

32/84

Nos. 39 & 40 of 1982

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :-

Appeal No. 39 of 1982

UNITED MALAYAN BANKING CORPORATION
BERHAD Appellant

- and -

10 PERMUNGUT HASIL TANAH KOTA
TINGGI Respondent

Appeal No. 40 of 1982

JOHORE SUGAR PLANTATION AND
INDUSTRIES BERHAD Appellant

- and -

PERMUNGUT HASIL TANAH KOTA
TINGGI Respondent

CASE FOR THE RESPONDENT

Record

20 1. These are appeals from the judgment and
order of the Federal Court of Malaysia given on
12th August 1981 allowing the Respondent's appeals
against the judgment and order of the High Court
in Malaya (Gill C.J.) given on 6th March 1979,
brought with the leave of the Federal Court given
on 2nd November 1981. The two appeals are
consolidated and were heard together in both the
High Court and the Federal Court.

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p.125
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30 2. The main question raised in the present
appeals is whether the Courts of Malaysia have
jurisdiction to grant relief against the forfeiture
of alienated land where such forfeiture is
effected in accordance with the provisions of the
National Land Code 1965.

Record

3. In December 1966 approximately 20,680 acres of land in the District of Kota Tinggi, Johore were alienated under Section 76 of the National Land Code ("the Code") by the State Authority of Johore to the Johore Sugar Plantation Industries Berhad, who is the Appellant in Appeal No. 40 (hereinafter called "the second Appellant"). The land was alienated to the Second Appellant as registered proprietor for a term of 99 years and the second Appellant charged the land to United Malayan Banking Corporation Berhad, who is the Appellant in Appeal No. 39 (hereinafter called "the First Appellant"). The charges were to secure banking facilities granted by the First Appellant to the Second Appellant. Three charges were granted over the land and the amount owing by the Second Appellant and secured by the three charges on 26th November 1977 was \$5,334,163.60 with interest accruing at 11 per cent.

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4. In consideration of the alienation of the land the Second Appellant was obliged to pay rent to the State Authority under Section 76(b) of the Code. For the year 1977 the rent due under Section 76(b) of the Code was \$186,125. This rent was demanded by service upon the Second Appellant of a notice described as "Form 6A" pursuant to the provisions of Section 97 of the Code. And a copy of the notice was served upon the First Appellant under Section 98 of the Code. The notice and the copy were served simultaneously on 2nd June 1977 but payment was not made within the stipulated period of three months. As a result, the Respondent in accordance with Section 100 of the Code by an order made on 7th September 1977 declared the land forfeit to the State Authority and published in the State Government Gazette of 15th September 1977 notification of forfeiture of the land under Section 130(1) of the Code.

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5. The Second Appellant applied to the State Authority on 17th November 1977 for the annulment of the forfeiture under Section 133 of the Code but by a letter dated 26th November 1977 the State Authority, acting under Section 133(2) of the Code, refused to annul the forfeiture.

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p.2, p.15

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7. The motions were heard together by Tan Sri S.S. Gill, C.J. (as he then was) who gave judgment

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on 6th March 1979 in favour of the Appellants and granted relief against the forfeiture. The Respondent appealed to the Federal Court (Coram Suleiman J., Salieh Abas J, and E. Arbcoldcader J.) which by a judgment and order of 12th August 1981 allowed the appeal.

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10 8. In the Respondent's respectful submission these present appeals should be dismissed because the second Appellant's claim for relief from forfeiture is unambiguously prohibited by the terms of Section 134(2) of the Code which provides as follows:

20 "No order of the Collector under Section 100 or 129 shall be set aside by any Court except upon the grounds of it having been made contrary to the provisions of this Act, or of there having been a failure on the part of the Collector to comply with the requirements of any such provision; and no such order shall be set aside by reason only of any irregularity in the form or service of any notice under Chapter 2 of Part Six or, as the case may be, Chapter 5 of Part Seven unless, in the opinion of the Court, the irregularity was of a significant nature".

30 9. The terms of Section 418(2) of the Code do not require or imply any widening of the limits placed on the Court by Section 134(2). The purpose of Section 418(2) is (inter alia) to declare the powers of the Court in a case where a purported forfeiture under Section 100 of the Code has been made in breach of the provisions of the Code and is therefore within the exception to the general bar on Court proceedings laid down by Section 134(2). In such a case, Section 418(2) enables the Court to make such order as it considers just. In the present cases there has been no breach by the Respondent of any of the provisions of the Code apart from a possible error (which is not admitted) in the notice relating to the amount of rent which error was found by both the High Court and the Federal Court not to have been of a significant nature. In such circumstances Section 134(2) operates as a complete bar to Court proceedings for relief against forfeiture and Section 418(2) has no application. The Federal Court has previously held this to be the proper construction of Section 134(2) in Pow Hing & Another v. Registrar of Titles, Malacca /1981/ M.L.J. 155 at page 160.

p.114,155

50 10. English authorities on the circumstances in which relief against forfeiture will be granted do

not, in the Respondent's submission, have any application to the present cases. While Section 3(1) of the Civil Law Ordinance 1956 introduces English principles of common-law and equity, the subsection opens with the words:

"Save so far as other provision has been made or may hereafter be made by any written law in force in Malaysia"

English principles therefore cannot be applied to the forfeiture now in issue since the propriety and validity of that forfeiture and the availability or otherwise of relief against it is regulated specifically by statutory provisions in the Code. This conclusion is also supported by the provisions of Section 6 of the Civil Law Act 1956 which excludes English conveyancing and land-law principles from Malaysian law. More generally, in Midland Bank Trust Company Limited and Another v. Green /1981/ A.C. 513 your Lordships' House disapproved the introduction of equitable principles to detract from or modify the proper construction of a statute. 10 20

11. The fact that relief in respect of this particular forfeiture cannot be obtained from the Courts by reason of the restriction in Section 134(2) of the Code does not mean that no remedy is available. Section 133 of the Code gives an administrative remedy by empowering the State Authority to annul a forfeiture under Section 100. And Section 133(3) entitles the Second Appellant to apply for a new alienation of the land forfeited. The scheme of the Code is to exclude from the jurisdiction of the Courts cases of forfeiture where there has been no breach of the requirements of the Code by the Collector. Parties suffering such forfeiture have administrative remedies but are excluded from resort to the Courts. 30

p.110 12. In the Federal Court the First Appellant made a preliminary application to dismiss the appeal by the Respondent in limine on the ground that by accepting rent for periods after the forfeiture the Respondent had waived the Collector's right of forfeiture. The Federal Court dismissed this application on three main grounds, namely:- 40

p.111 (1) That in accepting the rent the Respondent was complying with the terms of the Order of the High Court which could not amount to a "waiver" or give rise to any estoppel.

(2) That since forfeiture had taken place on 15th September 1977 no subsequent acceptance of rent could retrospectively cancel that forfeiture, and that English authorities on waiver were concerned with waiver of rights to claim forfeiture and could not apply where forfeiture had already occurred.

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(3) That even if (contrary to the view of the Court) waiver were a theoretical possibility in these circumstances, a purported waiver by an individual collector of Land Revenue could not bind or estop the State Authority

pp.112,133

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The Respondent respectfully adopts the reasoning of the Federal Court and further relies on the fact that the receipt of rent for the years 1978 and 1979 occurred when the Appellants well knew that the Respondent was appealing to the Federal Court with a view to the enforcement of the forfeiture, notice of appeal having been given on 6th March 1979. This being so the Appellants could not have been misled by the acceptance of rent and such acceptance could therefore not give rise to any waiver or estoppel.

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13. AND the Respondent respectfully submits that the Appeals should be dismissed for the following among other

R E A S O N S

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1. BECAUSE the terms of Section 134(2) of the Code are clear and ought to be applied.

2. BECAUSE Section 133 of the Code gives an administrative remedy to those whose land is forfeited.

3. BECAUSE Section 134(2) excludes adjudication by the Court in the present case because the Respondent has complied with all the requirements of the Code.

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4. BECAUSE in the circumstances of this case acceptance of rent after the date of forfeiture did not give rise to a waiver of the Respondent's right to forfeit the alienated land.

5. BECAUSE the decision of the Federal Court was right and ought to be upheld.

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STEWART BATES

STEPHEN ALLCOCK

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A N D B E T W E E N :

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PERMUNGUT HASIL TANAH
KOTA TINGGI

Respondent

CASE FOR THE RESPONDENT

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