

32/64

Nos. 39 and 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 1982UNITED MALAYAN BANKING
CORPORATION BERHADAppellants

- and -

PEMUNGUT HASIL TANAH,
KOTA TINGGIRespondent

AND B E T W E E N :

Appeal No. 40 of 1982JOHORE SUGAR PLANTATION
& INDUSTRIES BERHADAppellants

- and -

PEMUNGUT HASIL TANAH,
KOTA TINGGIRespondent

(CONSOLIDATED)

RECORD OF PROCEEDINGS

PHILIP CONWAY THOMAS & CO.
61 Catherine Place,
London, SW1E 6HB
No. 39 of 1982STEPHENSON HARWOOD,
Saddlers' Hall,
Gutter Lane,
Cheapside,
London EC2V 6BS
Nos. 39 & 40 of 1982TURNER & PEACOCK,
1 Raymond Building,
Gray's Inn,
London, WC1R 5RJ
No. 40 of 1982Solicitors for the
AppellantsSolicitors for the
Respondent

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

Appellants

- and -

PEMUNGUT HASIL TANAH,
KOTA TINGGI

Respondent

A N D B E T W E E N :

Appeal No. 40 of 1982

JOHORE SUGAR PLANTATION
& INDUSTRIES BERHAD

Appellants

- and -

PEMUNGUT HASIL TANAH,
KOTA TINGGI

Respondent

(CONSOLIDATED)

RECORD OF PROCEEDINGS

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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

Appellants

- and -

10 PEMUNGUT HASIL TANAH,
KOTA TINGGI

Respondent

AND B E T W E E N :

Appeal No. 40 of 1982

JOHORE SUGAR PLANTATION
& INDUSTRIES BERHAD

Appellants

- and -

PEMUNGUT HASIL TANAH,
KOTA TINGGI

Respondent

20

RECORD OF PROCEEDINGS

In the High
Court

No. 1

NOTICE OF MOTION
(No.42 of 1977)

No.1
Notice of
Motion
(No.42 of
1977)

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

ORIGINATING MOTION NO. 42 OF 1977

7th December
1977

In the Matter of Land held
under Q.T.(R) 156 for Lot
MLO 1481(A) measuring 20,680
acres or thereabouts in the
Mukim of Ulu Sungei Johore, 10
District of Kota Tinggi,
State of Johore.

And

In the Matter of three
Charges of the said Land in
favour of United Malayan Banking
Corporation Berhad, registered
under Pres.No.9244/73 Vol.183
Fol.165, Pres.No.3088/75
Vol.203 Fol.12 and Pres.No. 20
3089/75 Vol.203 Fol.12,
respectively.

And

In the Matter of Johore
Government Gazette Notification
No.1136 dated 15th September,
1977.

And

In the Matter of Sections 130,
131, 132, 417 and 418, National 30
Land Code, 1965.

Between

UNITED MALAYAN BANKING
CORPORATION BERHAD

Applicant

And

PEMUNGUT HASIL TANAH,
KOTA TINGGI

Respondent

NOTICE OF MOTION

40

TAKE NOTICE that the Court will be moved on the 28th day of March, 1978 at 9.00 o'clock in the forenoon or so soon thereafter as Counsel can be heard by Mr. Wong Kim Fatt of Counsel for the abovenamed Applicant for the following order that :

In the High Court

No.1
Notice of Motion
(No.42 of 1977)

7th December 1977
(continued)

10

a) the Order declaring the said Land, MLO 1481(A), Q.T.(R) 156, Mukim of Ulu Sungei Johore, District of Kota Tinggi, forfeit to the State Authority by the Respondent appearing in the Johore Government Gazette Notification No.1136, dated the 15th September, 1977, be set aside;

20

b) the Respondent and all other appropriate officers or authorities be directed to effect or register all memorials or endorsements pursuant to the order of this Honourable Court affecting the said Land; and

c) such other order or orders as the Court deems fit or just.

Dated this 7th day of December, 1977.

(L.S.)

Sd:
.....
Solicitors for Applicant

Sd: Rohani bte.Mohd.Dali
.....
Senior Assistant Registrar
High Court,
Johore Bahru.

30

This Application is intended to be served on the Collector of Land Revenue, Kota Tinggi.

This Application is supported by the Affidavit of Mr. Cho Mun Tuck affirmed on the 7th day of December, 1977.

Application is filed on behalf of the Applicant by its Solicitors Messrs. Allen & Gledhill, Rooms 302-303, 3rd Floor, O.C.B.C. Building, Johore Bahru.

In the High Court

No. 2

No.2
Affidavit of
Cho Mun Tuck
(No.42 of
1977

AFFIDAVIT OF CHO
MUN TUCK
(No. 42 of 1977)

7th December
1977

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

ORIGINATING MOTION NO. 42 OF 1977

In the Matter of Land held
under Q.T.(R) 156 for Lot MLO
1481(A) measuring 20,680 acres
or thereabouts in the Mukim of 10
Ulu Sungei Johore, District of
Kota Tinggi, State of Johore.

And

In the Matter of three Charges
of the said Land in favour of
United Malayan Banking
Corporation Berhad, registered
under Pres. No.9244/73 Vol.183
Fol.165, Pres. No.3088/75 Vol.203
Fol.12 and Pres. No.3089/75 20
Vol.203 Fol.12, respectively.

And

In the Matter of Johore
Government Gazette Notification
No.1136 dated 15th September,
1977.

And

In the Matter of Sections 130,
131, 132, 417 and 418, National
Land Code, 1965. 30

Between

UNITED MALAYAN BANKING CORPORATION
BERHAD

Applicant

And

PEMUNGUT HASIL TANAH,
KOTA TINGGI

Respondent

A F F I D A V I T

I, Cho Mun Tuck (I/C No.7789495), of full 40
age of United Malayan Banking Corporation Berhad,
Jalan Ah Fook, Johore Bahru, do hereby solemnly
and sincerely affirm and state as follows :-

1. I am the Manager of the Applicant, United Malayan Banking Corporation Berhad, a company incorporated in Malaysia having its registered office at Bangunan UMBC, Jalan Sultan, Kuala Lumpur, and a branch in Johore Bahru. I am duly authorised to make this affidavit on its behalf.

In the High Court

No.2
Affidavit of
Cho Mun Tuck
(No.42 of
1977)

7th December
1977
(continued)

10 2. All that piece of land (the "said Land") held under Q.T.(R) 156 for Lot 1481(A) measuring 20,680 acres or thereabouts, in the Mukim of Ulu Sungei Johore, District of Kota Tinggi, State of Johore, was charged by the registered proprietor Johore Sugar Plantations & Industries Bhd. (hereinafter called the "Chargor") to secure banking facilities granted by the Applicant to the Chargor. The charges in favour of the Applicant are registered as follows :-

(a) Pres. No. 9244/73 Vol.183 Fol.165

(b) Pres. No.3088/75 Vol. 203 Fol. 12

20 (c) Pres. No.3089/75 Vol. 203 Fol. 13

30 3. The Chargor is a public company incorporated in Malaysia having its registered office at 5th Floor, O.C.B.C. Building, Johore Bahru. I am informed and verily believe that the original paid up capital of the Chargor was \$36,682,000-00. The capital had since been reduced to \$7,336,400-00. I am further informed and verily believe that the Chargor has spent well over \$10,000,000-00 for development and expenditure costs, and that out of the total acreage of 20,680 acres, an area of 17,500 acres has been deforested and is ready for planting of sugar canes and that 8,500 acres of the said Land have been planted with sugar canes. There are two (2) sets of small existing sugar machinery.

40 4. The total amount of money owing by the Chargor under the said charges is \$5,334,163-60 as at 26th November, 1977, with further interest thereon at the rate of 11% with monthly rests until full settlement.

5. The purpose of the banking facilities granted to the Chargor is as follows :-

(a) To assist the Chargor in the development of the said Land comprising 20,680 acres for cultivation of sugar canes.

(b) To assist the Chargor in the construction of a sugar refining factory.

In the High Court

No.2 Affidavit of Cho Mun Tuck (No.42 of 1977)

7th December 1977 (continued)

- (c) To assist the Chargor in the purchase of acquisition of necessary machinery and equipment for harvesting of canes for the refining of sugar.
- (d) To provide additional capital to the Chargor for its daily operational expenses in the management and running of the whole complex.

6. The Applicant had been persuading the Chargor to reconstruct itself and to meet the conditions of the lease. The Applicant had been queried by Bank Negara Malaysia for paying the quit rent for the said Land for the year 1976. The Applicant had informed the Chargor to raise the funds for payment of the quit rent for 1977 for the said Land and that in the event that the Chargor was unable to raise the necessary funds for payment of the quit rent, the Chargor should refer the matter back to the Applicant for request for payment of the quit rent by the Applicant. The Chargor had verbally assured the Applicant that it would be able to raise the funds to pay the quit rent within the period stipulated by the Respondent in his notice dated the 2nd day of June 1977 and that it would take active steps to reconstruct itself. The Chargor did not refer the matter of payment of quit rent to the Applicant and the Applicant believed that the quit rent had been paid by the Chargor in time.

7. The Applicant subsequently discovered that the Respondent had by order declared the said Land forfeit to the State Authority, vide Johore Government Gazette Notification No. 1136 dated the 15th day of September 1977 for non-payment of the quit rent amounting to \$186,125-00 for the year 1977. The Applicant is aggrieved by the decision of the Respondent.

8. I verily believe that if the Order declaring the said Land forfeit is set aside by this Honourable Court, the Chargor will be able to do its best to continue with the development of its sugar project with the capital, machinery and equipment on which they have already expended substantial sums of money, running into millions of dollars over the past few years. I have been informed by the Chargor and verily believe that the Chargor has fully committed and is prepared to offer equity participation to Bumiputras up to the extent of 60% of the Chargor's share capital in line with the New Economic Policy.

9. I verily believe that the Chargor is very

10 keen, sincere and determined to carry out its sugar project on the said Land in order to achieve the final objective of a fully integrated sugar mill. If this objective is achieved, it will be able to produce an estimated 50,000 tons of white sugar a year, thereby saving the country millions of dollars in foreign exchange, as I understand that some 80% of the country's annual requirement of 400,000 tons of sugar is imported. In addition this project will provide numerous employment opportunities for Malaysians. I verily believe that the setting aside of the forfeiture order will therefore have beneficial consequences.

In the High Court

No.2
Affidavit of
Cho Mun Tuck
(No. 42 of
1977

7th December
1977
(continued)

20 10. The Applicant states that in all the circumstances of this case it is harsh and inequitable for the Respondent to declare the Land forfeit merely for non-payment of the quit rent for the year 1977. The forfeiture will cause hardship and irreparable loss to the Chargor, the Applicant and all the shareholders of the Chargor numbering over 3,000. On the contrary, it is just and equitable that the forfeiture order should be set aside. The Applicant seeks the discretion and sympathy of this Honourable Court and humbly submits that this is a proper case for the Court to exercise its discretion in setting aside the forfeiture order. The Applicant is willing and able at
30 all material times to pay the quit rent.

Affirmed by the abovenamed)
Cho Mun Tuck at Johore)
Bahru on this 7th day of) Sd: Cho Mun Tuck
December 1977 at 12.25 p.m.)

Before me,

Sd: Mustapha Bin Mohamad
Commissioner for Oaths
High Court, Johore Bahru.

40 This Affidavit is filed on behalf of the Applicant by its solicitors Messrs. Allen & Gledhill, Rooms 302-303, 3rd Floor, O.C.B.C. Building, Johore Bahru.

In the High
Court

No. 3

AFFIDAVIT OF RAHMAT
BIN A. RAHMAN, WITH
EXHIBITS THERETO
(No. 42 of 1977)

No.3
Affidavit of
Rahmat bin A.
Rahman with
Exhibits
thereto
(No. 42 of
1977)

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU
ORIGINATING MOTION NO. 42 OF 1977

17th June 1978

In the Matter of Land held
under Q.T.(R) 156 for Lot MLO
1481(A) measuring 20,680 acres 10
or thereabouts in the Mukim of
Ulu Sungei Johore, District
of Kota Tinggi, State of
Johore

And

In the Matter of three Charges
of the said Land in favour of
United Malayan Banking
Corporation Berhad, registered
under Pres. No.9244/73 Vol.183 20
Fol.165, Pres. No.3088/75
Vol.203 Fol.12 and Pres. No.
3089/75 Vol.203 Fol.12,
respectively.

And

In the Matter of Johore
Government Gazette Notification
No.1136 dated 15th September,
1977.

And 30

In the Matter of Sections 130,
131, 132, 417 and 418 National
Land Code, 1965.

Between

UNITED MALAYAN BANKING CORPORATION
BERHAD Applicant

And

PEMUNGUT HASIL TANAH, KOTA
TINGGI

Respondent 40

A F F I D A V I T

I, Rahmat bin A. Rahman, Collector of Land

Revenue, Pontian do solemnly affirm and say :

In the High
Court

1. I was the Collector of Land Revenue, Kota Tinggi, the Respondent herein, at the material time.

2. I crave leave to refer to the Affidavit of Cho Mun Tuck affirmed on the 7th day of December, 1977 and filed herein.

3. I have no knowledge of the facts stated in paragraph 1 of the said Affidavit.

10 4. I admit the facts stated in paragraph 2 of the said Affidavit.

5. I have no knowledge of the facts stated in paragraphs 3, 4, 5, 6, 8 and 9 of the said Affidavit.

6. As regards paragraphs 7 and 10 of the said Affidavit, I am advised and verily believe that,

20 (1) the Applicant herein could have availed itself but failed to avail itself of the opportunity to pay the quit rent for the year 1977 as provided for under section 98(1) of the National Land Code. A copy each of Borang 6A and A.R.Registered card addressed to the Applicant herein with its acknowledgment of receipt are annexed hereto and marked 'RAR 1' and 'RAR 2' respectively;

30 (2) this action by the Applicant herein is misconceived and bad in law in that section 418 of the National Land Code is not the remedy or any remedy at all open to the Applicant herein to appeal to the Court to set aside the order of forfeiture for the Applicant herein does not fall within the class "any person or body who was the proprietor of any alienated land" as envisaged by section 133 of the National Land Code for the State Authority could only
40 "re-alienate the land to the previous proprietor at any time" and none others and as such the Applicant herein could not be deemed to be "any person or body aggrieved" as enacted by section 418 of the National Land Code and consequently the Applicant herein has no locus standi to prosecute the appeal;

No.3
Affidavit of
Rahmat bin A.
Rahman with
Exhibits
thereto
(No. 42 of
1977)

17th June
1978
(continued)

In the High Court

(3) the one and only consideration of the Applicant herein is

No.3
Affidavit of
Rahmat bin A.
Rahman with
Exhibits
thereto
(No. 42 of
1977)

"The total amount of money owing by the Chargor under the said charges is \$5,334,163.60 as at 26th November, 1977, with further interest thereon at the rate of 11% with monthly rests until full settlement"

17th June
1978
(continued)

as per paragraph 4 of the said Affidavit and this I am advised and do hereby reiterate that section 418 of the National Land Code is not the remedy or any remedy at all open to the Applicant herein to appeal to the Court to set aside the order of forfeiture; and

10

(4) the order of forfeiture as appearing in the Johore Government Gazette Notification No.1136 of 1977 was published pursuant to section 100 of the National Land Code and in accordance with the statutory provisions.

20

WHEREFORE I pray that this action be dismissed with costs.

AFFIRMED by the abovenamed)
Rahmat bin A.Rahman at)
Johore Bahru this 17th day) Sd: Rahmat bin A.
of June, 1978) Rahman

Before me,

30

Sd: MUSTAPHA BIN MOHAMAD, P.I.S.
COMMISSIONER FOR OATHS
HIGH COURT,
JOHORE BAHRU

This Affidavit is filed by the State Legal Adviser's Chambers for and on behalf of the Respondent whose address is c/o the High Court Building, Johore Bahru, Johore.

TRANSLATION

In the High
Court

NATIONAL LAND CODE

FORM 6 A

(Section 97 and 98)

NOTICE OF DEMAND: ARREARS OF RENT

No.3
Translation of
Exhibit "RAR 1"
Notice of
Demand; arrears
of Rent

2nd June 1977

10 To Johore Sugar Plantations and Industries
Berhad of Bangunan O.C.B.C., 5th Floor, Jalan
Ibrahim, Johor Bahru proprietor of the land/s
described in the 1st and 2nd columns of the
Schedule below.

Whereas the rent reserved on the said
land/s and due in respect of the current year
is unpaid and, with effect from the 1st day of
June, in arrear.

20 You are hereby required, within three
months from the date of the service of this
notice, to pay at the Land Office of this
district/at Kota Tinggi all the sums now due
as entered in the 3rd-6th columns of the
Schedule and totalled in the final column thereof.

And take notice that, if the total/any
of the totals specified in the final column
is not paid in full within the said period of
three months, then I the undersigned, by
virtue of the powers conferred by section 100
of the National Land Code, shall by order
declare the land/the land in question forfeit
to the State Authority.

Dated this 2nd day of June, 1977.

30

Collector..signed.....

District.....Collector of Land Revenue

Kota Tinggi

Mukim Ulu Sungai Johor
PHT.KT. 14/706

SCHEDULE OF LAND AND ARREARS

No.3
Translation of
Exhibit "RAR 1"
Notice of
Demand; arrears
of Rent

2nd June 1977
(continued)

| Descrip- tion & No. of Title | Lot/ P.T. No. | Current Year's Rent | Arrears from previous years | Fees etc. charge- able as rent | Arrears fee/s | Total due |
|---------------------------------------|---------------------|---|--------------------------------------|---|---------------------------|--------------|
| QTRL 156 | MLO 1481 (A) | \$124,080/- (quit rent 31,020/- Education Rate) | - | \$31,020/- (late fine) | \$5.00 (notice fee) | \$186,125/- |

SUPPLEMENT

To UNITED MALAYAN BANKING CORPORATION BERHAD
of 82, Jalan Ah Fook, Johor Bahru, Chargee/
Lessee/Sub-lessee/Tenant/Lien-holder/Caveat/
Easement-holder.

Should you have reason to believe that the
proprietor of that land scheduled above in which
you possess or claim an interest will make
default in payment of the sums now declared
due thereon, you may avoid the forfeiture of
such land by paying in full to the Collector
within the time specified, the total specified
in respect of that land. 20

And take notice that (without prejudice to
any right under that section to sue the
proprietor direct) the following special rights
of recovery exist by virtue of the provisions
of section 98 of the National Land Code -

(a) any sum paid by a chargee shall be
added to the first payment thereafter
due under the charge; 30

(b) any sum paid by a lessee, sub-lessee
or tenant may be recovered by deducting
the amount of such sum from any rent
then or thereafter due from him to
the proprietor or other person under
whom the land is held;

(c) any lessee, sub-lessee or tenant who
incurs any additional liability or
suffers any deduction under that
section may recover the amount of such
liability or deduction by making a
corresponding deduction from the amount
of the rent payable by him. 40

Dated this the 2nd day of June, 1977.

In the High
Court

Signed
Collector of Land Revenue
Kota Tinggi

No.3
Translation
of Exhibit
"RAR 1"
Notice of
Demand;
arrears of
Rent

This is the True Translation of
the Original Document produced
in Serial No.290 of 1982

2nd June
1977
(continued)

10

Sd: Illegible
Interpreter
High Court
Kuala Lumpur

JABATAN PERKHIDMATAN POS, NEGERI²
TANAH MELAYU

Exhibit
"RAR 2"
AR Regist-
ered Card

Hendak-lah di-penchi oleh pejabat yang asal
To be filled in by the office of origin

2nd June
1977

Baran Berdaftar atau Bungkosan
Registered article or parcel (PHTK 14/706)

Di-hantar oleh : Pemungut Hasil Tanah
Sent by Kota Tinggi

20 Di-'alamatkan kepada: United M'yan Banking
Addressed to Corporation

Di : 82, Jln Ah Fook, Johor Bahru
At

Telah di-poskan di : Kota Tinggi
Posted at

Pada : 2.6.1977
On

Di-bawah No. Daftar:
Under Registration No. 1919

30

Chap Haribulan
Pejabat yang
Menghantar
Date stamp of
Despatching Office

In the High
Court

AKUAN MENERIMA SURAT DAFTARAN DALAM NEGERI
Advice of delivery inland registered letter

No.3
Exhibit
"RAR 2"
AR Registered
Card

Yang bertanda tangan di-bawah ini mengatakan
benda yang tersebut telah di-sampaikan di'alamat
yang tersebut pada.....19.....
The undersigned states that the article mentioned
was duly delivered at the address stated on

2nd June
1977
(continued)

COP PENERIMAAN * Si-penerima.....
3, Jun.1977 Recipient
Di-tanda tangani atau 10
oleh or
Signature of / Ketua Pos.....
Postmaster

Chap Haribulan
Pejabat yang
Menyampaikan
Date stamp of
Delivering Office

* Potong apabila si-penerima enggan menanda
tangani kad ini atau apabila kad ini tidak
berserta dengan benda itu. 20
Delete when recipient declines to sign this
card or when the card does not accompany the
article.

/ Potong apabila kad yang telah di-penuhi ada
bersama benda itu dan si-penerima akan menanda
tangan.
Delete when the completed card accompanies
the article and the recipient will sign.

SETELAH PENOH KAD INI HENDAK-LAH DI-KEMBALIKAN
KAPADA 'ALAMAT DI-SEBELAH 30
On completion this card should be returned to
the address shewn overleaf

No. 4

In the High
Court

NOTICE OF MOTION
(No. 43 of 1977)

No.4
Notice of
Motion
(No. 43 of
1977)

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

ORIGINATING MOTION NO. 43 OF 1977

14th December
1977

10

In the Matter of land held
under Q.T.(R) 156 for Lot MLO
1481(A) measuring 20,680 acres
or thereabouts in the Mukim of
Ulu Sungei Johore, District of
Kota Tinggi, State of Johore

And

20

In the Matter of three Charges
of the said land in favour of
United Malayan Banking
Corporation Berhad, registered
under Pres. No.9244/73 Vol. 183
Fol.165, Pres. No. 3088/75
Vol. 203 Fol.12 and Pres. No.
3089/75 Vol. 203 Fol.12,
respectively.

And

In the Matter of Johore Government
Gazette Notification No. 1136
dated 15th September 1977.

And

30

In the Matter of Sections 130,
131, 132, 417 and 418 National
Land Code, 1965.

Between

Johore Sugar Plantation &
Industries Berhad

Applicant

And

Pemungut Hasil Tanah,
Kota Tinggi

Respondent

NOTICE OF MOTION

40

TAKE NOTICE that the Court will be moved on
the 28th day of March, 1978 at 9.00 o'clock in
the forenoon or so soon thereafter as Counsel can
be heard by Mr. Teng Wan Kah of Counsel for the
abovenamed Applicant for the following order that:

In the High
Court

No.4
Notice of
Motion
(No. 43 of
1977)

14th December
1977
(continued)

a) the Order declaring the said land,
MLO 1481(A), Q.T.(R) 156, Mukim of
Ulu Sungei Johore, District of Kota
Tinggi, forfeit to the State Authority
by the Respondent appearing in the
Johore Government Gazette Notification
No. 1136 dated 15th September, 1977
be set aside;

b) the Respondent and all other appropriate
officers or authorities be directed to
effect or register all memorials or
endorsements pursuant to the order of
this Honourable Court in affecting
the said land; and

c) such other order or orders as the
Court deems fit or just.

10

Dated this 14th day of December, 1977.

(SEAL)

Sd:..... Sd:.....
Solicitors for Applicant Senior Assistant
Registrar,
High Court,
Johore Bahru

20

This Application is intended to be served
on the Collector of Land Revenue, Kota Tinggi.

This Application is supported by the
Affidavit of Datuk Tsang Tak Chuen and Mr. Peng
Swee Huat affirmed on the 14th day of December,
1977.

Application is filed on behalf of the
Applicant by its Solicitors M/s. Lim & Hooi,
Advocates & Solicitors, Room 4, 4th Floor,
U.M.N.O. Building, Jalan Segget, Johore Bahru.

30

No. 5

In the High
Court

AFFIDAVIT OF DATUK TSANG
TAK CHUEN (No.43 of 1977

NO.5
Affidavit of
Datuk Tsang
Tak Chuen
(No. 43 of
1977)

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU
ORIGINATING MOTION NO. 43 OF 1977

14th December
1977

10

In the Matter of Land held
under Q.T.(R) 156 for Lot
MLO 1481(A) measuring 20,680
acres or thereabouts in the
Mukim of Ulu Sungei Johore,
District of Kota Tinggi,
State of Johore

And

20

In the Matter of three Charges
of the said Land in favour of
United Malayan Banking
Corporation Berhad, registered
under Pres. No.9244/73 Vol.183
Fol.165, Pres. No.3088/75
Vol.203 Fol.13, respectively

And

In the Matter of Johore
Government Gazette Notification
No.1136 dated 15th September,
1977

And

In the Matter of Sections 130,
131, 132, 417 and 418 National
Land Code, 1965.

30

Between

JOHORE SUGAR PLANTATION &
INDUSTRIES BERHAD

Applicant

And

PEMUNGUT HASIL TANAH, KOTA
TINGGI

Respondent

A F F I D A V I T

40

I, Datuk Tsang Tak Chuen of 115/75, Jalan
Haji Yunos, Muar, Johore, do hereby solemnly and
sincerely affirm and state as follows :-

1. I am the Managing Director of the Applicant
company, Johore Sugar Plantation & Industries
Berhad, a company incorporated in Malaysia and

In the High
Court

No.5
Affidavit of
Datuk Tsang
Tak Chuen
(No. 43 of
1977)

14th December
1977
(continued)

having its registered office at Suite 501-505,
5th Floor, Bangunan OCBC, Johore Bahru. I
am duly authorised to make this Affidavit on
its behalf.

2. The company is the registered lessee of
all that piece of land held under Qualified
Title No. Q.T.(R) 156 for Lot MLO 1481
comprising an area of approximately 20,680 acres
or thereabouts situate in the Mukim of Ulu
Sungei Johore in the District of Kota Tinggi
for a term of tenure by way of a lease of 99 years
to expire on the 21st day of December in the year
2065 (hereinafter referred to as the said land). 10

3. The said Land was charged by the company
to secure banking facilities granted by the
banker United Malayan Banking Corporation Berhad,
having its registered office at Bangunan UMBC,
Jalan Sultan, Kuala Lumpur, and a branch in
Johore Bahru, to the company as the Chargor.
The charges in favour of United Malayan Banking
Corporation Berhad are registered as follows:- 20

- (a) Pres.No. 9244/73 Vol.183 Fol.165
- (b) Pres.No. 3088/75 Vol.203 Fol.12
- (c) Pres.No.3089/75 Vol.203 Fol.13.

4. The company is a public company and the
original paid up capital was \$36,682,000-00
but which had, pursuant to an order of the
High Court dated the 21st day of March 1974,
been reduced to \$7,336,400-00.

5. The company has expended over \$19,000,000-00
for the development and expenditure to bring
about a complete and integrated sugar refinery.
Out of a total acreage of 20,680 acres, an area
of 17,500 acres have been deforested of which
8,500 acres have been successfully planted
with sugar canes. 30

6. There are in existence 2 sets of machinery
to process the sugar cane costing a sum of
\$1,000,000-00 and a combined crushing capacity
of 300 tons of cane daily.

7. The company has successfully cultivated
ten species of sugar cane seedlings suitable for
the climatic, soil and rain condition in Malaysia. 40

8. The company is in fact, since January 1974,
producing sugar and has successfully marketed
the same in the open market. With the addition
of a boiler, the production of white sugar would
be available.

9. The total amount owing by the company under the abovesaid charges is \$5,334,163-60 as at 26th November 1977 with interest thereon at the rate of 11% per annum until settlement.

In the High
Court

10. The aforesaid sum has also been expended on the further development of the said Land for the following purposes :-

No.5
Affidavit
of Datuk
Tsang Tak
Chuen
(No.43 of
1977)

10 (a) To assist the Applicant company in the development of the said Land for cultivation of sugar canes.

(b) To assist in the construction of a sugar refining factory.

(c) To assist in the purchase and acquisition of necessary machinery and equipment for harvesting a canes for the refining of sugar.

20 (d) To provide additional capital for the daily operational expenses in the management and running of the whole complex.

14th
December
1977
(continued)

11. The company has since 1973 gone through a series of reconstruction so as to meet the conditions of the lease.

12. In the previous years the quit rent amounting to \$186,125-00 per year had been paid by the company directly to the Collector of Land Revenue.

30 13. In the year 1976 the company paid the aforesaid quit rent with the approval of United Malayan Banking Corporation Bhd.

14. However for the year, 1977, for reasons of their own, we have been informed by United Malayan Banking Corporation Bhd. that the company has to meet the same payment on their own.

40 15. The company misunderstood this to mean that United Malayan Banking Corporation Bhd. is unwilling to make payment on its behalf if and when the company fails or could not meet the same in time and therefore did not refer back to them.

16. The actual situation is that the company should refer the issue back to United Malayan Banking Corporation Bhd. so as to enable the latter to pay on the company's behalf.

In the High
Court

No.5
Affidavit of
Datuk Tsang
Tak Chuen
(No. 43 of
1977)

14th December
1977
(continued)

17. The company did not refer the matter of payment back to United Malayan Banking Corporation Bhd. and the said Land was forfeited for non-payment for year 1977 by the Johore State Authority vide Government Gazette Notification No.1136 dated the 15th September, 1977. The Applicant is thereby aggrieved by the decision of the Respondent.

18. I verily believe that if the order declaring the said Land forfeiture is set aside by this Honourable Court the Applicant shall confidently proceed to continue the further development of the sugar project with further capital, machinery, equipment and the expertise on which we have already expended substantial sums of money over the past few years. We remain fully committed to and is still ever prepared and have in fact offered capital participation to bumiputra groups to the extent of 60% of the share capital of our company in line with the Nation's new economic policy. Negotiations have advanced considerably and we are awaiting a successful conclusion. 10 20

19. The Applicant company is determined and sincere in its avowed intention to carry to fruition its objective of a full integrated sugar mill on the said Land. If this aim is realised, the company shall be capable of producing an estimated 60,000 tons of white sugar a year thus saving for the Nation 60 million dollars in foreign exchange taking into account that 80% of the Nation's requirement of 400,000 tons of sugar per year is now imported. 30

20. The company will also be able to provide employment to an estimated 2,000 Malaysians in the State of Johore.

21. I verily believe that the setting aside of the forfeiture order will have enormous beneficial consequences.

22. The Applicant company appeals that in the light of the foregoing circumstances it would be harsh and inequitable to forfeit the said Land merely on the issue of non-payment of the quit rent for 1977 and amounting to \$186,125-00. A forfeiture will result in untold hardship and irreparable loss to the Applicant company, its bankers United Malayan Banking Corporation Bhd. and to the small shareholders numbering over 3,000. 40

23. The Applicant company seeks the discretion 50

and sympathy of this Court to exercise its inherent jurisdiction to annul the forfeiture and that this is proper case for the Court to exercise such equitable discretion in doing so.

In the High Court

24. The Applicant company stands ready to pay the quit rent so due.

No.5
Affidavit of
Datuk Tsang
Tak Chuen
(No. 43 of
1977)

10 AFFIRMED by the abovenamed)
Datuk Tsang Tak Chuen at) Sd: Datuk Tsang
Johore Bahru on this 14th) Tak Chuen
day of December, 1977)
at 11.45 a.m.)

14th December
1977
(continued)

Before me,

Sd: HJ. MOHD. YUSOFF BIN HAJI A. RAHIM, P.L.P.
COMMISSIONER FOR OATHS

This Affidavit is filed on behalf of the Applicant by its solicitors Messrs. Lim & Hooi, Advocates & Solicitors, Room 4, 4th Floor, U.M.N.O. Building, Jalan Segget, Johore Bahru.

20

No. 6

AFFIDAVIT OF PENG SWEE
HUAT (No. 43 of 1977)

No.6
Affidavit of
Peng Swee
Huata
(No. 43 of
1977)

IN THE HIGH COURT IN MALAYA AT JOHORE MAHRU
ORIGINATING MOTION NO. 43 OF 1977

14th December
1977

In the Matter of Land held
under Q.T.(R) 156 for Lot MLO
1481(A) measuring 20,680 acres
or thereabouts in the Mukim of
Ulu Sungei Johore, District of
Kota Tinggi, State of Johore

30

And

In the Matter of three Charges
of the said Land in favour of
United Malayan Banking
Corporation Berhad, registered
under Pres.No.9244/73 Vol.183
Fol.165, Pres.No.3088/75 Vol.203
Fol.12 and Pres.No.3089/75
Vol.203 Fol.12, respectively

In the High
Court

No.6
Affidavit of
Peng Swee
Huat
(No. 43 of
1977)

14th December
1977
(continued)

And

In the Matter of Johore
Government Gazette Notification
No.1136 dated 15th September,
1977.

And

In the Matter of Sections 130,
131, 132, 417 and 418 National
Land Code, 1965

Between

10

JOHORE SUGAR PLANTATION &
INDUSTRIES BERHAD.

Applicant

And

PEMUNGUT HASIL TANAH, KOTA
TINGGI

Respondent

A F F I D A V I T

I, Peng Swee Huat, I/C No. 0730335 of 32,
Kulai Besar, Kulai Johore, full age, do hereby
solemnly and sincerely affirm and state as
follows :- 20

1. I am an administrative officer employed by
Johore Sugar Plantations & Industries Bhd.
having its registered office at Suite 501-502,
5th Floor, Banguan O.C.B.C., Johore Bahru and
am duly authorised to make this affidavit on
behalf of the employees of the said company
employed since 1968.

2. The company as at 31st October 1977 did owe 30
us the sum of \$248,819-00. We are assured and
have in fact been paid 15% to 50% of the said
sum. In the event the lease is annulled and
the land taken away from the company, the
consequence is that the company would be wound
up and we would be unable to recover our wages.
We confidence in the future of the company and
its sincere desire to pay us eventually.

3. The company is the registered lessee of 40
all that piece of land held Qualified Title No.
Q.T.(R) 156 for Lot MLO No.1481 comprising an
area of approximately 20,680 acres or thereabouts
situate in the Mukim of Ulu Sungei Johore in the
District of Kota Tinggi, for a term of tenure by
way of a lease of 99 years to expire on the 21st
day of December in the year 2065 (hereinafter
referred to as the said land).

4. The company is a public company and the original paid up capital was \$36,682,000-00 but which had, pursuant to an order of the High Court dated the 21st day of March 1977, been reduced to \$7,336,400-00.

In the High
Court

No.6
Affidavit of
Peng Swee
Huat
(No. 43 of
1977)

10 5. The company has expended over 19 million dollars for the development and expertise to bring about a complete and integrated sugar refinery. Out of a total acreage of 20,680 acres, an area of 17,500 acres have deforested and of which 8,500 acres have been planted with sugar canes.

14th December
1977
(continued)

20 6. There are in existence 2 sets of machinery to process the sugar canes costing a total sum of \$1,000,000-00 and a combined crushing capacity of 300 tons of cane daily. With the same I, together with my colleagues are able to experiment at first and now to acquire and achieve expertise and experience in connection with the machinery and equipment relating to sugar production and in the ultimate aim of producing sugar itself on a large scale.

30 7. The company has successfully cultivated 10 species of sugar cane seedlings suitable for the climate, soil and rain condition in Malaysia. During the company's existence, the Applicant had the facilities to cultivate and produce local sugar cane species which excel in sugar content at 10% recovery under our Malaysian climatic condition. Such species further successfully grown on a large acreage at present in the company's plantation. In connection we have the opportunities of a laboratory to cultivate insect species as natural biological control to combat insects harmful to the sugar plant on large scale. Even a plant without chemical insecticide, the cane plant can grow safely with a sugar content of 10% recovery. This has been successful enough to enable us to import such experience to other sugar mills.

40 8. The company has in fact since 1974 produced brown sugar and has successfully marketed the same locally. With the additional purchase of a boiler, the production of white sugar would be available.

50 9. We are aware of the company's commitment to achieve a fully integrated sugar mill and that pursuant to this aim it has expended 14 million dollars in this direction and had further incurred the sum of \$5,334,163-60 from

In the High
Court

United Malayan Banking Corporation Berhad,
for the further development thereby.

No.6
Affidavit of
Peng Swee
Huat
(No. 43 of
1977
14th December
1977
(continued)

10. The company has since 1972 gone through a series of reconstruction so as to meet the conditions of the lease.

11. We are fully knowledgeable of the company's hardship. Nevertheless, our faith in its management has not failed and we believe that with the impending reconstruction of this company, we and the company's management are able to fulfil our obligations. 10

12. We believe that the non-payment of the quit rent amounting to \$186,125-00 is due to a misunderstanding between the company and their bankers United Malayan Banking Corporation Berhad, as to the actual party to effect payment. We understand that both parties stand ready to make payment upon the annulment of the forfeiture order.

13. Notwithstanding the foregoing circumstances, the company has been able to acquire valuable expertise and experience which are invaluable to the entire sugar industry in Malaysia. 20

14. The Applicant seek the discretion of the Court to exercise its inherent equitable power to annul the forfeiture order to prevent the loss of the priceless experience accumulated over 10 years of hard work to the company merely that the quit rent was inadvertently omitted to be paid. 30

AFFIRMED by Peng Swee Huat)
at Johore Bahru on this) Sd: Peng Swee Huat
14th day of December 1977)
at 11.45 a.m.)

Before me,

Sd: Mohd. Yusof b. Hj.A.Rahim

COMMISSIONER FOR OATHS

This Affidavit is filed on behalf of the Applicant by its Solicitors M/s. Lim & Hooi, Advocates & Solicitors, Room 4, 4th Floor, U.M.N.O. Building, Jalan Segget, Johore Bahru. 40

No. 7

In the High
Court

AFFIDAVIT OF RAHMAT BIN
A. RAHMAN (No. 43 of 1977)

No.7
Affidavit of
Rahmat bin A.
Rahman
(No. 43 of
1977)

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU
ORIGINATING MOTION NO. 43 OF 1977

In the Matter of land held
under Q.T.(R) 156 for Lot MLO
1481(A) measuring 20,680 acres
or thereabouts in the Mukim of
Ulu Sungei Johore, District
of Kota Tinggi, State of Johore

17th June 1978

10

And

In the Matter of three Charges
of the said land in favour of
United Malayan Banking
Corporation Berhad, registered
under Pres.No.9244/73 Vol.183
Fol.165, Pres.No.3088/75 Vol.203
Fol.12 and Pres.No.3089/75 Vol.
203 Fol.12, respectively.

20

And

In the Matter of Johore
Government Gazette Notification
No.1136 dated 15th September
1977

And

In the Matter of Sections 130,
131, 132, 417 and 418 National
Land Code, 1965.

30

Between

Johore Sugar Plantation &
Industries Berhad

Applicant

And

Pemungut Hasil Tanah, Kota
Tinggi

Respondent

A F F I D A V I T

I, Rahmat bin A. Rahman, Collector of Land
Revenue, Pontian do solemnly affirm and say :

40

1. I was the Collector of Land Revenue, Kota
Tinggi, the Respondent herein, at the material time.

In the High Court

No.7
Affidavit of
Rahmat bin A.
Rahman
(No. 43 of
1977)

17th June
1978
(continued)

2. I crave leave to refer to the Affidavit of Datuk Tsang Tak Chuen affirmed on the 14th day of December, 1977 and filed herein.

3. I have no knowledge of the facts stated in paragraph 1 of the said Affidavit.

4. I admit the facts stated in paragraphs 2 and 3 of the said Affidavit.

5. I have no knowledge of the facts stated in paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 and I am advised and verily believe that the facts deposited therein are irrelevant and of no bearing to the action.

10

6. As regards paragraphs 22, 23 and 24 of the said Affidavit, I am advised and verily believe that,

(1) the Applicant herein could have availed itself but failed to avail itself of the opportunity to pay the quit rent for the year 1977 upon the service on the Applicant herein of a notice of demand in Form 6A as provided for under section 97(1) of the National Land Code. A copy of Form 6A and A.R. Registered card addressed to the Applicant herein with its acknowledgment of receipt are annexed hereto and marked 'RAR 1' and 'RAR 2' respectively;

20

(2) this action by the Applicant herein is misconceived and bad in law in that the validity of the forfeiture was never at any time impugned on the grounds of its having been made contrary to the provisions of the National Land Code; and

30

(3) the order of forfeiture as appearing in the Johore Government Gazette Notification No.1136 of 1977 was published pursuant to section 100 of the National Land Code and in accordance with the statutory provisions.

40

7. WHEREFORE I pray that this action be dismissed with costs.

AFFIRMED by Rahmat bin A.Rahman)
at Johore Bahru this 17th day of June, 1978)Sd: Rahmat bin A.
Rahman

Before me,

Sd: MUSTAPHA BIN MOHAMED, P.I.S.
COMMISSIONER FOR OATHS
HIGH COURT,
JOHORE BAHRU.

In the High
Court

No.7
Affidavit of
Rahmat bin A.
Rahman
(No. 43 of
1977)

This Affidavit is filed by the State
Legal Adviser's Chambers for and on behalf of
the Respondent herein whose address for
service is care of the High Court Building,
Johore Bahru.

17th June
1978
(continued)

10

The Exhibits mentioned in this Affidavit have
not been included in the Record.

No. 8

AFFIDAVIT OF RAHMAT BIN
A. RAHMAN (No. 43 of 1977)

No.8
Affidavit of
Rahmat bin A.
Rahman
(No. 43 of
1977)

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU
ORIGINATING MOTION NO. 43 OF 1977

17th June
1978

20

In the Matter of land held
under Q.T.(R) 156 for Lot MLO
1481(A) measuring 20,680
acres or thereabouts in the
Mukim of Ulu Sungei Johore,
District of Kota Tinggi,
State of Johore.

And

30

In the Matter of three Charges
of the said land in favour of
United Malayan Banking
Corporation Berhad, registered
under Pres.No.9244/73 Vol.183
Fol.165, Pres.No. 3088/75
Vol.203 Fol.12 and Pres.No.
3089/75 Vol.203 Fol.12,
respectively.

And

In the Matter of Johore
Government Gazette Notification
No.1136 dated 15th September
1977

In the High
Court

No.8
Affidavit of
Rahmat bin A.
Rahman
(No. 43 of
1977)

17th June
1978
(continued)

And

In the Matter of Sections 130,
131, 132, 417 and 418 National
Land Code, 1965.

Between

Johore Sugar Plantation &
Industries Berhad

Applicant

And

Pemungut Hasil Tanah, Kota
Tinggi

10

Respondent

A F F I D A V I T

I, Rahmat bin A.Rahman, Collector of Land
Revenue, Pontian do solemnly affirm and say:

1. I was the Collector of Land Revenue, Kota
Tinggi, the Respondent herein at the material time.

2. I crave leave to refer to the Affidavit of
Peng Swee Huat affirmed on the 14th day of
December, 1977 and filed herein. 20

3. I am advised and verily believe that the said
Affidavit is irrelevant and of no consequence to
this action in that,

(1) Peng Swee Huat does not fall within
the class "any person or body who was
the proprietor of any alienated land"
as envisaged by section 133 of the
National Land Code for the State
Authority could only "re-alienate the
land to the previous proprietor at
any time" and none others; and 30

(2) consequently Peng Swee Huat could not
be deemed to be "any person or body
aggrieved" as enacted by section 418
of the National Land Code and hence he
has no locus standi in this action.

4. WHEREFORE I pray that this action be dismissed
with costs.

AFFIRMED by Rahmat bin A.Rahman)
at Johore Bahru this 17th day) Sd: Rahmat bin A. 40
of June 1978) Rahman

Before me,

Sd: MUSTAPHA BIN MOHAMAD, P.I.S.
COMMISSIONER FOR OATHS,
HIGH COURT,
JOHORE BAHRU

In the High
Court

No.8
Affidavit of
Rahmat bin A.
Rahman
(No. 43 of
1977)

This Affidavit is filed by the State
Legal Adviser's Chambers for and on behalf of
the Respondent herein whose address for
service is care of the High Court Building,
Johore Bahru.

17th June 1978
(continued)

10

No. 9

NOTICE OF MOTION
(No. 43 of 1977)

No.9
Notice of
Motion
(No. 43 of
1977)

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

September 1978

ORIGINATING MOTION NO. 43 OF 1977

In the Matter of land held under
Q.T.(R) 156 for Lot MLO 1481(A)
measuring 20,680 acres or
thereabouts in the Mukim of
Ulu Sungei Johore, District of
Kota Tinggi, State of Johore

20

And

In the Matter of three Charges
of the said land in favour of
United Malayan Banking
Corporation Berhad, registered
under Pres.No.9244/73 Vol. 183
Fol.165, Pres.No. 3088/75 Vol.203
Fol.12 and Pres.No. 3089/75
Vol.203 Fol.12 respectively

30

And

In the Matter of Johore
Government Gazette Notification
No.1136 dated 15th September
1977

And

In the Matter of Sections 130,
131, 132, 417 and 418 National
Land Code, 1965.

In the High Court

Between

No.9
Notice of Motion
(No. 43 of 1977)

Johore Sugar Plantation & Industries Berhad
Applicant/
Appellant

And

September 1978
(continued)

Pemungut Hasil Tanah, Kota Tinggi
Respondent

NOTICE OF MOTION

10

TAKE NOTICE that the Court will be moved on the 2nd day of October 1978 at 9.00 o'clock in the forenoon or so soon thereafter as Counsel can be heard by Messrs. Cheang Lee & Ong of Counsel for the abovenamed Applicant/Appellant for an Order that paragraph (a) of the Notion of Motion (Enclosure 1) in the above Originating Motion be amended by adding the following words :-

"or in the alternative that the Respondent be required to pay compensation to the Applicant/Appellant"

20

Dated this day of September 1978.

Sd:.....

Solicitors for Applicant/ Senior Assistant
Appellant Registrar

This Notice is filed by Messrs. Cheang Lee & Ong, Solicitors for the Applicant/Appellant abovenamed whose address for service is c/o No. 13 Jalan Bandar Raya, Ipoh.

It is supported by the Affidavit of Datuk Tsang Tak Chuen affirmed on the day of September 1978.

30

It is intended to be served on the Respondent abovenamed or the State Legal Adviser, c/o High Court Building, Johore Bahru.

No. 10

In the High
Court

AFFIDAVIT OF DATUK TSANG
TAK CHUEN WITH EXHIBIT
THERE TO (No. 43 of 1977)

No.10
Affidavit of
Datuk Tsang
Tak Chuen
with Exhibit
thereto
(No. 43 of
1977)

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU
ORIGINATING MOTION NO. 43 OF 1977

23rd September
1978

10

In the Matter of land held
under Q.T.(R) 156 for Lot MLO
1481(A) measuring 20,680 acres
or thereabout in the Mukim of
Ulu Sungei Johore, District of
Kota Tinggi, State of Johore

And

20

In the Matter of three Charges
of the said land in favour of
United Malayan Banking
Corporation Berhad, registered
under Pres.No. 9244/73 Vol.183
Fol.165, Pres.No. 3088/75
Vol.203 Fol.12 and Pres.No.
3089/75 Vol.203 Fol.12
respectively

And

In the Matter of Johore
Government Gazette Notification
No.1136 dated 15th September
1977

And

30

In the Matter of Sections 130,
131, 132, 417 and 418 National
Land Code, 1965.

Between

Johore Sugar Plantation &
Industries Berhad

Applicant

And

Pemungut Hasil Tanah, Kota
Tinggi

Respondent

40

A F F I D A V I T

I, Datuk Tsang Tak Chuen of 115/75, Jalan
Haji Yunos, Muar, Johore do hereby solemnly and
sincerely affirm and state as follows :-

In the High
Court

No.10
Affidavit of
Datuk Tsang
Tak Chuen
with Exhibit
thereto
(No. 43 of
1977)

23rd September
1978
(continued)

1. I am the Managing Director of the Applicant/Appellant Company Johore Sugar Plantation & Industries Berhad and I am duly authorised to make this affidavit on its behalf.

2. The Company is the registered lessee of all that piece of land held under Qualified Title No. Q.T.(R) 156 for Lot MLO 1481 comprising an area of approximately 20,680 acres or thereabouts situate in the Mukim of Ulu Sungei Johore in the District of Kota Tinggi for a term of tenure by way of a lease for 99 years commencing 22.12.1966 and due to expire on the 21st day of December in the year 2065 (hereinafter referred to as "the said land"). A copy of the said title and conditions is attached herewith and marked "A".

10

3. I crave leave to refer to paragraph 5 of my affidavit (Enclosure 2) affirmed on the 14th day of December, 1977 and filed herein. A sum of \$18,706,036/- has already been expended for the development of the said land in the following manner :-

20

| | | |
|--|------------------------|----|
| (a) Expenses incurred for sugar cane nurseries 1968-1974 | \$ 608,814.00 | |
| (b) Wages for Plantation workers from 1969 to 1977 | 1,240,600.00 | |
| (c) Building of roads bridges and drainage | 315,500.00 | |
| (d) Clearing and ploughing of whole land | 3,771,282.00 | 30 |
| (e) Fertilisers & chemicals spent | 832,885.00 | |
| (f) Fencing | 13,724.00 | |
| (g) Excavation, removing, filling & levelling of reservoir and boiler site | 23,040.00 | |
| (h) Pre-production expenses | 10,555,191.00 | |
| (i) Plantation Building & Factory | 372,000.00 | |
| (j) Plant and machinery | <u>973,000.00</u> | |
| | <u>\$18,706,036.00</u> | 40 |
| | ===== | |

4. When the said land was taken over by the

Applicant/Appellant it was secondary jungle and the Applicant/Appellant expended a lot of time, effort and expense in improving and cultivating the land in order to produce sugar in accordance with the terms and conditions of the lease. Between 1968 and 1977 the Company has constructed 250 miles of roads, drains and bridges. The Company has also constructed two dams.

In the High Court

No.10
Affidavit of
Datuk Tsang
Tak Chuen
with Exhibit
thereto
(No. 43 of
1977)

23rd September
1978
(continued)

10 5. The amount due to Government was \$186,125/- in respect of quit rent for the year 1977. The said quit rent was overdue for 3 months only and there was no great lapse of time. As a result of the forfeiture of the land the Applicant/Appellant stands to suffer a loss of \$18,706,036.00 for the investment that he had put in on the land and the Respondent stands to benefit by its act of forfeiture, a developed piece of land.

20 6. I pray for an Order in terms of the Notice of Motion herein.

AFFIRMED by the abovenamed)
Datuk Tsang Tak Chuen at) Sd: Tsang Tak Chuen
Ipoh on this 23rd day of)
September, 1978 at)
1.15 p.m.)

Before me,

Sd: L. Arasaradnam

30 COMMISSIONER FOR OATHS
11 Hale Street, Ipoh

This Affidavit is filed on behalf of the Applicant/Appellant by its Solicitors Messrs. Cheang Lee & Ong, No.13, Jalan Bandar Raya, Ipoh, Perak.

In the High Court

NATIONAL LAND CODE

FORM 11 A
(Section 177)

No.10
Exhibit "A"
Document of
Qualified
Title
Lot MLO 1481

(Qualified Title Corresponding to
Registry Title)

Q.T. REGISTER: District of Kota Tinggi
No. Q.T.(R) 156

22nd December
1966

State of J O H O R E

DOCUMENT OF QUALIFIED TITLE
Category of Land Use: Agriculture

10

Mukim: Ulu Sungai Johor

M.L.O. No. 1481

Lease for term of 99 years
expiring on 21.12.2065

Provisional Area: 20,680 acres O.R.OOP
Annual Rent: \$31,020-00 till 31.12.68 and
\$124,080-00 thereafter.

SPECIAL CONDITIONS OF
QUALIFIED TITLE

1. This title is subject to the provisions
of the National Land Code and all those
Express Conditions and Restrictions - 20

(a) subject to which alienation was
approved, vide Correspondence
No. PTG 570/65 & A.A.K.T. IV-6-65

(b) endorsed upon title...
to which this title is in continuation
vide Correspondence No.
(so far as, in cases of sub-dividing
or partition, they are capable of
affecting the land comprised herein) 30

(c) appended hereto.

2. In the plan of the land below the
boundaries shown in red, not having been estab-
lished by survey, are provisional only

Form 11 A

(Section 177)

(Qualified Title Corresponding to Registry Title)

No.10
Exhibit "A"
Document of
Qualified Title
MLO 1481
22nd December
1966
(continued)

O.T. REGISTER: District of Kota Tinggi No. O.T. (R) 156

State of J O H O R E.

DOCUMENT OF QUALIFIED TITLE

CATEGORY OF LAND USE: *AGRICULTURE/~~INDUSTRIAL~~

*Delete as appropriate.

Town/Village/Mukim Ulu Sungai Johor

~~Term of lease~~ M. L.O. No. 1481

*Lease for term of 99 years Provisional Area 20,680 Acres 0 R. 00P.

expiring on 6-8-2064 Annual Rent \$31,020-00 till 31-12-68 and \$124,080-00 thereafter.

SPECIAL CONDITIONS OF QUALIFIED TITLE

1. This title is subject to the provisions of the National Land Code and all those Express Conditions and Restrictions—

(a) subject to which alienation was approved, vide Correspondence No. PTG 570/65 & AAKT IV-6-65

Delete (a), (b) (c) as appropriate.

(b) endorsed upon title to which

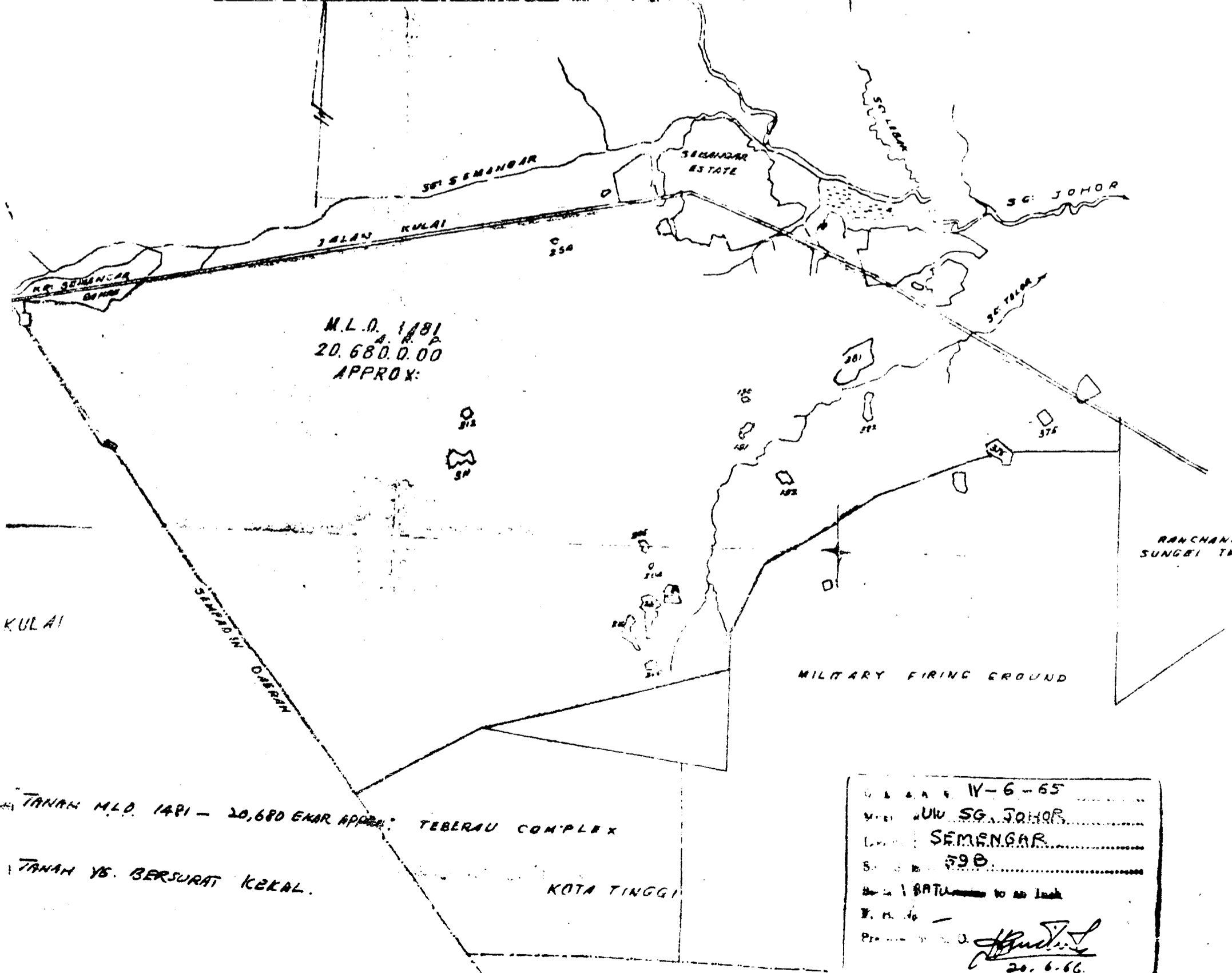
this title is in continuation, vide Correspondence No. (so far as, in cases of sub-division or partition, they are capable of affecting the land comprised herein)

Delete paragraph if it is in fact as a whole. For use in cases of amalgamation only.

(c) appended hereto.

2. In the plan of the land below the boundaries shown in red, not having been established by survey, are provisional only.

Sketch Plan The land described above is held by the proprietor for the time being as shown in the record.



TANAH M.L.O. 1481 - 20,680 ENAR APPROX. TEBERAU COMPLEX
TANAH YB. BERSURAT KEKAL.

To be completed when the title is issued in continuation

Date of first alienation.....
No. of original title (final or qualified).....
No. of immediately preceding title (if different from above).....

RECORD OF PROPRIETORSHIP, OF DEALINGS AND OF OTHER MATTERS AFFECTING TITLE
Federal Miners and Planters Limited.

Federal Miners and Planters Limited.
1924/73 D.A.P.P.A. Kadayan. 192.
Johore Sugar Plantations & Industries Bhd.

under the QTR) 156
JOHORE SUGAR PLANTATIONS AND INDUSTRIES BERHAD,
side No. 63 166
United Malayan Banking Corporation Bhd.

996/69
8th February, 1969
17.12.1969
3hb. November, 1973. 1100.



Upon application by the proprietor of this land under Section 107 of the Land Ordinance 1948, the following conditions are attached to the lease:

"The Lessee is not restricted to change this land to any Bank approved by the State Government provided the purpose of the change is only for the development of the said land."

7672/69 Pres. No. *65 86*

Dated 20th Nov. 1969
[Signature]
PENDAFATAR HAK MILIK TANAH JOHOR.

3089/75 D.A.P.P.A. Kadayan. 203. Pd. 12.
Johore Sugar Plantations & Industries Bhd.

United Malayan Banking Corporation Bhd.

20hb. May, 1975. 10-40.

[Signature]

3089/75 D.A.P.P.A. Kadayan. 203. Pd. 13.
Johore Sugar Plantations & Industries Bhd.

United Malayan Banking Corporation Bhd.

20hb. May, 1975. 10-41.

[Signature]

- | | | | |
|----|--------|--|---|
| | (i) | The land hereby leased shall be planted solely with sugar cane except on such portions which are reasonably required for buildings such as factory, store, office and dwellings. | In the High Court |
| | (ii) | Of the area required to be planted with sugar cane, not less than one half shall be established with the crop within 3 years from the date of approval of occupation, three-quarters within 4 years from the date of approval of occupation, and the whole area within 5 years from the date of approval of occupation. | No.10 Exhibit "A" Document of Qualified Title Lot MLO 1481 22nd December 1966 (continued) |
| 10 | | | |
| | (iii) | The lessee shall at all times take such measures on the land to prevent erosion as the State Agricultural Officer may at his discretion require. | |
| 20 | (iv) | The planting of sugar cane on the land hereby leased shall be in accordance with a scheme of cultivation approved by the State Agricultural Officer who will require to satisfy himself that no part of the land is allowed to be left uncultivated for a period of more than 2 years at any time. | |
| 30 | (v) | The lessee shall not dispose of the sugar cane as raw material but shall manufacture it into finished product in factories owned and operated by himself within the State. | |
| | (vi) | The land hereby leased shall not be subdivided. | |
| | (vii) | The lessee shall float a public joint stock company incorporated in Malaya to own and work the land, such company having not more than 50% of foreign capital. | |
| 40 | (viii) | The lessee shall within 5 years from the date of approval of occupation construct, either on the land hereby leased or at some other place within the State of Johore, a factory for treating the sugar cane and to produce the finished product. The site for such factory shall have been approved by the Government. The site for such factory. | |
| | (ix) | The land hereby leased shall not be transferred, charged, sub-leased or otherwise disposed of without prior written consent | |

In the High
Court

No.10
Exhibit "A"
Document of
Qualified
Title
Lot MLO 1481

of the Ruler in Council.

(x) Except in jobs which require special knowledge, experience or qualification to which any one may be engaged, the lessee shall ensure that not less than 25% of the other employees engaged on the land hereby leased and in the factory to be constructed shall be Malays and the rest Federal Citizens.

22nd December
1966
(continued)

(xi) Prior to commencement of planting operations all marketable timber on the land shall be removed under the supervision of the Conservator of Forests, Johore, who will issue a permit and therefor. 10

(xii) The lessee shall pay and discharge all taxes, rates, assessments and charges whatsoever which may be payable for the time being in respect of the land hereby leased or any part thereof whether levied by a Local Authority or any other authority. 20

(xiii) Not less than 50% of the capital in the working of the land or any work imposed under any condition of this lease shall at all time be held by Federal Citizens.

This is the Exhibit marked "A" referred to in the affidavit of Datuk Tsang Tak Chuen affirmed this 23rd day of September 1978

Sgd: Arassaradnam

Commissioner for Oaths
11 Hale Street, Ipoh

No. 11

In the High Court

AFFIDAVIT OF LAW PIANG
WOON (No. 43 of 1977)

No.11
Affidavit of
Law Piang
Woon
(No. 43 of
1977)

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU
ORIGINATING MOTION NO. 43 OF 1977

23rd September
1978

10

In the Matter of land held
under Q.T.(R)156 for Lot MLO
1481(A) measuring 20,680 acres
or thereabouts in the Mukim of
Ulu Sungei Johore, District of
Kota Tinggi, State of Johore.

And

20

In the Matter of three Charges
of the said land in favour of
United Malayan Banking
Corporation Berhad, registered
under Pres.No.9244/73 Vol.183
Fol.165, Pres.No.3088/75
Vol.203 Fol.12 and Pres.No.
3089/75 Vol.203 Fol.12
respectively.

And

In the Matter of Johore
Government Gazette Notification
No.1136 dated 15th September
1977

And

30

In the Matter of Sections 130,
131, 132, 417 and 418 National
Land Code, 1965.

Between

Johore Sugar Plantation &
Industries Berhad

Applicant/
Appellant

And

Pemungut Hasil Tanah, Kota
Tinggi

Respondent

40

A F F I D A V I T

I, Law Piang Woon of full age, A Federal
Citizen and residing at 2801-E, Taman Golf, Alor
Star in the State of Kedah do solemnly affirm and
say as follows :-

In the High
Court

No.11
Affidavit of
Law Piang
Woon
(No. 43 of
1977)

23rd September
1978
(continued)

1. I am an Accountant and was attached to the Applicant/Appellant Company from 1971 to 1977.

2. I have personal knowledge of the books of account of the said Company and I can verify the details as set out in paragraph 3 of the Affidavit of Datuk Tsang Tak Chuen affirmed on the 23rd day of September 1978 and filed herein.

AFFIRMED by the abovenamed)
Law Piang Woon at Ipoh on) Sd: Law Piang Woon 10
the 23rd day of September)
1978 at 1.15 p.m.)

Before me,

Sd: L. Arasasadnam

Commissioner for Oaths
11 Hill Street, Ipoh

I hereby certify that the above affidavit was read, translated and explained in my presence to the deponent who seemed perfectly to understand it and declared to me that he did understand it and made his signature in my presence. 20

Sd: L. Arasasadnam

Commissioner for Oaths
11 Hill Street, Ipoh

This affidavit is filed by Messrs. Cheang Lee & Ong, Solicitors for the Applicant/Appellant abovenamed whose address for service is c/o No.13 Jalan Bandar Raya, Ipoh.

No. 12

ORDER (No. 43 of 1977)

In the High
Court

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU
ORIGINATING MOTION NO. 43 OF 1977

No.12
Order
(No. 43 of
1977)

2nd November
1978

10

In the Matter of land held
under Q.T.(R) 156 for Lot
MLO 1481(A) measuring 20,680
acres or thereabouts in the
Mukim of Ulu Sungei Johore,
District of Kota Tinggi,
State of Johore

And

20

In the Matter of the three
Charges of the said land in
favour of United Malayan
Banking Corporation Berhad,
registered under Pres.No.
9244/73 Vol.183 Fol.165
Pres.No.3088/75 Vol.203 Folio
12 and Pres.No.3089/75 Vol.203
Fol.12 respectively.

And

In the Matter of Johore
Government Gazette Notification
No.1136 dated 15th September,
1977

And

30

In the Matter of Sections 130,
131, 132, 417 and 418 National
Land Code, 1965

Between

Johore Sugar Plantation &
Industries Berhad

Applicant/
Appellant

And

Pemungut Hasil Tanah, Kota
Tinggi

Respondent

40

BEFORE THE HONOURABLE
JUDICIAL COMMISSIONER TUAN
ANUAR BIN DATO ZAINAL
ABIDIN

IN OPEN COURT
THIS 2ND DAY OF NOVEMBER
1978

In the High
Court

O R D E R

No.12
Order
(No. 43 of
1977)

2nd November
1978
(continued)

The Notice of Motion (Enclosure 14) dated the 26th day of September, 1978 coming on for hearing this day in the presence of Mr. N.H.Chan and Mr. P.S.Gill of Counsel for the Applicant/Appellant abovenamed and Y.B. Nik Mohamed bin Nik Yahya, State Legal Adviser, Johore of Counsel for the Respondent abovenamed AND UPON READING the said Notice of Motion, the Affidavit of Datuk Tsang Tak Chuen (Enclosure 15) affirmed on the 23rd day of September, 1978 and the Affidavit of Law Piang Woon (Enclosure 16) affirmed on the 23rd day of September, 1978 and filed herein AND UPON HEARING Counsel as aforesaid IT IS ORDERED that paragraph (a) of the Notice of Motion (Enclosure 1) in the above Originating Motion be amended by adding the following words :

10

"or in the alternative that the Respondent be required to pay compensation to the Applicant/Appellant."

20

GIVEN under my hand and the Seal of the Court this 2nd day of November, 1978.

Senior Assistant Registrar,
High Court,
Johore Bahru.

No.13
Proceedings
(Nos.42 and
43 of 1977)

No. 13

PROCEEDINGS (Nos. 42
and 43 of 1977)

7th December
1978

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU
ORIGINATING MOTION NO. 42 of 1977

30

Between

United Malayan Banking Corporation
Berhad

Applicant

And

Pemungut Hasil Tanah
Kota Tinggi

Respondent

ORIGINATING MOTION NO. 43 OF 1977

In the High Court

Johore Sugar Plantations &
Industries Berhad

Applicant

And

Pemungut Hasil Tanah
Kota Tinggi

Respondent

No.13
Proceedings
(Nos. 42 and
43 of 1977)

7th December
1978
(continued)

Encik Wong Kim Fatt for the Applicant in
O.M. 42/77

Encik Nik Mohamed bin Nik Yahya for the Respondent

10

Encik N.H.Chan with Encik P.S.Gill for the
Applicant in O.M. 43/77

Encik Nik Mohamed bin Nik Yahya for the Respondent.

7th December 1978

Counsel agree to both applications being heard
together. I order that the two applications be
heard together.

Wong Kim Fatt:

I deliver a copy of my written submission of
which I have supplied copies to the other side.

20

Application to set forfeiture order made
by the Collector of Land Revenue on 15th September
1977 for failure to pay quit rent, educational
rate and penalty of \$31,020.00.

This is an appeal under section 418 of the
National Land Code. Refer to section 134 of the
National Land Code which seems to show that
section 237 of the National Land Code does not
apply.

30

Grounds of the application are stated in
the affidavit affirmed on 7th December 1977. There
is an affidavit in reply by the Collector dated
17th June 1978.

Facts of the case appear at page 2 of my written
submission. Read my written submission. Read
page 3 of paragraph 5. Issue of notice and then
forfeiture within 3 months for non-payment of
quit rent in pursuance of section 100 of the Land
Code.

40

Three issues emerge for the determination of
this application. First is purely procedural
namely, whether this appeal is properly brought
before the Court. Secondly, whether the Court has

In the High
Court

Nol3
Proceedings
(Nos. 42 and
43 of 1977)

7th December
1978
(continued)

jurisdiction to grant relief against forfeiture. And thirdly, if the Court has jurisdiction, whether this is a proper case in which the Court should exercise its discretion and set aside the forfeiture order.

On the first issue I refer to page 4 of my written submission. Refer to section 130 of the Land Code. I next refer to section 133(1). The applicant in this case being the registered chargee, could not invoke the provision of section 133(1). Refer to section 134 of the Land Code. Appeal was made within three months. 10

Refer to page 5 of my written submission as to proper procedure.

The real bone of contention is whether the Court has jurisdiction to grant relief from forfeiture. Read from paragraph 10 at page 5 of my record.

Go on to paragraph 11 of my ground. Application of equity. Refer to Karuppiah Chettiar v. Subramaniam (1971) 2 M.L.J. 20

Refer to page 8 of my written submission. Refer to section 134(2).

I now come to page 9 of my written submission where I say that the Court has inherent jurisdiction.

I would next proceed to deal with the 3rd issue, namely, whether the Court should grant relief. Refer especially to Shiloh Spinners Ltd. v. Harding (1973) 1 All E.R. 90. The Court should take a liberal view in this case as a question of forfeiture is involved. 30

The amount of quit rent on the figure of the Collector is about \$186,000. The amount owing to the Bank by the Company on the charge is nearly \$600,000. And the Company has expended up to \$20 million. So I think it would be totally harsh and unconscionable to uphold the forfeiture, particularly when there was no wilful default on the part of the Bank. 40

The Collector will be adequately compensated by the payment of rent and any penalty fee provided under the Land Rules and he will not suffer any hardship, on this I refer to the two authorities on page 14 of my written submission.

The setting aside of the order of forfeiture

will be beneficial to the Bank, the Company,
the shareholders and employees of the Company.

In the High
Court

On the benefit of the setting aside of the
forfeiture order, may I refer to paragraphs 9
and 10 of Mr. Cho's affidavit in support of
the applicant.

No.13
Proceedings
(Nos. 42 and
43 of 1977)

7th December
1978
(continued)

10 I next wish to deal with the validity of the
notice which was issued on 2nd June 1977 for
non-payment of rent and other sums. The total
sum demanded was \$186,125/-, as it appears in the
exhibit of the Collector, marked "RAR 1". I
would say that that amount was in excess of the
sum due, as shown at page 16 of my written
submission. This vitiates the entire notice.

20 I refer to paragraph 25 at page 16 of my
written submission (as worked out under Table II
- Annual Rent, para. 2 of the Johore Land Rules.
The arrears at page 16 are charged at the rate of
20% on the quit rent due. The amount of \$31,020.00
stated as Penalty fee is wrong. It should be
\$24,816 in accordance with Johore Land (Amendment)
Rules, 1976, Table III (b).

Education rate is charged at the rate of
\$31,020/-. That is correct. The last item
"Notice fee" should be \$2/- whereas it is stated
at \$5/- under the demand.

If the amount stated in the notice is wrong,
then the notice is wrong in law, so that the
forfeiture should be set aside without any ado.

30 Finally, taking the case as a whole it will
be harsh and unconscionable if the order of
forfeiture is allowed to stand. I would therefore
urge the Court to set aside the order. The summary
of reasons for allowing this appeal are set out at
pages 18 and 19 of the written submission.

N.H. Chan:

I associate myself with whatever has been said
by my learned friend Wong Kim Fatt.

40 In addition, in respect of my client there is
additional ground whether in equity compensation is
payable for the amount of money (in excess of
\$18,000,000) which has been expended on the improve-
ment of the land with the acquiescence and request of
the respondent. This is apparent in the condition
of the appeal which is attached to the affidavit of
Dato Tsang (Enclosure 15).

In the High
Court

No.13
Proceedings
(Nos. 42 and
43 of 1977)

7th December
1978
(continued)

The relevant sections of the National Land Code are sections 100, 130 and 131. The land was originally secondary jungle. It was cleared and planted with sugar cane as mentioned in the first affidavit of Dato Tsang. And roads of 200 miles were built on the land.

The total acreage was 20,680 of which 17,500 acres has been deforested of which 8,500 has been planted with sugar cane and there are 250 miles of road. There is no affidavit 10 challenging these facts.

The other relevant sections are 134 and 418. Refer to section 418(2).

I submit with respect that in the circumstances of this case it is just and equitable that the appellant should be compensated if the Court holds that the forfeiture is proper. I rely on the case of Inwards v. Baker (1965) 2 Q.B. 29,35.

In our case, if the Court holds the forfeiture 20 to be proper, then in what way can the Company's equity be satisfied.

Inwards v. Baker (1965) 2 Q.B. 29 applied the observations of Lord Kingston in Ramsden v. Dyson (L.R. 1 H.L. 129-170).

I refer to Plimmer & Anor. v. The Mayor, Councillors and Citizens of the City of Wellington (1884) 9 A.C. 705 706 (2nd para.).

More modern authority is Ives Investment Ltd. v. High (1967) 2 Q.B. 379, 394. In our case 30 the equity can be satisfied by compensation.

Refer to Ward v. Kirkland (1967) 1 Ch. 194, 205. Finally the equity is good against the Crown. In Plimmer's case, it was good against the authority of Wellington.

I will next hand up the case of A.G. to the Prince of Wales v. Collom (1916) 2 K.B. 193, 204. Here the amount of quit rent is minimal compared to the amount which has been expended in the development of the property and the expenditure 40 was a condition of the lease. Therefore if in equity the land were the revert back to the State Government, then the Court has to decide which is better way to decide the equity.

Nik Mohamed:

In the High
Court

At the outset I will concede to the two issues raised by Wong, namely, the procedural issue and the issue about jurisdiction. In other words, I agree that the Court has jurisdiction and this appeal is rightly brought under section 418. In my opinion section 236 does not apply.

No.13
Proceedings
(Nos. 42 and
43 of 1977)

7th December
1978
(continued)

10 My reply would be limited to the statutory provisions of the National Land Code. The facts of the case are not in dispute. The application is to set out the forfeiture made by the Collector of Land Revenue in exercising his power under section 100 of the Land Code.

20 The National Land Code under Part VI Chapter II deals with the collection of arrears of rent and also provides the remedies to the registered proprietor and certain persons interested. I would refer to section 98(1). The right before the forfeiture is laid down under sections 98 and 99. The rights of remedy after the forfeiture would be under section 133 and also provision for appeals against forfeiture under section 134(1). Section 134 has two limbs.

30 I now deal with section 97(1). In this case the Collector complied with this section and Form 6A (i.e. notice of demand as required by section 97(1) was issued and served both on the applicant chargee and the appellant landowner and duly acknowledged by them.

Under section 98(1) of the Land Code the Collector is required to serve a notice in Form 6A and in addition to the proprietor to the following persons namely, as mentioned under (a), (b), (c) and (d).

40 Under section 98(2) the appellant chargee could also avail itself of the liability to pay the arrears of rent demanded in Form 6A. It goes further to give the chargee certain rights if the money is paid by him. I next refer to section 99.

Now I go to remedies after the forfeiture. Two ways are open to the proprietor immediately before the forfeiture. The first is under section 133(1). What I mean is that he can pay within 3 months of the issue of the notice in Form 6A. In fact there is a long supplementary note at the reverse page 6A which gives full information to the proprietor to save the lease from being forfeited. Refer to Form 6A at page 557 of the Code (First Schedule).

In the High
Court

No.13
Proceedings
(Nos. 42 and
43 of 1977)

7th December
1978
(continued)

If the proprietor fails to pay after issue of Notice in Form A then only remedy open to him is to apply under section 133.

The proprietor in fact applied for annulment of the forfeiture under section 133(1) on 17th November 1977. The Collector under section 100 of the Code made the Forfeiture Order on 7th September 1977. The forfeiture order was published as required by section 130(1) in the Gazette on 15th September 1977 (No.1136). The order of forfeiture made on 7th September.

10

Notice of demand issued under section 97 on 2nd June 1977. It was served on the lessee as well as chargee on 3rd June 1977. When they did not pay within the period of three months as stipulated in Form 6A the Collector made an order of forfeiture under section 100 on 7th September. The forfeiture was published in the Gazette on 5th September (No.136 Pembaritahu Lewat). Forfeiture made on 7th September was served on the chargee on 23rd November (sent by registered post). I cannot decipher date on which the forfeiture order was ordered on the lessee.

20

The National Land Code does not require the Collector to serve the Notice of Forfeiture.

Section 133 does not restrict the time for the proprietor of any alienated land to have the forfeiture annulled.

In this case an application for annulment of the forfeiture was made by the lessee on 17th November 1977. This application went before the authority and the authority by letter dated 29th November 1977 replied to the effect that the application was refused.

30

They could have applied for re-alienation under section 133(3). This has no application to time. To my knowledge the lessee has not availed himself of this remedy open to them.

I want to refer to the stringent conditions laid down under section 133(2). There are similar stringent provisions under section 133(3).

40

Section 134 gives them the right to appeal. I now refer to section 134(2).

Section 236 does not apply to this case. That applies only to a lease as between a

registered proprietor and a third person.
Collector Land Revenue, Johore Bahru v. South
Malaysia Industries Bhd. (1978) 1 M.L.J. 130.

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Both the appellants in this case have not
alleged anything as regards any contravention
of the Land Code with regard to the forfeiture,
as laid down in section 134.

10 I now come to the contention that the
amount demanded from the appellants was different
from what was due. I maintained that the figure
given in Form 6A as exhibited to the affidavit
of Rahmat bin A. Rahman, except for the notice
fee which is in error. There is no mistake in
the arrears figures either. Penalty is dealt
with in Rule 16 of the Johore Land Rules.

20 (Mr. Wong: Penalty can be levied only on
quit rent and not on education rate as has been
done by the Collector here). (I also refer to
section (4), (5) and (6) of the Education
(Amendment) Act, 1966 - emphasises 6 (b) and (7).

Compensation on the setting aside of a
forfeiture order is unknown to the Land Code.

Wong Kim Fatt (in reply)

Education rate is levied in accordance with
section 4(1) of the Education (Amendment) Act 1966
and has to be authorised from year to year, so it
should be equated with the Land Code.

30 Nothing in the law to levy penalty on
education rate; if it was the statute should
specially say so. As forfeiture can take place
on account of non-payment of education rate after
demand in Form 6A by the Collector, the nature of
the statute is strict and should be subject to the
scrutiny of the Court. Refer to Craes on Statute
Law (7th Edition) 528, 530. Collector demanded
more than was due and therefore the notice was bad.
Item (d) was technically wrong.

40 Under section 418 the Court has wide powers
and unfettered jurisdiction. This appeal should be
allowed.

N.H. Chan (in reply)

I support what my learned friend has just said.
Assuming that the Legal Adviser is right on 134(2),
the rules of equity are not shut out. Equital
relief is not ruled out by the Land Code. We are
working for equital relief. The Court should make

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such order as may be just or just in equity.

Section 131(b) only excludes compensation for buildings and not for other things. Refer Shiloh Spinners (1973) A.C. 724.

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C.A.V.

Sd: S.S. Gill

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Written
Submission
for
Appellant
(No.42 of
1977)

No. 14

WRITTEN SUBMISSION
FOR APPLICANT (No.42
of 1977)

7th December
1978

IN THE HIGH COURT OF MALAYA AT JOHORE BAHRU

10

ORIGINATING MOTION NO. 42 OF 1977

Between

UNITED MALAYAN BANKING
CORPORATION BERHAD

Applicant

And

PEMUNGUT HASIL TANAH, KOTA TINGGI

Respondent

WRITTEN SUBMISSION FOR THE APPLICANT

Appeal

1. This is an appeal by way of Originating Motion under Section 418 of the National Land Code ("the Code") against the order of the Respondent, the Collector of Land Revenue, Kota Tinggi ("the Collector"), declaring the land M.L.O. 1481(A) Q.T.(R) 156, Mukim of Sungei Tiram, District of Kota Tinggi, measuring 20,680 acres forfeit to the State Authority under the provisions of Section 100 of the code.

20

2. The order of forfeiture by the Collector appears in Johore Gazette Notification No.1136 dated 15th September 1977. Pursuant to 130(1) of the Code the order of forfeiture took effect upon publication of notification of forfeiture

in Form 8A on the 15th day of September 1977. This originating motion No.42 of 1977 was filed on the 8th day of December 1977, within the stipulated period of three months for the appeal under Section 418 of the Code.

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Grounds

10 3. The grounds in support of this application are stated in the affidavit of Mr. Cho Mun Tuck, affirmed on the 7th day of December 1977. The Collector filed an affidavit in reply affirmed on the 17th day of June 1978.

Brief Facts

20 4. Briefly, the material facts leading to these proceedings are as follows. Johore Sugar Plantation and Industries Berhad, a public company incorporated in Malaysia, is the registered proprietor of a vast piece of land alienated in 1966 known as Lot M.L.O. 1481(A), held under Q.T.(R) 156, measuring 20,680 acres, situate in the Mukim of Sungei Tiram, District of Kota Tinggi. This piece of land is subject to certain conditions imposed by the State Authority, among others, payment of an annual rent, which never fell in arrears till 1977. The land is subject to the following three registered charges :

- (a) Presentation No. 9244/73
- (b) Presentation No. 3088/75 and
- (c) Presentation No. 3089/75

30 in favour of the Applicant, United Malayan Banking Corporation Berhad ("the Bank"), to secure banking facilities granted by the Applicant to the proprietor of the land, Johore Sugar Plantation and Industries Bhd. ("the Company"), who is the Applicant in Originating Motion No.43 of 1977.

40 5. In the year 1977, when the rent fell in arrears, the Collector issued Form 6A demanding payment of the rent and other sums from the Company. A notice had also been sent to the Bank, which asked the Company to pay the rent and if the Company was unable to do so, it should refer the matter back to the Bank. The Company had verbally assured the Bank that it would be able to raise the money to pay the quit rent. However, the Company did not refer the matter of payment of the rent to the Bank and the Bank believed that the quit rent had been paid by the Company in time. (Paragraph 6 of Mr. Cho's affidavit). This belief on the part of the Bank

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unfortunately not through its fault was mistaken, as the quit rent had not been paid by the Company.

6. The Collector proceeded under Sections 100 and 130 to declare the land forfeit to the State Authority and gazetted the notification of forfeiture dated the 15th day of September 1977 in the Johore Gazette Notification No.1136. The Bank has registered interests in the land and is aggrieved by the order of the Collector and hence this appeal pursuant to Section 418 of the Code.

10

THE ISSUES

7. From the pleadings three issues emerge for the decision of the Court :

- (1) On the procedural issue raised by the Collector in his affidavit, whether this appeal is properly brought;
- (2) Whether the Court has jurisdiction to grant relief against forfeiture; and
- (3) If the Court has jurisdiction whether this is a proper case for the Court to exercise its discretion to grant relief against forfeiture by setting aside the order of the Collector.

20

THE 1ST ISSUE

8. After the forfeiture order has taken effect under Section 130(1), the proprietor of the land immediately before forfeiture has two courses of remedy available to him :

30

- (a) To petition under 133 of the Code to the State Authority, and
- (b) To appeal to the Court under Sections 134 and 418 of the Code.

9. It may be noted that the petition under 133 of the Code is restricted only to the proprietor, and therefore the Bank as registered chargee cannot apply to the State Authority under Section 133. The method of appeal by the Bank is expressly provided under Sections 134 and 418. This motion is brought pursuant to Section 418 and is therefore properly brought before the Court by originating motion :

40

- (1) O.59, r.13(1), Rules of Supreme Court, 1957;
- (2) Sundram v. Chew Chee Khoon [1968] 2 M.L.J. 40;
- (3) Nanyang Development [1966] Sdn.Bhd. [1969] 1 M.L.J. 232; and
- (4) Temenggong Securities Ltd. [1974] 2 M.L.J. 45 F.C.

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THE 2ND ISSUE: WHETHER THE COURT HAS JURISDICTION TO GRANT RELIEF AGAINST FORFEITURE

10

Validity may be challenged

10. The validity of any forfeiture order may be challenged in Court by way of an appeal under Section 418 brought by a person aggrieved. This Section clearly confers power on the Court to make such order as it considers just. A wide and liberal interpretation should be given so as not to fetter the jurisdiction and discretion of the Court. Without any doubt, the Bank, as registered chargee, is a person or body aggrieved by the forfeiture as it affects directly its security and rights. The expression 'person aggrieved' is of wide import as was stated by Lord Denning in Attorney-General of Gambia v. N'Jie, [1961] A.C. 617, at Page 634:

20

"But the definition of James L.J. is not to be regarded as exhaustive. Lord Esher M.R. pointed that out in Ex parte Official Receiver, In re Reed, Bowen & Co. The words "person aggrieved" are of wide import and should not be subjected to a restrictive interpretation. They do not include, of course, a mere busybody who is interfering in things which do not concern him: but they do include a person who has a genuine grievance because an order has been made which prejudicially affects his interests."

30

It is clear beyond doubt that the Bank has locus standi. The Collector's objection is therefore misconceived.

40

11. The word validity may be interpreted as validity in equity as Section 134 does not exclude the application of the rules of equity under Section 3(1) of the Civil Law Act 1956 and applied by the Courts in Malaysia in various cases involving

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Torrens statutes. It is submitted that under Section 134(2) of the Code the forfeiture order of the Collector may be set aside by the Court if the Court is of the opinion that the order was made contrary to the provisions of this Act or the rules of equity. The function of the Collector under Sections 97 and 100 in respect of the Collection of rent and the forfeiture of the land is purely ministerial or administrative. He does not decide the equity or justice of the cases and this is left solely to the High Court to be decided by an appeal under Sections 134 and 418.

10

Application of Equity

12. That the rules of equity are recognised by the Court under the Torrens System including the National Land Code, is not open to question. There are ample authorities to support this point :

- (1) Karupiah Chettiar v. Subramaniam
/[1971] 2 M.L.J. 116, 118, 119 F.C. 20
- (2) Wilkins & Ors. v. Kannammal & Anor.
/[1951] M.L.J. 99, 100
- (3) Temenggong Securities Limited & Anor.
v. Registrar of Titles, Johore & Ors.
/[1974] 2 M.L.J. 45 F.C.
- (4) Registrar of Titles, Johore, Johore
Bahru v. Temenggong Securities Limited
& Anor. [1976] 2 M.L.J. 44 P.C.
- (5) Devi v. Francis [1969] 2 M.L.J. 169, 30
per Chan Min Tat J.
- (6) Butler v. Fairclough [1916-17] 23 C.L.R.
78, 91
- (7) Abigail v. Lapin [1934] A.C. 491.

Lacuna: Civil Law Act 1956

13. There is a lacuna in Section 134 as in the words of Raja Azlan Shah, F.J., in the case of the Collector of Land Revenue, Johore Bahru v. South Malaysia Industries Bhd., [1978] 1 M.L.J. 130, 134, F.C., "there is no provision for relief from forfeiture by the Court." The Code is silent on equity and Part 8 of the Code does not expressly exclude equity, as Section 6 of the Civil Law Act 1956 does expressly in the

40

exclusion of the English land law. Therefore the rules of equity are also applicable by virtue of 3(1) of the Civil Law Act reading as follows :-

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"3. (1) Save so far as other provision has been made or may hereafter be made by any written law in force in Malaysia, the Court shall -

10

(a) in West Malaysia or any part thereof, apply the common law of England and the rules of equity as administered in England on the 7th day of April, 1956;

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20

Provided always that the said common law, rules of equity and statutes of general application shall be applied so far only as the circumstances of the States of Malaysia and their respective inhabitants permit and subject to such qualifications as local circumstances render necessary."

Several cases support this contention, among them :

(1) Bagher Singh v. Chanan Singh [1961] 29 M.L.J. 328 C.A.

(2) Devi v. Francis [1969] 2 M.L.J. 169 Chan Min Tat J.

30

(3) Hj. Taib v. Ismail [1971] 2 M.L.J. 36

Inherent Jurisdiction

14. In any event, in order to do justice between the parties, the Court can always exercise its inherent jurisdiction:

The Motor Emporium v. Arumugam [1933-34] F.M.S.L.R. 21, 26

3RD ISSUE: WHETHER THE COURT SHOULD GRANT RELIEF

Principles

40

15. The principles of equitable intervention have been stated in a number of cases :

(1) Collector of Land Revenue, Johore Bahru

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v. South Malaysia Industries Bhd.
[1978] 1 M.L.J. 130 F.C., at P.134

- (2) Barton Thompson & Co.Ltd. v.
Stapling Machines Co. [1966] 1 Ch.499
- (3) Shiloh Spinners Ltd. v. Harding
[1973] 1 All E.R. 90, H.L., where
at page 100, Lord Wilberforce said:

"There cannot be any doubt that from the
earliest times courts of equity have
asserted the right to relieve against
the forfeiture of property. The juris-
diction has not been confined to any
particular type of case. The commonest
instances concerned mortgages, giving rise
to the equity of redemption, and leases,
which commonly contained re-entry clauses;
but other instances are found in relation
to copyholds, or where the forfeiture was
in the nature of a penalty. Although the
principle is well established, there has
undoubtedly been some fluctuation of
authority as to the self-limitation to be
imposed or accepted on this power. There
has not been much difficulty as regards
two heads of jurisdiction. First, where
it is possible to state that the object of
the transaction and of the insertion of
the right to forfeit is essentially to
secure the payment of money, equity has
been willing to relieve on terms that the
payment is made with interest, if appropriate,
and also costs (Peachy v. Duke of Somerset
and cases there cited). Yet even this head
of relief has not been uncontested: Lord
Eldon LC in his well known judgment in
Hill v. Barclay expressed his suspicion of
it as a valid principle, pointing out, in
an argument which surely has much force,
that there may be cases where to oblige
acceptance of a stipulated sum of money
even with interest, at a date when receipt
had lost its usefulness, might represent
an unjust variation of what had been
contracted for (see also Reynolds v. Pitt)
Secondly there were the heads of fraud,
accident, mistake or surprise always a
ground for equity's intervention, the
inclusion of which entailed the exclusion
of mere inadvertence and a fortiori of
wilful defaults."

After dealing with some hostile pronouncements at

page 100, His Lordship went on to say at page
101 :

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10 "I would fully endorse this: it remains
true today that equity expects men to carry
out their bargains and will not let them buy
their way out by uncovenanted payment. But
it is consistent with these principles that
we should reaffirm the right of courts of
equity in appropriate and limited cases to
relieve against forfeiture for breach of
covenant or condition where the primary
object of the bargain is to secure a stated
result which can effectively be attained
when the matter comes before the court, and
where the forfeiture provision is added by
way of security for the production of that
result. The word 'appropriate' involves
consideration of the conduct of the
applicant for relief, in particular whether
20 his default was wilful, of the gravity of
the breaches, and of the disparity between
the value of the property of which forfeiture
is claimed as compared with the damage caused
by the breach."

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Examples of equitable intervention

16. A good example of equitable intervention by
the Courts to mitigate the harshness or rigidity
of the legal provisions of the Code is the case
of Temenggong Securities Ltd. & Anor. v. Registrar
of Titles, Johore /1974/ 2 M.L.J. 45 F.C., which
30 was upheld on appeal by the Privy Council in
Registrar of Titles, Johore, Johore Bahru v.
Temenggong Securities Ltd. & Anor. /1976/ 2 M.L.J.
44. In this case, the Government of Malaysia
was seeking to execute against the land registered
in the name of the taxpayer. The Registrar of
Titles entered a Registrar's Caveat under Section
320 of the Code against the land. At the time of
entry of the caveat on 11th October 1972 there
40 was nothing in the register document of title to
show that the land had been sold or transferred to
another person. The Registrar relied on Sections
215(2) and 89 of the Code to say that land still
stood in the name of the taxpayer and that was
conclusive evidence of the title of the taxpayer.
Section 89 reads :

50 "Every register document of title duly
registered under this Chapter shall, subject
to the provisions of this Act, be conclusive
evidence -

(a) that title to the land described therein

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is vested in the person or body
for the time being named therein
as proprietor."

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17. In the Court of first instance, the late Pawan Ahmad J. took a narrow interpretation and held that the caveat was validly entered. He would be right if the rules of equity were excluded by the Code, as the caveat was entered before the transfer of the land was presented for registration. But the Federal Court applied equity and held that the title of the taxpayer was a bare legal title held on trust for the bona fide purchaser for value. It came to the conclusion that the caveat was wrongly entered. 10

18. To like effects are the earlier cases of Karupiah Chettiar v. Subramaniam [1971] 2 M.L.J. 116 F.C., and Haroon bin Guriaman v. Nik Mah binte Nik Mat [1951] M.L.J. 209, in which the Courts applied principles of equity to do justice between the parties. 20

Forfeiture harsh and unconscionable

19. It is clear on the undisputed facts in present case the Bank has not wilfully defaulted in payment of the rent. The non-payment of the rent is only for 1977. The Bank was acting under a mistaken belief that the rent in fact had been paid by the Company (paragraph 6 of the affidavit of Cho Mun Tuck). No hardship whatsoever would be caused to the Collector whose interest is the collection of revenue. The Collector can be adequately compensated by the payment of the rent plus the arrears fees under the Johore Land Rules, 1966, as amended. For compensation under English equity, Rigby L.J. said In re Dixon, Heynes v. Dixon, [1900] 2 Ch. 561, 576 C.A. : 30

"The Court of Chancery gave relief against the strictness of the common law in cases of penalty or forfeiture for non-payment of a fixed sum on a day certain, on the principle that the failure to pay principal on a certain day could be compensated sufficiently by payment of principal and interest with costs at a subsequent day." 40

20. For a more recent statement of the principle, see Chandless-Chandless v. Nicholson [1942] 2 K.B. 321, 323; [1942] 2 All E.R. 315, 317, C.A. per Lord Greene M.R. :

"The court, in exercising its jurisdiction to grant relief in cases of non-payment of rent is, of course, proceeding on the old principles of the court of equity which always regarded the condition of re-entry as being merely security for payment of the rent and gave relief if the landlord could get his rent."

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10 21. The setting aside of the Order will be beneficial to the Bank, the Company and the shareholders and also create employment opportunities for Malaysians and further would be beneficial to the economy of the country (paragraph 9 of the affidavit).

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(continued)

Sum demanded by Collector

20 22. The total amount of rent demanded in Form 6A under Section 97(1) of the Code by the Collector for 1977 is \$186,125-00, made up as follows (Exhibit "RAR 1" of Encik Rahmat's affidavit) :-

| | | | |
|----------------|-----|-----|-----------------------|
| Rent | ... | ... | \$124,080-00 |
| Education Rate | ... | ... | 31,020-00 |
| Penalty Fee | ... | ... | 31,020-00 |
| Notice Fee | ... | ... | 5-00 |
| Total demanded | | | \$186,125-00 ===== |

Disparity astronomical

30 23. The original paid up capital of the Company was \$36,682,000-00 (paragraph 3 of Mr. Cho's affidavit) and the amount owing to the Bank as at 26th November 1977 was \$5,334,163-00, with further interest thereon (paragraph 4 of Mr. Cho's affidavit). The amount owing to the Bank as at 26th November 1978 was \$5,951,390-40. Millions of dollars had also been expended by the Company according to paragraph 3 of Mr. Cho's affidavit and also the affidavit of Datuk Tsang Tak Chuen affirmed on 23rd September, 1978, and filed in Originating Motion No. 43 of 1977 in this Honourable Court. It is clearly seen that
40 the disparity is astronomical between the rent and the sum owing to the Bank and the value of the land and the expenditure thereon.

24. The Collector could and should have proceeded under Section 16(1)(d) of the Code to recover the rent due. The forfeiture is totally harsh and unconscionable that this is a proper case for the Court to intervene by equity to do

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justice between the parties by setting aside the forfeiture order of the Collector. The Bank has been willing and able to pay the rent. The Court has full jurisdiction to make such order as it considers just under Section 418(2) of the Code.

Sum correctly due

25. In accordance with R.16 and Table II of the Johore Land Rules, 1966, as amended, the rent due for 1977 on 20,680 acres at \$6-00 per acre is \$124,080-00. The arrears fees at 20% under Table III on \$124,080-00 should be \$24,816-00, and not \$31,020-00 as demanded by the Collector. The total amount, including education rate at \$1-50 per acre or part thereof, assuming this rate to be recoverable by forfeiture, correctly due to the Collector for 1977 is therefore as follows :-

| | | | | |
|-----------------------|-----|-------|--------------|----|
| (a) Rent | ... | ... | \$124,080-00 | |
| (b) Arrears Fees | ... | ... | 24,816-00 | 20 |
| (c) Education Rate | ... | ... | 31,020-00 | |
| (d) Notice Fee (R.17) | | | <u>2-00</u> | |
| | | Total | \$179,918-00 | |
| | | | ===== | |

26. The Collector had acted contrary to the provisions of the Code and had demanded \$186,125-00, in excess of the sum of \$179,918-00 lawfully due. It is respectfully submitted that the issue and service of Form 6A by the Collector were therefore bad in law and were inoperative and null and void.

As the education rate is chargeable by authority from year to year, it is submitted that it cannot be equated with rent which is payable annually under the Code. Consequently arrears or penalty fees of 20% should not be payable on the education rate.

Forfeiture contrary to provision of Code

27. If the Court accepts the foregoing submission, it follows that the forfeiture order based on the issue and service of the notice of demand in Form 6A is therefore contrary to the provisions of the code and must be set aside. The Court will not uphold forfeiture based on a sum which is not lawfully due. The severe and penal consequences of the order of forfeiture are the deprivation of the property of the Company and the extinction of the registered charges of the

Bank to secure the vast sum of money lent to the Company. The provisions relating to the issue of the notice of demand should be strictly observed by the Collector, whose attempt at forfeiture under such doubtful or unjustified circumstances should be subjected to the strictest scrutiny by the Courts. Only in the clearest case may the courts, having regard to all the circumstances of the case, uphold the forfeiture.

10

Appeal should be allowed

28. AND the Applicant humbly submits that this appeal should be allowed with costs for the following among others :

R E A S O N S

- (1) BECAUSE the Notice of Demand issued by the Collector in Form 6A is bad in law, inoperative, and null and void.
- (2) BECAUSE the order of forfeiture was made contrary to the provisions of Section 134(2) of the Code and the rules of equity.
- (3) BECAUSE this is a proper case for the Court to exercise its equitable and/or inherent jurisdiction to set aside the order of forfeiture.
- (4) BECAUSE it is totally harsh and unconscionable to uphold the order of forfeiture.
- (5) BECAUSE the Collector suffers nothing by accepting payment of the rent plus arrears fees under the Johore Land Rules.
- (6) BECAUSE it is just and equitable that the order of forfeiture should be set aside.

20

30

Dated this 7th day of December, 1978

Sd: (WONG KIM FATT)
Advocate & Solicitor,
Counsel for Applicant.

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No. 15

JUDGMENT (Nos. 42 and 43
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IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

6th March
1979

ORIGINATING MOTION NO. 42 OF 1977

Between

United Malayan Banking Corporation Applicant
Berhad

And

Pemungut Hasil Tanah, Kota Tinggi Respondent 10

ORIGINATING MOTION NO. 43 OF 1977

Johore Sugar Plantations &
Industries Berhad Applicant

And

Pemungut Hasil Tanah, Kota Tinggi Respondent

JUDGMENT OF GILL C.J.

Johore Sugar Plantations & Industries Berhad,
a company incorporated in Malaysia, was the
registered lessee of all that piece of land held
under qualified Title No. Q.T.(R) 156 for Lot 20
M.L.O. 1481(A) comprising an area of approximately
20,680 acres or thereabouts in the Mukim of Ulu
Sungei Johor in the District of Kota Tinggi for
a term of 99 years commencing on 22nd December
1966. The original capital of the Company was
\$36,682,000/- but it has since been reduced
to \$7,336,400/-.

The United Malayan Banking Corporation Berhad
lent money to the Company under three separate
charges to assist in the development of the land, 30
the construction of a sugar refining factory,
the purchase and acquisition of necessary machinery
and equipment for the purpose of harvesting of
canes for the refining of sugar and generally to
provide additional capital for the chargor for
the daily expenses and management of the whole
complex. The total amount of money owing the
said charge or charges was \$5,334,163.60 as on
26th September 1977.

Quit rent in respect of the lease was paid 40

regularly up to the year 1976. In the year 1977 when the rent fell in arrear the Collector of Land Revenue caused to be served on the Company a notice of demand for the rent in Form 6A under Section 97(1) of the National Land Code. A copy of such notice, as required by Section 98(1) of the Code, was also sent to the Bank. Presumably the Bank had paid the quit rent during the previous years. This time, however, the Company did not specifically refer the matter of payment to the Bank, and the Bank believed that the quit rent had been paid by the Company. All this confusion led to the quit rent not being paid in time. The result was that the Collector of Land Revenue proceeded under Section 100 of the Code to declare the land forfeit to the State Authority. Such forfeiture was gazetted in the Johore Gazette dated 15th September 1977 as Notification No: 1136.

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Judgment
(Nos. 42 and
43 of 1977)

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1979
(continued)

20 The Bank and the Company have now filed two separate motions in the High Court at Johore to have the order of forfeiture set aside, the originating motion by the Bank being No.42 of 1977 and the one by the Company being No.43 of 1977. By consent of the parties the two applications were heard together, as the points involved in and the object of each of the applications are the same.

30 In answer to the objection taken by the Collector of Land Revenue as respondent to each of the originating motions that the procedure adopted by the applicants was wrong, it was contended on behalf of the applicants that the proceedings were brought by way of appeal under sections 134(1) and 418 of the National Land Code. It was further contended that the points at issue are whether the Court has jurisdiction to grant relief against forfeiture and, if so, whether this is a proper case for the Court to exercise its discretion to grant such relief by setting aside the order of forfeiture made by the Collector.

40
50 One of the grounds in support of the motions is that the validity of any forfeiture order may be challenged in Court by way of an appeal under section 418 brought by a person aggrieved, as that section confers on the Court the power to make such order as it considers just. In this connection it was argued that a wide and liberal interpretation should be given to this section so as not to fetter the jurisdiction and discretion of the Court. It was further argued that the Bank as the registered chargee was undoubtedly a person or body aggrieved

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(continued)

by the forfeiture as such forfeiture directly affected its security and right under the charge. In support of this argument was cited the case of Attorney General of Gambia N'Jie (1) in which Lord Denning said :

"The words 'person aggrieved' are of wide import and should not be subjected to a restrictive interpretation. They do not include, of course, a mere busybody who is interfering in things which do not concern him: but they do include a person who has a genuine grievance because an order has been made which prejudicially affects his interest."

10

Another ground in support of the appeal is that the notice issued on the applicants was invalid in that the sum alleged to be due by way of quit rent was not correctly stated and was in fact in excess of the amount lawfully due. An effective answer to this ground is to be found in section 124(2) of the Code which says that no order of forfeiture shall be set aside by reason only of any irregularity in the form or service of any notice unless, in the opinion of the Court, the irregularity was of a significant nature. The only irregularity alleged here was that the amount demanded was some \$6,000/- more than the amount lawfully due. I do not think that was an irregularity of any significant nature, especially in view of the fact that no representations were made to the Collector as to the amount demanded by way of quit rent.

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It is common ground that the Collector has power under section 97 of the Code to cause to be served on the proprietor of the lease a notice of demand in Form 6A. It is also clear that under section 100 of the Code the Collector has the authority by order to declare the land forfeit to the State Authority in the event of failure on the part of the proprietor to tender to him the amount stipulated in the notice within the specified time.

40

The remedies open to the lessee thereafter are contained in sections 133 and 134 of the Code. Section 133 of the Code provides as follows:

(1) (1961) A.C. 617, 634

"(1) Any person or body who was the proprietor of any alienated land immediately before its forfeiture under this Act may at any time apply to the State Authority for the annulment of the forfeiture.

In the High Court

No.15
Judgment
(Nos. 42 and
43 of 1977)

(2) The State Authority may in its absolute discretion refuse or allow any petition under this section, and, if it allows the petition, may do so conditionally upon payment by the petitioner -

6th March
1979
(continued)

(a) if the forfeiture was for non-payment of rent, of such penalty, not exceeding six times the sum which he was required to pay by the notice of demand served on him under section 97, as the State Authority may think fit to impose;

(b) if the forfeiture was for breach of any condition, of such amount as the State Authority may determine in respect of the expenses occasioned by the forfeiture.

(3) The refusal of any petition under this section shall not be taken to prejudice the power of the State Authority to re-alienate the land to the previous proprietor at any time; and, for the purposes of any such re-alienation, the State Authority shall, at the time when it gives approval thereto, re-determine as it may consider appropriate the various matters specified in subsection (2) of section 79."

Section 134(1) of the Code provides as follows:

"(1) The validity of any forfeiture under this Act shall not be challenged in any court except by means of, or in proceedings consequent upon, an appeal under section 148 against the order of the Collector under section 100 or, as the case may be, 129; and, notwithstanding anything in any other written law, no such appeal shall be commenced after the expiry of the period of three months allowed for the bringing thereof by the said section 418."

It would thus seem clear that after the forfeiture order has taken effect under section 131 of the Code the proprietor of the land immediately

In the High
Court

No.15
Judgment
(Nos. 42 and
43 of 1977)

6th March
1979
(continued)

before the forfeiture has two courses open to him. First, he can petition the State Authority under section 133(2)(a) of the Code for the annulment of the forfeiture and the State Authority may, in its discretion, allow his petition conditional upon the making of such payments as may be required of him. Furthermore, as provided by section 133(3), the refusal of any petition for the annulment of the forfeiture shall not be taken to prejudice the power of the State Authority to reallocate the land to the previous proprietor at any time.

10

It was conceded by counsel for the respondent that in this case an application was made by the Company on 17th November 1977 for the annulment of the forfeiture. The application, however, was refused by the authority by its letter dated 28th December 1977. Even after the refusal of this petition by the State Authority it was open to the Company to apply to the Authority for reallocation of the land. The Company obviously chose not to do so because the conditions for reallocation under section 133(3) are as stringent as the conditions for annulment of the forfeiture under section 133(2). It is for this reason that the Company has chosen the second course open to it under section 134(1) of the Land Code read in conjunction with section 418 of the Code.

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I would pause here to observe that section 237 of the code makes specific provision for the granting by the Court of relief against forfeiture. But, as Raja Azlan Shah F.J. said in the Federal Court in The Collector of Land Revenue Johore Bahru v. The South Malaysia Industries Berhad (2) "Section 237 is referable to Part 15 which deals with leases and tenancies and section 221 refers to leases granted by the proprietor of alienated land." It would therefore seem clear that the only question to be decided in this appeal, which in my opinion has been correctly brought under section 418 of the Code, is whether it is open to this Court to grant any relief against the order of forfeiture made by the Collector. From the wording of section 418 it would appear that the Bank itself as an aggrieved party has the right to appeal against the forfeiture because of the large sums of money advanced by it to the Company for the development of the land, although it would be difficult for

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(2) (1978) 1 M.L.J. 130, 134

it to make out a case for the annulment of the forfeiture merely on the ground that it had loaned money to develop the leased land.

In the High Court

No.15
Judgment
(Nos. 42 and 43 of 1977)

6th March
1979
(continued)

10 The substantial ground of appeal is that the validity of any forfeiture order made by the Collector may be challenged in Court by way of an appeal under section 418 brought by a person aggrieved. In this connection it is contended that the word "validity" may be interpreted as "validity in equity" as section 134 does not exclude the rules of equity under section 3(1) of the Civil Law Act 1956, which have been applied by the Courts in Malaysia in various cases involving the Torrens System including our National Land Code. Several authorities such as Devi v. Francis (3), Temenggong Securities Ltd. and Another v. Registrar of Titles Johore and Others (4), Registrar of Titles Johore v. Temenggong Securities Ltd. (5), Butler v. Fairclough (6), and Abigail v. Lapin (7) were cited in support of this contention. But I need only refer to Wilkins & Ors. v. Kannammal & Anor (8) in which Taylor J. said :

"The Torrens Law is a system of conveyancing; it does not abrogate the principles of equity; it alters the application of particular rules of equity but only so far as necessary to achieve its own special objects."

30 The principles of equitable intervention by the Court have been stated in a number of cases. In Re Dixon Haynes v. Dixon (9), Rigby L.J. said:

"The Court of Chancery gave relief against the strictness of the common law in cases of penalty or forfeiture for non-payment of a fixed sum on a day certain, on the principle that the failure to pay principal on a certain day could be compensated sufficiently by payment of principal and interest with costs at a subsequent day."

40 In the more recent case of Chandless-Chandless v. Nicholson (10) Lord Greene M.R. said :

"The court, in exercising its jurisdiction to grant relief in cases of non-payment of rent is, of course, proceeding on the old

(3) (1969) 2 M.L.J. 169
(4) (1974) 2 M.L.J. 45
(5) (1976) 2 M.L.J. 44
(6) (1916-17) 23 C.L.R. 78, 91
(7) (1934) A.C.491
(8) (1951) M.L.J. 99, 100
(9) (1900) 2 Chan. 561, 576
(10) (1942) 2 K.B. 321, 323

In the High Court

No.15
Judgment
(Nos.42 and
43 of 1977)

6th March
1979
(continued)

principles of the court of equity which always regarded the condition of re-entry as being merely security for payment of the rent and gave relief if the landlord could get his rent."

In Barton Thompson & Co.Ltd. v. Stapling Machines (11), it was held that, although relief against forfeiture was normally only granted in the case of lease of land, it was not plain and obvious as a matter of law that the court could not in certain circumstances, even in the absence of unconscionable behaviour, grant relief against forfeiture in the case of a lease of chattels. 10

In Shiloh Spinners Ltd. v. Harding (12)
Lord Wilberforce (at page 100) said :-

"There cannot be any doubt that from the earliest times courts of equity have asserted the right to relieve against the forfeiture of property. The jurisdiction has not been confined to any particular type of case. The commonest instances concerned mortgages, giving rise to the equity of redemption, and leases, which commonly contained re-entry clauses but other instances are found in relation to copyholds, or where the forfeiture was in the nature of a penalty. Although the principle is well established, there has undoubtedly been some fluctuation of authority as to the self limitation to be imposed or accepted on this power. There has not been much difficulty as regards two heads of jurisdiction. First, where it is possible to state that the object of the transaction and of the insertion of the right to forfeit is essentially to secure the payment of money, equity has been willing to relieve on terms that the payment is made with interest, if appropriate, and also costs (Peachy v. Duke of Somerset and cases there cited (13)). Yet even this head of relief has not been uncontested; Lord Eldon LC in his well known judgment in Hill v. Barclay (14) expressed his suspicion of it as a valid principle, pointing out, in an argument which surely has much force, that there may be cases where to oblige acceptance of a stipulated sum of money even 20 30 40

(11) (1966) 1 Chan.499
(12) (1973) 1 All E.R. 90, 100
(13) (1721) 1 Stra. 447
(14) (1811) 18 Ves. 56, 1803-13 All E.R. Rep.379

with interest, at a date when receipt had lost its usefulness, might represent an unjust variation of what had been contracted for (see also Reynolds v. Pitt (15). Secondly, there were the heads of fraud, accident, mistake or surprise always a ground for equity's intervention, the inclusion of which entailed the exclusion of mere inadvertence and a fortiori of wilful defaults."

In the High Court

No.15
Judgment
(Nos.42 and
43 of 1977)

6th March
1979
(continued)

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After dealing with some contrary pronouncements his Lordship goes on to say at page 101 :

"I would fully endorse this: it remains true today that equity expects men to carry out their bargains and will not let them buy their way out by uncovenanted payment. But it is consistent with these principles that we should reaffirm the right of courts of equity in appropriate and limited cases to relieve against forfeiture for breach of covenant or condition where the primary object of the bargain is to secure a stated result which can effectively be attained when the matter comes before the court, and where the forfeiture provision is added by way of security for the production of that result. The word 'appropriate' involves consideration of the conduct of the applicant for relief, in particular whether his default was wilful, of the gravity of the breaches, and of the disparity between the value of the property of which forfeiture is claimed as compared with the damage caused by the breach."

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Having carefully considered the above authorities, I am of the view that in dealing with an appeal under section 418 of the National Land Code this Court in the exercise of its inherent equitable jurisdiction has the power to grant relief against the forfeiture, notwithstanding the fact that the only provision in the National Land Code regarding relief against forfeiture is contained in section 237 which clearly is not applicable in the present case.

40

It has been submitted on behalf of the applicants that the forfeiture in this case was harsh and unconscionable for the following reasons which emerge from the undisputed facts in

(15) (1812) 19 Ves.134

In the High
Court

No.15
Judgment
(Nos.42 and
43 of 1977)

6th March
1979
(continued)

the case. The non-payment of rent was only for the year 1977. The Bank had not wilfully defaulted in paying the rent as it was under the mistaken belief that the rent had been paid by the Company. No hardship whatsoever would be caused to the Collector whose main interest is the collection of revenue, and he can be adequately compensated by the payment of rent due up to date together with such penalty as may be imposed. The setting aside of the order will be beneficial to the Bank, the Company and the shareholders, and it would also create employment opportunities for Malaysians and it would further be beneficial to the economy of the country. 10

I must say that there is a good deal of substance in the above submission. It is to be observed that when the land was leased to the sugar company it was secondary jungle. The Company is stated to have spent more than \$18,000,000/- for the development of the land in making it suitable for the cultivation and production of sugar in accordance with the terms of the lease. Between 1968 and 1977 the Company claims to have constructed 250 miles of roads, drains and bridges. Out of a total acreage of 20,680 an area of 17,500 acres has been deforested and an area of 5,000 acres has been planted with sugar-cane. There is alleged to have been in existence at the time of the forfeiture two sets of machinery to process the sugar canes costing a total of \$1,000,000/- with a combined pressing capacity of 300 tons daily. The Company further claims that it had successfully cultivated ten species of sugar cane seedlings suitable for the climate, soil and rain conditions in Malaysia. 20 30

In all the circumstances of the case I am of the opinion that I should exercise a discretion in favour of the applicants by granting them the relief sought. I would therefore make an order that the forfeiture be set aside upon the Company paying within six months all the quit rents due and any money payable by way of penalty together with costs of the respondent. 40

Johore Bahru,
6th March 1979

(TAN SRI S.S. GILL)
CHIEF JUSTICE
MALAYA

Encik Wong Kim Fatt for Applicant in
O.M.No. 42/77

In the High
Court

Encik Nik Mohamed bin Nik Yahya for the
Respondent.

No.15
Judgment
(Nos.42 and
43 of 1977)

Encik N.H.Chan with Encik P.S.Gill for the
Applicant in O.M. No. 43/77

6th March
1979
(continued)

Encik Nik Mohamed bin Nik Yahya for the
Respondent.

10

Solicitors for O.M.No.42/77 - M/s. Allen &
Gledhill.

Solicitors for O.M.No.43/77 - M/s. Cheang Lee
& Ong.

No. 16

ORDER (Nos. 42 and
43 of 1977)

No.16
Order
(Nos.42 and
43 of 1977)

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

6th March
1979

ORIGINATING MOTION NO. 42 OF 1977

Between

20

United Malayan Banking Corporation
Berhad Applicant

And

Pemungut Hasil Tanah, Kota Tinggi Respondent

ORIGINATING MOTION NO. 43 OF 1977

Between

Johore Sugar Plantations &
Industries Berhad Applicant

And

Pemungut Hasil Tanah, Kota Tinggi Respondent

30

BEFORE THE HONOURABLE
TAN SRI S.S. GILL
CHIEF JUSTICE, MALAYA

IN OPEN COURT
THIS 6TH DAY OF MARCH, 1979

In the High
Court

O R D E R

No.16
Order
Nos.42 and
43 of 1977

6th March
1979
(continued)

UPON the aforesaid applications coming on for hearing this 7th day of December 1978 in the presence of Mr. Wong Kim Fatt of Counsel for the Applicant in Originating Motion No.42 of 1977 and Mr. N.H.Chan and Mr. P.S.Gill of Counsel for the Applicant in Originating Motion No.43 of 1977 and Yang Berhormat Nik Mohamed bin Nik Yahya, State Legal Adviser, Johore of Counsel for the Respondent in both the aforesaid applications AND BY CONSENT of Counsel as aforesaid, IT IS ORDERED that the aforesaid applications be heard together AND UPON READING the Originating Motion No.42 of 1977 and the Affidavit of Cho Mun Tuck affirmed on the 7th day of December 1977 in support thereof and the Affidavit in reply of Rahmat bin A.Rahman affirmed on the 17th day of June 1978 AND UPON HEARING oral submissions AND UPON READING the written submissions of Mr. Wong Kim Fatt of Counsel for the Applicant as aforesaid, AND UPON HEARING Yang Berhormat Nik Mohamed bin Nik Yahya of Counsel as aforesaid AND FURTHER UPON READING Originating Motion No.43 of 1977 and the Affidavits of Datuk Tsang Tak Chuen and Peng Swee Huat both affirmed on the 14th day of December, 1977 in support thereof and the Affidavit in reply of Encik Rahmat bin A. Rahman affirmed on the 17th day of June, 1978, AND UPON HEARING Mr. N.H.Chan and Yang Berhormat Nik Mohamed bin Nik Yahya of Counsel as aforesaid, IT IS ORDERED that these applications be adjourned for judgment AND UPON the same coming on for judgment this day IT IS ORDERED that the order of forfeiture of the Respondent appearing in the Johore Government Gazette Notification No.1136 dated the 15th day of September 1977 be set aside upon the aforesaid applicant Johore Sugar Plantations & Industries Berhad paying within six months all the quit rent due and any money payable by way of penalty AND IT IS FURTHER ORDERED that the Applicants do pay the taxed costs of these applications to the Respondent.

Given under my hand and Seal of the Court
this 6th day of March, 1979.

Senior Assistant Registrar,
High Court, Malaya,
Johore Bahru.

No. 17

In the Federal
Court

NOTICE OF APPEAL
No. 57 of 1979

No.17
Notice of
Appeal
No.57 of 1979

IN THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

6th March 1979

CIVIL APPEAL NO. 0 OF 1979

Between

Pemungut Hasil Tanah,
Kota Tinggi

Appellant

10

And

United Malayan Banking
Corporation Berhad

Respondent

(In the Matter of Originating Motion No.42
of 1977 in the High Court in Malaya at
Johore Bahru

In the Matter of land held under Q.T.(R) 156
for Lot MLO 1481(A) measuring 20,680 acres
or thereabouts in the Mukim of Ulu Sungei
Johore, District of Kota Tinggi, State of
Johore.

20

And

In the Matter of three Charges of the said
land in favour of United Malayan Banking
Corporation Berhad, registered under Pres.
No.9244/73 Vol.183 Fol.165, Pres.No.3088/75
Vol.203 Fol.12 and Pres.No. 3089/75 Vol.203
Fol. 12, respectively.

And

In the Matter of Johore Government Gazette
Notification No.1136 dated 15th September, 1977

30

And

In the Matter of Sections 130, 131, 132, 417
and 418 National Land Code, 1965.

Between

United Malayan Banking Corporation Berhad
Applicant

And

Pemungut Hasil Tanah, Kota Tinggi
Respondent)

In the Federal
Court

NOTICE OF APPEAL

No.17
Notice of
Appeal
No.57 of 1979
6th March 1979
(continued)

TAKE NOTICE that the Pemungut Hasil Tanah, Kota Tinggi the abovenamed Appellant being dissatisfied with the decision of the Honourable Mr. Justice Tan Sri Sarwan Singh Gill given at Johore Bahru on the 6th day of March, 1979, appeals to the Federal Court against the whole of the said decision

Dated this 6th day of March, 1979.

(SEAL) Sd: 10
(NIK MOHAMED BIN NIK YAHYA)
STATE LEGAL ADVISER,
JOHORE
for and on behalf of the Appellant

To:

- (1) The Chief Registrar,
Federal Court,
Malaysia,
Kuala Lumpur.

And to:

- (2) The Senior Assistant Registrar,
High Court,
Johore Bahru
- (3) Messrs. Allen & Gledhill,
O.C.B.C. Building,
Nos. 302-303 (3rd Floor)
1, Jalan Ibrahim,
P.O.Box 113,
Johore Bahru.
(Solicitors for the Respondent).

20

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The Appellant's address for service is c/o
The State Legal Adviser's Chambers, High
Court Building, Johore Bahru, Johore.

No. 18

In the Federal
Court

NOTICE OF APPEAL
No. 58 of 1979

No.18
Notice of
Appeal
No.58 of 1979

IN THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

6th March 1979

CIVIL APPEAL NO. 0 OF 1979

Between

Pemungut Hasil Tanah,
Kota Tinggi

Appellant

10

And

Johore Sugar Plantation &
Industries Berhad

Respondent

(In the matter of Originating Motion No.43 of
1977 in the High Court in Malaya at Johore
Bahru

In the Matter of land held under Q.T.(R) 156
for Lot MLO 1481(A) measuring 20,680 acres or
thereabouts in the Mukim of Ulu Sungei Johore,
District of Kota Tinggi, State of Johore

20

And

In the Matter of three Charges of the said
land in favour of United Malayan Banking
Corporation Berhad, registered under Pres.No.
9244/73 Vol.183 Fol.165, Pres.No.3088/75 Vol.203
Fol.12 and Pres.No. 3089/75 Vol.203 Fol.12,
respectively.

And

In the Matter of Johore Government Gazette
Notification No.1136 dated 15th September, 1977

30

And

In the Matter of Sections 130, 131, 132,
417 and 418 National Land Code, 1965

Between

Johore Sugar Plantation & Industries
Berhad

Applicant

And

Pemungut Hasil Tanah, Kota Tinggi

Respondent)

In the Federal
Court

No.18
Notice of
Appeal
No.58 of 1979

6th March 1979
(continued)

NOTICE OF APPEAL

TAKE NOTICE that the Pemungut Hasil Tanah, Kota Tinggi the abovenamed Appellant being dissatisfied with the decision of the Honourable Mr. Justice Tan Sri Sarwan Singh Gill given at Johore Bahru on the 6th day of March, 1979, appeals to the Federal Court against the whole of the said decision.

Dated this 6th day of March, 1979

(SEAL) Sd: (NIK MOHAMED BIN NIK YAHYA) 10
STATE LEGAL ADVISER,
JOHORE
for and on behalf of the Appellant

To:

- (1) The Chief Registrar,
Federal Court,
Malaysia,
Kuala Lumpur

And to :

- (2) The Senior Assistant Registrar,
High Court,
Johore Bahru
- (3) Messrs. Cheang Lee & Ong,
c/o 13, Jalan Bandar Raya,
Ipoh,
Perak.
(Solicitors for the Respondent)

The Appellant's address for service is c/o
The State Legal Adviser's Chambers, High Court 30
Building, Johore Bahru, Johore.

No. 19

In the Federal
Court

MEMORANDUM OF APPEAL
Nos.57 and 58 of 1979

No.19
Memorandum
of Appeal
Nos.57 and 58
of 1979
30th April 1979

IN THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

CIVIL APPEAL NO. 57 OF 1979

Between

Pemungut Hasil Tanah, Kota Tinggi Appellant

And

10 United Malayan Banking Corporation
Berhad Respondent

(In the matter of Originating Motion No.42 of
1977 in the High Court in Malaya at Johore
Bahru

In the Matter of Land held under Q.T.(R) 156
for Lot MLO 1481(A) measuring 20,680 acres
or thereabouts in the Mukim of Ulu Sungei
Johore, District of Kota Tinggi, State of
Johore

20 And

In the Matter of three Charges of the said
Land in favour of United Malayan Banking
Corporation Berhad, registered under Pres.
No.9244 Vol.183 Fol.165, Pres.No. 3088/75
Vol.203 Fol.12 and Pres.No.3089/75 Vol. 203
Fol.12, respectively.

And

30 In the Matter of Johore Government Gazette
Notification No.1136 dated 15th September,
1977.

And

In the Matter of Sections 130, 131, 132,
417 and 418 National Land Code, 1965

Between

United Malayan Banking Corporation
Berhad Applicant

And

Pemungut Hasil Tanah, Kota
Tinggi Respondent)

In the Federal
Court

IN THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

No.19
Memorandum
of Appeal
Nos. 57 and 58
of 1979

CIVIL APPEAL NO. 58 OF 1979

Between

Pemungut Hasil Tanah, Kota Tinggi Appellant

And

Johore Sugar Plantation &
Industries Berhad Respondent

30th April
1979
(continued)

(In the matter of Originating Motion No.43
of 1977 in the High Court in Malaya at
Johore Bahru 10

In the Matter of land held under Q.T.(R)
156 for Lot MLO 1481(A) measuring 20,680
acres or thereabouts in the Mukim of Ulu
Sungei Johore, District of Kota Tinggi,
State of Johore

And

In the Matter of three Charges of the said
land in favour of United Malayan Banking
Corporation Berhad, registered under Pres. 20
No.9244/73 Vol.183 Fol.165, Pres.No.3088/75
Vol.203 Fol.12 and Pres.No.3089/75 Vol.203
Fol.12, respectively

And

In the Matter of Johore Government Gazette
Notification No.1136 dated 15th September,
1977

And

In the Matter of Sections 130, 131, 132,
417 and 418 National Land Code, 1965 30

Between

Johore Sugar Plantation & Industries
Berhad Applicant

And

Pemungut Hasil Tanah, Kota Tinggi Respondent)

MEMORANDUM OF APPEAL

The Pemungut Hasil Tanah, Kota Tinggi,
the appellant abovenamed appeals to the Federal
Court against the whole of the decision of the
Honourable Mr. Justice Tan Sri Sarwan Singh Gill, 40
Chief Justice, Malaya given at Johore Bahru on

the 6th day of March, 1979 on the following grounds :

In the Federal Court

1. The Learned Trial Judge erred in law and in fact in holding that notwithstanding the provisions of section 134 of the National Land Code the United Malayan Banking Corporation Bhd. was an aggrieved party for purpose of an appeal under section 418 of the said Code.

No.19
Memorandum
of Appeal
Nos. 57 and 58
of 1979

30th April
1979
(continued)

10 2. Having determined that there had been no irregularity on the part of the Collector in carrying out the proceedings culminating in:

(a) the making of the order of forfeiture and

(b) the forfeiture having been validly effected,

20 in the instant case, the Learned Trial Judge erred in law and in fact in holding that notwithstanding the provisions of section 134 of the National Land Code, the Court had inherent equitable jurisdiction under section 418 of the said Code to grant relief against forfeiture.

30 3. Alternatively, having so determined as stated in paragraph 2 aforesaid the Learned Trial Judge erred in law and in fact in holding that notwithstanding the provisions of section 134 of the National Land Code, the Court should exercise its discretionary power in favour of the Respondents by granting the relief in equity against the order of forfeiture.

4. Having determined that the only provisions in the National Land Code regarding relief against forfeiture was contained in section 237 which clearly was not applicable in the instant case, the Learned Trial Judge erred in law and in fact in granting the equitable relief against the order of forfeiture.

40 5. The Learned Trial Judge erred in law and in fact in holding that in dealing with an appeal under section 418 of the National Land Code in the instant case, there was ground for equity's intervention.

Dated this 30th day of April, 1979.

Sd: Nik Mohamed bin Nik Yahya
(NIK MOHAMED BIN NIK YAHYA)
STATE LEGAL ADVISER, JOHORE

In the Federal
Court

No.19
Memorandum
of Appeal
Nos. 57 and 58
of 1979

30th April
1979
(continued)

For and on behalf of the Appellant
whose address for service is c/o
The State Legal Adviser's Chambers,
High Court Building, Johore Bahru

To:

Ketua Pendaftar,
Jabatan Kehakiman,
Mahkamah Persekutuan,
Kuala Lumpur 01-02

Tetuan Allen & Gledhill,
Peguambela & Peguamcara,
O.C.B.C. Building,
Nos.302-303 (3rd Floor),
1, Jalan Ibrahim,
Johore Bahru.

10

Solicitors for United Malayan Banking
Corporation Berhad

Tetuan Cheang Lee & Ong,
Peguambela & Peguamcara,
No.13, Jalan Bandar Raya,
Ipoh

20

Solicitors for Johore Sugar Plantation &
Industries Berhad

No. 20

In the Federal
Court

NOTICE OF MOTION
No. 57 of 1979

No.20
Notice of
Motion
No.57 of 1979

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

15th October
1980

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 57 OF 1979

Between

Pemoungut Hasil Tanah Kota Tinggi Appellant

10

And

United Malayan Banking Corporation
Berhad Respondent

(In the matter of Originating Motion
No.42 of 1977 in the High Court in Malaya
at Johore Bahru

Between

United Malayan Banking Corporation
Berhad Applicant

And

20 Pemungut Hasil Tanah Kota Tinggi Respondent)

NOTICE OF MOTION

30

Take notice that on Monday the 27th day of
October 1980 at 9.30 o'clock in the forenoon,
or as soon thereafter as he can be heard Mr. Wong
Kim Fatt of Counsel for the abovenamed Respondent
will move the Court for an order that this appeal
be dismissed with costs on the ground that the
Appellant has waived the forfeiture and that
the costs of this application be paid by the
abovenamed Appellant.

Sd: Allen & Gledhill

M/s Allen & Gledhill,
Solicitors for the Respondent

Dated at K.L. this 15th day of October, 1980

Sd: Illegible
Senior Assistant Registrar
Federal Court, Malaysia, Kuala Lumpur

In the Federal
Court

No.20
Notice of
Motion
No.57 of 1979

15th October
1980
(continued)

To:

Pemungut Hasil Tanah Kota Tinggi
and/or his Solicitor Yang Berhormat
Penasihat Undang2,
Legal Adviser's Chambers,
Johore Bahru.

This notice of motion will be supported
by the affidavit of Mr. Cho Mun Tuck affirmed
on the 8th day of October 1980.

This notice of motion is taken out by
M/s. Allen & Gledhill, Solicitors for the
Respondent, whose address for service is
No.302, O.C.B.C. Building, Johore Bahru.

10

No.21
Affidavit of
Cho Mun Tuck
with Exhibit
thereto
(No.57 of
1979)

8th October
1980

No. 21

AFFIDAVIT OF CHO MUN
TUCK WITH EXHIBIT THERETO
(No.57 of 1979)

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

(APPELLATE JURISDICTION)

20

FEDERAL COURT CIVIL APPEAL NO. 57 OF 1979

Between

Pemungut Hasil Tanah, Kota Tinggi Appellant

And

United Malayan Banking Corporation
Berhad Respondent

(In the matter of Originating Motion
No.42 of 1977 in the High Court of
Malaya at Johore Bahru

Between

30

United Malayan Banking Corporation
Berhad Applicant

And

Pemungut Hasil Tanah, Kota Tinggi Respondent)

A F F I D A V I T

I, CHO MUN TUCK, of full age, of United
Malayan Banking Corporation Bhd., Jalan Ah Fook,

Johore Bahru, do hereby solemnly affirm and state as follows :-

In the Federal Court

1. I am the Manager of the Respondent United Malayan Banking Corporation Bhd. in Johore Bahru and am duly authorised to make this affidavit on its behalf.

No.21
Affidavit of
Cho Mun Tuck
with Exhibit
thereto
(No.57 of 1979)

10

2. The arrears of rent, education rate, penalty fees and notice fee totalling \$186,125-00 for the year 1977 were paid fully on 5th September, 1979, within the six-month period as ordered by the Honourable the Chief Justice on 6th March 1979. The breakdown figures are as follows :-

8th October
1980
(continued)

| | |
|--|--------------|
| Rent | \$124,080-00 |
| Education Rate | \$ 31,020-00 |
| Penalty fee under the Johore Land Rules, 1966 | \$ 31,020-00 |
| Notice fee | \$ 5-00 |

Total: \$186,125-00
=====

20

3. On the 5th day of September 1979, rent for the year 1978 in the sum of \$124,080-00 was paid and received by the Appellant. Rent for the year 1979 in the sum of \$124,080-00 was also paid and received by the Appellant. The total sum of rent, education rate, penalty fee and notice fee for the years 1977 to 1979 so paid amounted to \$434,285-00. Copies of the official receipts for the years 1977 to 1979 are annexed hereto and marked exhibit "A".

30

4. In the circumstances, I am advised and verily believe that the receipt of quit rent for the years 1978 and 1979 constitutes a waiver of forfeiture on the part of the Appellant.

I therefore pray that the Appellant's appeal be dismissed with costs.

AFFIRMED by the abovenamed)
CHO MUN TUCK at Johore) Sd: Cho Mun Tuck
Bahru this 8th day of)
October, 1980 at 2.02 p.m.)

40

Before me,
Sd: Mustapha bin Mohamad
MUSTAPHA BIN MOHAMAD, PLP., PIS.
(Commissioner for Oaths)
JOHOR BAHRU

In the Federal
Court

No.21
Affidavit of
Cho Mun Tuck
with Exhibit
thereto
(No.57 of 1979)

8th October
1980
(continued)

This Affidavit is filed by Messrs.
Allen & Gledhill, Advocates & Solicitors,
302-303, 3rd Floor, O.C.B.C. Building,
Jalan Ibrahim, Johore Bahru, Solicitors for
the Applicant herein.

Exhibit "A"
Receipt 1977

TRANSLATION

EXHIBIT "A"

Receipt of payment will be
stamped hereby with this Office's
stamping machine, otherwise
payment is not acknowledged.

10

COLLECTOR OF LAND REVENUE
KOTA TINGGI

LAND OFFICE, KOTA TINGGI, JOHOR

PREMIUM

Payment in respect of: HS(D) 156, MLO 1481A
Ulu Sg.Johor D No.3518

| | |
|---|---------------------------|
| Additional Premium | |
| Portion of quit rent 1977 and education rate | Sum payable \$90,000/- |

| | | |
|--|---------------------------------|----|
| (Johore Sugar Plantations & Industries Bhd. PHTKT. 14/706-1(S) | Dollars Ninety Thousand only | 20 |
|--|---------------------------------|----|

Cheque in payment of the above shall
be made out in favour of the Collector
of Land Revenue and crossed "A/c Payee
Only".

This receipt shall be kept properly and
produced when applying for necessary
refund.

N.C.R. 1.8.70

30

TRANSLATION

EXHIBIT "A"

In the Federal Court

Receipt of payment will be stamped hereby with this Office's stamping machine, otherwise payment is not acknowledged.

COLLECTOR OF LAND REVENUE
KOTA TINGGI

LAND OFFICE, KOTA TINGGI, JOHOR

PREMIUM

No.21
Affidavit of
Cho Mun Tuck
with Exhibit
thereto
(No.57 of 1979)

8th October 1980
(continued)

Exhibit "A"
Receipt 1978

10 Payment in respect of: HS(D) 156, MLO 1481A
U.S.J. D No.3507

Additional Premium
Portion of quit rent 1978 and education rate Sum payable
\$90,000/-

(Johore Sugar Plantations & Industries Bhd. PHTKT. Dollars Ninety
14/706-1(S) Thousand only

20 Cheque in payment of the above shall be made out in favour of the Collector of Land Revenue and crossed "A/c Payee Only".

This receipt shall be kept properly and produced when applying for necessary refund.

N.C.R. 1.8.70

In the Federal
Court

TRANSLATION

EXHIBIT "A"

No.21
Affidavit of
Cho Mun Tuck
with Exhibit
thereto
(No.57 of 1979)

Receipt of payment will be
stamped hereby with this Office's
stamping machine, otherwise
payment is not acknowledged

COLLECTOR OF LAND REVENUE
KOTA TINGGI

8th October
1980
(continued)

LAND OFFICE, KOTA TINGGI, JOHOR

PREMIUM

Exhibit "A"
Receipt 1978

Payment in respect of: HS(D) 156, MLO 1481A 10
U.S.J. D No.3506

Additional Premium
Portion of quit rent 1978 Sum payable
and education rate \$90,000/-

(Johore Sugar Plantations & Dollars Ninety
Industries Bhd. PHTKT. Thousand only
14/706-1(S)

Cheque in payment of the above shall
be made out in favour of the Collector
of Land Revenue and crossed "A/c Payee
Only". 20

This receipt shall be kept properly and
produced when applying for necessary
refund.

N.C.R. 1.8.70

TRANSLATION

EXHIBIT "A"

In the Federal Court

LAND OFFICE
QUIT RENT, EDUCATION, DRAINAGE & IRRIGATION

Bil.PTGJ(E) No.166058

No.21
Affidavit of
Cho Mun Tuck
with Exhibit
thereto
(No.57 of 1979)

REMINDER

RENTS should be settled before 1st June each year. If not paid by that date, late fee will be imposed with immediate effect. Thereafter a notice of demand will be issued and a notice fee is also payable. If still not paid within 3 months from date of notice, the land contained in the title will be forfeited to the Government pursuant to Sec.100 and 130 of the National Land Code.

| DISTRICT | Title | Year |
|-------------------|----------|------|
| KT | HSD 156 | 1979 |
| | MLO 1481 | |
| quit rent | | |
| TOTAL: \$62,040/- | | |

10 \$62,040/-

20

8th October 1980
(continued)
Exhibit "A"
Receipt 1979

Cheque for payment of the above shall be made out in favour of Pemungut Hasil Tanah concerned and crossed "A/c payee only".

30 When paying the rent, the receipt for the previous year should be brought along.

Acknowledgment of receipt will be stamped by machine at this office, otherwise payment is not acknowledged.

No.21
Affidavit of
Cho Mun Tuck
with Exhibit
thereto
(No.57 of 1979)

8th Octcber
1980
(continued)

Exhibit "A"
Receipt 1979

LAND OFFICE

QUIT RENT, EDUCATION, DRAINAGE
AND IRRIGATION

No. PTGJ(E) No. 166057

C/S 40/79

| REMINDER | NAME | Area | YEAR |
|---|--------------------------------|--|------------|
| RENTS are required to be paid before 1st June each year. If not paid by the said date, a penalty is payable immediately. Thereafter a final notice of demand will be issued and a notice fee is also payable. If still not paid within 3 months from date of notice, the land contained in the title will be forfeited to the Government pursuant to Sec.100 and 130 of the National Land Code. | DISTRICT MUKIM TITLE | a.r.p. | 1979 |
| | | 10,340.0.00 | 10 |
| | KT U.S.JOHOR HSD 156 MLO 1481A | TOTAL A+B+N | |
| | \$62,040/- | EDUCA- DRAINAGE & IRRIGA- TION RATE TION | \$62,040/- |
| | QUIT RENT | A B N | 20 |

K: Late penalty.....

H: Notice fee.....

Total

Rebate 30

Cheque in payment of the above shall be made out in favour of the Collector of Land Revenue concerned and shall be crossed "A/c payee only".

When making payment the previous year's receipt shall be brought along.

Acknowledgment of receipt will be stamped by machine, otherwise it is not valid.

TRANSLATION

EXHIBIT "A"

In the Federal
Court

Receipt of payment will be stamped hereby with this Office's stamping machine, otherwise payment is not acknowledged.

COLLECTOR OF LAND REVENUE
KOTA TINGGI

LAND OFFICE, KOTA TINGGI, JOHOR

PREMIUM

No.21
Affidavit of
Cho Mun Tuck
with Exhibit
thereto
(No. 57 of 1979)

8th October
1980
(continued)

Exhibit "A"
Receipt (Year
not stated)

10 Payment in respect of: HS(D) 156, MLO 1481A
U.S.J. D No.3509

| | |
|--|---|
| Additional Premium | |
| Portion of education rate, | Sum payable |
| Fine and Notice | \$40,205/- |
| (Johore Sugar Plantations & Industries Bhd. PHTKT. 14/706-1(S) | Dollars Forty Thousand Two hundred and Five only |

20 Cheque in payment of the above shall be made out in favour of the Collector of Land Revenue and crossed "A/c Payee Only".

This receipt shall be kept properly and produced when applying for necessary refund.

N.C.R. 1.8.70

In the Federal
Court

No. 22

No.22
Affidavit of
Abdul Aziz bin
Abdul Hamid
with Exhibits
thereto
(No.57 of 1979)

AFFIDAVIT OF ABDUL AZIZ BIN
ABDUL HAMID WITH EXHIBITS
THERE TO (No.57 of 1979)

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 57 OF 1979

21st October
1980

Between

Pemungut Hasil Tanah, Kota Tinggi Appellant 10

And

United Malayan Banking Corporation
Berhad Respondent

(In the matter of Originating Motion
No.42 of 1977 in the High Court in
Malaya at Johore Bahru

Between

United Malayan Banking Corporation
Berhad Applicant

And

Pemungut Hasil Tanah, Kota Tinggi Respondent) 20

A F F I D A V I T

I, ABDUL AZIZ BIN ABDUL HAMID, of full age,
residing at No.351, Jalan Yahya, Kota Tinggi,
Johore made affirmation and say as follows :

1. I am the Pemungut Hasil Tanah of Kota
Tinggi, the Appellant herein and I am authorised
to make this affidavit.

2. I crave leave to refer to the affidavit
affirmed by CHO MUN TUCK on the 8th day of
October, 1980 and filed herein on the 10th day 30
of October, 1980.

3. I have no knowledge of paragraph 1 of the
said affidavit.

4. Paragraphs 2 and 3 of the said affidavit
are admitted.

5. As to paragraph 4 of the said affidavit, I

am advised and verily believe that the application of the Respondent herein is misconceived and an abuse of the process of the court in that,

In the Federal Court

No.22
Affidavit of
Abdul Aziz bin
Abdul Hamid
with Exhibits
thereto
(No.57 of 1979)

21st October
1980
(continued)

10

(1) the Respondent herein had, through its Solicitors, by a letter dated 26th May, 1979 made the following enquiries, to wit, "the appropriate amounts of quit rent and penalty payable for the years 1977, 1978 and 1979 to enable our clients to make payment in compliance with the order of court". A copy of the said letter is annexed hereto and marked "AABAH 1";

20

(2) in response to the letter marked "AABAH 1", the then Legal Adviser gave a reply dated 19th July, 1979 to the Respondent's Solicitors. A copy of the said reply is annexed hereto and marked "AABAH 2";

30

(3) on 15th September, 1979 the Appellant herein filed a Notice of Motion Entered No.54/79 supported by an affidavit, for an order that execution and other proceedings in these motions be stayed pending the final disposal of the appeal to the Federal Court. A copy each of the said Notice of Motion and the said affidavit are annexed hereto and marked "AABAH 3" and "AABAH 4" respectively;

40

(4) by a letter dated 24th September, 1979 the then Legal Adviser served a copy each of the said Notice of Motion (marked "AABAH 3") and the said affidavit (marked "AABAH 4") on the Respondent's Solicitors. A copy of the said letter is annexed hereto and marked "AABAH 5";

50

(5) on 14th October, 1979 the said Notice of Motion (marked "AABAH 3") was heard in open court with the Respondent's Solicitor in person and an order was granted in terms of the said Notice of Motion. A copy of the said order is annexed hereto and marked "AABAH 6";

(6) the Respondent had failed to appeal against the order granted on 14th October, 1979.

In the Federal
Court

No.22
Affidavit of
Abdul Aziz bin
Abdul Hamid
with Exhibits
thereto
(No.57 of 1979)

21st October
1980
(continued)

6. I am advised and verily believe that the Respondent's Solicitor had full and fair opportunity of being heard and was in fact heard by a competent court during the hearing of the Notice of Motion on 14th October, 1979. In the premises, the Respondent could not relitigate a question or issue which has already been decided against it and I humbly pray that the application by the Respondent herein be struck out with costs under H.H.C., Order 18, r.19 on the ground of issue estoppel.

10

AFFIRMED by the abovenamed)
ABDUL AZIZ BIN ABDUL HAMID) Sd: Abdul Aziz
at Johore Bahru on 21st)
day of October, 1980 at)
3.30 p.m.)

Before me,

Sd: Illegible

COMMISSIONER FOR OATHS

20

This affidavit is taken out by the State Legal Adviser for and on behalf of the Appellant whose address for service is care of the State Legal Adviser's Chambers, High Court Building, Johore Bahru.

EXHIBIT "AABAH 1"

In the Federal
Court

Our ref. WKF/HK/606/77
Your ref. (104) dlm.PUNJ.333(151)

•26th May, 1979

The State Legal Adviser,
State Legal Adviser's Chambers,
Johor,
Johor Bahru.

No.22
Exhibit
"AABAH 1"
Letter, United
Malayan
Banking
Corporation
Berhad to
State Legal
Adviser

Dear Sir,

26th May 1979

10 re: Federal Court Civil Appeal No.57 of
1977 (Johore Bahru High Court
Originating Motion No.42 of 1977)
And
Federal Court Civil Appeal No.58 of
1977 Johore Bahru High Court
Originating Moticn No.43 of 1977)

We thank you for your letter of 23rd May 1979.

20 Since you are awaiting payment of all quit rent
and any money payable by way of penalty, please
let us know the appropriate amounts of quit rent
and penalty payable for the years 1977, 1978 and
1979 to enable our clients to make payment in
compliance with the order of court.

Kindly acknowledge receipt by signing and
returning to us the duplicate copy of this letter.

Yours faithfully,

Sgd. Illegible

30 c.c. The Secretary,
United Malayan Banking Corpn.Bhd.,
Kuala Lumpur.

Mr. Joseph Lai,
M/s Allen & Gledhill, K.L.

In the Federal
Court

EXHIBIT "AABAH 2"

TRANSLATION

No.22
Exhibit
"AABAH 2"
Letter, State
Legal Adviser
to Allen &
Gledhill
19th July 1979

114) dlm.PUNJ.333(151) 19th July, 1979
Messrs. Allen & Gledhill
Advocates & Solicitors
O.C.B.C. Building,
Nos. 302-303, (3rd Floor)
No.1 Jalan Ibrahim
Johor Bahru

Dear Sirs,

10

Johore Bahru High Court Originating
Motion No. 42 and 43 of 1977
(Re: Forfeiture of Johore Sugar Plantation
and Industries' Land)

I refer to your letter dated 18.7.1979.

Pursuant to High Court Order dated 6.3.1979,
the following are the quit rents and other
charges payable by the proprietor or chargee:-

| <u>Year</u> | <u>Particulars</u> | <u>Amount</u> | |
|-------------|---|---------------------|----|
| 1977 | Quit Rent | \$124,080.00 | 20 |
| | Education rate | 31,020.00 | |
| | Additional fees under Johore Land Rules 1966 | 31,020.00 | |
| | Notice fee | 5.00 | |
| 1978 | Quit Rent | 124,080.00 | |
| 1979 | Quit Rent | <u>124,080.00</u> | |
| | Total: | <u>\$434,285.00</u> | |

The delay in replying is regretted due to
unforeseen circumstances.

Thank you,

30

Sgd: Illegible
(NIK MOHAMED BIN NIK YAHYA)
STATE LEGAL ADVISER
JOHORE

EXHIBIT "AABAH 3"

In the Federal Court

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

ORIGINATING MOTION NO. 42 OF 1977

No.22
Exhibit
"AABAH 3"
Notice of
Motion

Between

United Malayan Banking Corporation
Berhad Applicant

17th September
1979

And

Pemungut Hasil Tanah, Kota
Tinggi Respondent

10 ORIGINATING MOTION NO. 43 OF 1977

Johore Sugar Plantations &
Industries Berhad Applicant

And

Pemungut Hasil Tanah, Kota
Tinggi Respondent

NOTICE OF MOTION

20 Take notice that on the 14th day of October,
1979 at 9.00 o'clock in the forenoon, or as
soon thereafter as Counsel can be heard by Counsel
for the Pemungut Hasil Tanah, Kota Tinggi, the
abovenamed Respondent for an order that execution
and other proceedings in these actions be stayed
pending the final disposal of the appeal to the
Federal Court or further order that the costs
of this application be costs in the cause.

Dated this 17th day of September 1979.

30 Sgd. Illegible NIK MOHAMED BIN NIK YAHYA)
(Illegible) JOHORE,
for the Respondent Sgd. Illegible SENIOR ASSISTANT REGISTRAR,
HIGH COURT,
JOHORE BAHRU

This Notice of Motion will be supported by
the Affidavit of the Pemungut Hasil Tanah, Kota
Tinggi affirmed on the 15th day of September, 1979
and filed herein.

Entered No. 54/79

In the Federal
Court

EXHIBIT "AABAH 4"

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

No.22
Exhibit
"AABAH 4"
Affidavit of
Hapipah bte
Endot

ORIGINATING MOTION NO. 42 OF 1977

Between

United Malayan Banking Corporation
Berhad

Applicant

And

Pemungut Hasil Tanah, Kota
Tinggi

Respondent

ORIGINATING MOTION NO. 43 OF 1977

10

Johore Sugar Plantations &
Industries Berhad

Applicant

And

Pemungut Hasil Tanah, Kota
Tinggi

Respondent

A F F I D A V I T

I, Hapipah bte Endot, Pemungut Hasil Tanah,
Kota Tinggi do solemnly affirm and say as
follows :-

1. I am the Respondent in Originating Motion 20
Nos. 42 of 1977 and 43 of 1977.

2. On the 6th day of March, 1979 Judgment in
these actions was delivered in this Honourable
Court by the Chief Justice, Malaya, Tan Sri S.S.
Gill that "the order of forfeiture of the
Respondent appearing in the Johore Government
Gazette Notification No.1136 dated the 15th
day of September, 1977 be set aside upon the
aforesaid Applicant Johore Sugar Plantations &
Industries Berhad paying within six months all 30
the quit rent due and any money payable by way
of penalty."

3. The Applicant United Malayan Banking
Corporation Berhad in Originating Motion No.42
of 1977 had paid all the quit rent and penalty
on the 5th day of September, 1979, i.e. within
six months as mentioned in paragraph 2 above.

4. I am dissatisfied with the whole decision
so delivered on the 6th day of March, 1979 and
I have filed an appeal against such decision to 40
the Federal Court on the 6th day of March, 1979.

5. I therefore respectfully ask that this Honourable Court will stay execution in terms of the Application on the following grounds:

In the Federal Court

10

(1) that the lands in question have already been declared forfeit to the State Authority vide Johore Government Gazette Notification No.1136 dated the 15th day of September, 1977 for non-payment of quit rent amounting to \$186,125.00 for the year 1977;

No.22
Exhibit
"AABAH 4"
Affidavit of
Hapipah bte
Endot

15th May 1979
(continued)

(2) that notwithstanding the nature of the Judgment against me as stated in paragraph 2 hereof, I am advised and verily believe that I have good and valid grounds in succeeding in my appeal to the Federal Court; and

(3) that pending the outcome of my appeal to the Federal Court the status quo of the lands in question be preserved.

20

6. In the circumstances I humbly pray for an order in terms of the application filed herein.

AFFIRMED by the abovenamed)
Hapipah binte Endot of) Sd:
Johore Bahru this 15th)
day of September, 1979)

Before me,

30

Sgd: (R. Ramasamy)
Senior Tamil Interpreter
PESURUHJAYA SUMPAH
(Commissioner For Oaths)
High Court, Malaya,
Johore Bahru.

In the Federal
Court

EXHIBIT "AABAH 5"

TRANSLATION

No.22
Exhibit
"AABAH 5"
Letter, State
Legal Adviser
to (1) United
Malayan Banking
Corporation
Berhad and
(2) Johore
Sugar Planta-
tions &
Industries
Berhad

(116) dlm. PU J.335(151)

24th September, 1979

To:

- (1) United Malayan Banking Corporation
Berhad
and/or their Solicitors,
Messrs. Allen & Gledhill,
Nos. 302-303, (3rd Floor),
Jalan Ibrahim,
Johor Bahru.
- (2) Messrs. Johore Sugar Plantations &
Industries Berhad.
and/or their Solicitors,
Messrs. Cheang Lee & Ong,
No.13, Jalan Bandar Raya,
Ipoh,
Perak.

10

24th September
1979

REGISTERED

Dear Sirs,

20

J. Bahru High Court Originating
Motion No. 42/1977

Between
United Malayan Banking Corporation
Berhad Applicant
And
Pemungut Hasil Tanah,
Kota Tinggi Respondent

J. Bahru High Court Originating
Motion No. 43/1977

30

Between
Johore Sugar Plantations &
Industries Berhad ... Applicant
And
Pemungut Hasil Tanah,
Kota Tinggi ... Respondent

I refer to the matters mentioned above.

Enclosed herewith a copy of Notice of Motion
together with copy of Affidavit being service
upon you.

40

Sgd. Illegible
(NIK MOHAMED BIN NIK YAHYA)
STATE LEGAL ADVISER, JOHORE

EXHIBIT "AABAH 6"

In the Federal
Court

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

ORIGINATING MOTION NO.42 OF 1977

No.22
Exhibit
"AABAH 6"
Order

Between

United Malayan Banking Corporation
Berhad Applicant

14th October 1979

And

Pemungut Hasil Janah, Kota
Tinggi Respondent

10 ORIGINATING MOTION NO. 43 of 1977

Between

Johore Sugar Plantations &
Industries Berhad Applicant

And

Pemungut Hasil Tanah, Kota
Tinggi Respondent

20 BEFORE THE HONOURABLE MR. JUSTICE ANUAR BIN DATO' ZAINAL ABIDIN, JUDGE, MALAYA IN OPEN COURT THIS 14TH DAY OF OCTOBER, 1979

O R D E R

30 UPON the Notice of Motion (Enclosure 22) dated the 17th day of September, 1979 coming on for hearing this day in the presence of Encik Abbas bin Ismail Rowland, Federal Counsel of Counsel for the Applicant/Respondent abovenamed and Mr. Wong Kim Fatt of Counsel for the Applicant in Originating Motion No. 42 of 1977 and Mr. P.S.Gill of Counsel for the Applicant in Originating Motion No.43 of 1977 AND UPON READING the said Notice of Motion, the Affidavit of Hapipah bte Endot affirmed on the 15th day of September, 1979 and the Affidavit of Cho Mun Tuck affirmed on the 10th day of October, 1979 and filed herein AND UPON HEARING Counsel as aforesaid IT IS ORDERED that judgment and execution proceedings in these motions be stayed pending the final disposal of the appeals and that the costs of this Application be costs in the cause.

40 Given under my hand and the seal of the Court this 14th day of October, 1979.

Sgd: Illegible
Senior Assistant Registrar,
High Court, Malaya,
Johore Bahru.

In the Federal
Court

No. 23

NOTES OF WAN SULEIMAN, F.J.

No.23
Notes of Wan
Suleiman F.J.

11th August
1981

IN THE FEDERAL COURT OF MALAYSIA HOLDEN
AT KUALA LUMPUR
(Appellate Jurisdiction)

CIVIL APPEAL NO. 57 OF 1979

Between

Pemungut Hasil Tanah, Kota Tinggi Appellant

And

United Malayan Banking Corporation Berhad Respondent 10

(In the matter of Originating Motion No.42
of 1977 in the High Court in Malaya at
Johore Bahru

Between

United Malayan Banking Corporation Berhad Appellant

And

Pemungut Hasil Tanah, Kota Tinggi Respondent)

AND

20

CIVIL APPEAL NO. 58 OF 1979

Between

Pemungut Hasil Tanah, Kota Tinggi Appellant

And

Johore Sugar Plantation & Industries Berhad Respondent

(In the matter of Originating Motion No.43
of 1977 in the High Court in Malaya at
Johore Bahru

Between

30

Johore Sugar Plantation & Industries Berhad Appellant

And

Pemungut Hasil Tanah, Kota Tinggi Respondent)

Coram: Wan Suleiman, F.J.
Salleh Abas, F.J.
Abdoolcader, J.

NOTES OF PROCEEDINGS RECORDED BY
WAN SULEIMAN, F.J.

In the Federal
Court

11th August, 1981

No.23
Notes of Wan
Suleiman F.J.

P.W. Medd, Q.C. for appellant (Alauddin, L.A.
Johore and Pillay with him)

11th August
1981
(continued)

T.R. Hepworth for respondent 1 (Wong with him)

R.R. Chellian (Gill with him) for respondent 2.

Notice of Motion

Wong - Waiver.

10

2 authorities.

Davenport v. Reg. (1877) 3 A.C.115

Rex v. Paulson & Ors. (1921) 1 A.C.271

C.L.R. should have preserved status quo
by asking for stay of execution.

S.131.(c) of National Land Code.

Act - Collector estopped.

Yong Tong Hong v. Sun Soon Wah (1971)

2 M.L.J. 105

Hepworth :

20

S.131(c) National Land Code.

C.L.R. should have applied for stay and
for payment into court.

"intention" - Bower on Estoppel by
Representation page 352.

Medd:

Election by C.L.R. - having completed for-
feiture, impossible for him to waive it. Common
sense for C.L.R. to comply with court order without
this amounting to waiver.

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Roberts v. Davey 1843 B & AD 606

Davenport v. Reg. (1877) 3 A.C.115 P.C.

Pg. 120

Pg. 128, 129

Quesnel Forks Coldmining Coy v. Ward 1920

A.C.222

Pg. 227

Jardine v. A.G. for Newfoundland (1932)

A.C. 275

Pg. 287

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Pg. 289

Jones v. Carter (1846) 15 M & C 1040

Pg. 1043

James v. Young (1881) 27 Ch.652 at 667.

There was nothing to waive - having already forfeited. The tenant and not the bank should have brought this motion.

Hepworth:

Bank a party aggrieved.

Collector in quandary - had either to comply with 131(c) or to pay.

C.L.R. never took possession.

C.L.R. also accepted 2 further years' rent, '78 and '79 and have made no attempt to date to refund. 10

Intd. W.S.

Order: Motion dismissed with costs.

Medd:

S.100 - C.L.R. bound to forfeit.
3 issues before J.

- (1) Has appeal properly brought.
- (2) Has court power to grant relief against forfeiture.
- (3) If court has, was it right to relieve in this case. 20

Submits - there is no right to relief against forfeiture; no power to be.....from the rules equity here.

If I am wrong, then Judge has power in (ii) - if he exercises his powers rightly - failed to take into account 1 matter.

N.L.C.

S.40 Property of State.

S.41 Powers of disposal of State authority 30

S.42

S.46

S.76 (a)

S.93

S.94 - When rent due

S.97 - May - C.L.R. has choice to so act or to sue under S.93.

Reads Form 6A

S.98

S.100 - Mandatory nature. 40

S.130 - Forfeiture on gazetting

S.131

S.132

S.133 - Appeal against forfeiture.

S.418

Ch. 1 Pt.15

S.221 - Power of proprietors to lease.

S.222

Ch.3 - Forfeiture

S.234

S.237 - Relief against forfeiture

In the Federal
Court

No.23

Notes of Wan
Suleiman F.J.

11th August
1981

(continued)

10

Was J right that court could give relief against forfeiture of the present suit (S.97 to 100). Marked contrary to Part 15 where there is provision for relief - intention of legislature.
Grounds of Judgment P.86R.

P.92 - Can't understand passage sidelined. Auction under the old law.

C.J. accepts no provision in N.L.C. for relief e.g. forfeiture of this sort.

The Civil Law Act - S.3(1) & S.6

20

S.3(1)(a) & provisos - in fact only two provisions.

C.J. began with concept that there was a leasing and therefore no statutory provision - the wrong approach. In fact landowner had 2 other rights - release of forfeiture by C.L.R. and re-alienation.

(Also S.134).

S.6 Civil Law Act '56.

30

"law" here would include in this context both common law and the rules of equity.

Interpretation Act - law.

Art.161 - definition of law - and would include equity.

Tenure of immovable property.

East Union (Malaya) Sdn.Bhd. v. Govt. of the State of Johore & Govt. of Malaysia (1981) 1 M.L.J. 151 at 154 sidelined.

Datin Siti Hajar v. Murugasu (1970) 2 M.L.J. 153 at 154, 157.

40

S.3 Civil Law Ordinance considered by Privy Council in A.G. Warner v. Tay Say Geok (1965) M.L.J. 44 at p.45 col.1 I.

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(continued)

Matter put in slightly different way
in Baghar Singh v. Chanan Singh & Anor. (1961)
MLJ 328 at 329/330.

Collector of Land Revenue Johore v.
South Malaysian Industries Berhad (1978) 1
M.L.J. 130.

P.133 bracketed.

P.134 righthand column (supp.judgment) -
even though whether equity would apply not
argued.

10

Premchand Nathan and Co.Ltd. v. Land
Officer (1963) All E.R. 216 at 221 - similar
decision applicable by analogy.

Grounds of Judgment P.92, 93.

No mention of S.6 at all in judgment.

Appellant did not take into consideration
the wording in this.

Intd. W.S.

Hepworth:

Inaccuracy of notice under Form 6A.

20

Notice i.e. the \$6000 invalid

This is alienation of lease - except for
State being landlord.

Right to forfeit
Maxwell's 12th Ed. P.231

P.40

P.43 - the golden rule

P.44

P.199

P.205 "Injustice"

30

Wong's Tenure and Land Dealings in the
Malay States P.226.

P.30, 231.

Grounds of Judgment P.92 - cases there held
equity applicable in cases dealing with Torrens
System.

Halsbury's P.971 para. 1447.

S.418 "as it considers just" includes

right to apply equitable principle even in the face of 134(2). The O/M before C.J. did not challenge C.L.R's jurisdiction but the inequitable act.

In the Federal Court

Shiloh's case - P.102.

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Suleiman F.J.

Cutting down of equity principle by implication - can this be done?

11th August
1981
(continued)

Barrow v. Isaacs 1891 1 Q.B. 417 at 430.

10 Halsbury's para.1448.

Standard Pattern Co.Ltd. v. Ivey (1962) 1 AER 452.

P.456.

Lovelock v. Margo (1963) 2 A.E.R. 13

P.14

Thatcher v. Pearce (1968) 1 W.L.R. 748.

Starside Properties Ltd. v. Mustapha 1974 2 AER 567 at 574C.

P.62 of Records - L.A. conceded jurisdiction.

20 S.134(2) N.L.C. - should be read as if "word" in the grounds it being involved in law - after "aside".

Intd. W.S.

(This 12th day of August 1981)

12th August
1981

(Hearing continues)

Chelliah

Real issue - can court grant relief for forfeiture under N.L.C.

30 Hepworth submits - S.418 should be read together with S.134(2) and when so read court would have equitable jurisdiction.

Two alternatives - to sue for arrears or forfeiture - S.93 or S.97. Paramount objective of sections to enable recovery of rent.

S.418 - inherent equitable jurisdiction for court to act against unreasonable action. I do not talk about Civil Law Ordinance '56 but something inherent with the court - which suggests except on exclusion in express clear terms.

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12th August
1981
(continued)

S.134(2) does not help.

Midland Bank's case - P.132

Intd. W.S.

Medd

Defect in favour - judge held to be insignificant - does not concede defect.

Cases

None of the cases which we are dealing with are statutory tenure.

Shiloh's case - P.101 H.

10

Intd. W.S.

Court:

Appeal allowed with costs.

Sum of \$434,285.00 to be refunded to Respondent Bank.

Deposit to appellant by way of taxed costs.

Intd. W.S.

No. 24

In the Federal
Court

JUDGMENT

No.24
Judgment

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

25th August 1981

(APPELLATE JURISDICTION)

CIVIL APPEAL NO. 57 OF 1979

Between

Pemungut Hasil Tanah, Kota Tinggi Appellant

And

10 United Malayan Banking Corporation
Berhad Respondent

(In the matter of Originating Motion No.42
of 1977 in the High Court in Malaya at
Johore Bahru

Between

United Malayan Banking Corporation
Berhad Applicant

And

Pemungut Hasil Tanah, Kota Tinggi Respondent)

20 CIVIL APPEAL NO. 58 OF 1979

Between

Pemungut Hasil Tanah, Kota Tinggi Appellant

And

Johore Sugar Plantation &
Industries Berhad Respondent

(In the matter of Originating Motion No.43
of 1977 in the High Court in Malaya at
Johore Bahru

Between

30 Johore Sugar Plantation &
Industries Berhad Applicant

And

Pemungut Hasil Tanah, Kota Tinggi Respondent)

Coram: Wan Suleiman, F.J.
Salleh Abas, F.J.
Abdoolcader, J.

THE CRUCIAL ISSUE INVOLVED

No.24
Judgment
25th August
1981
(continued)

Has the court jurisdiction to grant equitable relief against the forfeiture of alienated land effected under the National Land Code, 1965 in the face of its express enactment? That is the basic issue arising for consideration and determination in these two joint appeals involving the forfeiture of a substantial parcel of land to the State Authority of Johore for non-payment of land rent. As we are primarily concerned in this matter with the provisions of the National Land Code ('the Code'), to obviate tautology all statutory references in this judgment will be to the Code unless otherwise specifically indicated.

10

EXORDIUM: EPITOME OF EVENTS

In December 1966 some 20,680 acres of land in the District of Kota Tinggi, Johore, were alienated under section 76 by the State Authority of Johore to Johore Sugar Plantation & Industries Berhad ('the Company') as registered proprietor for a term of 99 years and were then charged by the Company to United Malayan Banking Corporation Berhad ('the Bank') to secure banking facilities under three charges, the amount outstanding in respect thereof in November 1977 being over \$5 million carrying further interest. The Company alleges it has expended some \$18 million to develop the land as a sugar cane plantation and an integrated sugar refinery.

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The affidavits filed disclose that the rent payable under section 76(b) as consideration for the alienation and due to the State Authority for the year 1977 was not paid although the arrangement between the Company and the Bank appears to have been that if the former was unable to make payment it should then refer to the latter, but it did not do so notwithstanding the statutory notice of demand in Form 6A issued and caused to be served on the Company by the Collector of Land Revenue, Kota Tinggi ('the Collector') under the provisions of section 97(1) and the fact that the Company had previously assured the Bank that it would be able to raise the necessary funds for this purpose within the period stipulated in the Collector's notice. The

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Collector had also simultaneously by reason of the provisions of section 98(1) caused to be served on the Bank as chargee a copy of the notice in Form 6A to which was appended the additional notice set out in the supplement thereto.

In the Federal Court

No.24
Judgment

25th August
1981
(continued)

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As there was no compliance with the notice in Form 6A by either the Company or the Bank within the stipulated period of three months, the Collector in accordance with section 100 by an order made on 7th September 1977 declared the land forfeit to the State Authority, bringing into operation as a result the provisions of Part Eight in Division III of the code. The Collector accordingly published in the State Government Gazette a notification of forfeiture in Form 8A under section 130(1) on 15th September 1977 whereupon the forfeiture took effect with the consequences enacted in section 131. The Company applied to the State Authority on 17th November 1977 for the annulment of the forfeiture under section 133(1) but this was refused by a letter dated 29th November 1977 as indeed the State Authority was entitled to do as the matter was one in its absolute discretion under subsection (2) of that provision.

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The Bank then applied to avoid the forfeiture under section 134(1) by way of an appeal under section 418 and took out a motion for this purpose on 7th December 1977 on the ground, as set out in a supporting affidavit, that it sought "the discretion and sympathy" of the court to set aside the forfeiture which it contends is harsh and inequitable. We should perhaps add that the motion did not comply with the provisions of section 418(2) and Order 59 rule 13 of the Rules of the High Court, 1957 which specifically require the grounds of appeal to be set out in the motion but no point was taken by the Collector on this, and furthermore it was only at the hearing of the motion that the Bank raised the question of the purported invalidity of the notice in Form 6A under section 97(1) on a contention that the sum demanded therein was in excess of the sum due by some \$6,000/-. The Company took out a similar motion on 14th December 1977 by way of appeal under section 418 on the same ground in its supporting affidavit as that of the Bank but then applied by motion on 26th September 1978 to amend its original motion and obtained an order accordingly on 2nd November 1978 to add to its claim a prayer in the alternative that the Collector be required to pay compensation

In the Federal
Court

No.24
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25th August
1981
(continued)

to the Company.

The two appeals were heard jointly on 7th December 1978 by Tan Sri S.S. Gill (then Chief Justice) and in a reserved judgment delivered on 6th March 1979, acceding to the contention that equitable relief against the forfeiture could be granted by the court but, we should perhaps add, without considering and indeed wholly disregarding the specific provisions of section 134(2), he ordered that the forfeiture be set aside upon the Company paying within 6 months all the rent due and any money payable by way of penalty. The Collector immediately on that very day filed notices of appeal to this court against that decision

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THE BANK'S MOTION TO DISMISS THE APPEAL

It is necessary in the first instance to deal with a preliminary application by the Bank to dismiss the appeal by the Collector in limine, and this was brought about by what transpired after the learned Chief Justice's order of 6th March 1979. The Bank's solicitors made enquiries of the Collector in May 1979 as to the sums payable for rent and penalty for 1977, 1978 and 1979 to enable the Bank to make payment under the order of court, and on being informed of the total sum due therefor the Bank paid and the Collector accepted on 5th September 1979 the arrears of rent, education rate, penalty fee and notice fee for 1977 and the rent for 1978 and 1979 in the aggregate sum of \$434,285/-. On 17th September 1979 the Collector applied to the High Court for a stay of execution and other proceedings in this matter pending the final disposal of the appeals to this court and an order was made to this effect on 14th October 1979. The Bank now contends that the acceptance of the arrears of rent and concomitant sums for 1977 and the rent for 1978 and 1979 constitutes a waiver of the forfeiture by the Collector and took out a motion on 15th October 1980 for the dismissal on this ground of the appeal before us in respect of its motion under section 418.

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The learned Chief Justice specifically ordered that the forfeiture be set aside upon the Company paying all the rent and penalty due and payable although the appeals against the forfeiture were by both the Bank and the Company

and were heard together. It is true that a person or body whose interest in the land is affected is entitled under section 98(1) to pay the sum demanded by any notice under section 97(1) but this right only accrues before a forfeiture has been declared under section 100, and indeed the right to apply to the State Authority to annul any forfeiture so effected is restricted by section 133(1) to the registered proprietor of the land immediately preceding the forfeiture and does not enure to any other person or body however affected or aggrieved. In this case the Bank made the payment purportedly pursuant to the order of court and the Collector in accepting the payment so made also purported to act in accordance with the order of court against which he had lodged notices of appeal on the very day it was made and which is the very subject-matter of the appeals before us. The payment was therefore made by and accepted from the wrong entity and not in consonance with the specific requirement of the order for payment by the Company. In the face of the tenor of the order of 6th March 1979 the Collector had refused to accept the payment tendered by the Bank he might well perhaps have had qualms as to his liability for contempt of court and he would seem to have lost no time thereafter in applying for a stay.

In the Federal Court

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As the operation of the order resulted in the forfeiture being set aside if payment was made within 6 months, there was no question of any waiver of the forfeiture as there was nothing to waive when the forfeiture was seemingly no longer extant, having been set aside once there was payment in compliance with the terms of the order. In these circumstances moreover as the Collector purported to act under and comply with the order of court it can hardly be said that the waiver was intentional and it is trite law that 'a waiver must be an intentional act with knowledge' (Earl of Darnley v. London, Chatham & Dover Railway Proprietors (1) (at page 57 per Lord Chelmsford, L.C.).

In any event we cannot see how there can be any waiver once the forfeiture has been completed by the operation of the requisite provisions of the Code. After the forfeiture in this case was effected in accordance with the provisions of section 100 and took effect on 15th September 1977 upon the

(1) (1867) L.R. 2 H.L. 43, 57

In the Federal
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No. 24
Judgment

25th August
1981
(continued)

publication of the notification of forfeiture in Form 8A under section 130(1) with the consequences specified in section 131, no question of waiver can come in or arise. The Privy Council held in Jardine v. Attorney-General for Newfoundland (2) (at page 289) that in the case of a forfeiture clause, acceptance of rent after a known breach of a covenant or condition is not waiver of the covenant or condition or some part thereof, but waiver of the right to forfeit which has arisen from the breach. In Jones v. Carter (3), Parke, B., in a case of a forfeiture of a lease by a declaration in ejectment by a lessor which determined the term, said (at page 1043) that if once rendered void, the lease could not again be set up, concurring with what he termed the clear opinion expressed by Lord Tenterden in Doe d. Morecraft v. Meux (4) that the receipt of rent after an ejectment brought for a forfeiture was no waiver of such forfeiture. We would also refer in this connection to James v. Young (5) (at pages 662-663). If at all then waiver can be asserted, it must necessarily be of the right of forfeiture and cannot be of the forfeiture itself after it has taken effect, and the provisions of sections 127(2), 128(3) and 129(5) relating to liability to forfeiture for breach of condition of title and which refer to waiver of the right of forfeiture clearly substantiate this. In Davenport v. The Queen (6) too, which counsel for the Bank seeks to rely on, the main questions involved were, first, whether a Crown lease granted under and pursuant to the provisions of statute ever became liable to be forfeited, and next whether, assuming that it had become so liable, the right of forfeiture had not been waived.

Assuming for a moment, however, for the sake of argument the abstract possibility of waiver, the matter then resolves into the question as to whether the Collector has power under the Code to do so. The forfeiture provisions in the Code are clear, composite and complete and section 131 stipulates the legal consequences upon a forfeiture taking effect under section 130(1). The Collector has no power to effect a waiver and any purported act on his part which might give any semblance of a suggestion to that effect cannot in law

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- (2) (1932) A.C. 275, 289
(3) (1846) 15 M. & W. 1040, 1043
(4) 1 C. & P. 848
(5) (1884) 27 Ch.D. 652, 662-663
(6) (1877) 3 App. Cas. 115

10 be the subject-matter of waiver or estoppel against the State Authority. As soon as the forfeiture took effect the land reverted to and vested in the State Authority as State land under section 131(a) freed and discharged from the Company's and the Bank's title and interest and even if the Collector himself wanted to effect a waiver there was nothing left for him to waive and no power in him to resile and do so. Any question of waiver of a forfeiture effectively completed would give rise to a situation analogous to that of pardoning a condemned criminal after the hangman's noose has done its work.

In the Federal Court

No.24 Judgment

25th August 1981 (continued)

20 It is not surprising therefore in the light of what we have discussed that the Company has not taken this point on waiver even by proxy in the matter of payment by the Bank and acceptance by the Collector of the moneys in question and has not taken out any application to dismiss the appeal in relation to its own motion on this ground. We therefore for the reasons we have given dismissed the Bank's motion with costs and proceeded to hear the substantive appeal.

SUBSIDIARY CONTENTIONS RAISED

30 Before turning to the issue which is the nub of the appeals before us, we should perhaps touch on and dispose of two subsidiary contentions raised on behalf of the Bank.

40 First, at the outset of his argument Mr. Hepworth for the Bank submits that the order of the Collector under section 100 declaring the land forfeit to the State Authority was not produced in the court below and that in the circumstances this wholly vitiates the forfeiture, referring to that part of the judgment of this court in Pow Hing & Another v. Registrar of Titles, Malacca (7) which held (at page 159) that there should be a separate order previously made under section 100 distinct from the notification of forfeiture in Form 8A under section 130(1). There is however no requirement that the order under section 100 should be produced and there is on record an uncontroverted statement by the State Legal Adviser, Johore, in his submission in the court below that the Collector made an order under section 100 on 7th September 1977 (and there is no suggestion by the Bank or the Company otherwise) and that the notification

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(7) (1981) 1 M.L.J. 155, 159, 160

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Judgment

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1981
(continued)

of forfeiture in Form 8A under section 130(1) was published in the Gazette on 15th September 1977. When we drew his attention to this Mr. Hepworth did not pursue this point any further but Mr. Wong Kim Fatt who appeared with Mr. Hepworth then stood up to say that he has since searched the register of titles and finds that the Collector's order under section 100 has not been registered on the register document of title to the land in question. We immediately pointed 10 out to Mr. Wong that there is no requirement in the Code for an order under section 100 to be registered against the title nor any suggestion to that effect in the judgment in Pow Hing (7) which on the contrary indicated that the Collector need only make a simple order in the terms of that section or even perhaps make a minute to that effect in the relevant file. That disposes of this point which was raised in the absence of any notice of cross-appeal relating thereto. 20

Second, Mr. Hepworth raised the matter of the purported invalidity of the notice in Form 6A under section 97(1) which we have referred to in our exordial remarks and which the learned Chief Justice dismissed as not being of any substance, again without any notice of cross-appeal in this respect. The point made in the court below in this connection was that the sum demanded in the Collector's notice in Form 6A was in excess of the sum due by some \$6,000/- as 30 the demand wrongly included a penalty fee on the education rate payable and also a minor difference of some \$3/- for the notice fee. The State Legal Adviser disputed this contention except for the minimal error in the notice fee.

The matter of the quantum in dispute was not argued before us, and the learned Chief Justice in dealing with this point did not adjudicate on it either, but on an assumption without deciding that there was an irregularity in the sum demanded 40 as alleged, said in his judgment that the effective answer to this ground is to be found in section 134(2) which enacts that no order of the Collector under section 100 shall be set aside by reason only of any irregularity in the form or service of any notice under sections 97 and 98 unless, in the opinion of the court, the irregularity was of a significant nature. He went on to hold that the only irregularity alleged was that the amount demanded was some \$6,000/- more than 50 the amount lawfully due and he did not think that that was an irregularity of any significant nature, especially in view of the fact that no

representations were made to the Collector as to the amount demanded. We wholly agree with his conclusion in this respect.

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25th August
1981
(continued)

10 Assuming without deciding that there was an excess as alleged in the amount required to be paid in the Collector's notice, the excess was wholly minimal when viewed against the total amount due and payable and the learned Chief Justice held that if there was an irregularity as alleged he did not think that it was one of any significant nature, and section 134(2) clearly states that this is a matter for his opinion which we can find no reason to disturb. It was certainly open to the Company and the Bank to protest against the excess and clearly indicate what they thought was the proper amount due but they did not. We cannot but in the
20 circumstances consider this as reflecting a situation where the respondents to these joint appeals can have little cause for complaint if it is suggested that they have hardly come to court to seek equity with clean hands. We therefore find no ground for complaint on this count either.

THE SUBSTANTIVE ISSUE: IS EQUITABLE RELIEF AGAINST
THE FORFEITURE OF ALIENATED LAND UNDER THE CODE
EXIGIBLE?

30 We now advert to the substantive issue, scilicet, whether equitable relief against the forfeiture of alienated land is available in the face of the specific provisions of the Code. Section 134(1) enacts that the validity of any forfeiture under the code shall not be challenged in any court except by means of or in proceedings consequent upon an appeal under section 418 against the order of the Collector under section 100. Section 418 (so far as material for present purposes)
40 provides for an appeal to the High Court by any person or body aggrieved by any decision of the Collector and subsection (2) thereof prescribes the procedure therefor to be in accordance with the rules of court relating thereto and enacts that the court shall make such order on the appeal as it considers just. Section 134(2) stipulates that no order of the Collector under section 100 shall be set aside by any court except upon the grounds of its having been made contrary to the provisions of the Code or of there having been a failure on
50 the part of the Collector to comply with the requirements of any such provision but goes on to state that no such order shall be set aside by reason only of any irregularity in the form or

service of any notice under sections 97 and 98 unless, in the opinion of the court, the irregularity was of a significant nature.

The Bank and the Company contend that the provision in section 418(2) empowering the court on an appeal to make such order as it considers just must necessarily open the doors for the introduction of equity and allow the court to grant equitable relief against forfeiture in this case. If that were so any such exercise of power would fly in the face of section 134(2) and nullify its clearly defined restrictions, and as this court said in Pow Hing (7) (at page 160), an order of forfeiture can only be set aside on grounds circumscribed by the provisions of section 134(2) and then too not lightly for insubstantial cause. This enabling provision in section 418(2) for the court to make such order as it considers just can only mean that where the court has the power to grant a remedy, it also has the power to make such orders as may be necessary to make that remedy effective; it cannot be stretched to bestow or mean that the court has a general residual discretion to make any order it may think necessary in the circumstances of any particular case to ensure justice between the parties or otherwise which would transcend in facie legis the limits of its power to grant the remedy.

Section 3(1) of the Civil Law Act, 1956 which introduces the application of the United Kingdom common law and rules of equity in West Malaysia is subject to the saving provision with which it opens, namely, 'Save so far as other provision has been made or may hereafter be made by any written law in force in Malaysia,'. In relation to the matter before us which is governed by the Code this saving provision has both a positive and negative facet. On the positive aspect there is indeed power under the Code for relief against forfeiture but this is expressly and specifically provided for by section 133(1) and (2) and vested in the State Authority in its absolute discretion and not in the court and, as we have said earlier, the application by the Company for the annulment of the forfeiture in this case had previously been refused by the State Authority. There is also provision under section 133(3) for the State Authority to re-alienate the land to the Company at any time and that subsection provides that the refusal of any petition under section

133(1) shall not be taken to prejudice the power of the State Authority to re-alienate the land to the Company, but it would appear, however, that the Company has not taken any steps to apply for re-alienation.

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Court

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10 As to the negative aspect of the saving provision in section 3(1) of the Civil Law Act there are exclusive provisions in section 134(2) which circumscribe and specifically restrict the grounds on which an order of forfeiture by the Collector under section 100 can be set aside in an appeal to the court under section 418. The restrictive provisions of section 134(2) clearly suggest that the Collector's power to effect a forfeiture can be likened, to adopt a paradigm from the criminal law, to a case of enforcing strict liability without mens rea.

25th August
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(continued)

20 It is therefore abundantly clear that the Code does not contemplate any power or right in the court to grant equitable relief against forfeiture in the light of the several provisions we have adumbrated. There is no statutory provision giving such a right in marked contrast to the provisions of section 237 which relate to the grant or refusal of relief against forfeiture by the court of any lease of alienated land granted by the registered proprietor thereof to a lessee or
30 tenant.

We should perhaps also touch on section 6 of the Civil Law Act which precludes the introduction into Malaysia or any of its States of any part of the law of England relating to the tenure or conveyance or assurance of or succession to any immoveable property or any estate, right or interest therein. This provision would again preclude any application of the law of England, which must necessarily
40 in the context include the rules of equity, to the matter of forfeiture in this case which without doubt comes within the scope of the term 'tenure' in this section (East Union (Malaya) Sdn. Bhd. v. Government of the State of Johore & Government of Malaysia (8) (at page 154).

The relevant provisions of the Code provide a complete code regulating the respective rights, duties and liabilities of the State Authority and its agents on the one hand and the registered
50 proprietor of alienated land on the other in

(8) (1981) 1 M.L.J. 151, 154

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Judgment

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(continued)

relation to the rent payable in respect thereof and no recourse can legitimately be had to look beyond their specific terms to seek any relief for the alleviation of any complaint of hardship. Mr. Hepworth however suggests that section 134(2) should properly be read with the interpolation of the words 'on the grounds of its being invalid in law' after its opening words 'No order of the Collector under section 100 or 129 shall be set aside' so that section 134(2) should in fact read 'No order of the Collector under section 100 or 129 shall be set aside on the grounds of its being invalid in law by any court except.....', contending, as we understand him, that this will enable the introduction of equity to mitigate the rigours of that statutory provision and the forfeiture can therefore be challenged on its validity in equity. 10

The short answer to this contention is that a statute may not be extended to meet a case for which provision has clearly and undoubtedly not been made. In Magor and St.Mellons Rural District Council v. Newport Corporation (9) the House of Lords held that in the construction of a statute the duty of the court is limited to interpreting the words used by the legislature and it has no power to fill in any gaps disclosed, and that to do so would be to usurp the function of the legislature. Where the enactment of the legislature in clear and unequivocal language is capable of only one meaning, it must be enforced however harsh the result may be, and we need only refer to Cartledge v. E. Jopling & Sons Ltd. (10) as the locus classicus illustrating this principle. It is hardly necessary for us to stress that it is not the function of the courts to rewrite statutes - that is a role reserved for the domain of the legislative halls. 30

All the authorities on equitable relief against forfeiture canvassed on behalf of the Bank and the Company in the court below and before us and discussed and applied by the learned Chief Justice deal with personal covenants by agreement and bargain relating to leases, tenancies, mortgages and penalties. The present 40

(9) (1952) A.C. 189
(10) (1963) A.C.758

10 proceedings, however, involve forfeiture of alienated land under statutory provisions enacted in the Code which define and regulate the relationship between the State Authority and the registered proprietor thereof; the question before us depends on statute and the provisions of Chapter 2 of Part Six and Part Eight in Division III of the code and in particular section 134(2) preclude the court from avoiding the forfeiture effected by the Collector in the circumstances of this case.

In the Federal Court

No.24
Judgment

25th August
1981
(continued)

20 Both Mr. Hepworth and Mr. Chelliah for the Company frankly admit that they are unable to find any authority where equitable relief has been granted in respect of a forfeiture effected under a statutory provision. This absence of authority is not surprising in the circumstances, and we need only refer to what this court said in Diamond Peak Sdn. Bhd. & Another v. Tweedie (11) (at page 37) in regard to a situation of this sort. We find however that there is indeed authority the other way and Mr. Chelliah would appear to have overlooked proffering an identical argument in Siah Kwee Mow & Another v. Kulim Rubber Plantations Ltd. (12) when, in relation to the forfeiture of a substantial sum of money paid as deposit and part payment for the purchase of a rubber estate where reliance was sought on the equitable doctrine of relief against forfeiture, Abdoolcader, J., held (at page 201) that this principle of the intervention of equity to relieve against forfeiture is not applicable in the face of the express and specific provisions of the Contracts Act, 1950.

40 It would perhaps be useful and appropriate to refer to the decision of the House of Lords on 11th December last in Midland Bank Trust Co. Ltd. and Another v. Green (13) where Lord Wilberforce, with whom the other Law Lords concurred, discussed (at page 32) the equitable concept of the bona fide purchaser but then (at page 33) posed the question as to whether this requirement passed into the English property legislation of 1925 and went on to say that he did not think it safe to seek to answer this question by means of a general assertion that the property legislation of 1922-25 was not intended to alter the law or not intended to alter it in a particular field such as that relating to purchases of legal estates, adding significantly

(11) (1980) 2 M.L.J. 31, 37

(12) (1979) 2 M.L.J.190, 201

(13) (1981) 2 W.L.R. 28,32,33,35

In the Federal
Court

No.24
Judgment

25th August
1981
(continued)

that all the Acts of 1925 and their precursors were drafted with the utmost care and their wording, certainly where this is apparently clear, has to be accorded firm respect and cautioning against 'muddying clear waters', and (at page 35) he posited the danger of 'reading equitable doctrines (as to notice, etc.) into modern Acts of Parliament' and reaffirmed the validity of interpreting clear enactments according to their tenor. No exposition of the law could be more apposite in the context of the matter before us. None of the parties cited this case but we referred counsel to it in the course of argument and they had ample opportunity to consider it during the overnight adjournment. 10

In the circumstances it is our firm and considered view that no question of applying the equitable doctrine of relief against forfeiture can arise in relation to the forfeiture of the land in question by the Collector under the relevant provisions of the Code, and that the only relief available in connection with the forfeiture of alienated land under the Code is three-fold, namely, (a) that accorded to the precedent registered proprietor to apply to the State Authority under section 133(1) for the annulment of the forfeiture which under subsection (2) thereof the State Authority may in its absolute discretion refuse, as it did in this case, (b) for the State Authority to re-alienate the land under subsection (3) thereof, or (c) by virtue of the provisions of section 134, the right of any person aggrieved to challenge the validity of the forfeiture by way of an appeal under section 418 but only on the grounds specified in subsection (2) thereof. 30

Mr. Chelliah however goes even further and says that, quite apart from the provisions of section 3(1) of the Civil Law Act and section 418, the court has an inherent jurisdiction to act against what he calls unconscionable action, though we are not told how and why it was unconscionable for the Collector to comply and act in accordance with the express enactments in the Code in the matter of the forfeiture effected, and this inherent jurisdiction cannot be taken away except by the legislature by express and clear words. We only have to refer to what we have already said regarding the intervention of equity in the face of the express provisions of the Code to reject this argument. We cannot see 50

how the courts can exercise their inherent jurisdiction to override expressly enacted legislative provisions. Mr. Chelliah did indeed seek to invoke the inherent jurisdiction of the court in relation to the defeasibility of title under the Code in Mookapillai & Another v. The Liquidator, Sri Saringgit Sendirian Berhad (in compulsory winding-up) & Others (14) and this court in

In the Federal Court

No. 24 Judgment

25th August 1981 (continued)

10

its judgment referred to 'the somewhat startling proposition that the Court can set aside the transfers of the six titles under its inherent jurisdiction without telling us how this can be effected in the face of the express provisions of the National Code'. To countenance the injection of the inherent jurisdiction of the court into matters regulated and governed by the Code would be nothing short of negating and eradicating the very concept of certainty which the Code was enacted to introduce, reflect and preserve, and would well perhaps also evolve into reconstituting the court as a third legislative chamber.

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We should perhaps also add that acceding to the plea put forward for equitable relief against the forfeiture and the exercise of the court's inherent jurisdiction in this matter would, quite apart from throwing statute to the winds, be no less than to signal a judicial imprimatur to a process of energizing a renaissance of the apparition of the length of the English Chancellor's foot as the criterion for meting out equity to reactivate itself in a modern context as that of our several judges' feet! The court cannot be moved by compassion and sympathy for the Bank and the Company, and is bound and must abide by and apply the expressly enacted provisions of the code.

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The learned Chief Justice's order furthermore amounted in effect to an extension of the time expressly prescribed for compliance with the Collector's notice in Form 6A and virtually nullifies the purpose of the mandatory provisions of section 100 which impose a statutory duty on the Collector to declare the land forfeit if payment of the whole sum demanded has not been made by the end of the period specified in his notice under section 97(1) and debar him from even accepting a lesser amount than the sum demanded

(14) (1981) 2 M.L.J. 113.

In the Federal
Court

No.24
Judgment

25th August
1981
(continued)

during the currency of the notice.

THE COMPANY'S ALTERNATIVE CLAIM FOR
COMPENSATION

Neither Mr. Chelliah nor Mr. Medd for the Collector addressed us on the Company's claim in the alternative, inserted by amendment to its original motion, that the Collector be required to pay compensation to it, and when we enquired whether he was pursuing this aspect, Mr. Chelliah, who, we should add, did not appear in the court below, said, somewhat cautiously, that he was not abandoning it but was leaving it for our consideration. We think it was wise in the circumstances not to press this point as in our view this claim for compensation has only to be stated for it to be rejected. This claim for compensation in respect of a forfeiture under the Code effected under its express provisions, if sustainable, would fly in the face of the statute and would move Collectors of Land Revenue all over the country to forgo rather than enforce a forfeiture for non-payment of rent as in almost every conceivable case a claim for compensation far in excess of and wholly disproportionate to the amount of rent outstanding and even perhaps in some instances the value of the land itself would be advanced. 10 20

It would appear from the record that this alternative claim is based on the contention that the land was originally secondary jungle and that a substantial portion has been cleared and planted with sugar cane and some roads were built and other works carried out, with the Company expending in the process some \$18 million. Section 131 provides by paragraph (b) thereof that upon the taking effect in relation to any land of any forfeiture under the Code there shall vest in the State Authority to the extent specified in section 47 and without payment of compensation any buildings then existing on the land, and paragraph (a) thereof enacts that the land shall revert to and vest in the State Authority as State land, freed and discharged from all titles and interests, both subsisting and potential. 30 40

The land so reverting to and vesting in the State Authority under section 131(a) must necessarily connote the land in its improved state as at the point of time immediately 50

preceding the forfeiture taking effect, be it tilled, filled, levelled, cleared, developed, deforested or whatever, and even if planted with Jack's beanstalk (replete with its by-products - hen and eggs of gold and all) if there were such a thing, and no question of any compensation can possibly arise. Any other construction would result in the remarkably anomalous situation under section 131 that on a reversion of the land to the State Authority, compensation would be payable for improvements to the land as such but not for any buildings erected thereon.

In the Federal Court

No.24 Judgment

25th August 1981 (continued)

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There was no expectation created or encouragement given by the State Authority to the Company that its title to and interest in the land alienated to it for a term of 99 years would continue definitely for the full period of that term and without restriction, as the Company's tenure was at all times subject to the provisions of the Code including those relating to forfeiture for breach of condition of title and failure to pay the rent due. We would add that the indiscriminate reference to and reliance on authorities pertaining to encouragement, acquiescence and promissory estoppel in the court below in this regard without any consideration as to the context of their application and applicability in the circumstances of the case would appear to be like an exercise in attempting to fix window grilles to a drive-in movie.

THE RESULT

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There can in the premises only be one possible answer to the primal question posed in these proceedings and signified in the prelude hereto - a negative one. We accordingly at the conclusion of argument allowed the two related appeals by the Collector with costs and set aside the order of the learned Chief Justice made on 6th March 1979 except that part of his order directing the Bank and the Company to pay to the Collector the taxed costs of their motions which now stand dismissed. We also ordered that the sum of \$434,285/- paid by the Bank to the Collector for the years 1977 to 1979 pursuant to the order of the court below be refunded to the Bank and further directed that the deposit in court by way of security be paid out to the Collector.

In the Federal
Court

Sgd. Justice Dato E. Abdoolcader
JUDGE
HIGH COURT
(JUSTICE DATO EUSOFFE ABDOOLCADER)

No. 24
Judgment

25th August
1981
(continued)

25th August 1981

F.C.C.A. No. 57 of 1979

For Appellant ... P.W. Medd, Q.C. Alauddin
bin Dato Mohd. Sheriff
(State Legal Adviser,
Johore) and C.K.G. Pillay 10

For Respondent ... T.R. Hepworth and Wong Kim
Fatt.

Solicitors: Allen & Gledhill.

F.C.C.A. No. 58 of 1979

For Appellant ... P.W. Medd, Q.C., Alauddin
bin Dato Mohd. Sheriff
(State Legal Adviser,
Johore) and C.K.G. Pillay.

For Respondent ... R.R. Chelliah and P.S. Gill

Solicitors: Cheang Lee & Ong. 20

NOTE: Hearing: 11th & 12th August 1981.

No. 25

In the Federal
Court

ORDER

No.25
Order

ORDER OF FEDERAL COURT DATED 12TH DAY OF
AUGUST, 1981

12th August
1981

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 57 OF 1979

Between

10 Pemungut Hasil Tanah, Kota Tinggi Appellant

And

United Malayan Banking Corporation
Berhad Respondent

(In the matter of Originating Motion
No.42 of 1977 in the High Court in
Malaya at Johore Bahru

Between

United Malayan Banking Corporation
Berhad Applicant

20

And

Pemungut Hasil Tanah, Kota Tinggi Respondent)

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 58 OF 1979

Between

Pemungut Hasil Tanah, Kota Tinggi Appellant

And

30 Johore Sugar Plantation &
Industries Berhad Respondent

(In the matter of Originating Motion
No.43 of 1977 in the High Court in
Malaya at Johore Bahru

Between

Johore Sugar Plantation & Industries
Berhad Applicant

And

Pemungut Hasil Tanah, Kota Tinggi Respondent)

In the Federal
Court

No.25
Order

12th August
1981
(continued)

CORAM: WAN SULEIMAN, JUDGE, FEDERAL COURT,
MALAYSIA;
SALLEH ABAS, JUDGE, FEDERAL COURT,
MALAYSIA;
E. ABDOLCADER, JUDGE, HIGH COURT,
MALAYA

IN OPEN COURT
THIS 12TH DAY OF AUGUST, 1981

O R D E R

THESE APPEALS coming on for hearing on the 11th day of August, 1981 in the presence of Mr. Patrick William Medd, Q.C. (Mr. Alauddin bin Dato' Mohd. Sheriff, Legal Adviser, Johore, and Mr. C.K.G. Pillay with him) of Counsel for the Appellant and Mr. T.R.Hepworth and Mr. Wong Kim Fatt of Counsel for the Respondent in the Civil Appeal No.57 of 1979 and Mr. R.R.Chelliah (Mr. P.S.Gill with him) of Counsel for the Respondent in the Civil Appeal No.58 of 1979 AND UPON READING the Records of Appeals AND UPON HEARING the submissions of Counsel as aforesaid IT WAS ORDERED that these appeals do stand adjourned to the 12th day of August, 1981, for further hearing AND the case coming on for further hearing this day in the presence of Counsel as aforesaid IT IS ORDERED that these Appeals be and are hereby allowed AND IT IS ORDERED that the Order of the High Court made on the 6th day of March, 1979, setting aside the forfeiture of the Appellant appearing in the Johore Government Gazette Notification No.1136 dated the 15th day of September, 1977, be and is hereby set aside AND IT IS FURTHER ORDERED that the Appellant do refund to the United Malayan Banking Corporation Berhad the arrears of land rent, education rate, penalty fee under the Johore Land Rules, 1966, and notice fee for 1977 and land rents for 1978 and 1979 amounting to \$434,285.00 received by the Appellant AND IT IS LASTLY ORDERED that the costs of these Appeals be taxed by the proper officer of the Court and paid by the Respondents to the Appellant.

GIVEN under my hand and the seal of the Court this 12th day of August, 1981.

L.S. ..

Sd: K.S.Tan
SENIOR ASSISTANT REGISTRAR
FEDERAL COURT, MALAYSIA

This Order is filed by the Legal Adviser,
Johore for and on behalf of the Appellant
whose address for service is c/o The State
Legal Adviser's Chambers, High Court
Building, Johore Bahru.

In the Federal
Court

No.25
Order

12th August
1981
(continued)

No. 26

ORDER GRANTING FINAL
LEAVE TO APPEAL TO H.M.
THE YANG DI-PERTUAN AGONG

No.26
Order granting
Final Leave to
Appeal to H.M.
the Yang Di-
Pertuan Agong

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IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

6th March 1982

(APPELLATE JURISDICTION)

CIVIL APPEAL NO. 57 OF 1979

Between

Pemungut Hasil Tanah, Kota Tinggi Appellant

And

United Malayan Banking Corporation
Berhad Respondent

20

(In the Matter of Originating Notion No.
42 of 1979 in the High Court in Malaya at
Johore Bahru

Between

United Malayan Banking Corporation
Berhad Applicant

And

Pemungut Hasil Tanah, Kota Tinggi Respondent)

30

CORAM: LEE HUN HOE, CHIEF JUSTICE, HIGH COURT,
BORNEO:
WAN SULEIMAN, JUDGE, FEDERAL COURT,
MALAYSIA
MOHD. YUSOFF, JUDGE, HIGH COURT, MALAYA.

IN OPEN COURT

THIS 6TH DAY OF MARCH, 1982

In the Federal
Court

O R D E R

No.26
Order granting
Final Leave to
Appeal to H.M.
the Yang Di-
Pertuan Agong

6th March 1982
(continued)

UPON MOTION made unto Court this day by
Datuk P. Suppiah of Counsel for the Respondent/
Applicant in the presence of Encik Alauddin
bin Dato' Mohd. Sheriff, State Legal Adviser,
Johore, of Counsel for the Appellant/Respondent
AND UPON READING the Notice of Motion dated
the 21st day of January, 1982 and the Affidavit
of Chin Yew Meng affirmed on the 14th day of
December, 1981, both filed herein IT IS
ORDERED that the Respondent/Applicant be granted
final leave to appeal to His Majesty the Yang
Di-Pertuan Agong and that the costs of this
application be costs in the cause.

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GIVEN under my hand and the seal of the
Court this 6th day of March, 1982.

Sd: W.S. Tan

SENIOR ASSISTANT REGISTRAR,
FEDERAL COURT, MALAYSIA
KUALA LUMPUR

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This ORDER is filed by Messrs. Allen &
Gledhill, Solicitors for the Respondent/
Applicant herein whose address for service is
at 24th Floor, UMBC Building, Jalan Sulaiman,
Kuala Lumpur.

CYM/cck/1458/81

Nos. 39 and 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

Appellants

- and -

PEMUNGUT HASIL TANAH,
KOTA TINGGI

Respondent

AND B E T W E E N :

Appeal No. 40 of 1982

JOHORE SUGAR PLANTATION
& INDUSTRIES BERHAD

Appellants

- and -

PEMUNGUT HASIL TANAH,
KOTA TINGGI

Respondent

(CONSOLIDATED)

RECORD OF PROCEEDINGS

PHILIP CONWAY THOMAS & CO.
61 Catherine Place,
London, SW1E 6HB
No. 39 of 1982

STEPHENSON HARWOOD,
Saddlers' Hall,
Gutter Lane,
Cheapside,
London EC2V 6BS
Nos. 39 & 40 of 1982

TURNER & PEACOCK,
1 Raymond Building,
Gray's Inn,
London, WC1R 5RJ
No. 40 of 1982

Solicitors for the
Appellants

Solicitors for the
Respondent