



REAL PROPERTY (SPECIAL VESTING ORDERS).

No. 94 of 1973.

ANALYSIS.

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AN ACT to provide for certain persons seised of land in this State to obtain registered proprietorship.

[22 January 1974.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—(1) This Act may be cited as the *Real Property (Special Vesting Orders) Act 1973*.

Short title,
construction,
and
commencement.

(2) The Act shall be read and construed as if it were part of the *Real Property Act* 1862, which in this Act is referred to as the Principal Act.

(3) This Act shall commence on a date to be fixed by proclamation.

Appointment of
commissioners.

2—(1) The Governor may appoint one or more fit persons to be special commissioners for the purposes of this Act.

(2) A commissioner appointed under this section—

(a) shall be appointed from a panel of persons submitted to the Governor by the Law Society of Tasmania;

(b) is not subject to the *Public Service Act* 1973 in respect of appointment or otherwise;

(c) shall hold office for such period, or until he has completed such work, as is specified in his commission;

(d) is entitled to such remuneration as the Governor may determine; and

(e) has, so far as their use may assist him in his work, all the powers of a commissioner appointed under section fourteen of the *Evidence Act* 1910.

Application
for title.

3—(1) A person who—

(a) at, or within two years from, the commencement of this Act is in possession himself, or by his tenant or an undertenant, holding mediately or immediately of that tenant, of land in this State that is subject to the provisions of the Principal Act; and

(b) believes that he can show an entitlement to the land as provided in section five,

may, subject to this section, apply within that period to the Recorder for an order vesting the land in him for an estate in fee simple.

(2) The Governor may, by order-in-council, extend the period within which an application may be made to the Recorder under subsection (1) of this section.

Form of
application.

4—(1) Subject to this section, an application under section three shall be in writing in accordance with the prescribed form and accompanied by evidence as to the applicant's entitlement in accordance with section five and by a fee of twenty-five dollars.

(2) The Recorder may, if it appears to him that a case of hardship exists, remit the whole or part of the fee payable by an applicant under subsection (1) of this section.

5 To obtain a vesting order under this Act the applicant shall show— Evidence of entitlement.

- (a) that he is qualified to apply under paragraph (a) of subsection (1) of section three;
- (b) a sale of the land not less than fifteen years before the commencement of this Act; and
- (c) an event or a chain of events, such as sales, gifts, and transmissions on death or otherwise, in consequence of which he is entitled in equity and good conscience to be registered as proprietor of an estate in fee simple in the land.

6—(1) On receipt of an application under section three the Recorder shall, unless he rejects the application— Initial action on application.

- (a) proceed to consider it himself; or
- (b) refer it to a commissioner appointed under section two.

(2) Where the Recorder acts under paragraph (a) of subsection (1) of this section, the following provisions apply, namely:—

- (a) The Recorder shall cause notice of the application—
 - (i) to be advertised in the *Gazette* and in a newspaper; and
 - (ii) to be given to every person appearing by the register book to have any estate or interest in the land or in any incumbrance notified on the title thereto and to any other person to whom the Recorder considers that notice should be given;

- (b) A notice of the application under paragraph (a) of this subsection shall specify a period of not less than one month and not more than twelve months from the date of the advertisement or the giving of the notice, as the case may be, on or after the expiration of which the Recorder may, unless a caveat is lodged forbidding the granting of the application, make a vesting order under section eleven; and

(c) The applicant shall cause a notice of the application, in a form approved by the Recorder, to be posted in a conspicuous place on the land where the notice can be read by passers-by and keep it or a copy thereof posted there for a total period of thirty days.

(3) The Recorder shall cause a memorandum of his compliance with paragraphs (a) and (b) of subsection (2) of this section to be filed in his office and that memorandum shall be sufficient evidence of his compliance as stated in it.

(4) If sub-paragraph (i) of paragraph (a) of subsection (2) of this section has been complied with, it makes up for any defect of compliance with sub-paragraph (ii) of that paragraph, so far as the validity of any order under section eleven is concerned.

Duties of
special
commissioner.

7—(1) When an application is referred to a commissioner appointed under section two, the commissioner shall inquire into the applicant's title and for that purpose—

- (a) shall appoint a time and place for hearing, in the municipality in which the land lies, objections to granting the application;
- (b) shall identify the land by such means as he thinks fit;
- (c) is not bound by the rules of evidence but may inform his mind as he thinks fit;
- (d) may make such requisitions as to the applicant's title or as to any other matter relating to the application as he thinks fit; and
- (e) shall at the time and place appointed hear any objections to granting the application,

and shall report the results of his inquiry to the Recorder.

(2) The Recorder shall cause notices, in accordance with the prescribed form, of the time and place for hearing objections to be advertised and given in the same way in all respects as notices under subsection (2) of section six.

(3) The applicant shall cause a notice of the application, in a form approved by the Recorder, to be posted in a conspicuous place on the land where the notice can be read by passers-by and keep it or a copy thereof posted there for a total period of thirty days.

(4) If the commissioner cannot sit at the time or place appointed, he or the Recorder may, by notice on the door of the place at the time appointed, adjourn the sitting to another time or place and all persons wishing to appear before the commissioner may attend accordingly.

8 Where the Recorder considers an application himself as mentioned in section six, he may— Inquiry by the Recorder.

- (a) in his discretion, reject the application altogether or in part;
- (b) make such requisitions as to the title applied for or as to any other matter relating to the application, as he thinks fit; or
- (c) make a vesting order under section eleven.

9 If, at any time before an application under section three is granted, the applicant fails to answer to the satisfaction of the Recorder or a commissioner any requisition made by him under this Act within such time as seems reasonable to him— Power to reject application.

- (a) if the request is made by the Recorder, he may in his discretion reject the application; or
- (b) in any other case, the commissioner shall seek the Recorder's directions as to what action he should take with respect to the application and shall, on receiving those directions, forthwith comply with them.

10—(1) Any person claiming any estate or interest in the land in respect of which an application has been made under section three may, before the granting thereof, lodge a caveat with the Recorder forbidding the granting of the application. Caveats.

(2) A caveat under this section shall in all other respects be in the same form and subject to the same provisions and have the same effect with respect to the application against which it is lodged as a caveat against bringing land under the operation of the Principal Act.

(3) A person who has been given a notice under subsection (2) of section seven may not lodge a caveat under this section but shall instead make his objection to the commissioner to whom the application has been referred.

11 Where the Recorder—

- (a) has dealt with an application himself, he may, after the expiration of the period prescribed by paragraph (b) of subsection (2) of section six; or
- (b) has received the report of a commissioner under section seven with respect to an application, he may,

make in respect of the application an order vesting the land in the applicant or person entitled thereto for an estate in fee simple or other estate to which the applicant is entitled, free from— Granting of application.

(c) all incumbrances shown in the register book as affecting the existing title that appear to have been determined or extinguished; and

(d) any easement notified as an incumbrance that has, to the satisfaction of the Recorder, been proved to have been abandoned by evidence of non-user for a period of not less than twenty years,

but subject to any estate or interest to which the estate of the applicant appears to the Recorder to be subject.

Procedure on vesting order.

12—(1) Where a vesting order is made under section eleven, the Recorder shall make the entries directed to be made by section one hundred and twelve of the Principal Act in the case of the vesting orders therein mentioned and the making or omission to make those entries shall be attended by the same results as declared by that section in respect of the vesting orders therein mentioned.

(2) In cancelling any Crown grant, certificate of title, instrument, memorial, or entry in the register book in pursuance of the vesting order, the Recorder shall endorse thereon a memorandum stating the circumstances and authority under which the cancellation is made.

Issue, &c., of certificate of title in pursuance of vesting order.

13 Any certificate of title issued by the Recorder in pursuance of a vesting order under this Act shall be issued and registered in the manner prescribed by section thirty-one of the Principal Act.

Effect of application on registered title.

14—(1) Upon the making of an application under section three, all persons having or claiming an estate or interest in the land shall be deemed to have such rights as they would have had if the Principal Act and section four hundred and seventy-eight of the *Local Government Act 1962* had not been passed.

(2) Subsection (1) of this section ceases to operate in respect of the land when the application has been rejected under this Act or a vesting order has been made in pursuance thereof.

Application of the Principal Act.

15—(1) Section one hundred and twenty-five of the Principal Act applies in respect of applications under this Act as if after the word “application” (first occurring) in subsection (4) were inserted the words “, his evidence in support thereof,”.

(2) Section one hundred and thirty of the Principal Act applies in respect of vesting orders under this Act as if—

(a) at the end of paragraph (c) of subsection (1) there were added the words “ or a vesting order had been made under the *Real Property (Special Vesting Orders) Act 1973*;

- (b) after the word " Act " (first occurring in subsection (2)) were inserted the words " or the making of a vesting order under the *Real Property (Special Vesting Orders) Act 1973* ";
 - (c) after the word " Act " (second occurring in that subsection) were inserted the words " or for a vesting order under that Act "; and
 - (d) at the end of that subsection were added the words " or had, wilfully or collusively, failed to make objections to a commissioner appointed under that Act ".
- (3) Section one hundred and thirty-five of the Principal Act applies in respect of titles obtained under this Act as if—
- (a) after the word " Act " (first occurring) were inserted the words " or upon a vesting order under the *Real Property (Special Vesting Orders) Act 1973* "; and
 - (b) after the word " Act " (second occurring) were inserted the words " or became subject to the vesting order ".
- (4) Where, by reason of subsection (3) of this section, a certificate of title is void as against another person's title, that other person or his successor in title may apply for and obtain a vesting order under section one hundred and fifty-one of the Principal Act in respect of the land as to the title to which the certificate of title is void, as if—
- (a) no application or vesting order had ever been made under this Act; and
 - (b) no person other than the applicant had subsequently become registered as proprietor of that land.
- (5) Where a person is deprived of land or sustains loss or damage by virtue of a vesting order under this Act, the date of the deprivation, loss, or damage shall, for the purposes of estimating the damages to which he is entitled under the Principal Act, be deemed to be the date on which he or his predecessors in title lost possession of the land or the date of a sale referred to in paragraph (b) of section five, whichever is the earlier.

16 The Governor may make regulations for the purposes of this Regulations. Act.