

JUDICIAL COMMITTEE OF THE
IN THE PRIVY COUNCIL

No. 44 of 1975

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

B E T W E E N :

SYED OMAR BIN ABDUL RAHMAN TAHA ALSAGOFF
and CHEE KUTTY S/O ABU BAKAR Appellants

- and -

THE GOVERNMENT OF THE STATE OF JOHORE Respondent

10

CASE FOR THE APPELLANTS

RECORD

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1. This is an appeal against a judgment of the Federal Court of Malaysia (Suffian L.P., Ali Hassan F.J. and Wan Suleiman F.J.) given on the 16th January 1975 dismissing with costs the appeal of the Appellants from a judgment of Syed Othman J. dated the 3rd June 1974, in which the learned Judge dismissed with costs the Appellants' application for a declaration that proceedings for the acquisition of lands owned by the Appellants were null and void. The appeal is brought pursuant to the Order of the Federal Court of the 18th August 1975 granting final leave to appeal to His Majesty the Yang Di-Pertuan Agong.

THE LEGISLATION

2. The appeal arises out of the Appellants' challenge to the validity of the compulsory acquisition by the State Authority for the State of Johore of lands owned by each of the Appellants in the Pasir Gudang area of the State of Johore.

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3. The Malaysian Legislation governing compulsory acquisition of land is contained in the Land Acquisition Act 1960 ("the Act"). The Act has been amended but after the events the subject of this appeal. The power to acquire land is conferred by section 3 in the following terms:-

"3. The State Authority may acquire land which is needed -

- (a) for any public purpose; or 10
- (b) by any person or corporation undertaking a work which in the opinion of the State Authority is of public utility; or
- (c) for the purpose of mining or for residential or industrial purposes."

section 3

By "State Authority" is meant the Ruler or the Governor of the State, as the case may require: 20
section 2(1).

4. The Act lays down a number of steps to be taken leading to the acquisition of land in accordance with the power conferred by section 3 and prescribes Forms for use at some of these steps which are set out in the Second Schedule. The provisions enacting those steps which are material to this appeal are quoted or referred to below :-

"4.(1) Whenever the State Authority is satisfied that any land in any locality in the State is likely to be needed for any of the purposes referred to in section 3 a notification in Form A shall be published in the Gazette." 30
Section 4(1)

"7. Whenever any lands are needed for any of the purposes referred to in section 3 the Collector shall prepare and submit to the State Authority - 40

- (a) a plan of the whole area of such lands, showing the particular lands, or parts thereof, which it will be necessary to acquire; and

(b) a list of such lands, in Form C."
section 7

"8.(1) When the State Authority decides that any of the lands referred to in section 7 are needed for any of the purposes referred to in section 3, a declaration in Form D shall be published in the Gazette.

10 (2) A copy of the list of lands referred to in paragraph (b) of section 7, amended, if necessary, in accordance with the decision of the State Authority, shall be included as a schedule to the declaration in Form D.

(3) A declaration in Form D shall be conclusive evidence that all the scheduled land referred to therein is needed for the purpose specified therein."
section 8

20 Section 9 requires the Collector upon the publication of the declaration in Form D to cause the areas affected by the intended acquisition to be marked out upon the land, unless this has already been done to his satisfaction, and for a note of the intended acquisition to be entered in the appropriate register concerning title. Sections 10 and 11 then lay down the manner in which proceedings for the acquisition of the land shall be commenced, section 10 providing that :-

30 "10.(1) The Collector shall, having completed the action required by section 9, commence proceedings for the acquisition of the land by giving public notice in Form E in the manner prescribed by section 52, and by fixing the date of an inquiry for the hearing of claims to compensation for all interests in such land."
section 10(1)

40 A copy of the notice in Form E must in addition be served on every person with a specified interest in the land included in the schedule to the notice:
section 11. Sections 12 to 17 require the Collector then to hold a full, or in specified circumstances a summary, enquiry for the purpose of assessing the amount of compensation -

"..which in his opinion is appropriate in each case, according to the considerations set out in the First Schedule."
section 12(1)

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Upon the conclusion of a full enquiry under section 12 the Collector must prepare a written award in Form G: section 14(1). In the case of a summary enquiry under section 17 the award may be oral but must be recorded in Form G: section 17(2) and (3). The circumstances and manner in which possession of land may be taken are set out in sections 18 to 22. Relevant provisions are :-

"18. The Collector may take possession -

- (a) of any land in respect of which an award has been made under section 14, such possession being taken at the time of the service upon the occupier of such land of a notice in Form H, or at any time thereafter; 10
- (b) of any land specified in a Certificate of Urgency issued under section 19, whether or not any award has been made in respect of such land:....." 20

section 18

"19.(1) Where any country land or arable land or unoccupied land, described in any notice in Form E given under section 10, is in the opinion of the State Authority urgently required for use for a public purpose the Commissioner may, on or after the expiration of fifteen days from the date of the giving of such notice, issue a Certificate of Urgency directing the Collector to take possession of such land, subject to the provisions of section 20." 30
section 19(1)

Sections 20 and 21 make provision for land on which there is a building and are not relevant to this appeal.

"22.(1) The Collector shall take formal possession of any scheduled land by serving upon the occupier thereof or, if he cannot be found, by posting thereon, a notice in Form K." 40
section 22(1)

It is implicit in the scheme of the Act that formal possession in pursuance of section 22

completes the proceedings for acquisition of land under the Act, section 23 providing that :-

10 "23. The proper registering authority, upon receipt of the notice in Form K. or the Collector of his own motion after completing Form K. shall, upon the register document of title or other appropriate record in his possession as specified in sub-section (2) or (3) of section 9, make with respect to any scheduled land a note -

- (a) that the whole of such land has been acquired and has vested in the Ruler.....; or
- (b) that so much of the land as is specified in the last column of the schedule to such Form has been acquired."

section 23

Section 66 provides for the vesting of land :-

20 "66. Upon the completion of any proceedings for the acquisition of land under this Act the land shall vest in the Ruler... free from incumbrances."

section 66

THE FACTS

30 5. By the direction of the learned Judge at first instance evidence was given on affidavit. It was not cross-examined to and is therefore effectively unchallenged, though some areas of fact are left obscure. The crucial facts were not accordingly in dispute and may be shortly stated.

p.53, 5-12

40 6. Until the completion of proceedings for the acquisition of their land the first Appellant was the owner of four parcels of land, and the second Appellant the owner of three parcels of land, in the Pasir Gudang region of the State of Johore. The first Appellant began in 1967 the development of three of his parcels of land as a beach and holiday resort, and by June 1972 had completed a considerable complex including chalets and a restaurant. He had proposals to extend the development.

p.5, 3-8

p.6, 33-

p.7, 1

p.5, 9-15

7. By not later than April 1970 the Respondent had taken action (the nature of which is not

p.139, 27-30

RECORD

p.137, 1-
p.138, 3

explained in evidence) to freeze an area of about 5000 acres in the Pasir Gudang region, including the Appellants' lands, "for the purpose of selecting a suitable site for the development of a port and industrial area". On the 2nd April 1970 the State Development Officer wrote to the State Planning Officer referring to the fact that the State Government was taking steps to acquire land in that region "for the purpose of turning it into Harbour and Industrial sites", and attaching a plan (not produced in evidence) showing "the required areas" bounded by a red line. The State Planning Officer was asked to scrutinize this plan and prepare a draft layout of how these sites were to be developed, and was told that :

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"The requirements which must be given attention are:-

- (1) One Harbour site of 300 acres
 - (2) One Heavy Industrial site of 400 acres
 - (3) One Medium Industrial site of 800 acres
 - (4) One Light Industrial site of 300 acres and
 - (5) One residential town of 200 acres. This site is for the accommodation of between 10,000 - 12,000 people."
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p.139, 32-
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The total area of the State Development Officer's requirements was thus 2000 acres. This was also the approximate size of the area selected after a ground detail study of the frozen area of 5000 acres.

p.138, 26-28
p.139, 11

The State Planning Officer replied to the State Development Officer on the 6th June 1970 enclosing two plans, J7/3872 and J7/3872A. A copy of the former of these two plans was produced in evidence and is part of Ex.D8, but the latter was not. The State Planning Officer described these two plans as showing "the planning for the proposed Jetty/Harbour and Industrial site and residential town", and enclosed an undated "Outline Report of the Proposed Johore Jetty/Port and Town". For reasons which were not explained in evidence and remain obscure the development described in the State Planning Officer's Report and shown on plan J7/3872 was very substantially more extensive than that apparently envisaged in the State Development Officer's letter. The areas allocated in the State Planning Officer's layout for Port (393 acres) and Industrial (1478 acres) purposes were broadly in line with those mentioned by the State Development Officer (300 and 1500

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p.29, 42

p.139, 25

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p.140, 24
p.141, 28
p.137, 34-38

RECORD

acres respectively). But the residential area proposed was far more extensive: 1949 acres for a population of about 50,000 as against 200 acres for a population of 10,000 to 12,000 mentioned in the State Development Officer's letter. There were also three substantial areas which were shown as allocated for purposes other than Port, Industrial or Residential, i.e.:

p.142, 3-4

p.138, 1-3

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- firstly an area of 385 acres for "Kegunaan Khas" (Special Purposes); p.142, 25-30 & pt Ex D8
 - secondly an area of about 140 or 180 acres (the discrepancy between the former figure in the Report D9 and the latter figure on the plan pt D8 was not explained) for "Pusat Perkedaian" (Town Centre); and p.142, 32 & pt Ex D8
 - thirdly an area of 1381 acres for "Pertanian" (Agriculture). pt Ex D8

20 In the result, whereas the State Development Officer had referred to sites totalling about 2000 acres, the State Planning Officer produced a layout embracing a total area of at least about 5700 acres (it is common ground that in the event 5713 acres of land was acquired by the State Authority lying wholly within the boundary of this layout, but it is not clear from a perusal of the plan J7/3872 whether all the land within this boundary was acquired by the State Authority, and submissions on behalf of the Appellants to the Federal Court suggest that it was not).

p.60, 20 & p.49, 13

pt Ex D8

p.75, 35-45

30 9. The Appellants' lands were within the area allocated on plan J7/3872 as "Kegunaan Khas", described in the State Planning Officer's report in the following terms :

pt Ex D8

"SPECIAL AREA

p.142, 25-30

An Area of approximately 385 acres has been zoned for special purposes which includes recreation such as beaches for swimming, boating, picnic areas, camping sites, hotels, chalets and shops."

40 10. The State Planning Officer sent copies of his plans J7/3872 and J7/3872A to the State Engineer, Commissioner of Lands and Mines, Collector of Land Revenue and Harbour Master. This

p.30, 1-5 & p.139, 7-11

RECORD

p.30, 37-39 Case will refer later to the use made by the Commissioner of the former plan. The State Planning Officer deposed in his affidavit affirmed on the 12th September 1973 that:

"The plan (J7/3872, pt Ex D8) containing my proposal of the zoning of the area had not been accepted by the State Government."

p.137, 25-28 Save as aforesaid no evidence was led on behalf of the Respondent of action taken on its behalf "to acquire land in the Pasir Gudang area for the purpose of turning it into Harbour and Industrial sites" (vide State Development Officer's letter of 2nd April 1970) before the declaration of intended acquisition published on the 21st January 1971, which is more particularly referred to in paragraph 11 hereafter. No doubt a preliminary notice in Form A under section 4 was published in the Gazette of the State Authority's satisfaction that land was likely to be needed, but no evidence was led on the point one way or the other. Neither did the Respondent lead evidence of action taken by the Collector to prepare and submit to the State Authority a plan and list of lands needed for any of the purposes referred to in section 3, although Syed Othman J. assumed in his judgment that such a plan had been submitted.

p.59, 18-20

Ex P1 at pp.96-113

p.96, 15-30

11. On the 21st January 1971 the Respondent published in the Gazette a declaration in Form D under section 8 of the Act, the English translation of which reads as follows:

"No. 55 LAND ACQUISITION ACT, 1960

FORM D
DECLARATION OF INTENDED ACQUISITION

(SECTION 8)

It is hereby declared that particular lands and areas specified in the Schedule hereto are needed for the following purpose:

Construction of Port, Residential and Industrial. 40

2. A plan of the particular lands and areas so specified may be inspected during the normal

hours of business in the Land Office of the District in which such lands and areas are situated.

Dated this 18th day of January, 1971.
(PTG.J(R)Bil.1; PHTJB. 7/2/70)

COMMISSIONER. "

10 Listed in the Schedule to the declaration were 264 separate parcels of land totalling about 5713 acres, and including the lands owned by the Appellants.

12. Each side produced in evidence a plan purporting to be a copy of the plan referred to in paragraph 2 of the Form D declaration. The first Appellant in his affidavit sworn on the 8th October 1972 deposed that :

20 "... as Members of the Public are not allowed to purchase copies of the said plan, I exhibit herewith a plan of the area showing all the relevant details as displayed in the plan produced for public examination." p.21, 28-31

This plan is now Ex.P5. In an affidavit affirmed on the 26th October 1972 an official of the Respondent deposed that this plan was "not a true copy of the plan referred to in the said Form D" and he would produce the plan referred to at the hearing of the motion. In the event the Commissioner, above whose title the declaration in Form D was published, deposed in his affidavit affirmed on the 13th September 1973 to the identity of the plan referred to in that declaration. He said that he had received a copy of plan J7/3872 (pt Ex.D8) from the State Planning Officer and -

30 Ex.P5 in folder p.24, 12-15 p.24, 6-9 p.32, 4-13

"Due to the urgency of the acquisition and lack of large scale plans of the area to be acquired by the Government, I had used the said Exhibit (pt D8) as the plan showing the particular lands and the areas to be acquired by the Government."

40 13. Exhibits P5 and pt D8 are clearly prints from the same negative of plan J7/3872. The only differences are that the latter is coloured up with an additional key on the left hand side (discrepancies between the two keys on this plan were not explained in evidence). Both plans, Exs.P5 & pt D8

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therefore, are identical in dividing the lands into a number of areas allocated to a specific use with the Appellants' lands situated in an area allocated as "Kegunaan Khas" (Special Purposes), and separate areas allocated to port, industrial and residential purposes.

Ex.P2, pp.
114-115

14. On the 23rd February 1971 the first Appellants's solicitors wrote to the Collector pointing out that the first Appellant's lands were shown on the plan referred to in the Form D declaration as being in an area reserved for "Kegunaan Khas", that two of the plots of land were already developed as a beach and holiday resort and the third was also to be utilized for this purpose, and asking the Collector in these circumstances to excise the three properties from the intended acquisition proceedings. The Collector did not reply to this letter.

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p.5, 34-35

p.3, 41-
p.5, 3

15. An enquiry under section 12 of the Act was held on the 17th November 1971 concerning the lands of the first Appellant and on the 19th September 1971 concerning the lands of the second Appellant. At no time before, during or since that enquiry, until this action was commenced, did the Respondent suggest that the Appellants' lands were required for any purpose other than that stated on the plan referred to in the Form D declaration

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p.4, 3-6

pt.Ex P4
p.118

16. On the 20th April 1972 the Commissioner issued a Certificate of Urgency in Form I under section 19 of the Act referring to the Gazette Notification of the 21st January 1971 (Ex.P1) and stating as follows:-

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p.118 10-
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"Whereas the land schedule below, being country/land arable land/unoccupied land, was declared by the above Gazette Notification to be required for a public purpose:

And whereas such land is now urgently required for use for a public purpose:

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Now therefore in exercise of the powers conferred by Section 19 of the Land Acquisition Act, 1960, I hereby certify that such land is urgently required for use for a public purpose and DIRECT you

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forthwith to take possession of such land."

The Appellants' lands were included in the Schedule to the Certificate of Urgency, as were all the lands listed in the Schedule to the Form D declaration except two parcels totalling about 37 acres (this is apparent from a comparison of the two schedules). It is to be observed that, contrary to the assertion made in the Certificate of Urgency, the Form D did not declare any land to be needed for a public purpose

Ex P1 at
p.112, 16 &
27. Lots
2173 & 1942

Ex P1 at
p.96, 22-23

17. On the 22nd April 1972 the Collector issued a notice in Form K under section 22 of the Act that he had that day "taken formal possession of the land shown in the Schedule below to the extent declared in the last column of the Schedule." This schedule was identical to the schedule to the Form I Certificate of Urgency. The notice was served on the Appellants and formal possession of their lands was thus taken on the 22nd April 1972. The Collector wrote to the first Appellant on the 3rd June 1972 stating that his lands had "become State land", and asking him to deliver up the keys of the buildings on the lands.

Pt Ex P4 at
p.117

p.8, 25-28
p.9, 33-38

Ex P3 at
p.116

18. This prompted the first Appellant together with the second Appellant to commence proceedings against the Respondent by an Originating Notice of Motion filed on the 4th June 1972 seeking a declaration that the proceedings by the Respondent for the acquisition of their lands were illegal and as such null and void. A summons issued next day for an interim injunction to restrain the Respondent from proceeding with the acquisition until after the hearing of the substantive motion was dismissed on the 8th August 1972. The motion came on for hearing before Syed Othman J. on the 20th September 1973, and judgment was reserved until the 4th June 1974

p.1 1-
p.2, 10

p.16, 19-34

p.53, 20-
p.53, 14

19. It is apparent from the affidavit of the State Planning Officer affirmed on the 12th September 1973 that some time well after the Appellants had begun their action another layout for the area acquired by the Respondent was prepared. He says that plan J7/3872 was no more than a draft layout which represented only his own proposal and continues at paragraph 10 of his affidavit:-

p.30, 12-20

"The plan (J7/3872) containing my proposal

p.30, 37-43

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of the zoning of the area had not been accepted by the State Government. Another layout plan and zoning of the area has now been submitted to the (State Development Officer) for his comments and advice after which it will be forwarded to the State Government for consideration."

Plan pt Ex
D8 in folder

A copy of this further layout was produced and is plan J7/3872/2 now part of Exhibit D8. It is clear from this evidence and the dates on the plan itself (8th January 1973 in Roman numerals and 22nd May 1975 in Arabic) that this plan was prepared long after the Appellants' lands had been acquired. No explanation appears on the Record for the second date on the plan, the 22nd May 1975, which is some 20 months after the affidavit attaching it was affirmed.

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20. No evidence was led as to whether the Respondent has in the event accepted the layout shown on this later plan. But it shows a substantially different zoning arrangement from that shown on the earlier plan, J7/3872, with the Appellants' lands situated in an area allocated for "Perindustrian Berat" (Heavy Industry).

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P.76, 1-4
p.83, 1-4 &
p. 91, 15-24

21. Whilst no evidence was led on the point, it appears to have been agreed that by the time that written submissions were submitted to the Federal Court in November 1974 the Appellants' lands were in fact being used as part of a shipyard.

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THE JUDGMENTS BELOW

22. The Appellants' application was dismissed by Syed Othman J. on the 4th June 1974 for the following principal reasons appearing from the Grounds of Judgment dated the 3rd June 1974:-

p. 59, 7-12

(1) The plan referred to in the Form D declaration was a draft layout plan which was not approved by the Respondent and showed the zoning of areas which did not correctly reflect the intention of the Respondent. The Commissioner's use of this plan was a mistake. He should have used the plan submitted by the Collector under section 7. No reason had been given why he had not used "another plan approved by the Government (which) shows that the applicants' lands are within the area for a shipyard and heavy industry" (no doubt a

p.59, 29-31
p.59, 18-22

p.59,24-29

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reference to plan J7/3872/2, pt Ex.D8). The mistake should, however, have been obvious to the Appellants and was capable of correction.

p.60, 3-6

p.59,31-32

(2) The material or substantive part of the Form D declaration was contained in the first paragraph. Paragraph 2 was merely procedural and could not restrict or nullify the effect of the declaration in paragraph 1 which "clearly indicates that the applicants' lands are in the list of lands needed for public purposes mentioned in the notification."

p.59, 40-42

p.59, 46-47

p.59, 48-51

p.59, 42-45

(3) The Appellants had not established bad faith on the part of the Respondent. The explanation for the fact that the Respondent had acquired 5713 acres and not the 2000 acres envisaged by the State Development Officer was that given on behalf of the Respondent, namely that "2000 acres reflected only the exact need which does not include incidentals e.g. roads, drains, open space, gardens and vehicle parks." The Respondent had power under section 30 of the Interpretation and General Clauses Ordinance, 1948 to acquire land for such "incidental" purposes. The Respondent had said that all the lands were required for the purposes declared in the notification, and it was not required to "account for every inch of the lands it is acquiring." Moreover, the proposal for the 2000 acres was by the State Development Officer, and it was "clear from what transpired afterwards that the State Authority itself was of the mind that more lands were needed. And hence the declaration of 5,713 acres which was made in June 1971" (sic: the intended reference was no doubt to January 1971).

p.61, 18-19

p.60, 19-25

p.60, 48-

p.61,

p.61, 10-14

p.61, 22-28

The Appellants' appeal to the Federal Court of Appeal was dismissed on the 16th January 1975, their Lordships holding that:-

(1) The "meat" of the Form D declaration was contained in its first paragraph. The reference to the plan in the second paragraph was only to enable owners and other interested persons to check whether or not their lands were to be acquired and if so to what extent.

p.88, 44-

p.89, 1

(2) The effect of section 8(3) was to make the declaration conclusive evidence that all the lands referred to therein were needed for the purpose specified therein.

p.89, 13-16

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- p.89, 17-22 (3) The fact that the Appellants' lands were marked "Kegunaan Khas" did not affect the issue, since "the matter is governed" by the first paragraph of Form D which clearly stated the purposes for which all the lands shown on the plan were to be acquired.
- p.89, 23-30 (4) The plan referred to in the Form D declaration was headed "Rancangan Pelabuhan" (Proposed Harbour). This heading was all-embracing and described clearly the purpose for which the lands on it were to be acquired, and the words "Kegunaan Khas" merely detailed the particular use to which the Appellants' lands would be put within the proposed harbour area. 10
- p.89, 31-43 (5) The Appellants had not shown bad faith on the part of the Respondent in acquiring almost 6000 acres instead of the 2000 acres envisaged by the State Development Officer. The views of that officer and other civil servants did not invalidate the final decision of the Ruler as to the lands and the total acreage needed.
- p.90, 5-8
- p.91, 15-24 (6) The fact that the Appellants' lands had been allocated on plan J7/3872 for "Kegunaan Khas" but had been finally acquired for a shipyard did not invalidate the acquisition, because use as a shipyard was still use for an industrial purpose, which was specified in the first paragraph of Form D. 20

SUBMISSIONS

23. It is well settled that where a public body or other person is authorised by statute to acquire land compulsorily it is not legitimate for that person to seek to use such power for some different purpose, and if it attempts to do so the Courts will interfere. 30

See: Galloway v Mayor & Commonalty of London
(1886) LR 1 HL 34 @ 43 per Ld. Cranworth LC

Sydney Municipal Council v Campbell (1925)
AC 338 @ 343 per Duff J.

Simpsons Motor Sales v Hendon Corpn. (1963)
2 AER 484 @ 488E per Ld. Evershed

Webb v Minister of Housing & Local Govnmt.
(1965) 2 AER 193 @ 201B per Ld. Denning MR

24. The Appellants' first submission is that their lands were acquired for purposes other than those for which the Respondent was authorised to acquire them, and the acquisition was therefor unlawful. 40

Their reasons are as follows:-

10 (1) Although the Respondent by its declaration in Form D professed to have decided that all the lands listed in the schedule thereto, including the Appellants' lands, were needed for the purpose of "Construction of Port, Residential and Industrial", plan J7/3873, taken in combination with the State Planning Officer's report of June 1970, manifested the intention of the Respondent to acquire the Appellants' lands as part of an area for use for recreational purposes, such as beaches for swimming, boating, picnic areas, camping sites, hotels, chalets and shops.

20 (2) Such a recreational purpose is not within or incidental to the declared purpose of "Construction of Port, Residential and Industrial", giving to those words their ordinary and natural meaning. If there were any remaining doubt, the point is put beyond argument by the clear distinction drawn on plan J7/3872 and in the said report between the areas allocated severally for port, residential and industrial purposes, and the area marked "Kegunaan Khas". Nor is such a recreational purpose one for which the Respondent had power to acquire land under section 3 of the Act.

30 (3) No evidence was adduced by the Respondent to show that, if and to the extent that it had addressed itself to the need to acquire and the purpose in acquiring the Appellants' lands, the intention was to acquire those lands for any other purpose than that manifested by plan J7/3872 and the said report.

40 (4) The effect of section 8(3) of the Act is that the declaration in Form D is conclusive evidence that the Appellants' lands were needed for the purpose therein specified, but not that that was the purpose for which the Respondent intended to acquire those lands. The Court is, therefore, prevented by section 8(3) from investigating the Respondent's need for the land acquired, but not the intended purpose in acquiring it. The Federal Court of Appeal were accordingly wrong in holding, if it intended so to hold, that by reason of section 8(3) the declaration in Form D was conclusive of the purpose for which the Respondent intended to acquire the lands therein specified.

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(5) The fact that the Appellants' lands have, since their acquisition by the Respondent, been used for the purpose of a shipyard (admittedly an industrial purpose) does not validate the Respondent's acquisition of those lands because, at the time when the Respondent decided to and did acquire the lands, the purpose of the acquisition was recreational and not within any of the purposes stated in the Form D declaration and authorised by section 3.

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pt Ex D8 in
folder

(6) Although the Appellants' lands are shown on plan J7/3872/2 as part of an area allocated for industrial purposes, no evidence was adduced that this plan has been approved by the Respondent, and in any event it is clear from the evidence and the plan itself that no decision on this layout was or could have been made before the Appellants' lands were acquired. The industrial allocation of the Appellants' lands on this plan is therefore not relevant to the validity of the Respondent's acquisition of these lands.

25. Conversely if, as the Respondent contends, plan J7/3872 did not represent the Respondent's intention in acquiring the lands shown thereon and in particular the Appellants' lands, the Respondent does not appear from the evidence to have addressed itself for the question of what land was required and for what purpose or therefore to have arrived at the 'decision' which, under section 8(1), was a necessary condition precedent to the effective exercise of its statutory power of compulsory acquisition. There was no evidence of the Respondent having formulated any decided intention inconsistent with the scheme shown on plan J7/3872 at any time prior to the acquisition of the Appellants' lands, and there cannot be an effective decision where proposals are only in draft. Moreover, to have acquired any land, let alone an area which exceeded by almost 200% that envisaged in the State Development Officer's letter of the 2nd April 1970, without having first decided that every part of it was required for an authorised purpose, and without - on the evidence - having any material before it to justify such an acquisition was, it is submitted, an unreasonable and therefore unlawful exercise or abuse of power.

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pp.137-
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26. It was argued for the Appellants in the Courts below that the Respondent had acted mala fide. In support of this argument it is unnecessary to go further than to submit, in accordance with well established principles, that an acquiring authority acts mala fide if it seeks to acquire land for an unauthorised purpose (London & N.W. Rly Co. v Westminster Corpn. (1904) 1 Ch. 759 @ 767 per Vaughan Williams L.J.; and Smith v East Elloe RDC (1956) AC 736 @ 767 per Lord Radcliffe).

27. The arguments set out above rest on the discrepancy between the purposes stated in the Form D declaration and those manifested by plan J7/3872. The Appellants submit in the alternative that this plan is an inseparable and necessary part of Form D and the statement of purposes there given has to be read together with that plan. The basis of this latter submission is that if the plan is not so treated the statement of purpose is too vague and uncertain to be effective. Section 8 requires the State Authority to declare the precise purpose, being one of the purposes specified in section 3, for which it has decided to acquire land. Taken by themselves the words "Construction of Port, Residential and Industrial" in paragraph 1 of the Form D declaration refer, however, to a multiplicity of purposes applicable to each of the 264 parcels of land listed in the schedule to the declaration. This want of particularity can only be supplied by reading the words together with the plan; only then is the reader able to see the precise purpose for which any particular piece of listed land is required. Viewed in this way the plan is a convenient and sensible way of dealing with a situation which would otherwise require a lengthy textual declaration or a large number of separate declarations. The Federal Court of Appeal were therefore wrong in holding that the function of the plan was "only to enable owners and other interested persons to check whether or not their lands are to be acquired and if so to what extent". This purpose would have been served equally well by the list which accompanied the declaration. When the text of the declaration and the plan are taken together an apparent inconsistency is revealed between the two inasmuch as more purposes are shown on the plan than are stated in the text. This inconsistency may be resolved in two ways; either, as the Appellants would principally submit, by regarding the declaration as valid in, but only in, the case of those lands which are shown on the plan as allocated for a port, industrial or residential purpose; or by holding that the inconsistency renders the whole

p.88, 45-
p.89, 1

RECORD

of the Form D declaration uncertain of meaning and inoperable. On either view there was valid declared purpose in relation to the Appellants' lands.

p.59, 39-45

28. The Learned Judge at first instance held that paragraph 1 of the Form D declaration "clearly indicates that the applicants' lands are in the list of lands needed for public purposes mentioned in the notification." This concept of

p.61, 6-9

"public purposes" is echoed in his later observation that "The Government is building a new industrial town with a port. It cannot be denied that all this is for the public good and not for the benefit of a few individuals." The Federal Court

p.89, 23-31

of Appeal, relying on the heading to plan J7/3872, spoke in terms of an all-embracing "harbour area". The Appellants submit that the approach of the Courts below evidenced by these passages from

the judgments is wrong for three reasons. Firstly, acquisition of the Appellants' lands could not properly have been, and was not, justified by any such composite purpose. Secondly, a port or harbour is not one of the purposes for which the Respondent had power to acquire land under

section 3. Thirdly, none of the purposes specified in the Form D declaration was stated to be a public purpose. Acquisition of the Appellants' lands could not be, and was not, justified by the power of acquisition conferred by section 3(a). This was accepted by the Federal Court of Appeal and not denied by the Respondent.

p.87, 36-
p.88, 1

29. It follows that possession and acquisition of the Appellants' lands pursuant to the Certificate of Urgency issued on the 20th April 1972 and the Notice in Form K dated the 22nd April 1972 was unauthorised and unlawful, in that the Certificate wrongly stated that the Appellants' lands had been declared in the Gazette Notification No. 55 to be required for a public purpose. This point was not advanced in the Courts below, but the Appellants would wish to argue it on this appeal. As it is essentially a point on the construction of the statutory provisions and their application to the documents produced in evidence the Appellants submit that it is one which they should be permitted to advance.

pp.117-
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30. WHEREFORE THE APPELLANTS HUMBLY SUBMIT that this Appeal be allowed for the following among other.

REASONS

1. BECAUSE the Appellants' lands were acquired for purposes other than those for which the Respondent was authorised to acquire them.
- 10 2. BECAUSE if, as the Respondent contends, plan J7/3872 did not represent the intention of the Respondent in acquiring the Appellants' lands at the time of acquisition, the Respondent failed to satisfy a necessary condition precedent to the valid exercise of its power of compulsory acquisition, in that it had not addressed itself, and had no material before it on which it could reasonably have addressed itself, to the question of what land it required and for what purpose, and had thus failed properly or at all to arrive at the necessary decision required under section 8(1) before a declaration in Form D could validly be issued.
- 20 3. BECAUSE if the purpose for which the Appellants' lands were acquired was not an authorised purpose, the provisions of section 8(3) are not capable of curing that defect.
- 30 4. BECAUSE whether the text of the declaration in Form D is taken by itself or whether it is read in conjunction with the plan J7/3872, the statement of purpose is too vague and uncertain to be effective, in the former case because a multiplicity of purposes is stated no one of which can be related to any particular parcel of land, and in the latter case because there is an inconsistency between the text and the plan. In either event there was no valid declared purpose in relation to the Appellants' lands.
5. BECAUSE the Certificate of Urgency wrongly stated that the Appellants' lands had been declared in the Gazette Notification No. 55 to be required for a public purpose.

LIONEL READ

HOWARD PAGE

No. 44 of 1975
JUDICIAL COMMITTEE OF THE
IN THE/PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF
MALAYSIA HOLDEN AT KUALA LUMPUR

B E T W E E N :

SYED OMAR BIN RAHMAN
TAHA ALSAGOFF and
CHEE KUTTY S/O ABU
BAKAR Appellants

- and -

THE GOVERNMENT OF
THE STATE OF JOHORE Respondent

CASE FOR THE APPELLANTS

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