considerations.
- In order to succeed with a review, Maxrea had to prove that the exercise of the discretion by the Minister, as conferred on him by section 4(2) of the Act, was arbitrary, or that the discretion was exercised improperly.
- On the facts, and given the very wide nature of the discretion conferred on the Minister by section 4(2), it was not shown that the Minister did not exercise the discretion within the bounds of the law and that the Minister did not exercise it reasonably, rationally and justifiably. The Minister had provided the reasons why he upheld the decision of the Department and there was no indication that the Minister or the Department did not exercise the discretion rationally, reasonably and within the bounds of the law.

CONCLUSION

Maxrea's application accordingly failed.