

~~Case No. 2~~

33/62

IN THE PRIVY COUNCIL

No.14 of 1961

ON APPEAL

FROM THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE MATTER OF KUALA LUMPUR HIGH COURT CIVIL
APPLICATION NO.1 of 1959

AND IN THE MATTER OF LAND ACQUISITION ENACTMENT
CAP.140 SECTION 23

AND IN THE MATTER OF LAND ACQUISITION OF LOT
NOS. 57 and 58 SECTION 58, TOWN OF KUALA LUMPUR

B E T W E E N

LIM FOO YONG LIMITED (Applicant) Appellant

- and -

THE COLLECTOR OF LAND
REVENUE ... (Respondent) Respondent

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
30 MAR 1963
25 RUSSELL SQUARE
LONDON, W.C.1.

68270

COWARD, CHANCE & CO.,
St. Swithin's House,
Walbrook,
London, E.C.4.

Solicitors for the Appellant.

WRAY, SMITH & CO.,
1, King's Bench Walk,
Temple,
London, E.C.4.

Solicitors for the Respondent.

ON APPEAL

FROM THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE MATTER OF KUALA LUMPUR HIGH COURT CIVIL
APPLICATION NO.1 of 1959

AND IN THE MATTER OF LAND ACQUISITION ENACTMENT
CAP.140 SECTION 23

AND IN THE MATTER OF LAND ACQUISITION OF LOT
NOS.57 and 58 SECTION 58, TOWN OF KUALA LUMPUR

B E T W E E N

LIM FOO YONG LIMITED (Applicant) Appellant

- and -

THE COLLECTOR OF LAND
REVENUE ... (Respondent) Respondent

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

No.	Description of Document	Date	Page
1	Reference to Court by Respondent under Land Acquisition Enactment Cap.140 Section 23	20th March, 1959	1
	Annexures thereto as follows:-		
	"A" Written offer of Compensation	31st January, 1958	3
	"B" Rejection of offer and request for reference to Court	11th March, 1958	4
	"C" Plan	-	5
	"D" Schedule under Land Acquisition Enactment Cap.140 Section 23(ii)	-	5
	"D1" Notification No.495 on page 291 of Selangor Government Gazette	11th October, 1957	7
	"D2" Notification No.496 on page 292 in Selangor Government Gazette	11th October, 1957	8
	"D3" Notice that the Government intends to take possession	16th October, 1957	9

No.	Description of Document	Date	Page
	"D4" Agreement by Appellant	12th October, 1957	11
	"D5" Letter, Appellant's Solicitors to Respondent	30th October, 1957	11
	"D6" Letter, Respondent to Appellant's Solicitors	6th November, 1957	12
	"D7" Letter, Appellant's Solicitors to Respondent and Statement enclosed	3rd December, 1957	13
	"D8" Letter, Respondent to Appellant's Solicitors	5th December, 1957	14
	"D9" Letter, Respondent to Appellant's Solicitors	5th December, 1957	15
	"D10" Letter, Appellant's Solicitors to Respondent	9th December, 1957	15
	"D11" Letter, Respondent to Appellant's Solicitors	31st December, 1957	16
	"D12" Letter, Respondent to Appellant's Solicitors	3rd January, 1958	18
	"D13" Letter, Appellant's Solicitors to Respondent	11th January, 1958	18
	"D14" Letter, Respondent to Appellant's Solicitors	20th January, 1958	19
	"D15" Letter, Appellant's Solicitors to Respondent	21st January, 1958	20
	"D16" Letter, Appellant's Solicitors to Respondent	31st January, 1958	22
	"D17" Letter, Appellant's Solicitors to Respondent	4th February, 1958	22
	"D18" Letter, Respondent to Appellant's Solicitors	14th February, 1958	23
	"D19" Letter, Appellant's Solicitors to Respondent	17th February, 1958	24
	"D20" Letter, Respondent to Appellant's Solicitors	22nd February, 1958	26
	"D21" Letter, Appellant's Solicitors to Respondent	25th February, 1958	27
	"D22" Letter, Respondent to Appellant's Solicitors	26th February, 1958	28

No.	Description of Document	Date	Page
	"D23" Letter, Appellant's Solicitors to Respondent	1st March, 1958	28
	"D24" Letter, Appellant's Solicitors to Respondent	11th March, 1958	29
	"D25" Report and Valuation by Mr. A.A. Wragg, Chief Valuer, Treasury Valuation Division.	29th January, 1958	29
	"D26" Notes of Enquiry by Respondent.		30
	<u>IN THE SUPREME COURT OF THE FEDERATION OF MALAYA</u>		
	<u>IN THE HIGH COURT AT KUALA LUMPUR</u>		
2	Notes of Evidence recorded by Ong, J.	20th October, 1959	35
	<u>Applicant's Evidence</u>		
	Chin Kok Kiong Examination	20th October, 1959	36
	Cross-Examination		38
	Re-Examination		38
	Lim Foo Yong Examination	20th October, 1959	38
	Cross-Examination		43
	Re-Examination		44
	Recalled Examination	26th February, 1960	57
	Cross-Examination		57
	Re-Examination		57
	Lee Yoon Thim Examination	20th October, 1959	44
	Cross-Examination		45
	Mrs. Lucy Pereira Examination	20th October, 1959	46
	Cross-Examination		46
	Lim Joo Tan Examination	21st October, 1959	47
	Cross-Examination		50
	Re-Examination		50
	<u>Respondent's Evidence</u>		
	Arthur Aubrey Wragg Examination		51
	Cross-Examination		52
	Submissions by Counsel - Counsel for Respondent	21st October, 1959	54
	Counsel for Applicant	21st October, 1959	55
	Direction by Court	13th November, 1959	56
3	Award	26th February, 1960	58

No.	Description of Document	Date	Page
4	Opinion of Assessor Mr.A.K. Jones (Exhibit "J")	26th February, 1960	72
5	Opinion of Assessor Mr.M.W. Navaratnam (Exhibit "N")		74
<u>IN THE COURT OF APPEAL AT</u> <u>KUALA LUMPUR</u>			
6	Notice of Appeal	23rd March, 1960	77
7	Memorandum of Appeal	12th May 1960	78
8	Notice of Cross-Appeal	21st May 1960	81
9	Notes of Argument recorded by Thomson, C.J.	25th and 26th August, 1960	82
10	Judgment of Thomson, C.J.	12th December, 1960	87
11	Judgment of Hill, J.A.	12th December, 1960	96
12	Judgment of Neal, J.	10th November, 1960	96
13	Order.	12th December, 1960	100
14	Order granting conditional leave.	7th February, 1961	101
15	Order granting final leave.	1st May 1961	102

E X H I B I T S

Exhibit Mark	Description of Document	Date	Page
"A1"	Site Plan	Separate document	
"A2"	Plan	Separate document	
"A3"	Plan	Separate document	
"A4"	Letter Joe Eu to Lim Foo Yong	24th September, 1956	103
"A5"	Letter, Kuala Lumpur Municipal Council to Appellant's Solicitors	15th October, 1957	104

PART II

Exhibit Mark	Description of Document	Date	Page
"A6"	Letter, Lim Joo Tan to Appellant	19th March, 1957	105
"A7"	Letter Appellant to Lim Joo Tan	23rd March, 1957	105
"A8"	Letter, Lim Joo Tan to Appellant	8th July, 1957	106
"A9"	Letter, Appellant to Lim Joo Tan	12th July, 1957	107
"A10"	Letter, Lim Joo Tan to Appellant	5th November, 1957	108
"A11"	Letter, Lim Joo Tan to Appellant	20th November, 1957	109
"A12"	Letter, Appellant to Lim Joo Tan	2nd December, 1957	110
"A13"	Letter, Appellant to Lim Joo Tan	5th May, 1959	111
"A14"	Letter, Lim Joo Tan to Appellant	11th May, 1959	111
"A15"	Letter, Appellant to Lim Joo Tan	14th May, 1959	112
"A16"	Letter, Town Planning Officer, Kuala Lumpur to Y.T. Lee & Co.	18th May, 1956	113
"R17"	Report by A.A.Wragg, Chief Valuer, Valuation Division, Ministry of Finance	29th January, 1958	114
"R18"	Plan Annexure to Plan (Ex.R.18)		116

DOCUMENTS NOT TRANSMITTED TO PRIVY COUNCIL

Description of Document	Date
Notice of Motion	10th January, 1961
Affidavit of Lim Foo Yong	10th January, 1961
Notice of Motion	24th April, 1961
Affidavit of Chu Yin Mooi (f)	24th April, 1961

IN THE PRIVY COUNCIL

No.14 of 1961

ON APPEAL

FROM THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE MATTER OF KUALA LUMPUR HIGH COURT CIVIL
APPLICATION NO.1 of 1959

AND IN THE MATTER OF LAND ACQUISITION ENACTMENT
CAP.140 SECTION 23

AND IN THE MATTER OF LAND ACQUISITION OF LOT
NOS. 57 and 58 SECTION 58, TOWN OF KUALA LUMPUR

10

B E T W E E N

LIM FOO YONG LIMITED (Applicant) Appellant

- and -

THE COLLECTOR OF LAND
REVENUE ... (Respondent) Respondent

RECORD OF PROCEEDINGS

No. 1.

No. 1.

REFERENCE TO COURT BY RESPONDENT UNDER LAND
ACQUISITION ENACTMENT CAP.140 SECTION 23

Reference to
Court by
Respondent
under Land
Acquisition
Enactment
Cap.140,
Section 23.

20

WHEREAS Lim Foo Yong Limited of 35 Pudu Street,
Kuala Lumpur represented by Messrs. Shook Lin and
Bok of 80 Cross Street, Kuala Lumpur, has not ac-
cepted the award made by me under Section 11 of the
Land Acquisition Enactment, Cap.140, a copy of
which is annexed hereto as ANNEXURE A and required
by the application of which is annexed hereto as
ANNEXURE B that the matter be referred to Court
now I, M.A.Kidner, Collector of Land Revenue, Kuala
Lumpur, do hereby make REFERENCE to the Court of
the acquisition by the Selangor Government of the
land situated at 1½ mile Ampang Road, Town of Kuala
Lumpur for a public purpose, to wit, a Conference
Hall and ancillary buildings.

20th March,
1959.

30

Notification under Section 4(i) of Cap. 140
was signed on 8th October, 1957 and appeared as
notice No.495 on page 291 in Selangor Government
Gazette of 11th October, 1957.

40

The declaration under Section 6(i) of Cap.140
was signed on 8th October, 1957 and appeared as
notice No.496 on page 292 in Selangor Government
Gazette of 11th October, 1957.

No. 1.
Reference to
Court by
Respondent
under Land
Acquisition
Enactment
Cap.140,
Section 23.
20th March,
1959
- continued.

The area of the land affected by the declaration is 2 acres 1 rood 11.5 poles registered as Lot Nos.57 and 58, Section 58, Town of Kuala Lumpur in the District of Kuala Lumpur.

The land is town land held under Certificates of Title Nos.3952 and 3953.

The area to be acquired is the whole area - 2 acres 1 rood 11.5 poles - which consists of the following :-

C.T.3952	Lot 57	...	la.	Or.	16.6p.	10
" 3953	" 58	...	<u>1</u>	<u>0</u>	<u>34.9</u>	
TOTAL			<u>2</u>	<u>1</u>	<u>11.5</u>	

The land is planted with rambutan trees and is about 12 feet below the level of the road and the adjoining land, Lot No.56.

The land consists of two contiguous lots with Lot No.57 having a frontage of about 148 feet to Ampang Road.

Section 23(i)(b) No houses have been erected on the land. (ANNEXURE C). 20

The persons interested in the land at the time of acquisition are Lim Foo Yong Limited, the registered proprietors and Kwong Yik (Selangor) Banking Corporation Limited, Kuala Lumpur, as Chargees.

Section 23(i)(c) The claims of the Petitioners are -

- (i) \$325,357/- for the land
- (ii) \$585,135/- for injurious affection.

The amount awarded by the Collector under Section 5 is NIL. The amount awarded as compensation under Section 11 is \$60,000/-.

The Petitioners accepted the award under protest as to the sufficiency of the amount.

Section 23(i)(d) The grounds on which this amount of compensation was determined are given in ANNEXURE D.26. 30

Sgd: ?

COLLECTOR OF LAND REVENUE,
KUALA LUMPUR.

20th March, 1959.

ANNEXURE "A" - WRITTEN OFFER OF COMPENSATION
(27) in CLR.KL9/5/57B (Land 174) ANNEXURE A

No. 1.

Reference to Court by Respondent under Land Acquisition Enactment Cap. 140, Section 23. 20th March, 1959 - continued.

STATE OF SELANGOR

LAND ACQUISITION ENACTMENT (CAP. 140)
FORM VIII
WRITTEN OFFER OF COMPENSATION
(Section 43(i))

Annexure "A".
Written offer of Compensation. 31st January, 1958.

10 WHEREAS land formerly held by Lim Foo Yong Ltd., of Kuala Lumpur under CT.3952 & 3953, Lots 57 & 58 Sec. 58 situated at Ampang Road in the Township of Kuala Lumpur in the District of Kuala Lumpur in the State of Selangor containing acres 2 roods 1 poles 11.5 is being acquired by the Menteri Besar of Selangor.

20 Now I, M.A.Kidner, Asst. Collector of Land Revenue for the district of Kuala Lumpur in the State of Selangor do hereby offer to Lim Foo Yong Ltd., the sum of dollars sixty thousand only (~~60,000~~ /-) * as full compensation for the aforesaid land so acquired by the said Menteri Besar and I make acquisition award under the powers vested in me by Sections 11 and 43(i) of the Land Acquisition Enactment.

* For detail see below

DATED at Kuala Lumpur this 31st day of January, 1958.

Sgd: M.A.Kidner,
Collector of Land Revenue,
Dist. of Kuala Lumpur
State of Selangor.

30 L.S.
Section 12(ii)

AWARD

TOWNSHIP OF KUALA LUMPUR

Lot No.	Sec.No.	Area A.R. P.	Compensation	Payable to
57	58	1 0 16.6)	60,000/-	Lim Foo Yong Limited subject to discharge of charge
58	58	1 0 34.9)		

No. 1.
Reference to
Court by Re-
spondent under
Land Acquisition
Enactment Cap.
140, Section 23.
20th March, 1959
- continued.

Chargee - Kwong Yik (Selangor) Banking Corporation
Ltd., Kuala Lumpur.

Sgd: M.A.Kidner,
Collector of Land Revenue,
Kuala Lumpur.

Served on Lim Foo Yong Ltd., on 4.2.58.

Served on The Kwong Yik (Sel.) Banking Corporation
Secretary on 4.2.58.

Annexure "A"

Written offer of
Compensation.

31st January,
1958
- continued.

Received copy on 4.2.58 at 10.25 a.m. by Shook
Lin & Bok.

10

Annexure "B"

Rejection of
offer and
request for
reference to
Court.

11th March,
1958.

ANNEXURE "B" - REJECTION OF OFFER AND REQUEST FOR
REFERENCE TO COURT

Lim Foo Yong Ltd.,
35, Pudu Street,
Kuala Lumpur.

MARCH 11, 1958.

Collector of Land Revenue,
KUALA LUMPUR.

Sir,

Acquisition of C.T.Nos.3952 and 3953 -
Lots 57 & 58 Section 58 - Town of Kuala Lumpur.

20

We hereby notify you that we do not accept
the award of \$60,000/- made by you on 31st January,
1958.

2. We hereby require that the matter be referred
by you for the determination of the Court under
Section 22(i) of the Land Acquisition Enactment,
Cap.140.

3. We object to the amount of compensation award-
ed on the following grounds :-

30

(a) That the amount of compensation awarded
is insufficient having regard to :-

(i) The market value of the lands;

(ii) The damage sustained by us at the time of your taking possession of the lands by reason of the acquisition injuriously affecting our other property on Lots 134, 135, 136, 156 and 157 of Section 58 Town of Kuala Lumpur;

10 (b) That the amount of \$910,492/- claimed by us, being apportioned as to \$325,357/- for the lands contained in Lots 57 and 58 and as to the balance of \$585,135/- for injurious affection to our other property on Lots 134, 135, 136, 156 and 157, correctly represents the amount of compensation which should have been awarded.

We have the honour to be,
Sir,
Your obedient servants,
LIM FOO YONG LTD.,
Sgd: Lim Foo Yong
Managing Director.

20

No. 1.
Reference to Court by Respondent under Land Acquisition Enactment Cap. 140, Section 23.
20th March, 1959
- continued.

Annexure "B"
Rejection of offer and request for reference to Court.

11th March, 1958
- continued.

PLAN ANNEXURE "C" IS ATTACHED OPPOSITE

ANNEXURE "D" - SCHEDULE UNDER LAND ACQUISITION ENACTMENT CAP.140, SECTION 23(ii)

Particulars of notices served

- 30 (1) Notice under section 4(i) Published in Selangor Government Gazette as notice No. 495 on page 291 dated 11.10.1957.
(2) Notice under section 6(i) Published in Selangor Government Gazette as notice No. 496 on page 292 dated 11.10.1957.
(3) Notice under sections 9(i) and (iv) and 10(i) Served on proprietors on 18.10.1957.

Statements in writing

- 40 (4) Agreement by Lim Foo Yong Ltd. dated 12.10.57.
(5) Letter from Messrs. Shook Lin & Bok to Collector of Land Revenue, Kuala Lumpur dated 30.10.57.
(6) Letter from Collector of Land Revenue, Kuala Lumpur to Messrs. Shook Lin & Bok dated 6.11.57.

Annexure "D"
Schedule under Land Acquisition Enactment Cap.140, Section 23(ii).

- No. 1.
Reference to
Court by Re-
spondent under
Land Acquisition
Enactment Cap.
140, Section 23.
20th March, 1959
- continued.
- Annexure "D"
Schedule under
Land Acquisition
Enactment Cap.140,
Section 23(ii).
- continued.
- (7) Letter from Messrs. Shook Lin & Bok to Collector of Land Revenue, Kuala Lumpur dated 3.12.57.
- (8) Letter from Collector of Land Revenue, Kuala Lumpur to Messrs. Shook Lin & Bok dated 5.12.57.
- (9) Letter from Collector of Land Revenue, Kuala Lumpur to Messrs. Shook Lin & Bok dated 5.12.57.
- (10) Letter from Messrs. Shook Lin & Bok to Collector of Land Revenue, Kuala Lumpur dated 9.12.57. 10
- (11) Letter from Collector of Land Revenue, Kuala Lumpur to Messrs. Shook Lin & Bok dated 31.12.57.
- (12) Letter from Collector of Land Revenue, Kuala Lumpur to Messrs. Shook Lin & Bok dated 3.1.58.
- (13) Letter from Messrs. Shook Lin & Bok to Collector of Land Revenue, Kuala Lumpur dated 11.1.58. 20
- (14) Letter from Collector of Land Revenue, Kuala Lumpur to Messrs. Shook Lin & Bok dated 20.1.58.
- (15) Letter from Messrs. Shook Lin & Bok to Collector of Land Revenue, Kuala Lumpur dated 21.1.58.
- (16) Letter from Messrs. Shook Lin & Bok to Collector of Land Revenue, Kuala Lumpur dated 31.1.58. 30
- (17) Letter from Messrs. Shook Lin & Bok to Collector of Land Revenue, Kuala Lumpur dated 4.2.58.
- (18) Letter from Collector of Land Revenue, Kuala Lumpur to Messrs. Shook Lin & Bok dated 14.2.58.
- (19) Letter from Messrs. Shook Lin & Bok to Collector of Land Revenue, Kuala Lumpur dated 17.2.58.
- (20) Letter from Collector of Land Revenue, Kuala Lumpur to Messrs. Shook Lin & Bok dated 22.2.58. 40

- (21) Letter from Messrs. Shook Lin & Bok to Collector of Land Revenue, Kuala Lumpur dated 25.2.58.
- (22) Letter from Collector of Land Revenue, Kuala Lumpur to Messrs. Shook Lin & Bok dated 26.2.58.
- (23) Letter from Messrs. Shook Lin & Bok to Collector of Land Revenue, Kuala Lumpur dated 1.3.58.
- 10 (24) Letter from Messrs. Shook Lin & Bok to Collector of Land Revenue, Kuala Lumpur dated 11.3.58.
- (25) Report and Valuation by Mr. A. A. Wragg.
- (26) Notes of enquiry by Collector.

No. 1.
Reference to Court by Respondent under Land Acquisition Enactment Cap. 140, Section 23. 20th March, 1959 - continued.
Annexure "D"
Schedule under Land Acquisition Enactment Cap. 140, Section 23(ii). - continued.

ANNEXURE "D1" - NOTIFICATION No.495 ON PAGE 291 OF SELANGOR GOVERNMENT GAZETTE.

THE LAND ACQUISITION ENACTMENT
(F.M.S. Cap.140)

20 NOTIFICATION THAT LAND IS LIKELY TO BE NEEDED
(Section 4(i))

It is hereby notified that it appears to the Mentri Besar, to whom the powers conferred by Section 4(i) of the Land Acquisition Enactment have been delegated, that the land hereunder described is likely to be needed for a public purpose, namely a site for a conference hall and ancillary buildings.

30 And it is further notified that the Director of Public Works and any servants or workmen employed under him are authorised by the Mentri Besar:-

- (i) To enter upon and survey and take levels of any land in the said locality;
- (ii) To dig or bore into the sub-soil;
- (iii) To do all other acts necessary to ascertain whether the land is adapted for such purposes;
- (iv) To set out the boundaries of the land proposed to be taken and the intended

40

Annexure "D1"
Notification No.495 on page 291 of Selangor Government Gazette.
11th October, 1957.

No. 1.
Reference to
Court by Re-
spondent under
Land Acquisition
Enactment Cap.
140, Section 23.
20th March, 1959
- continued.

- line of the work proposed to be made
thereon;
- (v) To mark such levels, boundaries and line
by placing marks and cutting trenches;
 - (vi) Where otherwise the survey cannot be
completed, the levels taken or the
boundaries or line of work marked, to
cut down and clear away any standing
crop, fence or jungle;

Annexure "D1"
Notification
No.495 on page
291 of Selangor
Government
Gazette.

11th October,
1957
- continued.

provided that no person shall enter into any build- 10
ing or upon any enclosed court or garden attached
to a dwellinghouse (unless with the consent of the
occupier thereof) without previously giving such
occupier at least seven days' notice in writing of
his intention to do so.

DESCRIPTION OF LOCALITY

District of Kuala Lumpur, Town of Kuala Lumpur
Section 58

Lots Nos.55, 56, 57 and 58.

DATED at Kuala Lumpur this 8th day of October, 20
1957.

DOKL.Conf.48/57. MOHD. ISMAIL,
STATE SECRETARY,
SELANGOR.

Annexure "D2"
Notification
No.496 on page
292 in Selangor
Government
Gazette.

11th October,
1957.

ANNEXURE "D2" - NOTIFICATION No.496 ON PAGE 292 IN
SELANGOR GOVERNMENT GAZETTE OF 11.10.57.

THE LAND ACQUISITION ENACTMENT
(F.M.S. Cap.140)

DECLARATION UNDER SECTION 6(i)

In exercise of the powers conferred by sub- 30
section (i) of section 6 of the Land Acquisition
Enactment and delegated to him, the Mentri Besar,
Selangor, hereby declares that the land specified
in the Schedule hereto is needed for a public pur-
pose, to wit, a Conference Hall and ancillary
buildings.

2. A plan of the said land may be seen at the
office of the Collector of Land Revenue, Kuala
Lumpur during office hours.

SCHEDULE

District of Kuala Lumpur.
Township of Kuala Lumpur.

No. 1.

Reference to
Court by Re-
spondent under
Land Acquisition
Enactment Cap.
140, Section 23.
20th March, 1959
- continued.

Annexure "D2"

Notification
No.496 on page
292 in Selangor
Government
Gazette.

11th October,
1957
- continued.

Nature & No. of title	Lot No.	Sec- tion No.	Area			Approximate area to be ac- quired	Name of Proprietor
			A.	R.	P.		
10 CT.3950	55	58	0	3	24.3	The whole	Charles William Tresise as Represen- tative.
CT.3951	56	58	2	2	22.0	The whole	Charles William Tresise as Repre- sentative.
CT.3052	57	58	1	0	16.6	The whole	Lim Foo Yong Ltd.
20 CT.3953	58	58	1	0	34.9	The whole	Lim Foo Yong Ltd.

DATED this 8th day of October, 1957.

(DOKL.48/57)

MOHD. ISMAIL,
STATE SECRETARY,
SELANGOR.

ANNEXURE "D3" - NOTICE THAT THE GOVERNMENT INTENDS
TO TAKE POSSESSION

(1) in CLR.KL.9/5/57B

(Land 127)

LAND ACQUISITION ENACTMENT (CAP.140)

NOTICE THAT THE GOVERNMENT INTENDS TO TAKE
POSSESSION

[Sections 9(i) and (iv) and 10(i)]

Notice is hereby given that the Government
intends to take possession of the land described in
the Schedule hereto and that claims to compensation
for all interests therein may be made to the under-
signed.

All persons interested in the said land are
required to appear personally or by agent before the

Annexure "D3".

Notice that the
Government
intends to take
possession.

16th October,
1957.

No. 1.
Reference to
Court by Re-
spondent under
Land Acquisition
Enactment Cap.
140, Section 23.
20th March, 1959
- continued.

Annexure "D3"
Notice that the
Government
intends to take
possession.
16th October,
1957
- continued.

undersigned on the 14th day of November, 1957 at 10.30 a.m. at the office of the Collector of Land Revenue, Kuala Lumpur and there to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests and their objections; if any, to the measurements made under section 8 of the Land Acquisition Enactment and to deliver to me within 21 days a statement in writing containing so far as may be practicable the name of every other person possessing any interests in the land or any part thereof as co-owner, chargee, lessee, sub-lessee, tenant or otherwise and the nature of such interest and the rents and profits, if any, received or receivable on account thereof for three years next preceding the date of the statement. 10

DATED at Kuala Lumpur this 16th day of October, 1957.

Sgd: M.A. Kidner,
Collector of Land Revenue,
District of Kuala Lumpur. 20
L.S.

DESCRIPTION OF THE LAND

Nature and number of document of title and lot No.	Town or Mukim	Original area A. R. P.	Area to be acquired	
CT.3952 Lot 57 Sec.58	K.Lumpur Town	1 0 16.6	The whole	
CT.3953 Lot 58 Sec.58	do.	1 0 34.9	The whole	30

Proprietor: Lim Foo Yong Ltd.

Chargee: Kwong Yik (Sel) Banking Corp. Ltd., K. Lumpur.

No.(1) in CLR.KL.9/5/57B.

Land Office,
Kuala Lumpur,
16th Oct., 57.

LAND ACQUISITION ENACTMENT SECTION 9(iii)

You are required to furnish within 21 days of the date on which you receive this notice, a

statement in writing of your valuation of the area of lot Nos. 57 and 58 Section 58 in the Township of Kuala Lumpur now to be acquired, and the basis upon which such valuation is made.

Sgd: M.A.Kidner,
Collector of Land Revenue,
Kuala Lumpur.

No. 1.
Reference to Court by Respondent under Land Acquisition Enactment Cap. 140, Section 23. 20th March, 1959 - continued.

Posted on lot 57 Sec. 58 on 18.10.57.

Served on Lim Foo Yong Ltd. on 18.10.57.

Annexure "D3".
Notice that the Government intends to take possession. 16th October, 1957 - continued.

10 ANNEXURE "D4" - AGREEMENT BY APPELLANT.

WE, Messrs. Lim Foo Yong Limited hereby grant our consent to the District Officer, Kuala Lumpur and any persons or workmen employed for the proposed erection of a Conference Hall on our land C.Ts 3952 and 3953 lots 57 and 58 Section 58 Town of Kuala Lumpur respectively, to enter upon the land and commence construction.

LIM FOO YONG LTD.,
Sgd: Lim Foo Yong,
Director.

20 12.10.57.

Annexure "D4"
Agreement by Appellant. 12th October, 1957.

ANNEXURE "D5" - LETTER, APPELLANT'S SOLICITORS TO RESPONDENT

SHOOK LIN & BOK.
CLR.KL.9/5/57 B
YPH/6521/D.9673

P.O. Box 766,
80, Cross Street,
Kuala Lumpur.
30th October, 1957.

Annexure "D5"
Letter, Appellant's Solicitors to Respondent. 30th October, 1957.

Dear Sir,

C.T.Nos.3952 and 3953 - Lots 57 & 58.
Section 58 - Town of Kuala Lumpur

30 We act for Lim Foo Yong Ltd., the registered proprietors of the above land, on whom you have served notices under Sections 9 and 10 of the Land Acquisition Enactment.

No. 1.
Reference to
Court by Re-
spondent under
Land Acquisition
Enactment Cap.
140, Section 23.

20th March, 1959
- continued.

Annexure "D5"

Letter,
Appellant's
Solicitors to
Respondent.

30th October,
1957
- continued.

2. With reference to the notice which you have served on our clients under Section 9, we have been instructed to notify you that our clients expect to be in a position to state the amount of their claim to compensation when appearance is made before you at the enquiry on 14th November, 1957.

3. With reference to your other notice under Section 10, we have been instructed to notify you that the above land (together with the lands held under Certificates of Title Nos. 16589 and 16590 Lots 156 and 157 respectively of Section 57 Town of Kuala Lumpur) were charged by our clients to the Kwong Yik (Selangor) Banking Corporation Ltd. under a Memorandum of Charge dated 18.7.57 to secure a sum of \$70,000/-. There is no other person possessing any interest in the land to be acquired or any part thereof as co-owner, chargee, lessee, sub-lessee, tenant or otherwise.

10

4. Kindly acknowledge receipt.

20

Yours faithfully,

Sgd: Shook Lin & Bok.

Collector of Land Revenue,
KUALA LUMPUR.

Annexure "D6"

Letter,
Respondent to
Appellant's
Solicitors.

6th November,
1957.

ANNEXURE "D6" - LETTER, RESPONDENT TO APPELLANT'S SOLICITORS

Land Office,
KUALA LUMPUR.

6th November, 1957.

30

Messrs. Shook Lin & Bok,
Advocates & Solicitors,
P.O. Box 766,
KUALA LUMPUR.

Gentlemen,

Sub: CT.Nos.3952 and 3953 - Lots 57 and 58
Section 58 - Town of Kuala Lumpur

Ref: Your Ref. YPH/6521/D.9673 of 30.10.57

I have the honour to acknowledge the receipt of the above-mentioned letter.

2. I am to request that the valuation required under Section 9(iii) of the Land Acquisition Enactment be set out in writing, together with the basis upon which the valuation is made.

I have the honour to be,
Gentlemen,
Your obedient servant,

Sgd: M.A. Kidner,
COLLECTOR OF LAND REVENUE,
KUALA LUMPUR.

10

No. 1.
Reference to
Court by Re-
spondent under
Land Acquisition
Enactment Cap.
140, Section 23.
20th March, 1959
- continued.

Annexure "D6"

Letter,
Respondent to
Appellant's
Solicitors.

6th November,
1957
- continued.

ANNEXURE "D7" - LETTER APPELLANT'S SOLICITORS TO
RESPONDENT AND STATEMENT ENCLOSED

Shook Lin & Bok,
Advocates & Solicitors.

P.O. Box 766,
80, Cross Street,
Kuala Lumpur.

3rd December, 1957.

No.(1) in CIR.KL.9/5/57 B (4)
YPH/6521/E.543.

Annexure "D7"

Letter,
Appellant's
Solicitors to
Respondent and
Statement
enclosed.

3rd December,
1957.

20 Dear Sir,

C.T.Nos.3952 & 3953 - Lots 57 & 58
Section 58 - Town of Kuala Lumpur.

With reference to your notice to our clients
Lim Foo Yong Ltd., under Section 9(iii) of the
Land Acquisition Enactment, we forward herewith
the statement in writing of their valuation of the
land showing the basis upon which such valuation
is made.

2. Kindly acknowledge receipt.

30

Yours faithfully,
Shook Lin & Bok.

Collector of Land Revenue,
Kuala Lumpur.

No. 1.

LAND ACQUISITION

Reference to
Court by Re-
spondent under
Land Acquisition
Enactment Cap.
140, Section 23.
20th March, 1959
- continued.

Lots 57 & 58, Section 58, Kuala LumpurSTATEMENT OF CLAIM

(a)	Value of land 101,140 square feet @ \$3/- per square foot	\$ 303,420
(b)	Damage by reason of severance and injurious affection	<u>1,200,000</u>
	Total	<u>\$ 1,503,420</u>

Annexure "D7"

Letter,
Appellant's
Solicitors to
Respondent and
Statement
enclosed.

3rd December,
1957
- continued.

Sgd: Lim Foo Yong
Director
Lim Foo Yong Ltd.

10

DATED this 30th day of November, 1957.

Annexure "D8"

Letter,
Respondent to
Appellant's
Solicitors.

5th December,
1957.

ANNEXURE "D8" - LETTER, RESPONDENT TO APPELLANT'S
SOLICITORS

No.(13) in CIR.KL.9/5/57.

Land Office,
Kuala Lumpur.

5th December, 1957.

Messrs.Shook Lin & Bok,
P.O. Box 766,
Kuala Lumpur.

20

Gentlemen,

Sub: CT.Nos.3952 & 3953 - lots 57 & 58
Section 58 - Town of Kuala Lumpur
Ref: YPH/6521/E.543 of 3rd December '57.

I have the honour to refer to your above-men-
tioned letter and to request you to set out in
writing the basis upon which the valuation attached
hereto is made in accordance with the notice served
upon the Proprietors under Section 9(iii) of the
Land Acquisition Enactment.

30

I have the honour to be,
Gentlemen,
Your obedient servant,
Sgd: M.A.Kidner,
COLLECTOR OF LAND REVENUE,
KUALA LUMPUR.

ANNEXURE "D9" - LETTER, RESPONDENT TO APPELLANT'S SOLICITORS

No.(14) in CLR.K.L.9/5/57

Land Office,
Kuala Lumpur.

5th December, 1957.

Messrs. Shook Lin & Bok,
P.O. Box 766,
Kuala Lumpur.

Gentlemen,

10

CT.Nos.3952 & 3953 - Lots 57 & 58
Section 58 - Town of Kuala Lumpur.
Your Ref:YPH/6521/E.543 of 3.12.57

I have the honour to refer to your above-mentioned letter and to our telephone conversation this morning and confirm that I have adjourned the Hearing until 10.30 a.m. on Tuesday 7th January, 1958.

20

I have the honour to be,
Gentlemen,
Your obedient servant,
Sgd: M.A.Kidner,
COLLECTOR OF LAND REVENUE,
KUALA LUMPUR.

ANNEXURE "D10" - LETTER, APPELLANT'S SOLICITORS TO RESPONDENT.

Shook Lin & Bok,
Advocates & Solicitors.
CLR.KL.9/5/57
YPH/6521/E.681.

P.O. Box 766,
80, Cross Street,
Kuala Lumpur.

9th December, 1957.

30

Dear Sir,

C.T.Nos.3952 and 3953 - Lots 57 and 58
Section 58 - Town of Kuala Lumpur

We thank you for your letters Nos.13 and 14 in CLR.KL.9/5/57 dated 5th December, 1957.

2. We shall be obliged if you will clarify your letter No.13 as to the particulars which you consider are necessary as it appears to us that the

No. 1.

Reference to Court by Respondent under Land Acquisition Enactment Cap. 140, Section 23. 20th March, 1959 - continued.

Annexure "D9"

Letter, Respondent to Appellant's Solicitors.

5th December, 1957.

Annexure "D10"

Letter, Appellant's Solicitors to Respondent.

9th December, 1957.

No. 1.
Reference to
Court by Re-
spondent under
Land Acquisition
Enactment Cap.
140, Section 23.
20th March, 1959
- continued.

basis upon which the valuation of ~~£~~1,503,420.00
was made was shown sufficiently therein.

3. With regard to your letter No.14 we have
noted that the hearing has been adjourned to Tues-
day 7th January, 1958.

Yours faithfully,

Shook Lin & Bok.

Annexure "D10"

Letter,
Appellant's
Solicitors to
Respondent.
9th December,
1957
- continued.

Collector of Land Revenue,
KUALA LUMPUR.

Annexure "D11"

Letter,
Respondent to
Appellant's
Solicitors.
31st December,
1957.

ANNEXURE "D11" - LETTER, RESPONDENT TO APPELLANT'S
SOLICITORS

10

No.(18) in CLR.KL.9/5/57 B.

Land Office,
Kuala Lumpur.

31st December, 1957.

Messrs. Shook Lin & Bok,
P.O. Box 766,
Kuala Lumpur.

Gentlemen,

Sub: CT.Nos.3952 and 3953 - Lots 57 and 58
Section 58 - Town of Kuala Lumpur

Ref: YPH/6521/E.681.

20

I have the honour to refer to your letter
dated 9th December, 1957.

2. With reference to paragraph 2 thereof it is
considered that particulars necessary in connec-
tion with the statement of claim which accompanied
your letter dated 3rd December 1957, are particu-
lars sufficient to indicate the general grounds
for your clients claiming the sum of ~~£~~303,420 for
the value of the land and the sum of ~~£~~1,200,000
for severance and injurious affection. It is con-
sidered that particulars provided are sufficient
to satisfy the requirements of a notice under

30

Section 9(ii) of the Enactment, being particulars of the amount of a claim to compensation but that Section 9(iii) of the Enactment requires something more than mere particulars and that the term "basis" implies grounds or reasons for any claim.

10 3. In the circumstances it will be appreciated if some reasons could be given for the particulars furnished previously. If your clients are unwilling or unable to furnish such reasons it is felt
 10 'to be necessary, having regard to the size of the claim, to require reasons to be stated by witnesses at the inquiry for the claim which has been put forward. It is suggested that in every case the Claimant can and should present his case fully before the Collector in order that the Collector shall be enabled to meet the just claim of the Claimant by ascertaining what is the true value of the land and offering him compensation accordingly.

20 4. If required I should be glad to indicate the nature of the further particulars which are sought in advance so that your clients shall not be embarrassed or, alternatively, I should be glad to adjourn the inquiry to suit your clients convenience if any inquiries that are put to him prove to be embarrassing.

I have the honour to be,
 Gentlemen,
 Your obedient servant,
 Sgd: M.A. Kidner

30 Collector of Land Revenue,
 Kuala Lumpur.

No. 1.

Reference to Court by Respondent under Land Acquisition Enactment Cap. 140, Section 23.

20th March, 1959
 - continued.

Annexure "D11"

Letter,
 Respondent to Appellant's Solicitors.

31st December, 1957
 - continued.

No. 1.
Reference to Court by Respondent under Land Acquisition Enactment Cap. 140, Section 23. 20th March, 1959 - continued.

ANNEXURE "D12" - LETTER, RESPONDENT TO APPELLANT'S SOLICITORS.

No.(19) in CLR.KL.9/5/57 B. Land Office, Kuala Lumpur.
3rd January, 1958.
Messrs.Shook Lin & Bok,
P.O. Box 766,
Kuala Lumpur.

Annexure "D12"
Letter, Respondent to Appellant's Solicitors.

Gentlemen,
Sub: CT.Nos.3952 & 3953 - Lots 57 and 58 Section 58 - Town of Kuala Lumpur. 10
Ref: YPH/6521/E681.

3rd January, 1958.

I have the honour to refer to our telephone conversation that the hearing is adjourned to 10.30 a.m., Tuesday, 21st January, 1958.

I have the honour to be,
Gentlemen,
Your obedient servant,
Sgd: M.A.Kidner,
Collector of Land Revenue, Kuala Lumpur. 20

Annexure "D13"
Letter, Appellant's Solicitors to Respondent. 11th January, 1958.

ANNEXURE "D13" - LETTER, APPELLANT'S SOLICITORS TO RESPONDENT.

Shook Lin & Bok. P.O. Box 766, 80, Cross Street, Kuala Lumpur.
CLR.KL.9/5/57 B
YPH/6521/E.1402. 11th January, 1958.

Dear Sir,

C.T.Nos.3952 & 3953 - Lots 57 & 58 Section 58 - Town of Kuala Lumpur. 30

We thank you for your letters No.(18) and (19) in this series dated 31st December, 1957 and 3rd January, 1958. We regret the delay in dealing with them as the writer has been away from the office.

2. We have noted that the hearing has been adjourned to 10.30 a.m. on Tuesday 21st January, 1958.

3. With reference to paragraphs 2 and 3 of your letter of 31st December 1957, we have asked our clients to let us have further and better particulars and as soon as these are received we shall forward them to you.

10 4. It may be of assistance, however, if you can indicate the nature of the further particulars you require, as stated in paragraph 4 of your letter of 31st December 1957. This may save you the inconvenience of our having to go back to our clients again in the event of the further and better particulars now being provided by them not being the particulars which you have in mind.

Yours faithfully,
Shook Lin & Bok.

Collector of Land Revenue,
KUALA LUMPUR.

ANNEXURE "D14" - LETTER, RESPONDENT TO APPELLANT'S SOLICITORS.

20 No.(21) in CLR.KL.9/5/57B

Land Office,
Kuala Lumpur.

20th January, 1958.

Messrs. Shook Lin & Bok,
P.O. Box 766,
Kuala Lumpur.

Gentlemen,

Sub: CT.Nos.3952 & 3953 - Lots 57 & 58
Section 58 - Town of Kuala Lumpur

Ref: YPH/6521/E/402 dated 11th January 1958

30 I have the honour to refer to your above mentioned letter and to inform you that the particulars I seek are :-

- (a) The reasons for considering the value of each lot to be at a rate of ~~13~~3/- per square foot.
- (b) The reasons for claiming severance. From what other land owned by your client are lots 57 and 58 being severed?

No. 1.

Reference to Court by Respondent under Land Acquisition Enactment Cap. 140, Section 23. 20th March, 1959 - continued.

Annexure "D13"

Letter,
Appellant's Solicitors to Respondent.

11th January, 1958
- continued.

Annexure "D14"

Letter,
Respondent to Appellant's Solicitors.

20th January, 1958.

No. 1.
Reference to
Court by Re-
spondent under
Land Acquisition
Enactment Cap.
140, Section 23.
20th March, 1959
- continued.

(c) The reasons for assessing severance in
this case at \$1,200,000/-. On what
grounds is it claimed that the value of
your clients other land has been reduced
by this amount.

2. I regret the delay in replying.

I have the honour to be
Gentlemen,

Your obedient servant,

Sgd: M.A.Kidner

Collector of Land Revenue,
Kuala Lumpur.

10

Annexure "D14"
Letter, Respondent
to Appellant's
Solicitors.
20th January, 1958
- continued.

Annexure "D15"
Letter,
Appellant's
Solicitors to
Respondent.
21st January, 1958.

ANNEXURE "D15" - LETTER, APPELLANT'S SOLICITORS TO
RESPONDENT.

Shook Lin & Bok.
CIR.KL.9/5/57 B
YPH/6521/E.1625.

P.O. Box 766,
Kuala Lumpur.
21st January, 1958.

Dear Sir,

C.T.Nos.3952 & 3953 - Lots 57 & 58
Section 58 - Town of Kuala Lumpur.

20

We thank you for your letter No.(21) in this
series dated 20th January, 1958.

2. Our clients have now been able in the addi-
tional time which has been available to them, to
finalise their claim to compensation and we have
been instructed to amend the original claim which
accompanied our letter to you dated 3rd December,
1957. Our clients amended claim is for the total
sum of \$910,492/- being apportioned as to \$325,357/-
for the land contained in lots 57 and 58 and as
to the balance of \$585,135/- for injurious affec-
tion to the remainder of our clients' hotel pro-
perty, which now occupies lots 134, 135, 136, 156
and 157. We shall be obliged if you will note the
amended claim.

30

3. With regard to your notice under section
9(iii) of the Enactment, as clarified in your
letter of 20th January, 1958, our clients have in-
structed us to supply the following further and
better particulars of their amended claim:

40

- (a) In the amended claim, the land contained in Lots 57 and 58 is not valued at a rate of ~~£3~~/- per square foot but as a part of the hotel property belonging to our clients and now occupying lots 134, 135, 136, 156 and 157;
- (b) The claim is for injurious affection or for severance and injurious affection. As stated above, lots 57 and 58 form part of the hotel property belonging to our clients and now occupying lots 134, 135, 136, 156 and 157. The said lots 57 and 58 were planned by our clients to contain the playground of their hotel, with a swimming pool, and other outdoor sporting and recreational amenities to be constructed and provided there for the residents and customers of their hotel. Permission had been obtained from the owner of lot 56 to use the footpath which traverses lot 56 and links lots 57 and 58 to lots 134, 135, 136, 156 and 157. The acquisition of lots 57 and 58 deprives our clients' hotel of a distinctive attraction and a distinguishing amenity and affects injuriously the remaining property.
- (c) The amended claim is based on the difference in the value of our clients' hotel property aforesaid before and after the acquisition, taking into account the difference in the rent and the return it is able to command. Allowance has been made for the fact that the hotel was not completed at the effective date of acquisition. The resultant difference in value has for the purpose of our clients' claim been apportioned in the figures shown above.

4. This letter will be handed to you by the writer at the hearing of our clients' claim at 10.30 a.m. today Tuesday 21st January, 1958.

Yours faithfully,
Shook Lin & Bok.

Collector of Land Revenue,
KUALA LUMPUR.

No. 1.

Reference to Court by Respondent under Land Acquisition Enactment Cap. 140, Section 23. 20th March, 1959 - continued.

Annexure "D15"

Letter, Appellant's Solicitors to Respondent.

21st January, 1958 - continued.

No. 1.
Reference to
Court by Re-
spondent under
Land Acquisition
Enactment Cap.
140, Section 23.
20th March, 1959
- continued.

Annexure "D16"

Letter,
Appellant's
Solicitors to
Respondent.

31st January,
1958.

ANNEXURE "D16" - LETTER, APPELLANT'S SOLICITORS TO
RESPONDENT.

Shook Lin & Bok
CLR.KL.9/5/57 B
YPH/6521/R.1889.

P.O. Box 766,
80, Cross Street,
Kuala Lumpur.
31st January 1958

Dear Sir,

C.T.Nos.3952 & 3953 - Lots 57 & 58
Section 58, Kuala Lumpur

With reference to the above matter, we con-
firm for the purposes of record that at the ad-
journd hearing this morning when you made an
award of \$60,000/- you handed to us signed copies
of the following :-

- (a) Report and Valuation by Mr. A. A. Wragg,
Chief Valuer, Treasury Valuation Division
dated 29.1.58.
- (b) The grounds or reasons for your award da-
ted 31.1.58.

Yours faithfully,

Sgd: Shook Lin & Bok.

Collector of Land Revenue,
KUALA LUMPUR.

10

20

Annexure "D17"

Letter,
Appellant's
Solicitors to
Respondent.

4th February,
1958.

ANNEXURE "D17" - LETTER, APPELLANT'S SOLICITORS TO
RESPONDENT.

Shook Lin & Bok
CLR.KL.9/5/57B
YPH/6521/E.2002.

P.O. Box 766,
80, Cross Street,
Kuala Lumpur.
4th February 1958

Dear Sir,

C.T.Nos.3952 & 3953 - Lots 57 & 58
Section 58, Kuala Lumpur

We have today received a copy of your written
offer of compensation under Section 43(1) of the
Enactment.

2. As our clients intend to make an application
under Section 22 of the Enactment, we have been
instructed to notify you that our clients will re-
ceive payment of the compensation awarded under
protest as to the sufficiency of the amount. As

30

40

the property concerned is charged to the Kwong Yik (Selangor) Banking Corporation Ltd., payment should be made by you direct to the Chargee Bank who will receive such payment for our clients account, subject to the protest referred to.

3. In view of the provisions of Section 43(i) of the Enactment, kindly arrange for the aforesaid payment to be made without further delay.

10 4. In this connection, we shall be obliged for your confirmation of the date on which possession of the land was taken.

Yours faithfully,
Shook Lin & Bok.

Collector of Land Revenue,
KUALA LUMPUR.

ANNEXURE "D18" - LETTER, RESPONDENT TO APPELLANT'S SOLICITORS.

No.(34) in CLR.KL.9/5/57 B

Pejabat Tanah,
Kuala Lumpur.

20 14th February 1958.

M/s. Shook Lin & Bok,
Advocates & Solicitors,
P.O. Box 766,
Kuala Lumpur.

Subject - Acquisition of lots 57 & 58
Section 58, Kuala Lumpur.

Your Ref: - YPH/6521/E.2002.

Gentlemen,

30 I have the honour to refer to your above-mentioned letter and to inform you that the Secretary to the Minister of Natural Resources has been requested to arrange payment at an early date.

2. I have taken possession of Lots 57 and 58, Section 58, Town of Kuala Lumpur at 5 p.m. on Thursday 13th February, 1958 under Section 16 of the Land Acquisition Enactment. Possession of 6,000

No. 1.

Reference to Court by Respondent under Land Acquisition Enactment Cap. 140, Section 23.

20th March, 1959
- continued.

Annexure "D17"

Letter,
Appellant's Solicitors to Respondent.

4th February, 1958
- continued.

Annexure "D18"

Letter,
Respondent to Appellant's Solicitors.

14th February, 1958.

No. 1.
Reference to
Court by Re-
spondent under
Land Acquisition
Enactment Cap.
140, Section 23.
20th March, 1959
- continued.

Annexure "D18"

Letter,
Respondent to
Appellant's
Solicitors.
14th February,
1958
- continued.

square feet of Lot 58 (being that part on which the Conference Hall is being constructed) was taken under Section 17 of the Enactment on 12th November, 1957.

3. When your clients have received payment, it will be appreciated if the document of title be delivered to this office.

I have the honour to be,

Gentlemen,

Your obedient servant,

Sgd: M.A. Kidner,

Pemungut Hasil Tanah,

Kuala Lumpur.

10

Annexure "D19"

Letter,
Appellant's
Solicitors to
Respondent
17th February,
1958.

ANNEXURE "D19" - LETTER, APPELLANT'S SOLICITORS TO RESPONDENT.

No.(35) in CLR.KL.9/5/57 B

Shook Lin & Bok

CLR.KL.9/5/57 B
YPH/6521/E.2316

P.O. Box 766,
80, Cross Street,
Kuala Lumpur.

17th February 1958.

Dear Sir,

C.T.Nos.3952 & 3953 - Lots 57 & 58
Section 58, Town of Kuala Lumpur.

We thank you for your letter of 14th February 1958.

2. We regret that we cannot understand your paragraph 2. If, as you have stated, possession has been taken by you the date of your taking possession is important only from the point of view of the payment of interest. Our clients have therefore instructed us to refer to the following points:-

- (a) On the evening of 11th October 1957, the District Officer, Kuala Lumpur called personally on Mr. Lim Foo Yong, notified him of the acquisition, and requested him to give his consent in writing on behalf of Lim Foo Yong Ltd., for any persons or workmen employed for the proposed erection

20

30

of a Conference Hall on the above lands to enter upon the land and commence construction;

- (b) The District Officer in fact stated that possession would have to be taken on the following day, Saturday 12th October 1957 to enable the Public Works Department to commence work immediately;
- (c) You now say that possession of 6,000 square feet only of Lot 58 was taken on 12th November 1957; and
- (d) that possession of Lot 57 and, presumably, the balance of Lot 58 was taken on 13th February 1958.

10

20

3. Before we advise our clients further on this question of possession, kindly let us know from which of the three dates above you suggest that interest should run. If the date is to be either 12th November 1957 or 13th February 1958, kindly also let us know how you propose to split the question of possession and to apportion the interest payable.

4. We have noted your paragraph 3.

5. In the meantime, to enable us to prepare the application under Section 22 of the Enactment, kindly let us have a copy of the notes of evidence taken by you at the hearing. We undertake to pay any necessary fees on hearing from you.

Yours faithfully,

30

Sgd: Shook Lin & Bok.

Pemungut Hasil Tanah,

KUALA LUMPUR.

No. 1.

Reference to Court by Respondent under Land Acquisition Enactment Cap. 140, Section 23.

20th March, 1959
- continued.

Annexure "D19"

Letter, Appellant's Solicitors to Respondent.

17th February, 1958

- continued.

No. 1.

ANNEXURE "D20" - LETTER, RESPONDENT TO APPELLANT'S
SOLICITORS.

Reference to
Court by Re-
spondent under
Land Acquisition
Enactment Cap.
140, Section 23.
20th March, 1959
- continued.

No.(36) in CLR.KL.9/5/57 B

District Office,
Kuala Lumpur.

22nd February, 1958.

Messrs. Shook Lin & Bok,
P.O. Box 766,
Kuala Lumpur.

Annexure "D20"

Letter,
Respondent to
Appellant's
Solicitors.

22nd February,
1958.

Gentlemen,

CT.Nos.3952 & 3953 - Lots 57 & 58
Section 58, Town of Kuala Lumpur.

10

Your Ref: YPH/6521/E.2316

I have the honour to refer to your letter dated 17th February, 1958, and to inform you that the Collector cannot take possession under Section 16 of the Land Acquisition Enactment until he had made an award. In regard to this acquisition the Collector did not take possession until 5 p.m. on 13th February, 1958, except in the case of 6,000 square feet being part of the site for the new Conference Hall possession of which was taken under Section 17 on 12th November 1957.

20

2. I propose to recommend, however, that interest on \$60,000 be made as from 12th October 1957 since occupation commenced on that date. I will address you again on this matter in due course.

3. A copy of the notes asked for will be forwarded shortly.

I have the honour to be,

Gentlemen,

Your obedient servant,

Sgd: M.A. Kidner

Collector of Land Revenue,

Kuala Lumpur.

30

ANNEXURE "D21" - LETTER, APPELLANT'S SOLICITORS TO
RESPONDENT

No.(37) in CLR.KL.9/5/57B

Shook Lin & Bok

CLR.KL.9/5/57 B
YPH/6521/E.2489.

P.O. Box 766,
80, Cross Street,
Kuala Lumpur.

25th February, 1958.

Dear Sir,

CT.Nos.3952 & 3953 - Lots 57 & 58
Section 58, Town of Kuala Lumpur.

10 We thank you for your letter of 22nd February, 1958 and have noted the contents thereof.

2. While we agree with you on the provisions of Section 16 of the Enactment, we really think that where Government has asked an owner to waive his rights, then agreement should be reached as an administrative measure for payment of interest in return for such a concession.

20 3. This is quite apart from any direction which the Mentri Besar may give under Section 17. In this case, however, our clients are very pleased to note the proposal contained in your paragraph 2 and, on the assumption that your recommendation will be followed by Government, they will await hearing further from you.

Yours faithfully,

Shook Lin & Bok.

Collector of Land Revenue,
Kuala Lumpur.

No. 1.

Reference to Court by Respondent under Land Acquisition Enactment Cap. 140, Section 23. 20th March, 1959 - continued.

Annexure "D21"

Letter, Appellant's Solicitors to Respondent.

25th February, 1958.

No. 1.
Reference to
Court by Re-
spondent under
Land Acquisition
Enactment Cap.
140, Section 23.
20th March, 1959
- continued.

Annexure "D22"

Letter,
Respondent to
Appellant's
Solicitors.

26th February,
1958.

ANNEXURE "D22" - LETTER, RESPONDENT TO APPELLANT'S
SOLICITORS.

No.(38) in CLR.KL.9/5/57 B

Pejabat Tanah,
Kuala Lumpur.

26th February, 1958.

M/s. Shook Lin & Bok,
Advocates & Solicitors,
P.O. Box 766,
Kuala Lumpur.

Sub - Acquisition of Lots 57 & 58
Section 58, Kuala Lumpur.

10

Ref - YPH/6521/E.2489.

Gentlemen,

With reference to your above-mentioned letter dated 25th instant I shall be grateful to know the date on which the amount of compensation was received by the Chargees, Kwong Yik (Selangor) Banking Corporation Ltd.

I am, Gentlemen,
Your obedient servant,

20

Sgd: M.A.Kidner,
Pemungut Hasil Tanah,
Kuala Lumpur.

Annexure "D23"

Letter,
Appellant's
Solicitors to
Respondent.

1st March, 1958.

ANNEXURE "D23" - LETTER, APPELLANT'S SOLICITORS TO
RESPONDENT

Shook Lin & Bok.

P.O. Box 766,
80, Cross Street,
Kuala Lumpur.

1st March, 1958.

Dear Sir,

Acquisition of Lots 57 & 58
Section 58 - Kuala Lumpur

30

With reference to your letter of 26th February 1958, the amount of compensation was received by the Chargees, the Kwong Yik (Selangor) Banking Corporation Ltd., on 17th February 1958.

2. The said payment was of course received under protest as to the sufficiency of the amount, as per paragraph 2 of our letter to you No.E.2002 of 4th February 1958.

40

Yours faithfully,
Shook Lin & Bok.

Pemungut Hasil Tanah,
KUALA LUMPUR.

ANNEXURE "D24" - LETTER, APPELLANT'S SOLICITORS TO RESPONDENT.

Shook Lin & Bok.

P.O. Box 766,
80, Cross Street,
Kuala Lumpur.

11th March, 1958.

Dear Sir,

Acquisition of Lots 57 & 58
Section 58 - Kuala Lumpur

10 With reference to the above matter, we forward herewith the written application of our clients Lim Foo Yong Ltd., for a reference to Court under Section 22(i) of the Land Acquisition Enactment, Cap. 140.

2. Please acknowledge receipt.

3. When making the reference to the Court, please send us a copy of the statement made by you under Section 23 of the Enactment.

Yours faithfully,
Sgd: Shook Lin & Bok.

20 Pemungut Hasil Tanah,
KUALA LUMPUR.

ANNEXURE "D25" - REPORT AND VALUATION BY MR.A.A.WRAGG, CHIEF VALUER, TREASURY VALUATION DIVISION

Lots 57 & 58 Section 58, Kuala Lumpur

30 1. Lot 57 contains an area of approximately 1.103 acres and has a frontage of about 148 feet to Ampang Road. Except for a narrow strip immediately fronting Ampang Road the level of this lot is some 12 feet below the level of the road and the adjoining lot 56, considerable filling would therefore be necessary in any development of lot 57.

2. Lot 58 contains an area of approximately 1.218 acres and it is situated immediately behind Lot 57. It is at the same level as the major part of Lot 57 i.e. about 12 feet below road level and adjoining Lot 56.

40 3. In April 1957 Lots 57 and 58 were sold for the sum of \$60,000/- (Dollars sixty thousand). This figure is equivalent to a price of approximately 60 cents per square foot overall, or if one

No. 1.

Reference to Court by Respondent under Land Acquisition Enactment Cap. 140, Section 23.

20th March, 1959
- continued.

Annexure "D24"

Letter, Appellant's Solicitors to Respondent.

11th March 1958.

Annexure "D25"

Report and Valuation by Mr. A.A.Wragg, Chief Valuer, Treasury Valuation Division.

29th January, 1958.

No. 1.
Reference to
Court by Re-
spondent under
Land Acquisition
Enactment Cap.
140, Section 23.
20th March, 1959
- continued.

Annexure "D25"

Report and
Valuation by Mr.
A.A.Wragg, Chief
Valuer, Treasury
Valuation
Division.

29th January,
1958
- continued.

considers that Lot 57 fronting Ampang Road would command a higher price, then about 72 cents per square foot for Lot 57 and 48 cents per square foot for Lot 58.

4. I have examined certain documents of Transfer in the Selangor Registry of Titles and from the information contained therein and a consideration of the prices paid, in recent years, for other comparable lots in the immediate vicinity of Lots 57 and 58, I am of the opinion that the price paid of \$60,000/- for Lots 57 and 58 was a proper value for the lots at the date of sale, i.e. April, 1957.

10

5. In my opinion no circumstances have arisen between April 1957 and the 8th October, 1957 to increase the value of this land and I am therefore, of the opinion that the value of Lots 57 and 58 at the material date, 8th October, 1957 was \$60,000/- (Dollars sixty thousand).

Sgd: A.A.WRAGG,
Chief Valuer,
Treasury Valuation Division.

20

29th January, 1958.

Annexure "D26"

Notes of Enquiry
by Respondent.

ANNEXURE "D26" - NOTES OF ENQUIRY BY RESPONDENT

Acquisition of Lots 57 and 58, Section 58,
Town of Kuala Lumpur.

CIR.KL.9/5/57B.

10.30 a.m.

Adjourned to 10.30 a.m. on 6.12.57.

Sgd: M.A.Kidner
Collector of Land Revenue,
Kuala Lumpur.

30

14.11.57.

Acquisition of lots 57 & 58, Section 58, Town
of Kuala Lumpur.

CIR.KL.9/5/57B

At the request (on telephone) of Shook Lin &
Bok, Hearing adjourned to 10.30 a.m. on 21st Janu-
ary, 1958.

Sgd: M.A.Kidner,
Collector of Land Revenue,
Kuala Lumpur.

40

3.1.58.

Acquisition of Lots 57 & 58 Section 58 Town
of Kuala Lumpur, for a Conference Hall etc.

No. 1.

10.30 a.m.

Present: Mr. Yong Pung-How of M/s. Shook Lin & Bok
represents the proprietor.
Mr. A.A.Wragg, Treasury Chief Valuer.

Reference to
Court by Re-
spondent under
Land Acquisition
Enactment Cap.
140, Section 23.

Mr. Pung-How States: My client has now amended his
claim and this new claim is now set out in
this letter, which I hand to you. (23 in
10 CIR.KL.9/5/57B) (YPH/6521/E.1625 dated
21st January, 1958) (The letter is read by
me and Mr.Wragg).

20th March, 1959
- continued.

Annexure "D26"
Notes of Enquiry
by Respondent
- continued.

Mr. Wragg asks Mr.Pung-How: "I see you say in your
letter 'Permission has been obtained etc.'
concerning the footpath. Have you an ac-
tual agreement?"

Mr. Pung-How states: "There is no written agree-
ment but there has been an exchange of
letters in which permission is granted".

20 Mr. Wragg asks: "Concerning the recreation ground,
has any planning or building approval been
given?"

Mr. Pung-How: "Building approval - No, Planning
approval - Yes".

In order that I may consider the new claim,
Hearing is adjourned until 10.30 a.m. on 31st
January, 1958.

Sgd: M.A.Kidner,
Collector of Land Revenue,
Kuala Lumpur.

30 21.1.58.

31.1.58 Lots 57 & 58, Section 58.

10.30 a.m.

Present: Mr. Yong Pung-How of Messrs. Shook Lin &
Bok representing proprietor.
Mr. A.A. Wragg, Chief Valuer, Treasury.

I say "First, in connection with your last letter.
I wish to point out that your client first
planned his swimming pool on Lot 136, vide
Plan (1261A) in KLM.1059/56".

40 Mr. Pung-How says: "This plan was probably pre-
pared before my client purchased lots 57
and 58. It shows that he intended at
that time to construct a swimming pool".

No. 1.
Reference to
Court by Re-
spondent under
Land Acquisition
Enactment Cap.
140, Section 23.
20th March, 1959
- continued.

Annexure "D26"
Notes of Enquiry
by Respondent
- continued.

Mr. Wragg then points out the date of the architect's covering letter to the plan and says "The architect's covering letter is dated 25.4.56". He adds "on 8.6.56 the architect submitted an amended plan from which the swimming pool was deleted".

I have considered the contents of your letter YPH/6521/E.1625 dated 21 January 1958 in which an amended claim of ~~₹~~910,492/- is submitted. I note that this includes ~~₹~~325,357/- for the land contained in Lots 57 and 58 Section 58, and ~~₹~~585,135/- for injurious affection to the remainder of your clients' hotel property which now occupies lots 134, 135, 136, 156 and 157, Section 57. The grounds for assessing the land at this value have not been given.

2. In accordance with Section 15 of the Land Acquisition Enactment, in determining the amount of compensation, I must take into consideration the matters mentioned in Section 29 and must not take into consideration any of the matters mentioned in Section 30.

3. (a) Market Value. I have received a report from the Federal Treasury's Chief Valuer on the market value of Lots 57 and 58. I agree with it and consider the market value of the two lots to be ~~₹~~60,000/- on 11th October 1957, the date on which the declaration under Section 6 was published in the gazette.

(b) Increase in value of your clients' other land likely to accrue from use to which Lots 57 and 58 will be put.

I do not consider that there will be any such increase in value.

(c) Severance.

I note in paragraph 3(b) of your letter referred to above that you say "the claim is for injurious affection or for severance and injurious affection". This is vague. My reaction is a feeling that the proprietor does not know exactly the nature of the damage he alleges and for which he is claiming compensation. However, I have considered as to whether there can be said to be any severance in this case. If a plan of the areas is examined it will be seen that Lots 57 and 58, Section 58 on the

10

20

30

40

one hand, and Lots 134, 135, 136, 156 and 157, Section 57 on the other, are separated by Lot 56, Section 58, and Lot 158, Section 57. The shortest distance between the two areas owned by your clients is 165 feet or two and a half chains. Furthermore I have examined the papers in the Kuala Lumpur Municipal Council offices relating to your clients' Hotel project on Lots 134, 135, 136, 156 and 157 and I find no suggestion anywhere in any correspondence or plans submitted to the Municipality by your clients up to the present date that Lots 57 and 58 were to be a part of the Hotel project. Your clients' plans in the Municipal file 1059/56 do not even indicate the boundaries of Lots 57 and 58. These two lots cannot be said to form part of the Hotel Property.

I have to assess the damage, if any, sustained by your clients by reason of severing Lots 57 and 58 from your clients' other land. I have examined the views expressed on pages 297 to 299 in "Compulsory Acquisition of Land" (Om Prakash Aggarawala). In this case, I consider that there is no severance. The part taken is not so connected with or related to the part left that the owner of the latter is prejudiced in his ability to use or dispose of it to advantage by reason of the acquisition.

(d) Injurious Affection.

Does the acquisition of Lots 57 and 58 injuriously affect your clients' other land, Lots 134, 135, 136, 156 and 157, or your clients' actual earnings? I consider that it does not. There is no depreciation in value of lots 134, 135, 136, 156 and 157 by reason of this acquisition.

The permission of the owner of Lot 56, Section 58 to use a footpath on Lot 56 may have been obtained. Is there a written agreement to this effect? If so, is it not contravening the terms upon which Lot 56 is leased out to the lessee? It is. The lessee has not agreed.

In "Compulsory Acquisition of Land" (Aggarawala) on page 300, it is stated in connection with Injurious Affection:

No. 1.

Reference to Court by Respondent under Land Acquisition Enactment Cap. 140, Section 23.

20th March, 1959
- continued.

Annexure "D26"

Notes of Enquiry by Respondent
- continued.

No. 1.

Reference to
Court by Re-
spondent under
Land Acquisition
Enactment Cap.
140, Section 23.
20th March, 1959
- continued.

Annexure "D26"

Notes of Enquiry
by Respondent
- continued.

The test is this "Where by the construction of works there is a Physical interference with any right, public or private, which the owners or occupiers of property are by law entitled to make use of in connection with such property and which right gives an additional market value to such property apart from the uses to which any particular owner or occupier might put it, there is a title to compensation, if by reason of such interference the property as a property is lessened in value".

10

In the English law, it appears that the same principle is followed. In "The Complete Valuation Practice" (Mustoe Eve Anstey) on page 210 it is stated: "An owner, from whom land is taken, is entitled to compensation for any injurious affection which may be caused to his remaining land by the construction of the proposed works and their subsequent use;" and again "It is only in respect of things done by the authority of the special Act - things which would be illegal if the special Act did not exist - that a claim for injurious affection can be maintained".

20

(e) Change of Residence

This does not apply in this case.

4. I therefore award as follows :-

30

Lots 57 and 58, Section 58, Town of Kuala Lumpur.

Area: Lot 57: 1a. Or. 16.6p.

Lot 58: 1a. Or. 34.9p.

Compensation ~~₹~~60,000/- (Sixty thousand) to be paid to Lim Foo Yong Ltd. subject to discharge of charge.

Sgd: M.A.Kidner,

Collector of Land Revenue, KL.

31.1.58.

40

No. 2.

NOTES OF EVIDENCE RECORDED BY ONG, J.

In the
High Court at
Kuala Lumpur.

Mr. A.K. Jones)
) Assessors
Mr. M.W. Navaratnam)

No. 2.

Notes of
Evidence
recorded by
Ong, J.

20th October,
1959.

I hand over copy of Sections 29 - 31 of Cap. 140 to Assessors who inform me they are well acquainted with those provisions of the Land Acquisition Enactment.

Yong Pung How & S.T. Chung for Applicant

10 Bahaudin bin Yaacob, State L.A. for Respondent.

Yong: Land concerned is Lots 57 & 58: acquisition in October 1957 - part of 4 lots acquired 55, 56, 57 and 58 for Tunku Abdul Rahman Hall. Claimants Lim Foo Yong Ltd.

20 Two claims - 1st in a hurry. Amended in June '58 after proper valuation. Claim is now for total of \$910,492 made up of \$325,357 for land @ \$3.25 per sq. ft., and for severance and injurious affection the sum of \$585,135. Other lands affected are Lots 134, 135, 136, 156 & 157 (5 lots on which Hotel Merlin stands).

It is contended that the offer of \$60,000 is inadequate and not actual market value having regard to all surrounding circumstances.

30 Lots 57 & 58 form part of Lim Foo Yong Ltd's Hotel property - these lots were planned as playground for Hotel, with swimming pool and other outdoor recreational amenities for residents and customers of Hotel. Loss of amenity has injuriously affected their property - the Hotel Merlin.

Respondent's valuation based on earlier purchase at \$60,000 - few months earlier.

Development of Hotel stunted by acquisition. We ask compensation for such loss.

In the
High Court at
Kuala Lumpur.

P.W.1: CHIN KOK KIONG: affirmed states in English

(Site plan put in - Ex. "A.1")

Applicant's
Evidence.

23 Church Street, Kuala Lumpur - Valuer and Auctioneer - since 1941 - all the time in Malaya.

No. 2.

As Valuer in Kuala Lumpur I have done numerous valuations of K.L. property.

Chin Kok Kiong.

Examination.

I was instructed to make valuation of Lots 57 - 58 in June 1958. I made report and valuation after inspection.

Ex. A.1.

Lot 57: it abuts Ampang Road - level with it - road frontage 145 ft. on Ampang Road. The drop of 12 - 13 feet is about 8 - 10 feet behind the boundary wall of the land. Whole of Lot 57 except for this narrow strip is low. Area of Lot 57 is 1 acre 0 rood 16.6 poles.

10

Lot 58 lies south of Lot 57 and adjoins it: area 1 acre 0r. 34.9 poles. Lots 57 and 58 contiguous. Lot 58 has no road frontage on Ampang Road but it has frontage on Government Road reserve connecting Ampang Road with Perak Road. Lot 58 is same level as lower part of Lot 57 - and flat.

20

At time of inspection the lots were a lawn, with fruit trees and concrete paths running through it. No boundary fences between Lots 57 and 58. These lands were part of compound of No.109 Ampang Road.

Basis of valuation is the Before and After method - to find the margin of compensation for injurious affection. I was given a file of correspondence regarding these 2 pieces of land - showing owners' intention to use the land for recreational amenities of Hotel Merlin. I was informed of an easement in the nature of a path joining the Hotel property with Lots 57 - 58. At that time owner told me of having asked permission of owner of Lot 56 for covered way - alternatively owner of Lot 158.

30

I would value the whole land (7 lots) with its amenities which would exist had there been no acquisition. I would then proceed to value the

40

land after Lots 57 - 58 had been acquired, which would deprive those other 5 lots of these amenities.

In valuing: I work on data of rental figure - ~~£~~50,000 p.m. with Lots 57 - 58, and ~~£~~35,000 without Lots 57 - 58 with amenities thereon. These figures were given me by owner of the land and Hotel. On basis of rental of ~~£~~50,000 for a furnished Hotel - I have to make a statutory deduction of 1/60 of the furniture valued at ~~£~~250,000 or ~~£~~4,166 p.m.

I would further deduct 26% of rental for assessment - ~~£~~11,960. Total of both is ~~£~~16,126 leaving net monthly rent of ~~£~~33,874. Multiply by 12 for annual rent - ~~£~~406,488. I allow 10 years purchase: making capital value ~~£~~4,064,880.

I valued also for "after acquisition" - when the recreational amenities of Lots 57 - 58 were lost. The rental, reduced was ~~£~~35,000. I deducted ~~£~~4,166 p.m. in respect of furniture: assessment would be ~~£~~8,060, making total on both items of ~~£~~12,226. This leaves net monthly rent of ~~£~~22,774 - annual value ~~£~~273,288: capitalised on basis of 11 years' purchase, the value would be ~~£~~3,006,168.

The difference between the 2 capital values is ~~£~~1,058,712. At the relevant time, the Hotel Merlin was 2 years short of completion - and allowing for same at 8% for 2 years, I obtained net figure of ~~£~~910,492. This figure represents blanket form compensation for land and injurious affection. I broke down this figure to get value of land, and of building separately. The total cost of lands and building was ~~£~~4,064,880. Less estimated cost of buildings, roads, swimming pools etc. at ~~£~~3,000,000 - leaves balance of ~~£~~1,064,880 for the lands. I valued lands at date of acquisition at ~~£~~915,796 for a total of 6.533 acres covering 7 lots. Value of 2.321 acres (Lots 57-58) would be ~~£~~325,357 - i.e. ~~£~~3.21 cts. per sq.ft.

Injurious affection would therefore be ~~£~~910,492 less ~~£~~325,357 - or ~~£~~585,135.

At time of my valuation I was aware that he had purchased the land only recently, for ~~£~~60,000 for the 2 lots. In my opinion, the attitude of the buyer and of the seller is the main factor. I

In the
High Court at
Kuala Lumpur.

Applicant's
Evidence.

No. 2.

Chin Kok Klong.

Examination
- continued.

In the High Court at Kuala Lumpur.

Applicant's Evidence.

No. 2.

Chin Kok Kiong.

Examination - continued.

Cross-Examination.

thought the land cheap at \$60,000. Less development cost to buyer when building of swimming pool was contemplated. Market value would vary according to use to which the land is put. I dealt with Lots 57-58 on basis that they were part of the Hotel Property.

Cross-Examination:

The lands on Lots 57-58 had been given planning permission on 22.6.1956 (under Approved Plan 248/56 - I mean for Hotel Merlin).

10

Permission of Ruler in Council required for zoning change. Ampang Road is residential area. Building on Lot 1 or 78 facing Ampang Road have been used by the High Commissioner (Britain) - clearly shows change of use.

My valuation of Lots 57-58 would have been different in case of different user.

I know of sales in vicinity at between 75 cts and \$1.20 a sq.ft. I don't know if as low as 48 cts. per sq.ft. Hotel Merlin site - I do not know its purchase price.

20

Re-Examination.

Re-Examination:

Re zoning question. Hotel property was granted permission for com. development. 2 flats on Ampang Road allowed to use for non-residential purposes.

Prospective buyers would take these cases of user as indication of prospective user.

Prices vary very much according to nature of terrain, site, intended user.

30

Lim Foo Yong.
Examination.

A.W.2. LIM FOO YONG: affirmed states in Cantonese:

I am Managing Director of Lim Foo Yong Ltd. I have never been to court before. I know English only a little.

Lim Foo Yong Ltd., are owners of Hotel Merlin and quondam owners of Lots 57-58. They were bought from Estate of Eu Tong Sen.

I bought Lots 57-58 as I required them for swimming pool and recreation grounds of the Merlin Hotel.

In the High Court at Kuala Lumpur.

My purchase from Liquidator of Eu Tong Sen Ltd., of those 2 lots was not my first transaction with this vendor.

Applicant's Evidence.

No. 2.

Lim Foo Yong.

Examination
- continued.

10 Early in 1956 I purchased 3 lots from the Liquidator of Eu Tong Sen Ltd., viz: Lots 134, 135, and 136 for \$62,000. 1 month later I bought 2 more lots from same vendor, behind the 3 lots, being lots 156-157. I paid \$27,500 for them; intending, when I bought these 5 lots, to build a hotel. I had in mind a very high-class hotel of world standard - with recreational and amusement amenities - e.g. swimming, tennis and playground for children. I instructed architects to prepare plans. I engaged Y.T.Lee.

20 In April 1956 I made application for Planning permission, through my architects, to build hotel, swimming pool and petrol kiosk. The Planning Authorities approved plan, except that the petrol kiosk was required to be resited. I produce copy of the Plan then submitted (Ex.A-2).

Ex.A2.

30 As to resiting the petrol kiosk I had further discussion with my architect. As a result, I suggested moving the petrol kiosk to back of Hotel - and my architect proceeded to negotiate with Municipality. Architect suggested moving and I agreed to shift Hotel to one side of the land. This decision was outcome of discussion between me and architect. This resiting was to leave more grounds for car-park.

I produce Original of amended plan submitted and passed (Ex.A.3). In this plan the petrol kiosk was shifted to rear of hotel. In the amended plan the hotel as resited covered the site of the proposed swimming pool.

Ex.A3.

40 In the architect's opinion there was not sufficient space in the 5 lots for the swimming pool. My architect's advice was to acquire suitable place for swimming pool and recreation ground. The amended plan was approved on 21.6.56.

On such advice, I looked for land nearby. I

In the
High Court at
Kuala Lumpur.

Applicant's
Evidence.

No. 2.

Lim Foo Yong.
Examination
- continued.

went to the Liquidator of Eu Tong Sen Ltd., who owned Lots 57 & 58. I also considered purchase of Lots 55 & 56. But eventually I decided to purchase lots 57 & 58 because there was existing building on Lots 55 & 56, also latter is high land and lacking in privacy for swimming pool.

Lots 57-58 are low-lying. I was aware of this fact, but very suitable for me to build a swimming pool. It ensures privacy and to my advantage in the way of cost.

10

At the time of my purchase of these 2 lots - they were not on the market. I made up my mind to buy these lots for purposes of swimming pool. I knew the Liquidator and had had dealings with him, in respect of land at Kg. Bharu and at Pudu Road, behind Majestic Cinema (I meant Campbell Road when I said Kg. Bharu). I bought those lands at same time; at about the time of purchase of the 5 lots for Merlin Hotel. I negotiated the purchase for a syndicate called Eu Penninsula Development Ltd. of which I was shareholder.

20

Some of the members of the syndicate belong to Eu Tong Sen Finance and Eu Tong Sen's sons together own half of the syndicate.

A few months after purchase of Campbell Road and Pudu Road property, I negotiated with Liquidator for purchase of Lots 57 & 58 and of property in Freeman Road - the latter over 30 acres in extent. I negotiated for Freeman Road and Ampang Road property at same time. One total sum was agreed for both properties - \$660,000.

30

Price of Pudu Road and Campbell Road lots was \$680,000 - one lump sum price for the two.

I negotiated for Freeman Road and Ampang Road - but Lots 57 & 58 were bought in my name i.e. Lim Foo Yong Ltd. and Freeman Road in name of Federal Produce Ltd. of which also I was Managing Director.

Federal Produce Ltd. bought for sub-division and development.

I had no intention to sell Lots 57 and 58.

40

The price of \$660,000 was apportioned by agreement with directors of Federal Produce - between

Freeman Road at \$600,000 and \$60,000 for Lots 57 & 58. This apportionment was made on my suggestion, as negotiation was carried out by me. The \$60,000 was a price which took into consideration my services negotiating the deal. I was only shareholder of my family in Federal Produce - a \$3,000 share of \$500,000 to \$600,000 share capital. Lim Foo Yong Ltd. shares held by my family.

In the High Court at Kuala Lumpur.

Applicant's Evidence.

No. 2.

10 The transaction was finalised about September 1956.

Lim Foo Yong.
Examination
- continued.

The Land Office records show transfer of Lots 57 & 58 in April 1957 when I completed payment.

When I bought Lots 57 & 58 I knew land did not adjoin the other 5 lots. But during negotiations with the Liquidator, it was agreed I should be granted right to use an existing footpath.

20 I recognise this letter signed by Joe Eu dated 24.9.56. (Ex.A.4). Joe Eu is grandson of Eu Tong Sen. I understand he holds a P.A. from the Liquidator and was a Secretary of Eu Tong Sen Estate. Usually I dealt with Andrew Eu - but on those occasions Joe Eu took part in the transactions.

Ex.A.4.

In October 1956 I corresponded with the Authorities regarding the development of Lots 57 & 58. As a result, manager of Lim Foo Yong Ltd., Ho Yew Hong, went to Municipal Council. After his visit I continued with my plans.

Detailed planning for the pool was commenced at beginning of 1957.

30 Adjourned at 12.45 to 2.15 p.m.
Resumed at 2.15 p.m.

40 When I said I took the Ampang Road property and Federal Produce took the Freeman Road property, I mean that after I concluded negotiations with the Vendors I arranged to sell the Freeman Road property to Federal Produce for \$600,000. The total purchase price of both was \$660,000 and as the Freeman Road property was sold to Federal Produce for \$600,000, therefore the balance of \$60,000 was set down as the purchase price of Lots 57-58.

Architects for the swimming pool were also Y.T.Lee. I recognise plan Ex.A.1. It's the site

In the
High Court at
Kuala Lumpur.

Applicant's
Evidence.

No. 2.

Lim Foo Yong.

Examination
- continued.

plan prepared in beginning of 1957, after discussion with architect; I decided to build a swimming pool on Lot 58 and 2 tennis courts and 1 badminton court and a car park on Lot 57. This was decided after architect's advice that the 5 lots were too small.

Ex.A.1 was prepared by Y.T.Lee. The plan was not submitted for approval because before it could be submitted the 2 lots were acquired by Government.

Up till notice of acquisition this matter was under discussion between me and my architect. 10

In August 1957 I went to see Mrs. Pereira, owner of Lot 158. I intended to purchase Lot 158 from her; and I made her an offer. She told me she would give me reply after a few days. Eventually she told me she would not sell. I cannot remember exactly what reason she gave for not wanting to sell. When she gave her answer, I asked for right of access over her land to Lot 58. She agreed to do so, in consideration of rent. I offered her \$150 p.m. which she accepted. When I offered to buy Lot 158 the object was to obtain access to the swimming pool on Lot 58. When she refused to sell, my object in offering her \$150 p.m. for rent of a portion of Lot 158 was to provide such access. I arranged with her also for possibility of my future purchase of her land - i.e., to give me first offer, to which she agreed. This was not in writing. 20

In 1957 I had some difficulty with Municipality in regard to assessment of Lots 57, 58. Municipality wanted to assess these lots at \$2/- per sq. ft. I appealed. As a result assessment was reduced to \$1.50 per sq.ft. I now produce the relevant letter from the K.L.Municipal Council to my Solicitors (Ex.A.5) dated 18.10.57. 30

Ex.A.5.

In October 1957 acquisition of these 2 lots took place. As a result I cannot provide the amenities for my Hotel as planned. There is no other suitable land available. 40

I claim for the land and for severance on ground that my hotel property has been injuriously affected. I claim \$325,357 for the land and for severance \$585,135. I base claim on loss of rent resulting from the acquisition of the 2 lots.

Before acquisition Lim Joo Tan offered to rent the hotel from me for \$50,000 p.m. Lim Joo

Tan was proprietor of Harlequin Hotel then. He is now proprietor of Le Coq D'or. After the lots were acquired his offer was only \$35,000/- per month.

I see this letter of 19.3.57 from Lim Joo Tan acknowledging receipt of my notice to him re the Harlequin. (Ex.A.6). He asked for 1st option on the new hotel.

10 I produce my reply (Ex.A.7) dated 23.3.57. I produce original letter from Lim Joo Tan confirming terms of lease @ \$50,000 p.m. for 5 years with option of renewal. The 5 years was my idea. Lim Joo Tan wanted a longer lease. Letter of 8.7.57. (Ex.A.8.).

I produce letter in which I confirmed terms set out in A.8. Rent of \$50,000 includes hotel, Swimming pool, tennis courts etc. on Lots 57 & 58. (Ex.A.9).

20 After the 2 lots were acquired by Government I received this letter (Ex.A.10) from Lim Joo Tan asking reduction of rent.

Following receipt of this letter I had discussions with Lim Joo Tan following which I received a letter from him on reduced rent of \$35,000 (Ex.A.11).

On 2.12.57 on my instructions this letter was sent to Lim Joo Tan confirming acceptance of the offer of \$35,000 (Ex.A.12).

30 On 5.5.59 I sent this letter to Lim Joo Tan (Ex.A.13).

Letter of 11.5.59 was received by me from Lim Joo Tan asking for further reduction of rent to \$9,000 per month because restaurant and ballroom not ready and only 3 floors open to occupation etc. (Ex.A.14).

Letter of 14.5.59 sent by Lim Foo Yong Ltd. on my instructions to Lim Joo Tan confirming pro tem reduction of rent to \$9,000. (Ex.A.15).

Cross-Examination:

40 In first half of 1957 I instructed Y.T.Lee to prepare plan of swimming pool on Lot 58. It was after purchase i.e., after April 1957.

I said my purchase price was not fair market value for the 2 lots. I would have paid \$2 or \$3

In the High Court at Kuala Lumpur.

Applicant's Evidence.

No. 2.

Lim Foo Yong.

Examination - continued.

Ex.A.6.

Ex.A.7.

Ex.A.8.

Ex.A.9.

Ex.A.10.

Ex.A.11.

Ex.A.12.

Ex.A.13.

Ex.A.14.

Ex.A.15.

Cross-Examination.

In the High Court at Kuala Lumpur.

Applicant's Evidence.

No. 2.

Lim Foo Yong.

Cross-Examination - continued.

per sq.ft. because I required the land for my swimming pool.

It is low-lying land. I cannot say if Eu Tong Sen Ltd., knew my intention. I believe they did not know my object. I have no share in Eu Tong Sen Estate or associated companies.

Lim Joo Tan is not related to me. We are of same surname. Lim Joo Tan is now renting Hotel Merlin from me at \$9,000 p.m. Ballroom, restaurant not completed. Car park is usable.

10

It is not possible to build swimming pool on site of present car park - because if I do so - there would be no car park.

I arranged to use access over Lot 158. Not because I could not pass over Lot 56. I say I was not prevented from using footpath across Lot 56 because military was in occupation of that Lot. I did not have to get permission of military to use footpath. I wanted additional access - that's why I made the arrangements over Lot 158.

20

Buying and selling property is one of several of my lines of business.

Re-Examination.

Re-Examination:

Besides owning Hotel Merlin I have investments in Tin mines, Watson's Aerated waters, rice trade, housing in Tiong Nam Settlement.

I was able to use footpath over Lot 56 because it had long been in use and Lot 56 was fenced in, but the footpath was outside the fence.

Lee Yoon Thim.

A.W.3: LEE YOON THIM: affirmed states in English:

30

Examination.

I am architect, 88 Cross Street, Kuala Lumpur. I have practised since 1945. I am familiar with Hotel Merlin.

In early 1956 I was approached by Mr. Lim Foo Yong re development of the land. 5 lots off Treacher Road - viz., Lots 134, 135, 136, 156, 157 Section 57.

Plan was to build a 7 storey Hotel, a petrol kiosk, a swimming pool, and car park. As a result I submitted a site plan on behalf of Lim Foo Yong Ltd. to the K.L. Municipality for planning permission for 7 storey hotel, petrol kiosk, swimming pool and car park. I see "Ex.A.2". It is a copy

40

of the plan I submitted on 25.4.56. The authorities required the building and petrol kiosk to be resited and subject to resiting of the petrol kiosk and hotel building the plan was approved.

I see this letter of 18.5.56 received by me. (Ex.A.16). As a result I saw the Ag.Town Planner and discussed with him. A suggestion was made for resiting the building to provide for bigger car park. I discussed matter with Mr. Lim Foo Yong who agreed. Amended site plan was then submitted. A.3 is the amended site plan.

Difference between "A.3" and "A.2" -

- (1) Building resited towards one corner to provide bigger car park
- (2) petrol kiosk resited at rear of building.

As result the proposed swimming pool disappeared as hotel site covered site of swimming pool. This amended plan was approved on 21.6.'56. I asked Lim Foo Yong to obtain additional land for the swimming pool. The swimming pool was considered an essential amenity for the Hotel. I suggested he get additional land in vicinity.

Some time after June '56 I heard from Lim Foo Yong that he had acquired or was about to acquire 2 lots in the vicinity for the purpose of the swimming pool.

He subsequently instructed me to prepare sketch plans in respect of these 2 lots.

I see A.1 - it was prepared on Lim Foo Yong's instructions - sometime around August 1957. It was never submitted to K.L. Municipal Council for approval because it was only a preliminary lay out, and meanwhile I was then busy over the hotel plans. I had impression the swimming pool job was meant to be executed, though at a subsequent stage. No development plans re Lots 57, 58 were ever submitted to K.L. Municipality. I was busily engaged then on Hotel Merlin and I was informed by Lim Foo Yong that Government had acquired Lots 57, 58.

40 Cross-Examination:

Size of original swimming pool in "A.2" was not standard size. The resiting of the petrol kiosk at rear of hotel made it undesirable to build the swimming pool close by on Lots 156 or 157.

In the High Court at Kuala Lumpur.

Applicant's Evidence.

No. 2.

Lee Yoon Thim.

Examination - continued.

Ex.A.16.

Cross-Examination.

In the
High Court at
Kuala Lumpur.

Applicant's
Evidence.

No. 2.

Lee Yoon Thim.

Cross-
Examination
- continued.

Lim Foo Yong and I both considered swimming pool an essential amenity for the hotel. We deemed it necessary to acquire more land: after acquisition by Government of Lots 57 & 58 - I don't know exactly what Lim Foo Yong did about getting other land.

I knew of acquisition of lot 57 - 58 by Government in 1957 - but I can't remember in what month.

Re-Examination: Nil.

10

Lucy Pereira.
Examination.

A.W.4: MRS. LUCY PEREIRA: affirmed states in English:

I live in No.9 Lorong Perak, K.L., widow of K.E. Pereira deceased and administratrix of his estate. Husband was owner of a piece of land in Perak Road - Lot 158 in Ex.A.1. My house is on this land.

In 1957 Mr.Lim Foo Yong approached me - about August that year. I have known him for some time by sight. He was and is still residing opposite to my place.

20

He wanted a small portion of my land for a path from the Merlin Hotel to his swimming pool. The swimming pool was to be in place now accompanied by the Tungku Abdul Rahman Hall. I agreed. He offered me \$150 p.m. and I accepted his offer.

He wanted to buy my land. I said I had to have order of Court and I would let him know. I consulted my lawyer and decided not to sell. I might sell the land in future and I told Lim Foo Yong I would give him first offer in that event. No agreement in writing with Lim Foo Yong.

30

Cross-
Examination.

Cross-Examined:

When Lim Foo Yong saw me about the access road, no work had started yet on Tungku Abdul Rahman Hall. I cannot remember how long after.

Adjourned at 4.25 to 10.30 on 21.10.1959.

We now adjourn to view the land with the Assessors and learned Counsel.

(Sgd) H.T.ONG,
Judge
20.10.'59.

40

Wednesday, 21st October 1959 (Continued)

Resumed at 9.40 a.m. Appearances as before.

A.W.5: LIM JOO TAN affirmed states in English:

I am proprietor of Le Coq d'Or, 121 Ampang Road. I started my career in Hotel and Restaurant at Cameron Highlands Hotel about 20 years ago, when I worked there. Since then I was in Mayfair Hotel, Ipoh, till war broke out. I managed Naafi canteens after the war, in Changi (S'pore) Johore Bahru and Kluang. I opened the Harlequin Hotel, Kuala Lumpur in October 1950 and carried on until it was closed down in June 1957. Before Merdeka Day, I had optimistic view of Hotel business. I was quite satisfied with the business at the Harlequin.

Outside Malaya & Singapore I have travelled to Australia, England, S. America, S. Africa, Hongkong, Japan Phillipines. I studied the Hotel business on these foreign tours.

I received notice some time in March 1957 to quit the Harlequin - 3 months' notice. Lim Foo Yong Ltd. the owners of the building gave me notice.

Lim Foo Yong explained to me that the Harlequin was being sold to help finance building a new hotel in Treacher Road. It was to be a bigger and better hotel. I was keen to have a bigger and better place. I had discussions with Mr. Lim Foo Yong. He offered me first refusal on this Hotel which was to be a first class hotel by international standard. I accepted.

I see A.6 - dated 19.3.'57 - it's original letter sent by me to Lim Foo Yong Ltd.

I see A.7 - of 23.3.57 - it's original letter received by me - I took it out of my own file and delivered it to Lim Foo Yong Ltd's Solicitors.

I see A.8 - of 8.7.57 written and sent by me to Lim Foo Yong Ltd. - original

I see A.9 - 12.7.57 - original letter received by me from Lim Foo Yong Ltd. - handed over by me to Lim Foo Yong's solicitors.

I see A.10 - of 5.11.57 - original letter written by me to Lim Foo Yong Ltd. asking for reduction of rent. I sent this letter on my return from Hongkong holidays, when Mr. Lim Foo Yong told me that Lots 57 - 58 meant for swimming pool, tennis court, badminton court and recreational facilities

In the
High Court at
Kuala Lumpur.

Applicant's
Evidence.

No. 2.

Lim Joo Tan.

Examination.

In the
High Court at
Kuala Lumpur.

Applicant's
Evidence.

No. 2.

Lim Joo Tan.

Examination
- continued.

had been acquired by Government and I thought it fair to discuss reduction - because without these amenities, there would be nothing to distinguish this hotel as special or different to the ordinary run of hotels in K.L. By special I mean a 1st class hotel by international standards.

The importance of this fact to me as lessee is that - all bedrooms must have bathrooms attached, air-conditioned, public lounge at every storey for guests, ample car-parking space, sports ground, e.g., tennis and badminton courts, a swimming pool is essential - especially in an inland town like K.L.

10

With such facilities, the Hotel will be unique in K.L. in having such amenities. If one such big Hotel already exists, anyone thinking of building another in K.L. will think twice before doing so.

On basis of all these facilities I made offer of ~~£~~50,000 p.m. rental: absence of these amenities made rent reduction necessary.

20

My opinion was that without the swimming pool and other amenities - I would lose 15-25% of business.

The Federal Hotel, I believe, pays ~~£~~19,000 - ~~£~~20,000 rent per month with only 90 rooms.

In the Merlin Hotel - there are 204 rooms.

Lim Foo Yong Ltd. agreed to the reduction to ~~£~~35,000 p.m.

A.11 - of 20.11.57 - is original letter from me setting out the new rent.

30

A.12. - of 2.12.57 is original letter from Lim Foo Yong Ltd. confirming new rent - handed to Lim Foo Yong's Solicitors from my file.

A.13 - of 5.5.59 - is original letter received by me from Lim Foo Yong Ltd. advising certificate of fitness granted.

A.14 - of 11.5.59 is original letter from me to Lim Foo Yong Ltd. - asking for further reduction of rent to ~~£~~9,000.

A.15 - of 14.5.59 - is original letter received by me from Lim Foo Yong Ltd. - letter from my file.

40

I asked for further reduction to ~~£~~9,000 as only 3 storeys are ready - ballroom and dining room not ready - building operations in progress cause inconvenience and a nuisance.

I am prepared to go back to rent of \$35,000 if Hotel is complete.

Before loss of swimming pool and other amenities I was prepared to give \$50,000 p.m. As a business man, I had given careful study to matter before I made such offer.

If rent @ \$50,000 - I estimate other monthly expenditure of \$60,000 apart from rent. Gross outlay would be about \$110,000 p.m.

10 Largest single item of expenditure would be wages - about \$27,000 to \$29,000. Other items provided for are:

Cleaning, laundry, toilet paper, soap etc.

Miscellaneous, stamp etc.

Furniture and fitting

Band

Electricity

Water

Oil and Fuel

20 Licences for hotel rooms and bar

Stationery

Advertising

Entertainment

Staff messing

Transport

Flowers

Provident Fund

Medical Fees

Insurance

30 Uniforms for staff

Newspapers and periodicals

Telephones and telegrams

Replacements of cutlery, glassware, crockery, utensils and linen.

Against such outgoings, estimated income: we have 7 floors of ordinary rooms, including semi-suites. The 8th Floor contains 8 super-suites. The estimated income each floor, fully occupied would be \$856 per day.

40 Percentage of occupancy provided for should be 50% - 60% for calculation.

50% occupancy - estimated income would be \$97,000 for rooms alone.

On 60% - amount would be \$116,000.

The super-suites on 8th floor are included in those estimates.

In the High Court at Kuala Lumpur.

Applicant's Evidence.

No. 2.

Lim Joo Tan.

Examination - continued.

In the High Court at Kuala Lumpur.

Applicant's Evidence.

No. 2.

Lim Joo Tan.

Examination - continued.

In addition to income from these rooms, from my own past experience - I estimate restaurant sales - \$24,000 Bar sales - \$30,000 Barbecue stalls, snacks etc. at swimming pool @ \$500 per day - \$15,000

These sums are turnover.

From such turnover: I estimate -

Restaurant profits	30%	-	\$ 7,200/-	p.m.	
Bar	"	40%	-	12,000/-	p.m.
Barbecue, snacks etc.	30%	-	<u>4,500/-</u>	p.m.	10

Gross profits: Total: \$23,700/-

Total income based on 50% rooms, plus above Restaurant Bar and snack sales - would be \$120,000 approx. - On 60% rooms, \$140,000.

I would break even (on room occupancy of 50%) on whole business. On 60% occupancy, I would make \$30,000.

I was aware that Lots 57-58 were not joined to the land in which hotel stands. Rather than a detriment, I thought the swimming pool would be better some distance away instead of immediately behind Hotel - there is the covered walk (itself an amenity) and assured privacy.

20

Cross-Examination.

Cross-Examined:

If room occupancy drops - bar and restaurant would also drop,

Barbecue etc. at swimming pool: I have taken expenditure into account. \$500 per day takings is not over-estimate.

Harlequin had 20 rooms. It was very full most of the time. Federal not always full. It is hard to be 100% full all the time for any hotel.

30

Re-Examination.

Re-Examination:

Residents: some don't eat in. But non-residents came to restaurant too. I take all these into account.

The figures for restaurant, bar etc. were based on 50 - 60% occupation of Hotel rooms.

Case for Applicant.

Inche Bahauddin, State L.A. opens, calls -

R.W.1: ARTHUR AUBREY WRAGG: affirmed states in English:

I am Chief Valuer, Valuation Division, Ministry of Finance. Experience as valuer 30 years. Attached to Ministry of Finance etc. almost 5 years as valuer.

In 1957 Government acquired 2 pieces of land, Lots 57 & 58 Ampang Road.

10 I was asked to inspect and value the lots for purpose of Collector of Land Revenue's enquiry.

My report is as set out in Annexure D.25. True copy of original report which was sent to C.L.R. put in (by consent) - Ex.R.17.

Before submitting the report I examined various documents of transfer re property in vicinity (see para.4 of R.17).

I examined record re Lots 134, 135, 136, 156 & 157 also.

20 In April 1956 these 5 lots were sold to Lim Foo Yong Ltd. by Mr. Tresise, Liquidator of Eu Tong Sen Ltd. - for ~~89,500~~. Total area was 4A. OR. 34.2 poles or 48.76 cts. per sq.ft., over the whole of the 5 lots.

I examined record re Lot 60 in same locality.

I have prepared a plan which I now produce (Ex.R.18).

30 Lot 60 (marked (3) in red) - transferred on 16.4.56 for ~~29,000~~: area 1A.Or.09.9 poles: 62.69 cts. per sq.ft. including a house on the land at date of sale. Registered proprietor was Chan Mun Lai (f) of 1220 Tiong Bharu Road, Singapore.

40 Also re Lots 1, 43, 44, 78 & 63 which were sold together. The owners were Cheong Yoke Choy of 5 Sultan Street, K.L., Kuala Lumpur - for ~~135,500~~: total area 4A.1R.14.5P: or 76.04 cts. per sq. ft., including all buildings on the lot. The buildings on Lots 63, 1, 44 were demolished and re-developed with flats. House on Lot 43 still stands. The sale was on 25.3.55.

Also re Lots 57 & 58. Transfer was on 10.4.57 marked (5) in red on my plan. The consideration was ~~60,000~~ or 59.35 cts. per sq.ft. for 2A.1R.11.5P.

In the High Court at Kuala Lumpur.

Respondent's Evidence.

No. 2.

Arthur Aubrey Wragg.

Examination.

Ex.R.17.

Ex.R.18.

In the
High Court at
Kuala Lumpur.

Respondent's
Evidence.

No. 2.

Arthur Aubrey
Wragg.

Examination
- continued.

Cross-
Examination.

Lot 57 has a frontage of 148 feet in Ampang Road. I apportioned value as 72 cts. for Lot 57 fronting Ampang Road and 48 cts. per sq.ft. for Lot 58 - accessible from Parry Road by an access road (Lot 122) already in existence.

Cross-Examined:

I have 4 professional valuers who work under me. I have been 5 years in Malaya, in U.K. previous 25 years as valuer.

Prices of land in this country are static in my opinion. 10

The rise of prices would depend on developments affecting a certain locality.

In my 5 years I have seen prices rise - in K.L. I won't say that there was a general rise in prices in K.L. In my own experience, I have not come across any case of a steep rise in price. I am not aware of any land changing hands at great profits.

In making my valuation I examine transfer deeds of area between Ampang Road, Treacher Road, Parry Road, including this particular transaction. I looked at each of the lands - to see the physical aspects of the land transferred. 20

In the 5 sets of transfers - my conclusion was that the sales were not for the intrinsic value of the lands and buildings, but having in view the possibility of re-development.

As to Lots 51, 52, 53 and 54 (now renumbered, but edged in purple in plan). Consideration was ~~£~~50,000 or 23.39 cts. per sq.ft. 30

I inspected the transfers and the lands in each of the 5 sets of cases.

I say 23.39 cts. was not a fair valuation. I would accept the Collector of Land Revenue's valuation of ~~£~~86,800. I cannot give its valuation in 1952.

Lots 1, 43, 44, 63 & 78: I inspected the documents and the land. Consideration stated was ~~£~~135,500. I was of opinion the price paid was fair for subsequent redevelopment of flats. I saw no reason to doubt fairness of the price. 40

In cases 3, 4 and 5 set out in the Schedule I would accept the prices set out in the documents of transfer.

On taking into account general background knowledge of land transactions and kindred affairs I see no need for further enquiries into any particular transaction.

I was aware the transfer of Lots 51, 52 etc. of 17.11.52 was by L.Yew Swee to L.Y.Swee Realty Ltd. for consideration in shares.

10 Lots 1, 43, 44, 63 and 78: I did not suspect this transaction. It was transfer from C.Y. Chan to C.W. Chan - but I was not aware the parties were father and son. In my opinion 76.00 cts. per sq.ft. was maximum price for land in that locality.

Lot 60: I am not aware of kinship between buyer and seller. But I would have accepted it again here.

Lots 134, 135, 136, 156 & 157:

Lots 57 and 58 - I accepted figure of \$60,000. I had no cause to dispute that figure.

20 In my opinion frontage lot on that part of Ampang Road was worth 72 cts. and back lots 48 cts.

One must accept transfer at its face value.

To my mind 70 cts. would be fair for period 1955-57, for frontage land on Ampang Road. I arrived at my opinion of 70 cts. on 29.1.1958.

These 5 transactions were the only ones I could trace in the 5 years up to 1957. I based my valuation on these transfers backed by my general background knowledge.

30 I was aware of a rating appeal in 1957 re Lots 57 - 58: against rating where annual value was based on valuation of \$2 per sq.ft. I have advised the K.L.M. Council. Even then 70 cts was in my mind. I had no power while in attendance on Assessment Committee. I cannot recollect if I made any comment.

My valuation was based on these 2 lands themselves, not in relation to other lands of same proprietors.

40 The car-park in Treacher Road for Government acquisition as frontage land, would be worth 56 cts. and 38 cts. for the back land.

Land may be worth more for potential use than existing use, e.g. Lot 60.

Re-Examination: Nil.

In the
High Court at
Kuala Lumpur.

Respondent's
Evidence.

No. 2.

Arthur Aubrey
Wragg.

Cross-
Examination
- continued.

In the
High Court at
Kuala Lumpur.

1 p.m. adjourned to 3 p.m.

Resumed at 3 p.m.

Bahaudin:

No. 2.
Submissions
by Counsel.
Counsel for
Respondent.

The main question is "market value".
Cap. 140 - Section 29.
"Market Value" - not value special to owner:
what willing buyer will pay to vendor willing
but not obliged to sell. Best guide is value
by which that particular piece of land was
sold.

10

Here Lots 57 - 58 were purchased in April
1957 - 6 months earlier - for \$60,000; in absence
of such evidence - transactions of land in vicinity
are looked at.

5 transactions in vicinity average 70 cts.
per sq.ft.

Owner claimed he bought Lots 57 - 58 cheap as
part of a larger transaction. Important to remem-
ber - Land Office in charge - stamp duty collected
on value of the land transferred. C.L.R. was sat-
isfied \$60,000 was fair market value.

20

Evidence before the Court, of the 5 transac-
tions, of transfer in April and of the Merlin site
lands - and of no change of circumstances in in-
tervening period - leads to only conclusion of
about 70 cts. per sq.ft.

Assessment - reduction from \$2 to 1.50. K.L.
Municipal assessment is no true criterion.

Next question is: the other matters covered
by S.29(c) and (d).

30

Dealing with (d) first: 2 things to consider:

- (1) the damage to his property is physical
damage.
- (2) "actual earnings".

Indian section does not have word "actual".

Hotel Merlin - in blue print at the time of
acquisition.

Aggarawalla (3 rd.) pp.302-303

"loss of earnings" - does not include specu-
lative or prospective earnings.

40

Dealing with (c):

Lots 57 - 58 do not adjoin the other lands -

but question is whether they are enjoyed together as a whole - a question of fact.

Admittedly - when plan submitted in 1956 - site plan showed swimming pool. Deletion from amended plan.

Lim Foo Yong said he looked for land for swimming pool - question of fact for the Court.

10 If swimming pool was a special amenity: one would have expected him to take immediate steps to acquire land for the purpose - but observe the delay. Lim Foo Yong did nothing towards building a swimming pool after Govt. acquisition of Lots 57 - 58.

If, however, swimming pool necessary - there was enough space on Hotel site - say, near car-park - swimming pool only for guests residing in Hotel.

If swimming pool necessary - figures, are left to Court.

20 Yong Pung How:

Lots 57 - 58 part and parcel of Hotel property.

Award should be in 2 parts:

- (1) Land
- (2) Severance.

Re "market value": value at date of acquisition - normal yardstick.

Circumstances of acquisition - part of purchase of larger transaction - buyer or seller same.

30 Transactions of lands in vicinity: these were all he could find over 5 year period. 3 between kinsmen - not between parties at arm's length - basis for Wragg's valuation does not exist.

Assessors know why so few transactions over Ampang Road - no open market sales over the years.

Submit Lots 57 - 58 should be valued as part and parcel of Hotel property - "user" as Wragg admits would be material.

Object of purchase - recreational amenities - corroboration by Y.T. Lee and Mrs. Pereira.

40 Lim Joo Tan - evidence as to original plan for swimming pool.

Never any intention to abandon swimming pool.

In the High Court at Kuala Lumpur.

No. 2.

Submissions by Counsel.

Counsel for Respondent - continued.

Counsel for Applicant.

In the High Court at Kuala Lumpur.

No. 2.

Submissions by Counsel.

Counsel for Applicant - continued.

August 1957 - instruction to Y.T.Lee were given - i.e., 2 months before acquisition. Negotiations concluded in September 1956.

Mrs.Pereira - evidence Lim Foo Yong approached her - right of way - reinforces evidence of firm fixed intention to build the swimming pool.

Were Lots 57 - 58 bought on speculation?

7th storey has become 9 - evidencing intention of expansion.

Basis of claim: Hotel has suffered damage by development of Hotel being cut short - stunted - uniqueness of world-class Hotel no longer possible. 10

Quantum: rents provide basis: \$50,000 and \$35,000. C.K.K. has given his calculations.

Here ready lessor and lessee.

S.29(c) Cap.140:

Aggarawala (3rd Ed.) p.298.

Holt v. Gas Light & Coke Co. (1872) 7 QBD @ 728.

Cowper Essex v. Acton Local Board (1889) 14 A.C. 153. 20

Anticipated use:

Sisters of Charity of Rockingham v. The King (1922) 2 A.C. 315.

Adjourned to 13.11.59 at 9.30 a.m.

Friday, 13th November 1959

Direction by Court.

13th November, 1959.

Civil Application No.1/59 (continued)

Mr.Yong Pung How for applicant.

One Bahauddin - Legal Adviser for Respondent.

Assessors as before. 30

I suggested to Counsel that there may be need to call certain evidence on part of Lim Foo Yong on points which heretofore would appear to be merely hearsay.

Copies of notes of proceedings to be supplied to both parties and to each of the Assessors.

Counsel for parties to consult each other thereon.

Adjourned 9.30 a.m. on 20.11.59.

(Sgd) H.T.ONG,
13.11.59. 40

Certified true copy

Sgd: ?

Ag. Secretary to Judge
Kuala Lumpur.

CIVIL APPLICATION NO.1 of 1959 - BEFORE ONG, J.
In Open Court, Friday, 26th February, 1960
 (Continued)

In the
 High Court at
 Kuala Lumpur.

Assessors as before.

Applicant's
 Evidence.

Yong Pung How and S.T.Chung for Applicants.
 Harun for Respondent.

No. 2.

I point out that there is a hiatus in the evidence. Yong asks leave to recall Lim Foo Yong.

Lim Foo Yong -
 (Recalled)

LIM FOO YONG: affirmed states in Cantonese:

Examination.

10 I remember last October giving evidence as
 Managing Director of Lim Foo Yong Ltd.

Estimates given then of cost of hotel.

Total estimated cost of hotel building, roads,
 swimming pool etc. was \$3,000,000.

The estimated cost of the swimming pool, tennis
 and badminton courts and recreational facilities
 was alone \$100,000.

20 (Harun informs Court that date of possession
 taken of the land has been agreed to be
 12.10.'57).

Two more floors and a floor containing conference
 room - not yet complete as to decoration and
 furnishing. The work will be finished by the end
 of April 1960.

Cross-Examination:

Cross-
 Examination.

30 I have experience in buildings and based estimates
 on consultation with Goh Soo Hean, head of
 construction of my business. I have personal experience
 in building - e.g. terrace houses and
 shop houses.

Estimate of \$3,000,000 is exclusive of cost
 of land.

Since last hearing, 3 more floors and the
 front house have been completed and furnished. They
 have been rented out to Merlin Hotel. For the time
 being, the current rent is \$30,000 p.m.

Re-Examination:

Re-Examination.

The \$30,000 rent inclusive of Ballroom and
 Restaurant both in use.

40 The building contractors are Lim Foo Yong Co.

In the High Court at Kuala Lumpur.

Applicant's Evidence.

No. 2.

Lim Foo Yong - (Recalled)

Re-Examination - continued.

Ltd. I as Managing Director looked after the construction.

(Assessors and I retire for consultation at 10.20 a.m.)

Resumed at 10.30 a.m.

Mr. Jones reads his opinion - (Ex."J") - which he hands to me.

Mr. Navaratnam reads his opinion (Ex."N") which he hands to me.

I read my award.

H.T. ONG,
Judge
26.2.'60.

10

Certified true copy,

Sgd: ?

Ag. Secretary to Judge,
Kuala Lumpur.

No. 3.

Award.

26th February, 1960.

No. 3.

AWARD.

This is a reference to the Court under Section 22(i) of the Land Acquisition Enactment, Cap.140.

The applicants Lim Foo Yong Ltd., were the registered proprietors, on October 8, 1957, of seven pieces of Land, namely, Lots 134, 135, 136, 156 and 157 (Section 57) and Lots 57 & 58 (Section 58) in the Township of Kuala Lumpur. Lots 57 and 58, which are situated at 1½ mile, Ampang Road, were acquired by the Selangor Government for the construction thereon of the Tunjku Abdul Rahman Hall, and its ancillary buildings.

The notification under Section 4(i) of Cap. 140 and the declaration under Section 6(i) were both signed on October 8, 1957, and appeared respectively as Notices Nos.495 and 496 on pages 291 and 292 of the Selangor Government Gazette of October 11, 1957.

The seven lots occupy a total area of 6 Acres 2 Roods 05.7 Poles and the aggregate area of Lots 57 and 58 is 2 Acres 1 Rood 11.5 Poles, so that the portion acquired is approximately one-third of the whole.

20

30

40

10 These two lots are town land, held under Certificates of Title Nos. 3952 and 3953, and are contiguous, with Lot 57 having a frontage of 148 feet along Ampang Road. Lot 58 is situated behind the other, but is itself accessible by another road off Parry Road. The whole land is level and except for a narrow strip fronting Ampang Road, is about 12 feet lower than that road and the adjacent land of Lot 56, on which stands the premises known as No. 109 Ampang Road. Lots 57 and 58 were formerly part of the extensive grounds and garden of the said premises, were planted with rumbutan trees, and had concrete paths across the lawns.

20 The procedure prescribed by the Land Acquisition Enactment was duly followed and on January 31, 1958 the Collector made his award under Section 11 assessing the compensation at \$60,000 as being the market value of the two lots on October 11, 1957. On the same day the Collector made his written offer of compensation of the said sum to the owners in accordance with the provisions of Section 43(i).

On March 11, 1959, Lim Foo Yong Ltd., by written application to the Collector pursuant to Section 22(i), required him to refer the matter for the determination of the Court on the following grounds, namely -

"(a) That the amount of compensation awarded is insufficient having regard to:

- 30 (i) the market value of the lands;
 (ii) the damage sustained by us at the time of your taking possession of the lands by reason of the acquisition injuriously affecting our other property on Lots 134, 135, 136, 156 and 157 of Section 57, Town of Kuala Lumpur.

40 (b) That the amount of \$910,492 claimed by us, being apportioned as to \$325,357 for the lands contained in Lots 57 and 58 and as to the balance of \$585,135 for injurious affection to our other property on Lots 134, 135, 136, 156 and 157, correctly represents the amount of compensation which should have been awarded".

In making his award under Section 29(i)(a) the Collector had based his assessment of the market value on a report of the Federal Treasury's Chief Valuer with which he agreed. In respect of the claim for injurious affection or for severance and injurious affection he held that there was neither

In the High Court at Kuala Lumpur.

No. 3.

Award.

26th February, 1960

- continued.

In the High Court at Kuala Lumpur.

No. 3.
Award.
26th February, 1960
- continued.

severance nor injurious affection and disallowed any compensation under paragraphs (c) and (d) of Section 29(i) for the damages claimed.

The hearing of the reference commenced on October 20, 1959 with Mr.A.K.Jones and Mr. M.W. Navaratnam as Assessors, in accordance with Section 25. I handed to them copies of Sections 29, 30 and 31 and am satisfied that they understood the provisions of these sections with which they said they were well acquainted.

10

Upon the close of hearing on the first day the Assessors and I considered it desirable to make an inspection of the various lots referred to in the evidence and, Counsel for the parties concurring, I proceeded with the Assessors and Counsel to view the land and buildings. In my opinion it is necessary for a proper determination of this reference that I and the Assessors should have had, and did have, the opportunity to do so.

The hearing was concluded, after submissions of Counsel, on October 21, 1959. I felt it to be impossible then for either the Assessors or myself to come to any satisfactory decision forthwith, in a matter in which the facts and figures and all other matters in evidence required careful study and consideration. The matter was accordingly adjourned to November 13, 1959. On that date the Assessors had stated their respective opinions in writing, of which each gave me a copy. By reason of their divergent views, by reason of the fact that I was, in the conclusions that I had come to, unable to agree entirely with the one or the other, and by reason, lastly, of the fact that in going through the evidence, I felt that I ought to point out to Counsel that they might wish to consider whether or not they desired to call further evidence on certain points which, on the record would otherwise be merely hearsay, I directed that a transcript of notes of the proceedings be supplied to both Counsel, so that they might confer and agree whether or not any further evidence should be called. In these circumstances, the opinions of the Assessors were not expressed or read, and I reserved my award. I also directed that a transcript of the notes be supplied to the Assessors.

20

30

40

The claim is in two parts, and the questions for determination are: first, under paragraph (a) of Section 29(i), the market value of Lots 57 and 58 at the date of publication of the notification

under Section 4(i), namely, October 11, 1957; secondly, the damage, if any, sustained by the owners by reason of the acquisition injuriously affecting their other property, whether by severance, under paragraph (c) of Section 29(i), or in any other manner or their actual earnings, under paragraphs (c) and (d). These are as follows :-

In the
High Court at
Kuala Lumpur.

No. 3.

Award.

26th February,
1960

- continued.

10

"29(i) In determining the amount of compensation to be awarded for land acquired under this Enactment the Court shall take into consideration the following matters and no others, namely :-

(c) the damage, if any, sustained by the person interested at the time of the Collector's taking possession of the land by reason of severing such land from his other land;

20

(d) the damage, if any, sustained by the person interested at the time of the Collector's taking possession of the land by reason of the acquisition injuriously affecting his other property whether movable or immovable in any other manner or his actual earnings;"

30

The first question presents little difficulty. Both the Assessors and I are in complete agreement that the Collector's award of ~~₹~~60,000 as being the market value of the land at the time of acquisition is wrong. That award is accordingly set aside.

40

The meaning of "market value" was expounded by Counsel to the Assessors and I am satisfied that they did fully understand its meaning and are also well qualified to express their opinion thereon. Mr.A.K.Jones placed a market value of ~~₹~~1.50 per square foot on the land as at October 8, 1957, and I think I am right in saying that he did so primarily on the basis that the owners had appealed against an assessment of ~~₹~~2 per square foot made at about the relevant time by the Kuala Lumpur Municipal Council, which resulted in a reduction to ~~₹~~1.50 per square foot accepted by the owners.

Mr.M.W.Navaratnam, on the other hand, valued the land at ~~₹~~2.50 per square foot on the basis of its user for the construction of residential apartments or flats, which is a permitted development, and which he and the others among us observed on lands in the vicinity during our view of the property.

In the
High Court at
Kuala Lumpur.

No. 3.

Award.

26th February,
1960

- continued.

My own opinion is that the true market value of the land at the date of acquisition was \$2 per square foot, and, in deference to the opinions of the assessors, I should state my reasons for differing from them. In the view of Mr. Jones, the owners had thought the Municipality assessment of \$2 too high, but they had accepted a reduced assessment of \$1.50. This is a perfectly sound reason, so far as it goes, but it failed to take into account the potential user on development, which is a legitimate consideration from the viewpoint of buyer as well as seller, but not of the Assessment Committee. Once vacant land is built upon, it is certain that there would be a revision of assessment, and in assessing the market value of land it should be assumed that an owner will make the best practicable use of his property; see Pribhu Dyal v. Secretary of State (1) As to Mr. Navaratnam's process of valuation, I agree with it in the main, except that, in taking a long-term view, the monthly rental, in the calculations of any would-be investor in building property, ought to be based, as a matter of prudence, on a lower figure between \$300 and \$350, which consequently reduces the value to nearer \$2 per square foot. I am also fortified in my opinion by the views of the members of the Assessment Committee, who, as independent persons performing a public duty, originally assessed the land in its vacant state at the same value as I have done.

10

20

30

Before proceeding to deal with the second question I shall now set out the material facts. These are not in controversy.

Early in 1956, Mr. Lim Foo Yong, Managing Director of Lim Foo Yong Ltd., purchased from the Liquidator of Eu Tong Sen Ltd. Lots 134, 135, and 136, and a month later two more lots, 156 and 157, for the purpose of building what he described as a "very high-class hotel of world standard, with recreational and amusement amenities, such as, swimming, tennis and playground for children". The transfer of these five lots was registered on April 30, 1956. An Architect, Mr. Y. T. Lee, was engaged to prepare plans.

40

On April 25, 1956 the Architect submitted a site plan to the Municipality for planning permission for a multi-storeyed hotel with a swimming pool, car park and petrol kiosk. The swimming pool was then sited on Lot 136.

(1) A.I.R. (1931) Lahore 364.

On May 18, 1956 the Acting Planning Officer informed the Architect by letter that the Town Planning Committee had agreed to the proposal subject to the resiting of the petrol kiosk at the rear of the hotel building. The architect then had discussions with the Acting Town Planner, followed by discussions with Mr. Lim Foo Yong to resite the hotel building so as to provide a car park of adequate size. Accordingly an amended site plan was submitted, resiting the building towards one corner, and the petrol kiosk at the rear. In the result the proposed swimming pool disappeared, as its site was taken up by the hotel itself. The amended plan was approved on June 21, 1956.

10

By reason of the plan having been thus amended the architect asked Mr. Lim Foo Yong to obtain additional land in the vicinity for the swimming pool and recreation ground which they considered an essential amenity for the hotel.

20

Having chosen the additional land required, Mr. Lim Foo Yong entered into negotiations with the Liquidator of Eu Tong Sen Ltd. for the purchase of Lots 57 and 58, together with over 30 acres in Freeman Road. The negotiations were concluded about September 1956, and a lump sum of \$660,000 was agreed as the total sale price of the said property. The Freeman Road property was thereafter resold to a syndicate for \$600,000, thus leaving \$60,000 as the balance of the price payable for Lots 57 and 58. Land Office records show the transfer of these lots as having been registered on April 10, 1957. Mr. Lim Foo Yong's explanation was that registration had taken time until he completed payment.

30

Upon completion of negotiations for purchase of the property in September 1956, there is contemporaneous documentary evidence in the form of a letter dated September 24, 1956 (Ex.A.4) from Mr. Joe Eu, a grandson of Mr. Eu Tong Sen, Secretary of the Estate, and Attorney of the Liquidator, to Mr. Lim Foo Yong, agreeing to the continuing user by him of an existing footpath from Lot 157 to Lot 58 across the back portion of Lot 56 then belonging to the Estate.

40

Subsequently Mr. Lim Foo Yong and his architect commenced planning and discussions, leading ultimately to a decision to build a swimming pool on Lot 58 and two tennis courts, a badminton court and a car park on Lot 57. Instructions to prepare plans

In the
High Court at
Kuala Lumpur.

No. 3.

Award.

26th February,
1960

- continued.

In the
High Court at
Kuala Lumpur.

No. 3.
Award.
26th February,
1960
- continued.

for Lots 57 and 58 were given to the architect after registration of transfer in April 1957, and by August 1957, a plan (Ex.A.1) was duly prepared of the lay-out. It was, however, not submitted to the Municipal Council because the architect was busy with the plans of the hotel building itself which was then in course of construction. In my opinion this explanation is reasonable and sufficient. The architect admits no development plans had been submitted to the Municipality in respect of Lots 57 and 58 before notice of acquisition. 10

At some date about August 1957, Mr. Lim Foo Yong approached Mrs. Pereira, the registered proprietor of Lot 158, with a view to securing an alternative or additional means of access between his hotel and his proposed swimming pool on Lot 58. He offered her the sum of \$150 per month, which she accepted, for the grant of such right of way in due course.

Meanwhile, on March 13, 1957 Lim Foo Yong Ltd. who were also the owners of the Harlequin Hotel, 17 Bukit Bintang Road, had given formal notice in writing to Mr. Lim Joo Tan, the lessee, requiring possession on June 30, 1957; and on March 19, 1957 the lessee replied by letter (Ex.A.6) confirming that he would vacate the Harlequin Hotel on the agreed date, and requesting confirmation by Lim Foo Yong Ltd. of their offer to give him the first option to operate "the new hotel at Treacher Road, work on which has now started". 20 30

Then ensued the correspondence following :-

- (1) On March 23, 1957 Lim Foo Yong Ltd. wrote to Mr. Lim Joo Tan, confirming that he would be given "first option to run the new hotel on terms to be arranged and agreed". (Ex.A.7).
- (2) On July 8, 1957, Mr. Lim Joo Tan wrote Ex.A.8 to Messrs. Lim Foo Yong Ltd. for their confirmation of the terms verbally agreed two days earlier for the lease to him of the new hotel, namely: 40

- "1. The hotel will have 200 rooms all to be air-conditioned.
2. The hotel will have its own grounds with adequate car parking facilities, a swimming pool, tennis and badminton facilities, and recreational facilities.
3. You will provide all the furniture and fittings for the hotel and ballroom.

4. You will arrange for telephone service in each bedroom as well as Rediffusion.
5. The rental will be ~~50~~50,000 per month.
6. You will give me a lease for 5 years in the first instance with option of renewal".

In the
High Court at
Kuala Lumpur.

No. 3.

Award.

26th February,
1960

- continued.

- (3) On July 12, 1957, by Ex.A.9, a reply was given by Lim Foo Yong Ltd. confirming their willingness to lease the hotel on those terms.
- (4) On November 5, 1957, in consequence of the acquisition of Lots 57 and 58 Mr.Lim Joo Tan wrote Ex.A.10 to Lim Foo Yong Ltd. as follows:

"Hotel Merlin"

"I refer to our various correspondences on the question of leasing the new Hotel Merlin to us and now understand that there will be no swimming pool, tennis and badminton courts and recreational facilities due to the fact that Lots 57 and 58 have been requisitioned by the Government to build a conference hall.

If this is the case we have no alternative but to request you to agree to a reduction in the rental because the new hotel without a swimming pool and tennis courts will be the same as any other hotel in the country and cannot be considered a first class hotel by international standards.

At the moment I am not prepared to say how much we can offer but I would like to discuss the matter with you so if you can let me know a time when Mr.Foo Yong is free I shall call upon you".

- (5) On November 20, 1957 Mr.Lim Joo Tan wrote Ex. A.11 in these terms:

"Merlin Hotel"

"With reference to the discussion between Mr.Foo Yong, Mr.Yue Hong and the writer it is confirmed that we are prepared to take up the new Hotel Merlin on the same terms and conditions as set out in our previous correspondences at the new rental of ~~50~~35,000 (say Dollars thirty five thousand only) per month."

- (6) On December 2, 1957, Lim Foo Yong Ltd. by letter, Ex.A.12, confirmed acceptance of the offer of ~~50~~35,000 per month.

In the
High Court at
Kuala Lumpur.

No. 3.

Award.

26th February,
1960

- continued.

- (7) On May 5, 1959, Lim Foo Yong Ltd. notified Mr. Lim Joo Tan that a Certificate of Fitness for Occupation had been granted for the Hotel.
- (8) On May 11, 1959, Mr. Lim Joo Tan by Ex.A.14 replied pointing out that as only three floors of the Hotel were then finished, and neither the restaurant nor ballroom were ready, he would be prepared to sign an agreement for only the three floors, bar and tea-room for ~~£~~9,000 per month until such time as the whole building would be completed when the lease could be signed. 10
- (9) On May 14, 1959, Lim Foo Yong Ltd. accepted the above offer.

The evidence of Mr. Lim Foo Yong; Mr. Lim Joo Tan, Mrs. Pereira and Mr. Lee Yoon Thim, the architect was not challenged in respect of any of the material or other particulars, and upon the evidence which I have heard I have come to certain conclusions of fact. The Assessors are not required to express their views on the evidence or as to any of the witnesses, and Mr. Navaratnam did not in explicit terms do so. Mr. Jones, however, clearly expressed his belief that Mr. Lim Foo Yong intended to develop Lots 57 and 58 in the manner shown in Ex.A.1, and I entirely agree. 20

I accordingly find as a fact that the agreed rent payable by the lessee to the owners of the hotel, had Lots 57 and 58 not been taken, would have been ~~£~~50,000 per month, which rent I consider fair and reasonable. I find, also, that the lease at such rental would have been for 5 years, with an option to the lessee to renew. 30

Secondly, I find as a fact that the purchase of Lots 57 and 58 was made as a direct consequence of the resiting of the hotel, and was for the express purpose of providing a swimming pool together with other recreational amenities as part and parcel of the attractions of the hotel and to be comprised in the lease of the hotel for the monthly rent for ~~£~~50,000 inclusive. 40

Thirdly I find that, by reason of the acquisition, the owners are permanently disabled from providing for the hotel and swimming pool and recreational facilities which they could have done on Lots 57 and 58. The swimming pool and recreation ground cannot in my opinion be carved out of the existing car park area, because among other things

an adequate parking space for cars is essential to a hotel of this size in that locality.

Fourthly, I find as a fact that by reason of the acquisition the owners of the remaining lots have suffered substantial financial loss from the reduction of the rental value of their hotel.

I come now to the second question, the first part of which involves the question whether or not there was in effect a severance under paragraph (c) of Section 29(i) of the Enactment. The Collector held that there was not, and he referred to pages 297 to 299 of Aggarawala on Compulsory Acquisition of Land. I do not understand how the House of Lords case of Cowper Essex v. Acton Local Board(2) referred to in page 298 could have been overlooked. In Vallabhdas Naranji v. The Collector(3) their Lordships of the Privy Council have expressed their view that practically the statutory conditions of Sections 23 and 24 of the Indian Land Acquisition Act dealing with the considerations that have to be taken into account are just what had been laid down as the law in England. The third and fourth clauses of Section 23(1) are identical in wording with paragraphs (c) and (d) of our Section 29(1), except in respect of one word added in paragraph (d). In the Cowper Essex case sections 49 and 63 of the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict.c.18) fell to be considered, the relevant portions of which are as follows :-

S.49: "Where such inquiry shall relate to the value of the lands to be purchased, and also to compensation claimed for injury done or to be done to the lands held therewith, the jury shall deliver their verdict separately for the sum of money to be paid for the purchase of the land required for the words and for the sum of money to be paid by way of compensation for the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the lands of such owner, or otherwise injuriously affecting such lands by the exercise of the powers of this or the special Act or any Act incorporated therewith".

S.63: "In estimating the purchase money or compensation to be paid regard shall be had not only to the value of the land to be purchased or taken but also to the damage, if any, to be sustained by the owner of

In the
High Court at
Kuala Lumpur.

No. 3.

Award.

26th February,
1960

- continued.

(2) 14 A.C. 153.

(3) A.I.R. (1929) P.C. 112.

In the
High Court at
Kuala Lumpur.

No. 3.

Award.

26th February,
1960

- continued.

the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise of the powers of this or the Special Act or any Act incorporated therewith".

In his speech, Lord Watson said:

"I cannot assent to the argument that there can be no severance with the meaning of the Act unless the part taken and the parts left were in actual contiguity What lands are to be regarded as 'severed' from those taken is, in my opinion, a question which must depend upon the circumstances of each case. The fact that lands are held under the same title is not enough to establish that they are held 'with' each other, in the sense of the Act; and the fact that a line of railway runs through them is, in my opinion, as little conclusive that they are not. I shall not attempt to lay down any general rule about this matter. But I am prepared to hold that, where several pieces of land, owned by the same person, are so near to each other, and so situated that the possession and control of each gives an enhanced value to all of them, they are lands held together within the meaning of the Act; so that if one piece is compulsorily taken and converted to uses which depreciate the value of the rest, the owner has a right to compensation".

Lord Halsbury, L.C., Lord Bramwell, Lord Fitzgerald, and Lord Macnaghten were also in full agreement with Lord Watson on this point.

The Collector had held that there was no severance on two grounds: first, that the shortest distance between the land taken and the residue is 165 feet; second, that upon examining the papers in the Kuala Lumpur Municipal Council Offices relating to the Hotel project on Lots 134, 135, 136, 156 and 157 he could find no suggestion anywhere in any correspondence or plans submitted to the Municipality "up to the present date" - that is, January 31, 1958 - that Lots 57 and 58 were to be part of the Hotel project.

I say without hesitation that the Collector was clearly wrong in his decision on both grounds. The first was in complete disregard of what was said by their Lordships in the House of Lords case.

As to the second, he was wrong in coming to his conclusion by relying entirely on his own efforts at research among the papers in the Municipal Council offices, thereby making himself a witness for one party in proceedings over which he was supposed to preside with judicial impartiality. The papers referred to were never produced. The notification and declaration appeared in the Selangor Government Gazette on October 11, 1957, and the District Officer obtained the owners' written permission on October 12, 1957, to enter upon the land and commence construction. In spite of being fully aware of these facts the Collector still thought he ought to have been able to find plans and correspondence relating to the acquired lots, not only up to the date of notification of acquisition, but up to January 31, 1958. I should have thought it unrealistic if the owners had sent in any further correspondence or plans for their own development of the lots after they knew those lots had been acquired. Moreover, after the hotel plans in respect of Lots 134, 135, 136, 156 and 157 had been passed in June 1956, there was a lapse of ten months before Lim Foo Yong Ltd. became registered proprietors of Lots 57 and 58 during which time nothing could have been done. It is a well known fact that supplementary plans could have been sent in for Lots 57 and 58, so that the explanation is self-evident why in the Municipality papers relating to Lots 134, 135, 136, 156 and 157 the Collector could not necessarily expect to find references to Lots 57 and 58. Accordingly I find the second ground not only irrelevant but wholly erroneous.

In the course of argument in this Court over the question of severance, Counsel for the State Government rightly conceded that this question is one of fact for determination by the Court. In view of the findings of fact which have already been set out, it follows as a necessary corollary thereto that the owners have been damnified or injuriously affected by reason of the acquisition causing a severance of Lots 57 and 58 from the rest of the land with which those two lots were intended to and did in fact form a composite unit. The owners are therefore in my opinion entitled under paragraph (c) of Section 29(i) to compensation for the damage sustained by them. Such damage was the direct consequence of the severance, and such severance has had the effect of permanently disabling the owners from putting the land retained by them

In the
High Court at
Kuala Lumpur.

No. 3.

Award.

26th February,
1960

- continued.

In the
High Court at
Kuala Lumpur.

No. 3.

Award.

26th February,
1960

- continued.

to the most advantageous and profitable use. The nature and extent of such damage has been fully proved.

At the hearing the owners have confined themselves only to proving damage by reason of severance. They did not seek to prove that they had sustained damage "by reason of the acquisition injuriously affecting their other property whether movable or immovable in any other manner or their actual earnings", under the provisions of paragraph (d). It is not necessary therefore to discuss that paragraph with reference to the facts of this case.

10

The question that now remains is to determine the quantum of damages to be awarded under paragraph (c). The damage sustained at the time of the Collector's taking possession of the land acquired was and is a continuing damage to the other lands held. The compensation has to be assessed once and for all, and in so doing the settled principles of English law apply. A ready analogy exists in running-down cases where a person loses a limb or is otherwise crippled, and an award of damages must take into account such matters as disablement, loss of prospects, impairment of his faculties or earning capacity etc., provided always that such damage is not too remote.

20

The owners' total claim is for \$910,492 apportioned as to \$325,357 for the lands comprised in Lots 57 and 58, and as to the balance of \$585,135 for damage to their other property by reason of the severance.

30

Mr. Jones assessed the damage resulting from the severance at \$233,040. Mr. Navaratnam arrived at his own figure of \$514,288.92.

In the view that I have taken I do not think it necessary to enter upon a detailed analysis of the calculations whereby the owners' witness, Mr. Chin Kok Keong, and the two Assessors, came to the conclusions they did.

40

It is not disputed that the hotel property would have been leased for \$50,000 per month, had it included Lots 57 and 58. It is also not challenged that the severance of those Lots has caused the rental value to drop by \$15,000. Both Assessors, however, were of opinion that the decreased monthly rent should be of the order of \$40,000. I agree that such rent would be fair and reasonable,

and that in assessment of compensation the appropriate yardstick to apply should be a monthly loss of \$10,000.

On that basis the owners' annual loss of income amounts to \$120,000. Municipality assessment at the rate of 26% would reduce it by \$31,200, leaving a taxable income of \$88,800. The principle in British Transport Commission v. Gourley (4) was applied in West Suffolk County Council v. W. Rought Ltd. (5) and is equally applicable, in my opinion, to this case. The tax on limited companies is 40%, equivalent to \$35,520 on a taxable income of \$88,800. In the final result the true amount of the annual loss to the owners is thus \$53,280.

In capitalising this amount, I find again a divergence of opinion on the part of the owners' expert witness and the Assessors. Mr. Chin Kok Keong based his calculations on 10 and 11 years purchase; Mr. Jones thought 7 years purchase would be appropriate "for the risks involved in this business"; in Mr. Navaratnam's opinion 9% would be "a fair return on landed property". I must confess that I approach this question with some diffidence, but after long and careful consideration of all relevant factors, and bearing in mind that the investment is an investment in land which is in no way speculative in character, that the annual return is calculated by me free of assessment and tax, and that recovery of capital would be accelerated, I think the appropriate multiplying factor should be on the basis of 8 years purchase. I should add that I have not omitted to take into account that the lease initially would have been only for 5 years, but Kuala Lumpur was a growing city in 1957, even as it is a growing city today. The loss may accordingly be capitalised at \$426,240.

On the other hand I have to take into account the capital outlay involved in construction of the swimming pool and other recreational facilities. No evidence had been led on this point at the hearing of this reference. That omission has been repaired today. The Assessors and I are unanimously of opinion that a sum of \$150,000 should be allowed for capital outlay and interest charges, reducing the loss to \$276,240.

My award, in accordance with the provisions of Section 36(i) is therefore as follows :-

In the
High Court at
Kuala Lumpur.

No. 3.

Award.

26th February,
1960

- continued.

(4) (1956) A.C.185 (5) (1957) A.C.403.

In the
High Court at
Kuala Lumpur.

No. 3.

Award.

26th February,
1960

- continued.

(i) Under paragraph (a) of Section 29(i) the sum of ~~RM~~202,280 for 101,140 sq.ft. @ ~~RM~~2 per sq.ft.

(ii) Under paragraph (c) the sum of ~~RM~~276,240.

(iii) No deduction under paragraph (b), and no award under paragraphs (d) and (e).

Pursuant to Section 37(i)(c) I make no order as to costs. The Assessors were in attendance on 4 days and I direct that each be paid the sum of ~~RM~~400.

As to interest, I order that from the date of possession taken of Lots 57 and 58, i.e., October 12, 1957, the difference between the sum paid and the sum awarded under paragraph (a) do carry interest at 6% per annum till date of payment. Interest on the sum awarded under paragraph (c) will run from May 1, 1960.

Deposit by applicants to be returned after deduction of expenses.

Certified true copy

Sgd: B.E.Nettan
Ag.Secretary to Judge,
Kuala Lumpur.

Kuala Lumpur,
26th February, 1960.

Sgd: H.T.Ong
JUDGE,
SUPREME COURT,
FEDERATION OF MALAYA.

10

20

No. 4.

Opinion of
Assessor,
Mr.A.K.Jones,
(Exhibit J).

26th February,
1960.

No. 4.

OPINION OF ASSESSOR, MR.A.K.JONES (EXHIBIT J)

I set out below the compensation I consider should be awarded for the acquisition of the above lots.

LAND VALUE -

1. I consider the compensation awarded for the lots 57 and 58, Section 58, Town of Kuala Lumpur, does not represent the market value of the land as at 8th October, 1957. The land sales quoted in support of this award are not, in my opinion, a good guide for the market value of land in the area.

2. The value placed on the land by the Claimant's valuer is too high for reasons which I give below.

3. I place a value of ~~RM~~1.50 per sq.ft. on the land at 8th October, 1957.

30

40

My value for the whole area is therefore:

101,140 sq.ft. @ \$1.50 per sq.ft. = \$151,710.

SEVERANCE -

1. In view of Mrs. Pereira's evidence and the correspondence between Messrs. Lim Joo Tan and Lim Foo Yong, I believe Mr. Lim Foo Yong intended to develop lots 57 and 58 in the manner shown on Exhibit A.1. Mr. Lim Foo Yong had obtained a right of passage from Lot 157 to Lot 58 from Mr. Joo Eu and Mrs. Pereira, and I consider therefore that as a result of Government acquiring Lots 57 and 58, Mr. Lim Foo Yong has suffered loss from severance.

2. Mr. Chin Kok Kiong, the Appellant's valuer, has used the "before and After" method of valuation, and he has capitalised the net anticipated rentals before and after acquisition, the difference representing the loss to the owner.

3. The capitalisation of net rentals is a common and accepted method of valuation but the interest rate used depends on a number of factors, one being the risks of the business.

4. Mr. Chin used 10%, or 10 years purchase, for the hotel with the proposed recreational amenities, but I consider 10% is too low for the risk involved in this business, and believe that a rate of about 15%, or 7 years purchase should be used.

5. According to the evidence given in Court, the gross rental payable to Mr. Lim Foo Yong will be reduced by \$15,000/- per month as a result of the acquisition of Lots 57 and 58. However, I consider the proposed amenities on Lots 57 and 58 do not warrant the payment of an additional rental of \$15,000/- per month, and I have based my calculation on a loss of gross rental of \$10,000/- per month.

6. I assess the total compensation at: \$ 384,750/-
of which the market value of land = \$ 151,710/-
compensation for severance = \$ 233,040/-

Certified true copy

Sgd: B.E. Nettar,
Ag. Secretary to Judge,
Kuala Lumpur.

(Sgd) A.K. Jones,
26.2.'60.

In the
High Court at
Kuala Lumpur.

No. 4.

Opinion of
Assessor,
Mr. A.K. Jones,
(Exhibit J).

26th February,
1960

- continued.

In the
High Court at
Kuala Lumpur.

No. 5.

OPINION OF ASSESSOR, MR.M.W.NAVARATNAM (EXHIBIT "N")

No. 5.

Opinion of
Assessor,
Mr. M. W.
Navaratnam
(Exhibit "N").

Working on the "Before and After" method of valuation, my findings would be as follows based on the whole project of Hotel Merlin comprised in 7 lots, i.e. Lots 134, 135, 136, 156, 157 Sec. 57 and Lots 57 and 58, Sec.58, all in the Town of Kuala Lumpur.

Valuation of total compensation payable for Land, Severance and Injurious Affection:

10

The rental figure of \$50,000/- per month given to us appears reasonable but the figure of \$35,000 given after acquisition should be raised to \$40,000/- per month because the Federal Hotel with its 90 rooms is receiving \$19,800/- rental per month and the Hotel Merlin having 204 rooms more than double the Federal should be able to command \$40,000/- in view of the fact that its locality and parking facilities are far better than the Federal Hotel.

20

Working:

Monthly Rent before acquisition (Furnished)	\$50,000.00	
<u>Less</u> Allowance for Building repairs Maintenance and insurance - (5%)	\$2,500.00	
Allowance for adminis- trative costs involved in collection of rents, etc. - (2%)	\$1,000.00	30
Allowance for deprecia- tion on Furniture cost- ing \$250,000/- over 5 years' period - 1/60th	\$4,166.00	
Allowance for assess- ment based on 26% at date of acquisition	\$11,916.84	
	19,582.84	
Net Monthly Rental	\$30,417.16	
Net Yearly Rental = \$30,417.16 x 12 =	\$365,005.92	40

To capitalise this figure let us take a re-
turn of 9% per annum, a fair return on landed
property, which will give us a figure of
\$4,055,215.77.

	Value of Property before Acquisition there- fore equals ₹ 4,055,215.77.	
	Monthly Rent after Acquisition (Furnished)	₹ 40,000.00
	<u>Less</u> Allowance for Building Repairs, Maintenance and Insurance - (5%)	₹ 2,000.00
10	Allowance for adminis- trative costs involved in collection of rents etc. - (2%)	800.00
	Allowance for deprecia- tion on Furniture cost- ing ₹ 250,000/- over 5 years' period - 1/60th	4,166.00
	Allowance for assess- ment based on 26% at date of Acquisition	<u>9,316.84</u> <u>16,282.84</u>
	Net Monthly Rental =	₹ 23,717.16

20 Net Yearly Rental = ~~₹~~23,717.16 x 12 = ~~₹~~284,605.92

To capitalise this figure let us take a re-
turn of 9% per annum, a fair return on landed pro-
perty, which will give us a figure of ~~₹~~3,162,125.71.

Value of property after Acquisition therefore
equals ~~₹~~3,162,125.71.

Difference in value before and after acquisit-
ion is therefore :-

		₹ 4,055,215.77
30	<u>Less</u>	<u>3,162,125.71</u>
		<u>₹ 893,090.06</u>

Allowing 2 years for completion of Hotel Mer-
lin before income can be obtained, multiply
~~₹~~893,090.06 by .86, which will give a figure of
~~₹~~768,057.45 which will be the total compensation
payable for Land, Severance and Injurious Affection.

Valuation of Lots 57 & 58, Sec.58, Town of Kuala
Lumpur (Land only):

40 I have inspected the lands lying in the vicin-
ity of Lots 57 & 58, Sec.58, Town of Kuala Lumpur
and have found that there are flats built on Lots
1, 45, 44, 51 and 52, Sec.58, and Lot 159, Sec.57,

In the
High Court at
Kuala Lumpur.

No. 5.

Opinion of
Assessor,
Mr. M.W.
Navaratnam
(Exhibit "N")
- continued.

In the
High Court at
Kuala Lumpur.

No. 5.

Opinion of
Assessor,
Mr. M.W.
Navaratnam
(Exhibit "N")
- continued.

all in the Town of Kuala Lumpur. Based on a user as flat development, the valuation for land would work out as follows:-

Eight flats to the acre are permitted and these flats would have 3 bedrooms with bathrooms attached, dining room and sitting room, 1 servants' room with toilet, kitchen store and savery. Such a flat would command a monthly rental of ~~RM~~ \$400.00 unfurnished and would cost ~~RM~~ \$22,000.00 to build.

Monthly rent on 8 flats (unfurnished)		RM 3,200.00	10
<u>Less</u> Allowance for Building Repairs, Maintenance and Insurance - (5%)	RM 160.00		
Allowance for adminis- trative costs involved in collection of rents, etc. - (2%)	64.00		
Allowance for assess- ment based on 26% at date of Acquisition	<u>832.00</u>	<u>1,056.00</u>	20
Net Monthly Rental		RM 2,144.00	

Net Yearly Rental = ~~RM~~ 2,144.00 x 12 = ~~RM~~ 25,728.00.

To capitalise this figure let us take a return of 9% per annum, a fair return on landed property, which will give us a figure of ~~RM~~ 285,580.80.

Cost of 1 acre land with 8 flats therefore	RM 285,580.80		
Less cost of building 8 flats RM 22,000/- x 8	= <u>176,000.00</u>		30
Cost of 1 acre land (43,560 sq.ft.)=	<u>RM 109,580.80</u>		

which works out at ~~RM~~ 2.51 per square foot.

Lots 57 & 58, Sec.58, Town of Kuala Lumpur comprise 101,103 square feet which therefore equals a total value of ~~RM~~ 253,768.53

Apportionment of compensation payable is therefore as follows :-

(a) Compensation for land as valued above	RM 253,768.53		
(b) Compensation for Severance & Injurious Affection			40

Total Compensation payable	₹768,057.45	
Less Value of Land taken	253,768.53	₹514,288.92
TOTAL COMPENSATION PAYABLE		<u>₹768,057.45</u>

In the
High Court at
Kuala Lumpur.

No. 5.

Opinion of
Assessor,
Mr. M.W.
Navaratnam.
(Exhibit "N")
- continued.

(Sgd.) M.W.Navaratnam,
Assessor.

Certified true copy

Sgd: B.E.Nettar,
Ag. Secretary to Judge,
Kuala Lumpur.

10

No. 6.

NOTICE OF APPEAL

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA
IN THE COURT OF APPEAL AT KUALA LUMPUR
CIVIL APPEAL NO.22 of 1960

BETWEEN:

THE COLLECTOR OF LAND REVENUE Appellant

- and -

LIM FOO YONG LIMITED Respondent

20

(In the Matter of Kuala Lumpur High Court
Civil Application No.1 of 1959

In the Matter of Land Acquisition Enact-
ment Cap. 140 Section 23

- and -

In the Matter of Land Acquisition of Lot
Nos.57 and 58, Section 58, Town of
Kuala Lumpur

Lim Foo Yong Limited Applicant

vs.

30 The Collector of Land Revenue Respondent)

NOTICE OF APPEAL

TAKE NOTICE that the Collector of Land Revenue, the Appellant above-named, being dissatisfied with the decision of the Honourable Mr. Justice Ong Hock Thye given at Kuala Lumpur on the 26th day of February, 1960, appeals to the Court of Appeal against the whole of the said decision.

In the
Court of Appeal
at Kuala Lumpur

No. 6.

Notice of
Appeal.

23rd March,
1960.

In the
Court of Appeal
at Kuala Lumpur

No. 6.

Notice of
Appeal.
23rd March,
1960
- continued.

DATED this 23rd day of March, 1960.

Sgd: Harun bin Haji Idris
(LEGAL ADVISER, SELANGOR)
Solicitor for the Appellant.

To:

The Senior Assistant Registrar,
Supreme Court, KUALA LUMPUR.

And to:

Messrs. Shook Lin & Bok,
Advocates & Solicitors,
P.O. Box 766,
80, Cross Street, KUALA LUMPUR.

10

The address for service of the Appellant is
c/o Legal Adviser's Chambers, Government Offices,
Jalan Raja, Kuala Lumpur.

FILED this 24th day of March, 1960.

No. 7.

Memorandum of
Appeal.

12th May, 1960.

No. 7.

MEMORANDUM OF APPEAL

The Collector of Land Revenue, the Appellant
above-named, appeals to the Court of Appeal against
the whole of the decision of the Honourable Mr.
Justice Ong given at Kuala Lumpur on the 26th day
of February, 1960 on the following grounds :-

20

1. The learned Judge was wrong in his findings:-

(a) that the Collector's award of \$60,000 as
being the market value of the land at the
time of acquisition was wrong;

(b) that the true market value of the land at
the date of acquisition was \$2/- per sq.
ft.;

30

(c) that the reduced assessment of \$1.50 fail-
ed to take into account the potential
user on development;

(d) that he was fortified in his opinion by
the views of the members of the Assess-
ment Committee who as independent persons
performing a public duty originally ass-
essed the land in its vacant state at the
same value as he had done;

(e) that by reason of the acquisition (of lots
57 and 58) the owners of the remaining
lots have suffered substantial financial

40

loss from the reduction of the rental value of the Hotel;

In the
Court of Appeal
at Kuala Lumpur

No. 7.

Memorandum of
Appeal.

12th May, 1960
- continued.

10

(f) that the Collector was clearly wrong in coming to his conclusion that he could find no suggestion anywhere in any correspondence or plans submitted to the Municipality up to the present date - that is January 31, 1958 that lots 57 and 58 were to be part of the Hotel project, relying entirely on his own efforts at research among the papers in the Municipal Council offices;

20

(g) that the Collector thereby made himself a witness for one party in proceedings over which he was supposed to preside with judicial impartiality;

(h) that on his findings of fact it followed as a necessary corollary thereto that the owners have been damnified or injuriously affected by reason of the acquisition causing a severance of lots 57 and 58 from the rest of the land with which those two lots were intended to and did in fact form a composite unit;

30

(i) that the owners were therefore entitled to compensation for damage under para.(c) of Sec.29(i) as such damage was the direct consequence of the severance and such severance had had the effect of permanently disabling the owners from putting the land retained by them to the most advantageous and profitable use; and

(j) that the owners should receive

(i) \$202,280/- under para.(a) of Sec. 29(i) and

(ii) \$276,240/- under para.(c) of Sec. 29(i).

40

II. The learned Judge should have held that the market value of the two lots in the context of sales of property in the neighbourhood as well as the price paid by the owners themselves for their purchase was nearer the Award made by the Collector and clearly negatived a value at \$2/- per sq.ft. which the learned Judge awarded.

III. The learned Judge further failed to appreciate that the effect of the evidence showing that the owners applied for a reduction of the Assessment value to a rate of \$1.50 per sq. ft. before

In the
Court of Appeal
at Kuala Lumpur

No. 7.

Memorandum of
Appeal.

12th May, 1960

- continued.

the Assessment Committee was that in the judgment of the owners themselves the value to them of the land was not in excess of that rate, at the relevant date.

IV. The learned Judge misdirected himself on the law as to severance or injurious affection which properly considered and understood did not entitle the owners, in the face of the evidence to any compensation at all by reason thereof.

V. In evaluating the evidence and coming to his conclusions on this part of the case the learned Judge failed to appreciate that the injury complained of entitling the owners to any compensation must be an injury to land and not merely a personal injury or injury to trade; and that in any event according to the evidence before him, insofar as any injury was suffered by the owners by not being able to provide a swimming pool on the five lots on which the hotel was to be erected, such injury had been suffered even before the owners proceeded to negotiate for the purchase of lots 57 and 58.

VI. Further the learned Judge in valuing the potential user of the land failed to bear in mind that it is the possibilities of the land and not its realised possibilities that he had to take into consideration.

VII. In all the evidence tendered by the owners before the learned Judge there was no suggestion that the user of lots 57 and 58 in a manner otherwise than the permitted user on the date of acquisition, will be approved by the appropriate authorities and, as to this the onus was on the owners to establish that the said lots would have been rezoned or otherwise dealt with in such a manner as to permit their use for a swimming pool and tennis courts, as adjuncts to a hotel.

VIII. Assuming without admitting that there was a right to compensation by reason of severance, the learned Judge failed to appreciate that the capitalised value of the said two lots in the sum of ~~£~~276,240/- at which figure he arrived on the basis of the 'Before and After' method of valuation represented the compensation payable not only for the loss of the land taken but also for severance and injurious affection for the remainder.

IX. The learned Judge's Award therefore has, in the final result, given the owners compensation for the loss of the land twice over.

10

20

30

40

DATED this 12th day of May, 1960.

Sgd: Braddell & Ramani,
Solicitors for the Appellant.

To:
The Registrar,
Supreme Court, Kuala Lumpur.

And to:

Messrs. Shook Lin & Bok,
Solicitors for the Respondents,
No.80, Cross St., Kuala Lumpur.

10

The address for service of the Appellant is -

Messrs. Braddell & Ramani,
Hongkong Bank Chambers,
Kuala Lumpur.

In the
Court of Appeal
at Kuala Lumpur

No. 7.

Memorandum of
Appeal.

12th May, 1960
- continued.

No. 8.

NOTICE OF CROSS-APPEAL

TAKE NOTICE that, on the hearing of the above appeal, Lim Foo Yong Ltd., the Respondents above-named, will contend that the decision of the Honourable Mr. Justice Ong given at Kuala Lumpur on the 26th day of January 1960 ought to be varied to the extent and on the grounds hereinafter set out:

20

I. The learned Judge was wrong in the method of Valuation adopted by him whereby he proceeded to assess separately the compensation for the land and the compensation for injurious affection by reason of severance; the learned Judge should have followed the orthodox "Before and After" method of valuation adopted by the Respondents' Valuer, and should have awarded near-

30

II. In any event the learned Judge was wrong in holding:

(a) that in assessment of compensation the appropriate yardstick to apply should be a monthly loss of \$10,000/- in that according to the evidence he should have found that the monthly loss was \$15,000/- and should have accepted this figure in assessment of compensation;

40

(b) that an allowance should be made for income

No. 8.

Notice of Cross-
Appeal.

21st May, 1960.

In the
Court of Appeal
at Kuala Lumpur

No. 8.

Notice of Cross-
Appeal.

21st May, 1960
- continued.

tax payable by the Respondents in his assessment of compensation, in that he was making an assessment of compensation for the loss in the capital value of the remainder of the Respondents' property by reason of the acquisition, and not for the loss of income or earnings, and should have ignored the question of income tax liability.

SHOOK LIN & BOK
Solicitors for the Respondents.

10

DATED this 21st day of May, 1960.

To the Appellant above named or his Solicitors

Messrs. Braddell & Ramani
Hongkong Bank Chambers,
Kuala Lumpur.

The address for service of the Respondents is

Messrs. Shook Lin & Bok,
80, Cross Street, Kuala Lumpur.

No. 9.

Notes of
Argument
recorded by
Thomson, C.J.
25th and 26th
August, 1960.

No. 9.

NOTES OF ARGUMENT RECORDED BY THOMSON, C.J.
25th August, 1960.

20

For Appellant : Ramani & Ek Tiong

For Respondents : Pung-how & S.T.Chung.

Ramani: We are concerned with Lots 57 & 58 (see p.138).

Case for landowners was that it was intended to provide recreational facilities for hotel on 57 & 58. They thus added a claim for severance and injurious affection by reason of being prevented from developing 57 & 58, property on 134 etc. was depreciated in value.

30

Collector decided there was no severance or injurious affection. Awarded \$60,000 for value of land.

In the event Ong, J., found value of land as \$2 a sq.ft. - which makes \$200,000 - and to that he added \$276,000 for severance and injurious affection.

Dates:

(1) Lots 134, 135 & 136 were bought 23.1.56
for \$62,000.

40

- (2) Lots 156, 157 purchased 7.3.56 for ~~£~~27,000.
- (3) 25.4.56 Coy. submitted site Plans to Municipality - Ext.A.2 - swimming pool on Lot 136 and 2 tennis courts.
- (4) 18.5.56 - T.P. Committee approved site plan but recommended alteration as to petrol kiosk.
- 10 (5) 21.6.56 - new plan showing same design but on a different part of the land presented to Municipality and approved - Ext. A.3. This was not done by direction of the Municipality. At that time Lots 57 & 58 belonged to a different owner.
- (6) Sept. '56 - Lots 57 & 58 were negotiated for by the present Respondent.
- (7) April '57 - transfer of Lots 57 & 58 to Respondent.
- 20 (8) August '57 - Respondent instructed architect to prepare Plan A.1. That Plan is unsigned and undated and was never submitted to Municipality.
- (9) 11.10.57 declarations under Enactment.

Now under O.58 r.4 apply to read Affidavit dated 23.8.60.

If this evidence had been before Ong, J., he might have come to a different conclusion.

Pung-How: Object. There is no reference to any Plans in any of the letters mentioned in Ramani's affidavit.

30 Anyhow the Plan was in existence and they should have produced it at the trial.

Court: Refused.

No special ground shown - or indeed ground at all.

Evidence was in existence and could with reasonable diligence have been discovered. It is clear from the record they had access to the Municipal files (p.54).

Ramani continuing:

40 (10) 3.12.57 Respondent claimed compensation as at p.26 for value of land and damage for severance and injurious affection.

In the
Court of Appeal
at Kuala Lumpur

No. 9.

Notes of
Argument
recorded by
Thomson, C.J.

25th and 26th
August, 1960
- continued.

In the
Court of Appeal
at Kuala Lumpur

No. 9.

Notes of
Argument
recorded by
Thomson, C.J.

25th and 26th
August, 1960
- continued.

"Severance" was not mentioned in the ground of objection (p.12). So by reason of S.22(ii) severance should have been mentioned. I make no point of this. It was not taken from Ong, J.

In effect Ong, J., gave value of land twice over when he gave market value plus damage for severance based on the "before and after" principle.

Lawrence & Rees "Modern Methods of Valuation" (4th Ed.) 414.

Is this a case where compensation is payable at all for severance? 10

As to position of this Court.

A.D.O. Bombay v. Tayaballi Allibhoy Bohori
1933 A.I.R. Bomb. 361.

As to principles of assessment of compensation -

Sisters of Charity of Rockingham v. The King
(1922) 2 A.C. 315, 323.

"Severance" and "injurious affection" are different things. In England under the Lands Clauses (Consolidation) Act, 1845, they are not necessarily distinct. 20

Halsbury "Statutes" III p.890.

As to position in England -

Lawrence & Rees p.409.

Lawrence & Chevasse "Compulsory Purchase & Compensation" (2nd Ed.) p.111.

Aggarawala p.297, 299.

Severance necessarily demands damage to the land.

Cowper Essex v. Acton Local Bd. XIV A.C. 153, 161. 30

Contiguity of pieces of land is not essential but unity of interest is.

Collector of Dinajpur v. Girijanath Roy 25 Cal.346.

Severance is not merely a form of injurious affection but stands by itself. It involves damage done to land which remains by reason of the taking of the other land.

Sgd: J.B. Thomson,
25.8.60.

40

26th August, 1960.

Ramani: C.L.R. said he had found no trace on Municipal files of any attempt to develop Lot 57 by erecting swimming pool (p.53).

Nature of C.L.R. Enquiry.

Aggarawala p.99.

Ezra v. Secy: of State of India 32 Cal. 605

10 With regard to severance one has to deal with the land and the business thereon as 2 separate factors. After 18.5.56 in submitting Plan A.3 Respondent had put out of their minds making provision for a swimming pool on the 5 lots on which the Hotel stood. On 21.6.56 they obtained planning provision for the maximum development the 5 lots would bear. Then after several months Respondent negotiated for lots 57 and 58 not because they were necessary to their development but to add to the advantage of the 5 lots by providing a swimming pool.

20 So what he lost on the acquisition was the opportunity to provide this additional advantage to the Hotel. So the 5 lots were not injuriously affected and Respondent was not entitled to compensation.

Thus the only thing on which compensation should have been based is market value.

Damage from severance means damage to the remaining land.

30 Agree special value to owner can be taken into consideration.

L.A.Officer v. Jamnabai 1946 A.I.R. Bomb.142.

Ong, J., valued potentiality as if it was on actual business.

In Re Lucas & Chesterfield Gas & Water Board
(1909) 1 K.B. 16, 29, 31.

Case for Appellant.

Yong Pung-how: An excessive claim had to be made because there was insufficient time to ascertain a realistic claim. But the claim was later reduced.

40 Evidence of sales was considered by Judge and Assessors and not relied on.

Goes through history of the Hotel and the development of the 5 lots.

In the
Court of Appeal
at Kuala Lumpur

No. 9.

Notes of
Argument
recorded by
Thomson, C.J.

25th and 26th
August, 1960
- continued.

In the
Court of Appeal
at Kuala Lumpur

No. 9.

Notes of
Argument
recorded by
Thomson, C.J.

25th and 26th
August, 1960
- continued.

Aggarawala p.305.

We never claimed anything for loss of earnings but we produced evidence of it as having a bearing on valuation of land.

If Ong, J., had followed the "before and after" method, difficulty would not have arisen. The effect of the orthodox "before and After" method of valuation was given in evidence.

J. should not have considered incidence of income tax on lost earnings. 10

Burmah Steamship Co. v. I.R.C. 16 T.C.71.

What we are concerned with here is loss of capital asset - not a loss of earnings.

Br.Transport Comm. v. Gourley (1956) A.C.185, 202.

Comyn v. Attorney-General (1950) I.R. 142.

West Suffolk County Council v. W.Rought Ltd. (1957) A.C.403.

Hall & Co. Ltd. v. Pearlberg (1956) 1 W.L.R. 244. 20

"Tantalus" v. "Telemachus" (1957) p.47.

Island Tug & Barge Ltd. v. S.S. Makedonia (1958) 1 Q.B. 365.

Morahan v. Archer & Belfast Corp. (1958) C.L.Y.B. 2388.

Diamond v. Campbell-Jones & Ors. (1960) 1 A.E.R. 583.

Judd v. Bd. of Governors of Hammersmith, West London and St. Mark's Hospitals. (1960) 1 A.E.R. 607. 30

Lawrence & Rees p.64.

Put in calculation showing "reducto ad absurdum"

Case for Respondent.

Ramani: As to Income Tax -

West Suffolk County Council v. W.Rought Ltd. (1957) A.C. 412.

Real question is what is fair and proper compensation. There are all sorts of categories - depreciation, upkeep possibility of future compensation. 40

C. A. V.

Sgd: J.B. Thomson
26.8.60.

True Copy - Sgd: (Tneh Liang Peng)

(Tneh Liang Peng) Private Secretary to Chief Justice, 20/4/61.

No. 10.
JUDGMENT OF THOMSON, C.J.

In the
 Court of Appeal
 at Kuala Lumpur

No.10.

Judgment of
 Thomson, C.J.

12th December,
 1960.

This appeal relates to the compensation to be paid for the land on which the Tunku Abdul Rahman Hall stands which was compulsorily acquired under the provisions of the Acquisition of Land Enactment. The date of publication of the "Gazette" notification regarding the acquisition is 11th October, 1957.

10 The land in question, which is a single area, is registered as Lots Nos. 57 and 58, Section 58, Town of Kuala Lumpur in the District of Kuala Lumpur and amounts to 2 acres 1 rood 11.5 poles, that is 101,140 square feet. I shall call it "the swimming pool land". Prior to the acquisition the proprietors were Messrs. Lim Foo Yong Ltd., whom I shall call "the Company" and there was a charge on the land in favour of Kwong Yik (Selangor) Banking Corporation Ltd. as chargees. That charge has now
 20 been discharged and we are not in any way concerned with the position of the chargees.

 Early in 1956 the Company had bought some other land, consisting of Lots Nos. 134, 135, 136, 156 and 157. These pieces of land are contiguous and have a total area of about 183,474 square feet. Considering them as a single block the shortest distance between them and the swimming pool land is about 165 feet. On acquiring this land which I shall call "the hotel land" the Company proceeded
 30 to have plans prepared for the erection on it of a large hotel to be known as the Hotel Merlin presumably having regard to the Welsh wizard and not to the similarly named bird of prey. These original plans provided for the construction on the hotel land in addition to the Hotel of a motor-car park, an establishment for the sale of petrol and a swimming pool and were approved by the Town Council subject to an alteration in the site of the establishment for selling petrol. Some time in
 40 June, 1956, however, new plans were prepared which omitted any provision for a swimming pool.

 Then in April, 1957, the Company acquired Lots Nos. 57 and 58, the swimming pool land, from a deceased person's estate. It is said this land was bought for \$60,000 but this is not altogether accurate for it is clear that the price of \$60,000 is a notional one. What was bought was Lots Nos. 57 and 58 amounting to a little over 2 acres and

In the
Court of Appeal
at Kuala Lumpur

No.10.

Judgment of
Thomson, C.J.

12th December,
1960

- continued.

30 acres of land in another part of Kuala Lumpur, about a mile away at Freeman Road for a total price of \$660,000. Shortly afterwards the 30 acres at Freeman Road was resold for \$600,000 and as a result the balance of \$60,000 was treated as the purchase price of Lots Nos.57 and 58.

Although the actual transfer to the Company of the swimming pool land did not take place till April, 1957, the uncontradicted evidence of the Managing Director was that a contract for sale had been concluded in September, 1956. At the same time the Company obtained an assurance from the Vendor that they would be allowed the use of a footpath which led from Lot No.58 on the swimming pool land over some intervening land belonging to the Vendor to Lot No.157 on the hotel land. 10

Then, in August, 1957, a plan came into existence which provided for the erection of a hotel of the same design as was contemplated the previous year and a large car park on the hotel land and for the construction of a large swimming pool, two tennis courts, a badminton court and a car park on Lots Nos.57 and 58. 20

As has been said the notice relating to the acquisition of Lots Nos. 57 and 58 was published on 11th October, 1957, and the following day the Company without prejudice to their rights to compensation very obligingly allowed the Public Works Department to go into occupation of the land and commence operations on it. 30

Now, at this time the Company owned another hotel known as the Harlequin which was let out to a Mr. Lim Joo Tan and they had on 13th March, 1957, given Mr. Lim notice to terminate his tenancy on 30th June, 1957. On 19th March Mr. Lim replied agreeing to give up possession of the Harlequin Hotel as requested and saying, apparently with reference to some previous verbal exchanges: "Will you please confirm I will be given the first option to run the new hotel at Treacher Road". This is clearly a reference to the Hotel Merlin. On 23rd March the Company replied: "We confirm that you will be given the first option to run the new hotel on terms to be arranged and agreed". An Agreement was come to, and on 8th July Mr. Lim wrote a letter setting out the agreed terms. The hotel was to have two hundred rooms and to have various amenities including a swimming pool and tennis and badminton courts. The Company was to provide all 40

furniture and fittings for the hotel including the restaurant and ballroom and arrange for a telephone service and rediffusion in each bedroom. The lease was to be for five years with option of renewal and the rent was to be \$50,000/- a month.

10 On 12th July the Company replied confirming these terms and saying that as soon as the building was ready for occupation, which was then anticipated to be in a period of from eight to ten months, a lease could be drawn up.

20 Then the acquisition notice was published on 11th October and on 5th November Mr. Lim wrote to the Company saying that he understood Lots Nos. 57 and 58 had been acquired by the Government and that in consequence there would be no swimming pool, tennis courts or badminton court provided in connection with the new hotel. He said that if this was so he would have to ask for a reduction in rent. This was apparently followed by some discussion and in the event, on 20th November, 1957, Mr. Lim offered to take the hotel on the terms and conditions set out in the previous correspondence but at a rent of \$35,000 a month. This was accepted by the Company on 2nd December, 1957.

30 To conclude the story of the hotel, there was delay and ultimately on 11th May, 1959, Mr. Lim offered to rent three floors that had then been completed for \$9,000 a month. With its subsequent history I do not think we are further concerned beyond noting that some time after May, 1959, it was completed.

40 In accordance with the Land Acquisition Enactment which was then in force the Company claimed for compensation for the land which had been acquired. At first they claimed \$1,503,420 being \$303,420 for the value of the land at \$3 a square foot and \$1,200,000 for damage to their remaining land, that is the hotel land, by reason of severance and injurious affection. Later, however, this claim was reduced to \$910,492 being \$325,357 for the value of the land and \$585,135 for injurious affection to the remaining land. In the event the Collector of Land Revenue held an enquiry and made an award of \$60,000. The whole of that award was in respect of the market value of the land and it is quite clear that the Collector based it on a report on the subject by the Federal Treasury's Chief Valuer. He awarded nothing in respect of damage to the Company's other land in respect of severance or injurious affection.

50

In the
Court of Appeal
at Kuala Lumpur

No. 10.

Judgment of
Thomson, C.J.

12th December,
1960

- continued.

In the
Court of Appeal
at Kuala Lumpur

No.10.

Judgment of
Thomson, C.J.

12th December,
1960

- continued.

The Company then asked for a judicial reference and this was heard in due course by Ong, J., with the aid of assessors.

In the event Ong, J., made an award of ~~RM~~478,520 - ~~RM~~202,280 being for the market value of the land and ~~RM~~276,240 being for damage to the Company's remaining land by reason of severance. Neither of the assessors agreed with this award. One of them gave his opinion that the amount should be ~~RM~~384,750 being ~~RM~~151,710 for the market value of the land and ~~RM~~233,040 being for damage by severance. The other would have given ~~RM~~768,057.45 being ~~RM~~253,768.53 for the market value of the land and ~~RM~~514,288.92 for damage by reason of severance.

10

Against the award the Collector, that is to say the Government, has now appealed and there is a cross-appeal by the Company.

At the hearing before Ong, J., there was some evidence of comparable contemporaneous sales and there was a certain amount of expert evidence by valuers. On the whole, however, I do not think it is unfair to say that Ong, J., based the figure he gave for the market value of the land mainly on the fact that a short time before the acquisition the land had been valued for Municipal rating purposes at ~~RM~~2 per square foot. No doubt he was also influenced by the fact that of the two assessors, both of whom had visited the land, one valued it at ~~RM~~1.50 a square foot and the other valued it at ~~RM~~2.51 a square foot. This part of the award, however, has not in itself been seriously attacked before us and for myself I can see no reason to disagree with the Judge's figure.

20

30

As regards the award of ~~RM~~276,240 for damage to the Company's other land by reason of the severance from it of the acquired land the Judge based himself entirely on the evidence as to the negotiations between the Company and Mr. Lim Joo Tan. He took the view that if the swimming pool land had not been acquired the Company would have let both it and the hotel land and the buildings and recreational facilities to be provided for ~~RM~~50,000 a month; that as a result of the swimming pool land being acquired they would have to be content with a hotel on the hotel land without recreational facilities which could only be let at ~~RM~~35,000 a month; and that as a result of the acquisition they had thus lost a potential income of ~~RM~~15,000 a month. By a process of calculation which will call

40

for discussion later the capital value of this loss was calculated to be \$276,240.

At this stage it is important to bear in mind just what the Court was trying to do. It was trying to determine what amount of compensation should be awarded for land compulsorily acquired under the Land Acquisition Enactment and it was required to do so on the basis of the provisions, so far as they were relevant, of Section 29 of the Enactment, that is to say the provisions of Section 29(i)(a) and Section 29(i)(c). Section 29(i)(a) provides that the Court shall take into consideration the market value of the land. That had already been done and it had been held that the market value of the land at the material date was \$202,280. Then Section 29(i)(c) requires that the Court shall take into consideration "the damage, if any, sustained by the person interested at the time of the Collector's taking possession of the land by reason of severing such land from his other land".

Here there are two questions to be considered. The first is whether any damage at all has been sustained by the Company's remaining land (the hotel land) by reason of the acquired land being severed from it; and the second is if there has been such damage what is the amount of it? In other words, as a result of the taking away of the acquired land has there been any diminution in the value of the remaining land of the owner and if there has what is the value of that diminution?

Here I would observe that I agree that the case of Cowper Essex v. Local Board for Acton (1) is authority for the proposition that for the purpose of ascertaining whether one piece of land has been severed from another piece of land it is not necessary that the two pieces of land should have been in actual physical contiguity. It is, however, necessary to quote the actual words that set out Lord Watson's reasoning in this connection.

"I am prepared to hold that, where several pieces of land, owned by the same person, are so near to each other, and so situated that the possession and control of each gives an enhanced value to all of them, they are lands held together within the meaning of the Act; so that if one piece is compulsorily taken, and converted to uses which depreciate the value of the rest, the owner has a right to compensation".

In the
Court of Appeal
at Kuala Lumpur

No.10.

Judgment of
Thomson, C.J.
12th December,
1960
- continued.

(1) 14 A.C.153.

In the
Court of Appeal
at Kuala Lumpur

No.10.

Judgment of
Thomson, C.J.

12th December,
1960

- continued.

In other words in the present case before there could be said to be any diminution in the value of the hotel land by reason of the swimming pool land being severed from that land it would first have to be shewn that the possession of both pieces of land by the Company gave an enhanced value to the hotel land.

At this stage it will be desirable to look at the figure of \$276,240 which is said to be the damage the hotel land has suffered by reason of severance and the way in which it was reached in order to ascertain just what it represents. 10

One of the ways in which the value of land may be determined is to ascertain its annual yield and then capitalise that amount and this was the method adopted here by Ong, J. He started from the arrangement with Mr. Lim Joo Tan which has already been described and which was the only material before him. On a consideration of that arrangement he concluded that the probable combined annual yield of the hotel land when developed by the erection of the hotel and the swimming pool land when developed by the construction of the swimming pool and the tennis courts would be \$600,000 and that the probable annual yield of the hotel land when developed by the erection of the hotel only would be \$480,000. (He thought \$40,000 a month was a fairer estimate of probable yield than the \$35,000 actually offered by Mr. Lim). The difference in gross yield would thus be \$120,000. From this he made deductions for income tax and local rates and arrived at a net figure of \$53,280 which he capitalised at 8 years' purchase and so arrived at a figure of \$426,240. From this he deducted \$150,000 which he estimated to be the capital cost of constructing the swimming pool and tennis courts and thus arrived at the final figure of \$276,240. 20

But when the way in which this figure of \$276,240 was obtained is thus examined it is clear that what it represents, assuming the assumptions on which it is based to be correct, is the total loss the Company would probably sustain as a result of the acquisition of the swimming pool land. Basing capital values on the yield principle, it is what would be the total value of the two pieces of land when developed less the developed value of the land which had not been acquired. The value of the whole less the value of what had been taken was the total value of the loss. But the Company 40

has already been given \$202,280 which is considered to be the market value of the land and if the total loss by reason of the acquisition is to be accepted as a measure of the compensation to be given then in order to determine the value of the loss by severance to the remaining land that sum of \$202,280 already awarded must be deducted from the amount of the total loss. What we are concerned with at this stage is the extent to which the value of the hotel land has been lessened by reason of the swimming pool land having been separated from it and on the Judge's reasoning and calculations the amount in question is clearly \$74,000, that is the difference between the total loss and the market value of the acquired land. That would, of course, by reason of Section 29(i)(c) of the Enactment fall to be added to the compensation based on the market value of the land making a total amount of compensation of \$276,240.

10

20 But this figure of \$276,240 and the assumptions on which it is based have been attacked from both sides on other grounds.

30

40

For the Company it has been said that no allowance should have been made for the effect of Income Tax in arriving at the net amount of loss of yield, and indeed this is the main ground of the cross-appeal. Here it is important to observe what had to be done. It was to determine the compensation payable not for loss of earnings, or yield, but for the loss of the capital asset which produced that yield; a consideration of the amount of the yield which that capital asset would produce was merely a step towards the ascertaining the value of the capital asset itself. The case was therefore entirely different from the case where a Court is assessing the compensation to be paid for loss of profits or loss of earnings and in the circumstances in my opinion the law as laid down in such cases as British Transport Commission v. Gourley⁽²⁾ and West Suffolk County Council v. W. Rought Ltd.⁽³⁾ has no application. With respect I would re-echo the doubt of Earl Jowitt in Gourley (Supra - at p.202) as to whether a reduction of the amount to be paid as compensation for a capital asset based on the prospective tax liability of the owner "was in accordance with the true principle of valuation".

If the probable effect of Income Tax be disregarded here, the Judge's figure of \$276,240

In the
Court of Appeal
at Kuala Lumpur

No.10.

Judgment of
Thomson, C.J.

12th December,
1960

- continued.

(2) 1956 A.C.185

(3) 1957 A.C.403.

In the
Court of Appeal
at Kuala Lumpur

No.10.

Judgment of
Thomson, C.J.

12th December,
1960

- continued.

would fall to be increased to about \$560,000, making the diminution of value of the total land by reason of the severance alone about \$358,400 or about \$2 a square foot, which is the same as the total market value of the acquired swimming pool land.

The reflection that the learned Judge's course of reasoning leads to the last stated conclusion, that the depreciation in value of the hotel land by reason of the severance was as great per foot as the total market value per foot of the adjacent swimming pool land, is to my mind sufficient to call for some enquiry as to the validity of that course of reasoning. And, to my mind, such an enquiry produces certain very definite results.

10

What was under examination was the state of affairs as at 11th October, 1957, and what had to be determined was capital values at that date. At that date actual development of the land had not commenced. Everything was in the planning stage. No doubt at that stage the Company had worked out a scheme for the development of the hotel land and the swimming pool land as a single unit. They had spent money on plans and they had entered into a contract for letting out the resultant establishment. No doubt had they been deprived of the swimming pool land by some wrongful act, for example the failure of a Vendor to fulfil a contract for sale, they would have obtained compensation for the loss in accordance with the principles of the law relating to the assessment of damages. But that is not what we are concerned with here. What we are concerned with is whether there has been any actual lessening in the capital value of the hotel land. Was it worth any less on 11th October, 1957, than it was the previous day? No construction had been commenced on any of the land, either the hotel land or the swimming pool land. If the hotel had been completed and the swimming pool had been completed and the whole undertaking been in actual profit-making operation the position might well have been different. But that was not the case.

20

30

40

The whole case for the Company was based on potential development and it seems to me there was no evidence that the actual potential development which the Company had in mind, that is the development of the hotel land in conjunction with the swimming pool land was the only possible, or even the most profitable, development of the hotel land.

Indeed such evidence as there was was on the whole against this. It was said, and this seems obvious, that a hotel in Kuala Lumpur which can provide its inmates with the amenity of a swimming pool is more likely to attract custom than one which does not offer such an amenity. It is clear, however, that a swimming pool of some sort could have been provided on the hotel land, and indeed plans had been prepared and accepted by the local authority for such provision being made. Had the Company reverted to the original plans, what rent would their tenant have been prepared to pay? To that there is no answer. Again according to the plans before us there is an area of undeveloped land between the hotel land and the swimming pool land which the owner was at some time prepared to sell, no doubt when he got what he thought to be the right price. But there was not a scrap of evidence as to whether this land could or could not have been acquired, as to whether or not it would have been suitable for the construction of a swimming pool, or as to the price at which it could have been obtained.

The truth clearly is that the Company had a chance to buy the swimming pool land cheaply and they saw a perfectly legitimate opportunity to turn their bargain to profit by developing that land in connection with their scheme for a hotel on the hotel land. Of that possibility they have been deprived but it does not follow that by reason of their deprivation the hotel land has suffered any diminution of value at all.

I would, then, dismiss the cross-appeal and would allow the appeal to the extent of reducing the total amount of the Judge's award to \$202,280. The appellant should have the costs of the appeal.

Sgd: J.B.Thomson
CHIEF JUSTICE,
Federation of Malaya.

40 Kuala Lumpur,
12th December, 1960.

Messrs.R.Ramani and Ng Ek Tiong for Appellant.
Messrs.Yong Pung-how and S.T.Chung for Respondents.

TRUE COPY

Sgd:

Private Secretary to Chief Justice
20/12/60.

In the
Court of Appeal
at Kuala Lumpur

No.10.

Judgment of
Thomson, C.J.
12th December,
1960
- continued.

In the
Court of Appeal
at Kuala Lumpur

No. 11.

JUDGMENT OF HILL, J.A.

No.11.
Judgment of
Hill, J.A.
12th December,
1960.

I entirely agree with the judgment that has just been read by the learned Chief Justice and have nothing to add thereto.

Kuala Lumpur,
12th December, 1960.

Sgd: R.D.R.Hill,
Judge of Appeal,
Federation of Malaya.

Certified true copy

Sgd: C.S.Kumar

10

(C.S. Kumar)
Secretary to Mr. Justice Hill
28.12.60.

No.12.

No. 12.

Judgment of
Neal, J.

JUDGMENT OF NEAL, J.

10th November,
1960.

I have had the privilege of perusing the draft judgment of his Lordship the Chief Justice, and I find myself in complete agreement with his assessment of the facts of this particular case and in his statement of the law as to the applicability of the cases such as British Transport Commission v. Gourley⁽¹⁾ and West Suffolk County Council v. W.Rought Ltd.⁽²⁾ I am also in complete agreement with him in his finding that a consideration of the whole of the evidence and the inferences to be drawn therefrom calls for enquiry as to the validity of the trial judge's course of reasoning. To that, I would only add the words, "and his assessment of the evidence of rental values". I find, that if I accepted, as the Court below accepted, and, I think, the members of this Court accept, the unimproved value of the land which was acquired at £202,000, and with that as a basis and allowing 7 per cent on that value which according to the text book on Valuation written by Messrs. Lawrance and Rees is the appropriate amount and adding thereto assessment at 26 per cent and even allowing 40 per cent income tax (and I here point out that according to the five text books on principles of valuation it is doubtful whether the income tax allowance is a proper one), a reasonable rent to be received in respect of this land unimproved would be less than £25,000 (although I have

20

30

40

(1) (1956) A.C.185. (2) (1957) A.C.403.

10 in my workings dealt with the exact figures no
 useful purpose, in my opinion, in this judgment,
 would be served by re-producing my workings in de-
 tail). Then taking the difference alleged in the
 evidence of £15,000 per month for this particular
 piece of land when improved and deducting there-
 from the increased assessment on the difference in
 the rentals and again 40 per cent for the income
 tax, I am left with approximately £114,000 per an-
 num which according to the text books and, in par-
 ticular, according to the text books by Messrs. Law-
 rance and Rees relied upon by the parties before
 us, should in an ordinary landlord and prospective
 tenant case be represented by interest on the cost
 of improvements at 7 per cent plus the latent rent-
 al released by the improvements which the text
 books and, in particular, Lawrance and Rees in
 20 their illustrations as to how rental should be
 agreed upon between landlord and tenant give the
 figure $12\frac{1}{2}$ per cent but even allowing 25 per cent
 the figures still leave unaccounted for the sum of
 £80,000 approximately. Putting it in another way,
 the Respondent is asking the Court to accept as
 truthful evidence that he had a tenant prepared to
 pay to him over 100 per cent on his capital outlay
 for improvements per annum for five years. I make
 this figure to be in the vicinity of 114 per cent
 and I have made as I have pointed out allowances
 in respect of income tax which is not according to
 30 the authorities a normal but disputed allowance.
 This has caused me to view with considerable sus-
 picion the rental figures deposed to by the wit-
 nesses for the Respondent, and apparently it had
 the same effect on the trial judge and the two
 assessors. I find it unnecessary however to make
 a finding as to whether or not the evidence was
 worthy of credence because Lawrance and Rees in
 their book after stating at page 22 that where
 premises are let at a rent and the letting is a
 40 recent one, the rent actually paid is usually the
 best possible evidence of rental value, warn that
 the valuer should always check this before accept-
 ing it and the learned authors continue at page
 23: "If, on the other hand, he considers that the
 rent fixed by the present lease or tenancy is in
 excess of the true rental value, he will have to
 allow for the fact that the tenant, at the first
 opportunity, may refuse to continue the tenancy at
 the present rent, and also for the possible risk,
 50 in the case of business premises that the tenant

In the
 Court of Appeal
 at Kuala Lumpur

—
 No.12.

Judgment of
 Neal, J.

10th November,
 1960

- continued.

In the
Court of Appeal
at Kuala Lumpur

No.12.

Judgment of
Neal, J.

10th November,
1960

- continued.

may fail and the premises be turned back on the landlord's hands. As a general rule, any excess of actual rent over estimated fair rental value may be regarded as indicating a certain lack of security in the income from the property. But it must be borne in mind that rent is secured not only by the value of the premises but also by the tenant's covenant to pay, and a valuer may sometimes be justified in regarding the tenant's covenant as adequate security for a rent in excess of true rental value".

10

For those reasons in addition to those made by his Lordship the Chief Justice, I agree that the learned trial judge's course of reasoning was fallacious. I regret, however, that with respect to his Lordship I am unable to agree with his Lordship the Chief Justice's subsequent reasoning and decision. For myself, I am of the opinion that the Respondent has established in law a right to compensation for the severance of the acquired land from the other land used for an hotel in Treacher Road. It seems to me that the considerations to which his Lordship the Chief Justice refers are immaterial in a claim for compensation under the Land Acquisition Enactment. In my opinion to use the words of the Exchequer Court of Canada in R.v. Consolidated Motors⁽³⁾ as reported in 1 Current Law Consolidation as item No.1432, "the severance of the expropriated property prejudiced him in his ability to use or dispose of the remaining property" For myself, I would allow under the head of compensation for severance some compensation to the Respondent although not the amount assessed in the Court below. If I am wrong in this and the Respondent has not established his right to compensation for severance then in my opinion he is entitled to a compensation for the land taken which takes into account the loss in respect of prospective development.

20

30

Returning now to the quantum, I have reached the conclusion that the rents and prospective rents submitted by the Respondent cannot be accepted as a true basis for valuation whether that be due to either of the causes to which I have referred or to some other is in my opinion immaterial. An examination of the record has shewn me that there is some evidence unchallenged and undenied and I think accepted in the Court below from which it is possible to assess either a more correct difference (for valuation purposes) in rental values due to the

40

50

(3) (1949) 3 D.L.R. 729.

acquisition or to the loss to the Respondent in respect of prospective development. I refer to the figure of ~~£~~100,000 said to be the estimated cost of the improvements which would have been carried out to the particular land acquired. For the purpose of using this as a basis for fixing a proper rental value consideration need not according to the text books be given to the question of cost of funding a loan although it does become appropriate at a later stage in the workings. According to Messrs. Lawrance and Rees on Modern Methods of Valuation he was entitled to expect out of this property as a result of the improvements a rental based upon 7 per cent of the cost of the improvements plus 12½ per cent of that cost as representing the probable latent rental released by the improvements. This according to my workings would amount to ~~£~~19,500 from which one must deduct in order to obtain the net rental for valuation of the land 26 per cent for the additional assessment and this at eight years' purchase would mean that the loss to the Respondent would be in the region of ~~£~~137,000. From this must be deducted ~~£~~100,000 which he has not had to spend reducing the figure to ~~£~~37,000 which figure, in my opinion, should be further reduced to ~~£~~25,000 to make allowance for the fact that if he had carried out the improvements he would had had to obtain the money on loan (this appears in judgment of Court below and not contested before us). This figure, in my opinion, would be the quantum of compensation to which he would be entitled by way of severance from the other land. The same working, in my opinion, would establish the same figure which should be added to the value as compensation for the loss of the prospective improvement to the land. As I understand I am in a minority it is unnecessary for me to state whether I would allow this as compensation for severance or by way of addition for compensation for loss of prospective improvement and I am content to state that, in my opinion with regret, I find myself unable to agree with the judgment of the majority of the Court and I would allow an additional sum of ~~£~~25,000 either by way of damages for severance or as an addition to the market value of the land arising from the loss in respect of prospective improvement.

Sgd: M.G.Neal,
JUDGE

10th November 1960. FEDERATION OF MALAYA.

TRUE COPY

Sgd: Ng Yeow Hean, Secretary to Judge, Ipoh.
31/12/60.

In the
Court of Appeal
at Kuala Lumpur

No.12.

Judgment of
Neal, J.

10th November,
1960

- continued.

In the
Court of Appeal
at Kuala Lumpur

No. 13.

ORDER.

No.13.

Order.

12th December,
1960.

BEFORE: THE HONOURABLE DATO SIR JAMES THOMSON,
P.M.N., P.J.K., CHIEF JUSTICE, FEDERATION
OF MALAYA:
THE HONOURABLE MR.JUSTICE R.D.R.HILL,
B.D.L., JUDGE OF APPEAL, FEDERATION OF
MALAYA: AND
THE HONOURABLE MR.JUSTICE NEAL, B.E.M.,
P.J.K., JUDGE, FEDERATION OF MALAYA.

10

This 12th day of December, 1960

IN OPEN COURT

THIS APPEAL coming on for hearing on the 25th and 26th days of August, 1960 in the presence of Mr.R.Ramani (with him Mr.Ng Ek Teong) of Counsel for the Appellant and Mr.Yong Pung How (with him Mr.S.T.Chung) of Counsel for the Respondent AND UPON READING the Record of Appeal and the Notice of Cross-Appeal filed herein AND UPON HEARING Counsel as aforesaid for both parties IT WAS ORDERED that this Appeal do stand adjourned for judgment;

20

AND THIS APPEAL coming on for Judgment this day in the presence of Counsel as aforesaid for both parties;

IT IS ORDERED that this Appeal be and is hereby allowed;

AND IT IS ORDERED that the Cross-Appeal be and is hereby dismissed;

AND IT IS ORDERED that the total amount of the Award of compensation made by the Judge in the Court below be reduced to \$202,280/- (Dollars Two hundred and two thousand and two hundred and eighty only).

30

AND IT IS ORDERED that the costs of this Appeal as taxed by a proper officer of the Court be paid by the Respondent to the Appellant;

AND IT IS LASTLY ORDERED that the deposit of \$500/- (Dollars Five hundred only) lodged in Court by the Appellant as security for the costs of this Appeal be paid out to the Appellant.

40

GIVEN under my hand and the seal of the Court this 12th day of December, 1960.

SEAL.

Sgd: Shiv Charan Singh,
Assistant Registrar,
Court of Appeal, KUALA LUMPUR.

No. 14.

ORDER GRANTING CONDITIONAL LEAVE.

BEFORE: THE HONOURABLE DATO SIR JAMES THOMSON,
P.M.N., P.J.K., CHIEF JUSTICE, FEDER-
ATION OF MALAYA:
THE HONOURABLE MR. JUSTICE GOOD, JUDGE
OF APPEAL;
AND
THE HONOURABLE MR. JUSTICE ISMAIL KHAN.

In the
Court of Appeal
at Kuala Lumpur

No.14.

Order granting
Conditional
Leave.

7th February,
1961.

10 IN OPEN COURT This 7th day of February 1961

ORDER

UPON MOTION made unto Court this day by Mr. Yong Pung How of Counsel for Lim Foo Yong Ltd., the Respondent above-named in the presence of Mr. R. Ramani of Counsel for the Collector of Land Revenue, Kuala Lumpur, the Appellant above-named AND UPON READING the Notice of Motion dated the 10th day of January, 1961 and the Affidavit of Lim Foo Yong affirmed on the 10th day of January 1961 and filed herein AND UPON HEARING Counsel as

20 aforesaid IT IS ORDERED that leave be and is hereby granted to the Respondent to appeal to His Majesty the Yang di-Pertuan Agong against the Judgment of the Court of Appeal given on the 12th day of December 1960 upon the following conditions:-

- 30 (a) That the Respondent do within three months from the date hereof enter into good and sufficient security to the satisfaction of the Registrar of the Court of Appeal at Kuala Lumpur in the sum of \$5,000.00 (Dollars Five thousand only) for the due prosecution of the Appeal and the payment of all such costs as may become payable to the above-named Appellant in the event of the Respondent not obtaining an Order granting him final leave to appeal or of the Appeal being dismissed for non-prosecution or of the Yang di-pertuan Agong ordering the Respondent to pay the Appellant the costs of the Appeal, as the
- 40 case may be; and
- (b) That the Respondent do also within the same period of three months from the date hereof take the necessary steps for the purpose of procuring the preparation of the record and the despatch thereof to England.

In the Court of Appeal at Kuala Lumpur

AND IT IS ORDERED that the costs of this Motion be costs in the Appeal.

No.14.

GIVEN under my hand and the seal of the Court this 7th day of February, 1961.

Order granting Conditional Leave.

Sgd: Shiv Charan Singh
Assistant Registrar,
Court of Appeal,
Federation of Malaya.

7th February, 1961

SEAL.

- continued.

No.15.

No. 15.

Order granting Final Leave.

ORDER GRANTING FINAL LEAVE.

10

1st May, 1961.

BEFORE: THE HONOURABLE DATO SIR JAMES THOMSON,
P.M.N., P.J.K., CHIEF JUSTICE, FEDERATION OF MALAYA;
THE HONOURABLE MR.JUSTICE HILL, B.D.L., JUDGE OF APPEAL;
AND
THE HONOURABLE MR.JUSTICE GOOD, JUDGE OF APPEAL.

IN OPEN COURT

This 1st day of May 1961.

ORDER

20

UPON MOTION made unto the Court this day by Mr.L.P.Thean of Counsel for the above-named Respondent in the presence of Mr.D.G.Rawson on behalf of Mr.R.Ramani of Counsel for the above-named Appellant AND UPON READING the Notice of Motion dated 24th day of April 1961 and the Affidavit of CHU YIN MOOI (f) affirmed on the 24th day of April 1961, and filed in support thereof AND UPON HEARING Counsel as aforesaid IT IS ORDERED that final leave be and is hereby granted to the above-named Respondent to appeal to His Majesty the Yang di-Pertuan Agong against the Judgment of the Court of Appeal herein dated the 12th day of December 1960 AND IT IS ALSO ORDERED that the costs of this application be costs in the appeal.

30

GIVEN under my hand and the seal of the Court this 1st day of May 1961.

Sgd: Shiv Charan Singh
Assistant Registrar,
Court of Appeal,
Federation of Malaya.

SEAL

40

E X H I B I T S

EXHIBIT "A4" - LETTER, JOE EU TO LIM FOO YONG

EU PROPERTIES (SELANGOR) LIMITED,
271, South Bridge Road,
P.O.Box 1587.
SINGAPORE.

24th September, 1956.

10 Mr. Lim Foo Yong,
P.O. Box 469,
Kuala Lumpur.

Dear Foo Yong,

I thank you very much for your letter dated 21st instant and note that you would like to continue to make use of the footpath leading from Lot 157 to Lot 58.

20 As far as I can see, we would have no objection for you to make use of this footpath, but would inform you that in allowing you to do this, we do not waive any of our rights to the Title of this land and therefore, it is understood that you will not claim the land by use. I think that we might come to some agreement when you are ready on this matter, but at the moment, I can assure you that we will give every co-operation that we can and therefore do not think that you have anything to worry about in using the footpath.

Best regards,

Yours sincerely,

(Sgd) Joe Eu.

30 Exhibit A4 in C.A.1/59
By Applicant on 20.10.59
(Sgd) W.P.Sarathy
for S.A.R.

Certified true copy,

(Sgd) B.E.Nettar
Ag. Secretary to Judge,
Kuala Lumpur.

Exhibits

"A4"

Letter, Joe Eu
to Lim Foo Yong.

24th September,
1956.

Exhibits
"A5"

EXHIBIT "A5" - LETTER, KUALA LUMPUR MUNICIPAL
COUNCIL TO APPELLANT'S SOLICITORS

Letter, Kuala
Lumpur Municipal
Council to
Appellant's
Solicitors.
15th October,
1957.

KUALA LUMPUR MUNICIPAL COUNCIL
Treasurer's Department,
Municipal Offices,
P.O. Box 1022,
Kuala Lumpur.
15th October, 1957.

Ref: 250/57/11.

M/s. Shook Lin & Bok,
P.O. Box 766,
80, Cross Street,
KUALA LUMPUR.

10

Dear Sirs,

Revision of Assessment List
Lots 57, 58, Section 58

With reference to your letter dated 12th Oc-
tober, 1957, I am directed to inform you that the
Assessment Committee during its meeting on the
25th September, 1957 decided to reduce the basic
rate upon which the annual values of Lot Nos. 57
& 58 Section 58, Ampang Road from \$2.00 to \$1.50
per sq.ft. Working against this basic rate the
revised annual values are as follows:-

20

<u>Lot No.</u>	<u>Section No.</u>	<u>Revised Annual Value</u>
57	58	\$ 7,200/-
58	"	8,000/-

Yours faithfully,
(Sgd) K.B.SUBBAIAH
Ag. Municipal Treasurer,
Kuala Lumpur.

30

Exhibit 'A5' in C.A.1/59
By Applicant on 20.10.59
(Sgd) W.P.Sarathy
for S.A.R.

Certified true copy,
Sgd: B.E.Nettar,
Ag. Secretary to Judge,
Kuala Lumpur.

EXHIBIT "A6" - LETTER, LIM JOO TAN TO APPELLANT

Exhibits

THE HARLEQUIN
Air-conditioned
Kuala Lumpur

"A6"

19th March, 1957

Letter, Lim Joo
Tan to
Appellant.

Messrs.Lim Foo Yong Ltd.,
35, Pudu Street,
Kuala Lumpur.

19th March,
1957.

Dear Sirs,

10

No.17 Bukit Bintang Road, Kuala Lumpur.

I am in receipt of your letter of 13th March 1957 requiring me to give up vacant possession of the Harlequin Hotel on or before 13th June 1957 and I confirm our verbal discussion when it was agreed that I will give you possession of the Harlequin Hotel on 30th June, 1957.

Will you please confirm that I will be given the first option to run the new hotel at Treacher Road, work on which has now started.

20

Yours faithfully,
THE HARLEQUIN,
Kuala Lumpur.

Exhibit 'A6' in C.A.1/59
By Applicant on 20.10.59
(Sgd) W.P.Sarathy
for S.A.R.

Certified true copy,
(Sgd) B.E.Nettar,
Ag. Secretary to Judge,
Kuala Lumpur.

30

EXHIBIT "A7" - LETTER, APPELLANT TO LIM JOO TAN

"A7"

LIM FOO YONG LIMITED,
35, Pudu Street,
Kuala Lumpur.

Letter,
Appellant to
Lim Joo Tan.

23rd March, 1957.

Mr.Lim Joo Tan,
The Harlequin Hotel,
Kuala Lumpur.

23rd March,
1957.

Dear Sirs,

40

With reference to your letter of the 19th instant, we confirm that you will be given the first option to run the new hotel on terms to be arranged

Exhibits
 "A7"
 Letter,
 Appellant to
 Lim Joo Tan.
 23rd March,
 1957
 - continued.

and agreed.

Yours faithfully,
 LIM FOO YONG LIMITED
 (Sgd) Manager

Exhibit 'A7' in C.A.1/59
 By applicant on 20.10.59
 (Sgd) W.P.Sarathy
 for S.A.R.

Certified true copy,
 (Sgd) B.E.Nettar
 Ag. Secretary to Judge
 Kuala Lumpur.

10

"A.8"
 Letter, Lim Joo
 Tan to
 Appellant.
 8th July, 1957.

EXHIBIT "A8" - LETTER, LIM JOO TAN TO APPELLANT

THE HARLEQUIN
 Air-conditioned
 46, Tong Shin Terrace,
 Kuala Lumpur.

8th July, 1957.

Messrs.Lim Foo Yong Limited,
 35, Pudu Street,
 KUALA LUMPUR.

20

Dear Sirs,

New Hotel Merlin

I refer to the discussion in your office last Saturday 6th July and now wish to set down in writing the terms we agreed upon for leasing the new hotel to us.

1. The hotel will have 200 rooms all to be air-conditioned.
2. The hotel will have its own grounds with adequate car parking facilities, a swimming pool, tennis and badminton courts and recreational facilities. 30
3. You will provide all the furniture and fittings for the hotel and ballroom.
4. You will arrange for telephone service in each bedroom as well as rediffusion.
5. The rental will be \$50,000/- (Dollars fifty thousand) per month.
6. You will give me a lease for 5 years in the first instance with option of renewal. 40

Will you please confirm that the above is in order and oblige.

Yours faithfully,
THE HARLEQUIN
Kuala Lumpur.

(Sgd.) Illegible.

Exhibit 'A8' in C.A.1/59
By Applicant on 29.10.59
(Sgd) W.P.Sarathy
for S.A.R.

10

Certified true copy,
(Sgd) B.E.Nettar
Ag. Secretary to Judge,
Kuala Lumpur.

Exhibits

"A8"

Letter, Lim Joo
Tan to
Appellant.

8th July, 1957
- continued.

EXHIBIT "A9" - LETTER, APPELLANT TO LIM JOO TAN

LIM FOO YONG LIMITED
(Incorporated in the Federation of Malaya)
35, Pudu Street,
Kuala Lumpur.

20

12th July, 1957.

"A9"

Letter,
Appellant to
Lim Joo Tan.

12th July, 1957.

Mr.Lim Joo Tan,
The Harlequin Hotel,
46, Tong Shin Terrace,
Kuala Lumpur.

Dear Sirs,

Hotel Merlin

We have for acknowledgment your letter of the 8th instant for which we thank you.

30

It is confirmed that we are prepared to lease the Hotel Merlin to you when it is ready on the following terms and conditions -

1. The hotel, which is situated on Lots 134, 135, 136, 156 and 157 Sec: 57, Town of Kuala Lumpur, will have adequate car parking facilities and comprises of 204 bedrooms all fully air-conditioned and with bathrooms attached.
2. There will be a swimming pool, tennis courts, badminton courts and grounds on Lots 57 and 58, Sec: 58, Town of Kuala Lumpur, which is just behind the hotel proper.

40

Exhibits

"A9"

Letter,
Appellant to
Lim Joo Tan.
12th July, 1957
- continued.

3. We will supply all the furniture and immovable fittings for the hotel as well as the restaurant and ballroom but you will be responsible for any damage and replacements.
4. There will be a telephone and rediffusion in each bedroom.
5. The rental will be \$50,000.00 (Dollars Fifty thousand only) per mensem payable monthly in advance.
6. The lease will be for 5 years in the first instance with option of renewal. 10

As soon as the building is about ready for occupation which we anticipate will be in another 8 to 10 months, we shall write to you to arrange for a lease to be drawn up.

Yours faithfully,
LIM FOO YONG LTD.

(Sgd) Manager.

Exhibit 'A9' in C.A.1/59
By Applicant on 29.10.59
(Sgd) W.P.Sarathy
for S.A.R.

20

Certified true copy,
(Sgd) B.E.Nettar
Ag. Secretary to Judge.

"A10"

Letter,
Lim Joo Tan to
Appellant.
5th November,
1957.

EXHIBIT "A10" - LETTER, LIM JOO TAN TO APPELLANT

THE HARLEQUIN,
Air-conditioned
Kuala Lumpur.

5th November, 1957. 30

Messrs. Lim Foo Yong Ltd.,
35, Pudu Street,
KUALA LUMPUR.

Dear Sirs,

Hotel Merlin

I refer to our various correspondences on the question of leasing the new hotel Merlin to us and now understand that there will be no swimming pool, tennis and badminton courts and recreational facilities due to the fact that Lots 57 and 58 have been requisitioned by the Government to build a conference hall. 40

If this is the case we have no alternative but to request you to agree to a reduction in the rental because the new hotel without a swimming pool and tennis courts will be the same as any other hotel in the country and cannot be considered a first class hotel by international standards.

Exhibits

"A10"

Letter,
Lim Joo Tan to
Appellant.

5th November,
1957

- continued.

At the moment I am not prepared to say how much we can offer but I would like to discuss the matter with you so if you can let me know a time when Mr.Foo Yong is free I shall call upon you.

10

Yours faithfully,
THE HARLEQUIN
Kuala Lumpur
(Sgd)

Exhibit 'A10' in C.A.1/59
By Applicant on 29.10.59
(Sgd) W.P.Sarathy
for S.A.R.

20

Certified true copy
(Sgd) B.E.Nettar
Ag. Secretary to Judge,
Kuala Lumpur.

EXHIBIT "A11" - LETTER, LIM JOO TAN TO APPELLANT

"A11"

THE HARLEQUIN
Air-conditioned
Kuala Lumpur.

Letter, Lim
Joo Tan to
Appellant.

20th November, 1957.

20th November,
1957.

Messrs. Lim Foo Yong Ltd.,
35, Pudu Street,
KUALA LUMPUR.

30

Dear Sirs,

Merlin Hotel

With reference to the discussion between Mr. Foo Yong, Mr.Yue Hong and the writer it is confirmed that we are prepared to take up the new Hotel Merlin on the same terms and conditions as set out in our previous correspondences at the new rental of \$35,000/- (say Dollars Thirty five thousand only) per month.

40

Will you please let me have your confirmation when we can go ahead and arrange for a proper lease

Exhibits

to be drawn up.

"All"

Letter, Lim
Joo Tan to
Appellant.

20th November,
1957
- continued.

Yours faithfully,
THE HARLEQUIN
Kuala Lumpur.
(Sgd)

Exhibit 'All' in C.A.1/59
By applicant on 20.10.59
(Sgd) W.P.Sarathy
for S.A.R.

Certified true copy,
(Sgd) B.E.Nettar
Ag. Secretary to Judge
Kuala Lumpur.

10

"A12"

Letter,
Appellant to
Lim Joo Tan.

2nd December,
1957.

EXHIBIT "A12" - LETTER, APPELLANT TO LIM JOO TAN

LIM FOO YONG LIMITED
35, Pudu Street,
KUALA LUMPUR.

2nd December 1957.

Mr.Lim Joo Tan,
The Harlequin Hotel,
46, Tong Shin Terrace,
KUALA LUMPUR.

20

Dear Sir,

Hotel Merlin

We are in receipt of your letter of the 20th
November 1957 and confirm that your offer of
\$35,000/- (Dollars Thirty-five thousand only) is
acceptable to us.

It is anticipated that the hotel will be ready
some time in March next year and we are arranging
for our Solicitors, Messrs.Shook Lin & Bok to draw
up the lease before then.

30

Yours faithfully,
LIM FOO YONG LIMITED
(Sgd) Manager.

Exhibit 'A12' in C.A.1/59
By applicant on 20.10.59
(Sgd.) W.P.Sarathy
for S.A.R.

Certified true copy,
(Sgd) B.E.Nettar
Ag. Secretary to Judge
Kuala Lumpur.

40

EXHIBIT "A13" - LETTER, APPELLANT TO LIM JOO TAN

LIM FOO YONG LIMITED
35, Pudu Street,
KUALA LUMPUR.

5th May, 1959

Mr. Lim Joo Tan,
c/o Le Coq D'or,
121, Ampang Road,
Kuala Lumpur.

10 Dear Sir,

Hotel Merlin

Further to our letter of 2nd December 1957 we have pleasure in advising that Certificate of Fitness for Occupation has been granted for the above Hotel and would enquire whether you are now ready to sign the lease on the terms and conditions agreed upon in our previous correspondences.

Yours faithfully,
Lim Foo Yong Limited
(Sgd) Manager.

20

Exhibit 'A13' in C.A.1/59
By Applicant on 20.10.59
for S.A.R.

Certified true copy,
(Sgd) B.E. Nettar
Ag. Secretary to Judge
Kuala Lumpur.

EXHIBIT "A14" - LETTER, LIM JOO TAN TO APPELLANT

Le Coq D'or,
121, Ampang Road,
Kuala Lumpur.

Lim Joo Tan
11th May, 1959.

30

Messrs. Lim Foo Yong Limited,
Hotel Merlin,
Kuala Lumpur.

Dear Sirs,

The Hotel Merlin

40 I am in receipt of your letter of 5th May 1959 and contents noted with many thanks.

Exhibits

"A.13"

Letter,
Appellant to
Lim Joo Tan.
5th May, 1959.

"A14"

Letter, Lim
Joo Tan to
Appellant.
11th May, 1959.

Exhibits

"A14"

Letter, Lim
Joo Tan to
Appellant.

11th May, 1959
- continued.

I have to point out that the whole building is not yet completed, the restaurant and ballroom not ready and there are only 3 floors furnished. According to my previous offer the rent of ~~£35,000/-~~ was for the whole hotel and not for 3 floors.

Under the circumstances I suggest that no lease should be entered into for the time being but I am prepared to sign an agreement with you to rent the 3 floors fully furnished together with the bar and tea room at a monthly rental of ~~£9,000/-~~ (Nine thousand) for a trial period until such time as the whole building can be completed, when the lease can then be signed.

10

If the above is acceptable to you I request that the agreement to be entered into shall be signed between you and The Merlin Limited as I am incorporating this Company at the moment and they will take over my commitments.

Please let me know early whether this is acceptable to you.

20

Yours faithfully,
LE COQ D'OR
(Sgd.)

Exhibit 'A14' in C.A.1/59
By Applicant on 20.10.59
(Sgd) W.P.Sarathy
for S.A.R.

Certified true copy,
(Sgd) B.E.Nettar
Ag. Secretary to Judge
Kuala Lumpur.

30

"A15"

Letter,
Appellant to
Lim Joo Tan.

14th May, 1959.

EXHIBIT "A15" - LETTER, APPELLANT TO LIM JOO TAN

LIM FOO YONG LIMITED
35, Pudu Street,
Kuala Lumpur.

14th May, 1959.

Mr.Lim Joo Tan,
c/o Le Coq D'or,
121, Ampang Road,
KUALA LUMPUR.

40

Dear Sir,

We have for acknowledgment your letter of the 11th instant and confirm that the rental of ~~£9,000/-~~ is acceptable to us.

However, we think it is not necessary to draw up an agreement as it is anticipated that the whole building will be completed in a few months' time. We can then enter into a formal lease based on the previous rental of \$35,000/- and on the terms and conditions already discussed.

Yours faithfully,
LIM FOO YONG LIMITED,
(Sgd) Manager.

Exhibits

"A15"

Letter,
Appellant to
Lim Joo Tan.

14th May, 1959
- continued.

10 Exhibit 'A15' in C.A.1/59
By Applicant on 20.10.59
(Sgd) W.P. Sarathy
for S.A.R.

Certified true copy,
(Sgd) B.E.Nettar
Ag. Secretary to Judge,
Kuala Lumpur.

EXHIBIT "A16" - LETTER, TOWN PLANNING OFFICER,
KUALA LUMPUR TO Y.T.LEE & CO.

"A16"

20 TOWN PLANNING BRANCH,
Municipal Engineer's Department,
Municipal Offices,
P.O.Box 1022, KUALA LUMPUR.

Letter, Town
Planning
Officer,
Kuala Lumpur
to Y.T.Lee & Co.

Ref: 10/KLM.1059/56

18th May, 1956.

Messrs.Y.T.Lee & Co.,
Corporate Architects,
88, Cross Street,
KUALA LUMPUR.

18th May, 1956.

30 Proposed Hotel Building, Swimming Pool and
Petrol Kiosk on Lots 134 to 136, 156 and 157,
Sec.57, Treacher Road, K. Lumpur.

I refer to your letter dated 25th April, 1956 on the above proposal.

2. I am to inform you that the Town Planning Committee at its meeting on 8th May, 1956 have agreed to the above proposal subject to the resiting of the petrol kiosk at the rear of the hotel building.

3. Your site plans are, therefore, returned here-
with for the necessary amendment before formal
40 approval is granted.

Yours faithfully,
(Sgd)
Ag. Planning Officer,
for Municipal Engineer,
Kuala Lumpur.

Exhibit 'A16' in C.A.1/59
By Applicant on 20.10.59
(Sgd) W.P. Sarathy
for S.A.R.

50 Certified true copy,
(Sgd) B.E.Nettar
Ag. Secretary to Judge,
Kuala Lumpur.

Exhibits
"R17"

EXHIBIT "R17" - REPORT BY A.A. WRAGG CHIEF VALUER,
VALUATION DIVISION, MINISTRY OF FINANCE

Report by
A.A. Wragg,
Chief Valuer,
Valuation
Division
Ministry of
Finance.

TREASURY VALUATION DIVISION,
THE TREASURY, KUALA LUMPUR,
FEDERATION OF MALAYA.

29th January 1958.

REPORT AND VALUATION
LOTS 57 & 58 SECTION 58 KUALA LUMPUR

29th January,
1958.

1. Lot 57 contains an area of approximately 1.103 acres and has a frontage of about 148 feet to Ampang Road. Except for a narrow strip immediately fronting Ampang Road the level of this lot is some 12 feet below the level of the road and the adjoining lot 56, considerable filling would therefore be necessary in any development of Lot 57. 10
2. Lot 58 contains an area of approximately 1.218 acres and it is situated immediately behind Lot 57. It is the same level as the major part of Lot 57, i.e. about 12 feet below road level and adjoining Lot 56. 20
3. In April 1957 Lots 57 and 58 were sold for the sum of \$60,000/- (Dollars sixty thousand). This figure is equivalent to a price of approximately 60 cents per sq.ft. overall, or if one considers that Lot 57 fronting Ampang Road would command a higher price, then about 72 cents per sq.ft. for Lot 57 and 48 cents per sq.ft. for Lot 58.
4. I have examined certain documents of Transfer in the Selangor Registry of Titles and from the information contained therein and a consideration of the prices paid, in recent years, for other comparable lots in the immediate vicinity of Lots 57 and 58, I am of the opinion that the price paid of \$60,000/- for Lots 57 and 58 was a proper value for the Lots at the date of sale, i.e. April 1957. 30
5. In my opinion no circumstances have arisen between April 1957 and the 8th October 1957 to increase the value of this land and I am therefore of the opinion that the value of Lots 57 and 58 at the material date, 8th October, 1957, was \$60,000/- (Dollars sixty thousand). 40

(Sgd) A.A. WRAGG
CHIEF VALUER

TREASURY VALUATION DIVISION.

Exhibit "R17" in C.A.1/59
By Respondent on 21.10.59
(Sgd) C.L. Devasar
for S.A.R.

Certified true copy,
(Sgd) B.E. Nettar
Ag. Secretary to Judge,
Kuala Lumpur.

50

ANNEXURE TO EXHIBIT "R18" (PLAN PREPARED BY A.A.WRAGG, CHIEF VALUER, VALUATION DIVISION,
MINISTRY OF FINANCE)

SCHEDULE OF LAND TRANSACTIONS IN THE VICINITY OF LOTS 57 & 58 IN SECTION 58,
TOWN OF KUALA LUMPUR.

Ref. No.	Date	Lot No.	Area	Inter-est	Consider-ation	Equivalent Rate per sq. foot for sale interest	Remarks
1.	17.9.1952	51, 52, } 53 & 54 } in Sec.) 58 and) 171 and) 172 in) Sec. 57.)	A. R. P. 4 3 25.2	Whole	RM 50,000/-	23.39 cents	Collector's valuation for Stamp Duty RM 8,680,000/- equals 40.6 cents per sq.ft. Area subdivided into Lots 114, 115, 116, 117, 118, 119, 120, 121 & 122. Section 58. Lot 122 surrendered for access road and remaining Lots subsequently developed with flats.
2.	25.3.1955	1, 43 &) 44 in } Sec. 58 } & 63 & } 78 in } Sec. 57)	4 1 14.5	Whole	RM 135,500/-	76.04 cents (to include buildings)	Sale included House on Lot 43 and other houses demolished for re-development. Part of site subsequently developed for flats, involving considerable filling on Lot 1.

Exhibits

Annexure to
Plan Exhibit
"R18"

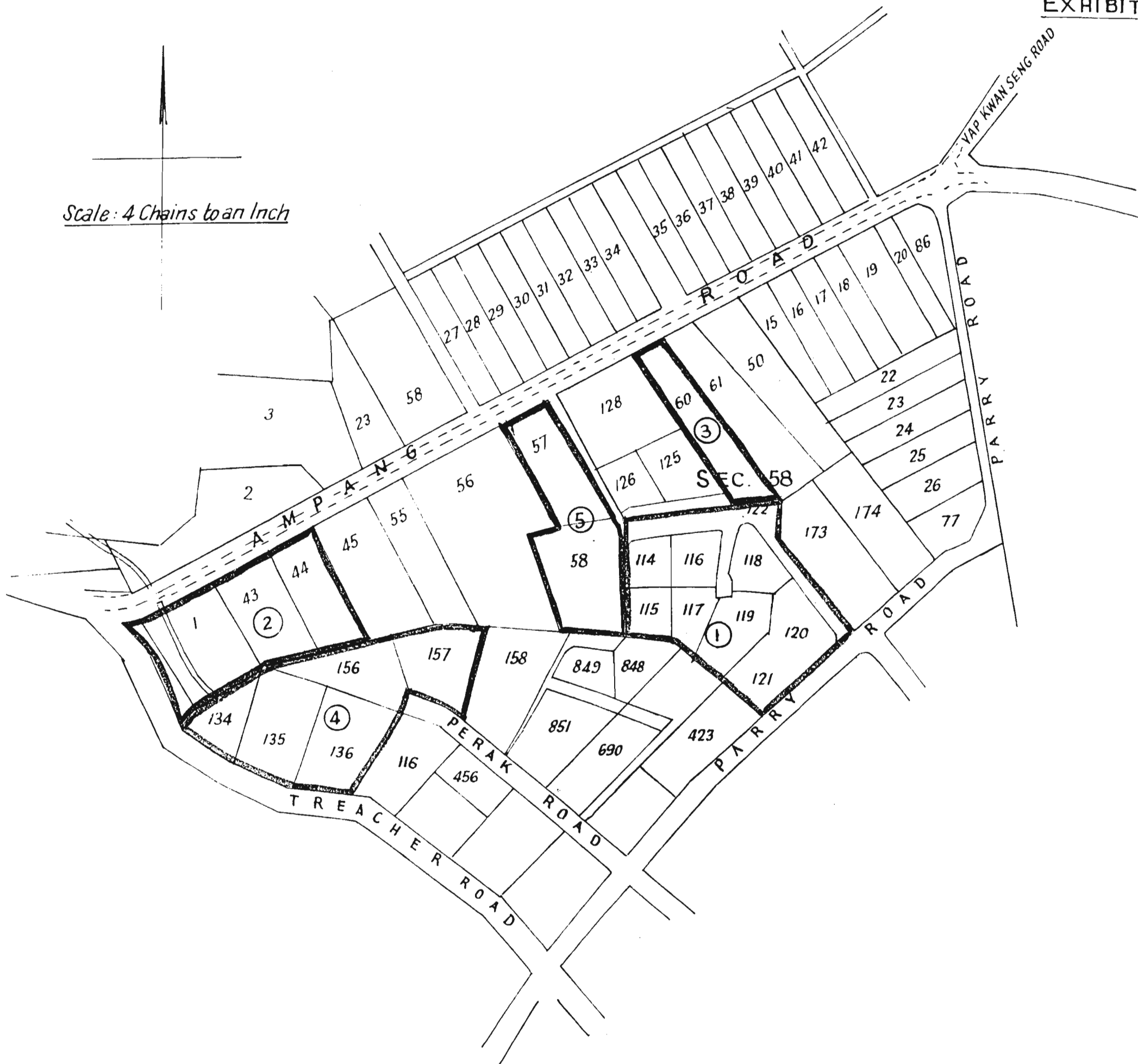
- continued.

Ref. No.	Date	Lot No.	Area	Inter-est	Consider-ation	Equivalent Rate per sq. foot for sale interest	Remarks
3	16.4.1956	60 Section 10 58.	A. R. P. 1 0 9.9	Whole	₹29,000/-	62.69 cents (to include buildings)	Sale included House on the Lot.
4	30.4.1956	134,135 } 136,156 } and 157 } Section } 57. }	4 0 34.2	Whole	₹89,500/-	48.76 cents	Sale price would indicate rate of about 56 cts. for Lots with frontage to Treacher Road and about 38 cents for back land. Site subsequently developed by erection of Merlin Hotel.
5	10.4.1957	57 & 58	1 11.5	Whole	₹60,000/-	59.35 cents	Subject of the present Reference sale price would indicate rate of about 72 cents for front Lot 57 and about 48 cts. for back Lot 58.



Exhibit "R18" in C.A.1/59
By Respondent on 21.10.59
(Sgd) C.L. Devasar
for S.A.R.

Certified true copy
(Sgd) B.F. Nettar
Ag. Secretary to Judge
Kuala Lumpur.

Scale: 4 Chains to an Inch



ANNEXURE C.

NOTE:
1. Area occupied by Federation Military Forces on Lots 55, 56, 57 & 58 Sec. 58 Town of K. Lumpur approx. 2.884 acres shown thus 
2. Lots 55, 56, 57 and 58 shown thus 

SECTION 58
TOWN OF K. LUMPUR.

Scale : 1 chain = 1 Inch

Sheet N° 86 A-1-13

REFERENCE :
Area acquired shown thus 