

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
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25 RUSSELL SQUARE  
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Judgment 35, 1970

33 OF 1968

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA HOLDEN  
AT KUALA LUMPUR (APPELLATE JURISDICTION)

B E T W E E N :

COLLECTOR OF LAND REVENUE Appellant

- and -

A.K.A.C.T.V. ALAGAPPA CHETTIAR Respondents

*& ANOTHER*

*(and Cross-Appeals ~~dismissed~~)*

CASE FOR THE ~~ABOVE NAMED APPELLANT~~  
THE COLLECTOR OF LAND REVENUE

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Record

1. These are consolidated Appeals and  
Cross-Appeals from a Judgment and Order of the  
Federal Court of Malaysia Holden at Kuala  
Lumpur dated the 20th day of February, 1968  
allowing appeals by the above-named Respondent  
and Appellant A.K.A.C.T.V. Alagappa Chettiar  
and Ong Thy Eng as Trustee (hereinafter  
referred to respectively as the 1st  
Respondent and the 2nd Respondent) from a  
Judgment and Orders of the High Court of  
Malaya at Kuala Lumpur dated the 28th day of  
February, 1967, by which Judgment and Orders  
the said High Court dismissed Applications by  
the said Respondents referred to it under  
section 38 of the Land Acquisition Act 1960  
objecting to the amount of compensation  
awarded by the above-named Appellant and  
Respondent, the Collector of Land Revenue  
(hereinafter referred to as the Appellant) in  
respect of the compulsory acquisition by the  
Government of the State of Selangor of certain  
lands in the township of Kuala Lumpur of  
which the Respondents, together with others,

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87  
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were co-owners.

2. The principal questions that arise in this Appeal are :-

- (a) what was the market value of the lands in question at the material time, viz the 4th June, 1964;
- (b) whether the Federal Court was justified in disturbing the findings as to this which the trial Judge arrived at upon the evidence before him. 10

3. The following provisions of the Land Acquisition Act 1960 (No. 34 of 1960) (hereinafter called "the Act") are relevant to this Appeal:

Section 10 (1)

The collector shall . . . commence proceedings for the acquisition of the land by giving public notice in Form E . . . and by fixing the date of an enquiry for the hearing of claims to compensation for all interests in such land. 20

Section 12 (1)

On the date appointed under sub-section (1) of section 10 the collector shall make full enquiry into the value of all scheduled lands and shall as soon as possible thereafter assess the amount of compensation which in his opinion is appropriate in each case, according to the considerations set out in the First Schedule. 30

(2) The Collector shall also enquire into the respective interests of all persons claiming compensation or who in his opinion are entitled to compensation in respect of the scheduled land, and into the objections, if any, made by any interested person to the area of any scheduled land.

14. BECAUSE in assessing the compensation payable allowance must necessarily be made for the fact that a larger piece of land is of less value pro rata than a smaller, and will fetch a smaller price.
15. BECAUSE the appreciation of land values in Kuala Lumpur between November 1963 and June 1964 was less than 40% and the award of \$3/- per square foot took account of the appreciation which had taken place.
16. BECAUSE the learned trial Judge in assessing the compensation that was payable took fully into account the potentialities of the land and all other relevant factors.
17. BECAUSE the land was at all material times zoned for "Open Development".
18. BECAUSE the plan P.2 showed and would show a prospective purchaser what development would be permitted by the town planning authority no less in June 1964 than in November 1963.
19. BECAUSE the plan P.4 was never approved or submitted for approval
20. BECAUSE there was no or no sufficient evidence that P.3 was ever finalised or approved.
21. BECAUSE the 19 sales put forward by Mr. Williams for purposes of comparison were not comparable.
22. BECAUSE the sale of Lot 2285 was not a sale in the open market and was rightly admitted by Mr. Williams to be not a reliable comparison.
23. BECAUSE the transaction relating to Lot 1 which took place in April 1964 was such that it did not provide any basis at all for valuation of other land in the neighbourhood.
24. BECAUSE the sales of Lots 29 and 56 on the

29th September 1962 and of Lot 21 on the 17th August 1962 are comparable sales and support the assessment arrived at by the Appellant and by the learned trial Judge.

25. BECAUSE the evidence of Lim Mau Chin that the Army camp which was formerly on the land was demolished in 1962 and that the Government lease expired in 1961 was not objected to or challenged and should have been taken into account by the Federal Court. 10
26. BECAUSE the Judgment of the High Court dated the 28th day of February 1967 was right for the reasons therein stated.
27. BECAUSE the Federal Court was entitled to deduct 10 per cent of \$7,733,840 from its award and rightly did so for the reasons stated by it.

MONTAGUE SOLOMON

JOHN VINELOTT

R. K. HANDOO

MONTAGUE SOLOMON

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IN THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL

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ON APPEAL FROM

THE FEDERAL COURT OF MALAYSIA  
HOLDEN AT KUALA LUMPUR

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(APPELLATE JURISDICTION)

B E T W E E N :-

COLLECTOR OF LAND REVENUE  
- and - Appellant

A.K.A.C.T.V.ALAGAPPA CHETTIAR  
Respondent

AND BETWEEN :-

COLLECTOR OF LAND REVENUE  
- and - Appellant

ONG THYE ENG (As Trustee)  
Respondent

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AMENDMENT TO THE REASONS  
OF THE CASE FOR THE APPELLANTS  
(Page 29)

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STEPHENSON HARWOOD & TATHAM,  
Saddlers' Hall,  
Cutter Lane, Cheapside,  
London, E.C.2.

Solicitors for the Appellant

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA HOLDEN AT  
KUALA LUMPUR

(APPELLATE JURISDICTION)

B E T W E E N :-

COLLECTOR OF LAND REVENUE Appellant

- and -

A.K.A.C.T.V. ALAGAPPA CHETTIAR  
Respondent

10

A N D B E T W E E N :-

COLLECTOR OF LAND REVENUE Appellant

- and -

ONG THYE ENG (As Trustee) Respondent

AMENDMENT TO THE REASONS OF THE CASE FOR  
THE APPELLANTS  
TO BE INSERTED BETWEEN REASONS 9 and 10 on  
PAGE 29 of the APPELLANTS CASE

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5. BECAUSE the High Court had the advantage of seeing and hearing the witnesses and its findings of fact should be upheld.
6. BECAUSE it was for the Respondents to show that the price at which Devarayan Chettiar sold his share of the land on the 5th November 1963 was not its market value at that time, and they failed so to do.
7. BECAUSE the Respondents failed to call Devarayan Chettiar or otherwise tender evidence by him, and their failure so to do gives rise to an inference that his testimony would have been adverse to them.

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8. BECAUSE the sale of the 5th November 1963 was the best evidence on which to base an assessment of the value of the same land 7 months later.
9. BECAUSE in the circumstances of the case, including the size of the land, the size of the share sold and the purpose for which it was held and would be used, the fact that the sale in November 1963 was of an undivided half-share had no or no appreciable effect on the price then obtained. 10
- 10A. The Federal Court in holding that the price at which Devarayan Chettiar sold his undivided half-share on 5th November 1963 could not be taken as evidence of the value of the land at that time unless an allowance was made for the relative unmarketability of an undivided share overlooked the fact that the Appellant was acquiring the undivided share of each of the Respondents none of whom can be treated as a willing vendor of more than an undivided half-share of the land. 20
10. BECAUSE the evidence adduced by the Respondents to show that there were special circumstances which led in November 1963 to the land being sold at less than its market value was, insofar as it was admissible, insufficient and unacceptable and was rightly rejected by the learned Trial Judge 30
11. BECAUSE it was common ground throughout the proceedings that the lands in question should be valued as one unit and not as 7 separate units under 7 titles
12. BECAUSE it was apparent that at all material times it was and would be contemplated by all persons interested in purchasing or developing the land that it was to be developed and dealt with as one unit and not piecemeal. 40
13. BECAUSE in view of the irregular shape of the land it would not be advantageous to sell it title by title.

Section 14 (1)

Upon the conclusion of the enquiry under section 12 relating to any scheduled land the Collector shall prepare a written award under his hand in Form G, in which he shall in respect of each separate area of scheduled land, make a separate award in respect of each person whose interest in the land has been established in such enquiry.

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Section 37 (1)

Any person interested in any scheduled land who, pursuant to any notice under section 10 or 11, has made a claim to the Collector in due time and who has not accepted the Collector's Award thereon, or has accepted payment of the amount of such award under protest as to the sufficiency thereof, may, subject to the provisions of this section, make objection to -

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- (a) the measurement of the land;
- (b) the amount of the compensation;
- (c) the persons to whom it is payable;
- (d) the apportionment of the compensation.

Section 38 (1)

Any objection made under section 37 shall be made by a written application in Form N to the Collector requiring that he refer the matter to the Court for its determination.

Section 47 (1)

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Every decision made under this Part shall be in writing signed by the Judge and by the assessor or assessors, if any, concurring therein.



Record

(2) Where such decision comprises an award of compensation it shall specify -

- (a) the amount awarded on account of the market value of the land under paragraph (a) of Section 2 of the First Schedule;

. . .

Section 49 (1)

Any person interested . . . may appeal from a decision of the Court to the Court of Appeal.

First Schedule

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(1) For the purposes of this Act the term "market value" where applied to any scheduled land shall mean the market value of such land:

- (a) at the date of publication in the Gazette of the notification under section 4, provided that such notification shall within six months from the date thereof be followed by a declaration under section 8 in respect of all or some part of the land in the locality specified or;

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- (b) in other cases, at the date of the publication in the Gazette of the declaration made under Section 8.

(2) In determining the amount of compensation to be awarded for any scheduled land acquired under this Act there shall be taken into consideration the following matters and no others:

- (a) the market value as determined in accordance with paragraph 1 of this Schedule; . . .

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4. On the 4th June, 1964 a notification in Form A under Section 4 of the Act that the lands in question were likely to be acquired was published in the Selangor Government Gazette (Notification No.335).

On the 8th October, 1964 a declaration in Form D under Section 8 of the Act of intended acquisition of the lands in question for a public purpose was published in the Gazette. (Notification No. 678).

10 5. By notice dated the 15th October 1964 the Appellant gave notice in accordance with the notice of intended acquisition of the said lands, which were described in the Schedule thereunder, that an enquiry to hear all claims to compensation for all interests in such land would be held on the 12th day of November, 1964 at the Land Office Kuala Lumpur and requiring all persons having interests in the said land then to appear before him either personally or by agent and to state

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- 20 (a) the nature of their respective interests in the land;
- (b) the amount and particulars of their claims to compensation for such interests;
- (c) their objections, if any, to the measurements of approximate area given in the said Schedule;
- 30 (d) the names of any other person known to the party or his agent to possess any interests in the land or any part thereof, and to produce all documents and deed relating to their claims.

The lands intended to be acquired were thus described in the Schedule to the Notice:



Survey Lot No.	Title or Occupation	Registered Proprietor or Record Occupant	Area of Lot	Approx. Area to be acquired
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Sec.47

17	C.T. 10800	-do-	4.3.09.5	-do-
18	C.T. 10801	-do-	2.0.28.8	-do-
10 19	C.T. 14401	-do-	3.2.27.6	-do-

6. On the 12th November 1964 the Appellant duly held the inquiry. The 1st Respondent, 2nd Respondent and all other proprietors of the lands were jointly represented and claimed \$30/- per square foot for all the lots to be acquired.

7. The Chief Valuation Officer of the Federation of Malaya was also represented. A detailed report on and valuation of the lands in question was produced by his department in December. This was prepared by Lim Now Chin, a Valuation Officer in the Treasury. It described the situation of the land and its nature, stating that "apart from the rear portion which is slightly elevated the land is generally flat. It is irregular in shape, it is covered with numerous squatters which are located at the rear and the north west corner . . . The land is sited in a predominantly residential area which is the poorer section of Jalan Pekeliling."

The report also referred to the town planning position of the land as stated in a letter of the Pesuruhjaya, Ibu Kota, Kuala Lumpur dated the 12th November, 1964. This was in short that the lots were zoned "Open Development" in the Approved Town Plan with a suggested density of three houses to an acre and with a reasonable expectation, subject to

official approval of the layout, of development for flats, the maximum density permissible for point block flats being in the region of approximately 200 persons/acre or at 5 persons to a flat and about 40 flats to an acre.

As to the value to be put on the land, the Valuation Officer referred to a previous sale effected in respect of the very land to be acquired, observing that "the previous sale of the land itself which is under acquisition would be a better guide than sales of other lands however similar". This previous sale was effected on the 5th November, 1963 when an undivided half share was sold by one Devarayan Chettiar to the 2nd Respondent and eight others (i.e. to all the persons now interested in the land under acquisition, with the exception of the 1st Respondent whose interest was in the other half share). The price obtained was \$2/20 per square foot (or \$95,832 per acre). The Valuation Officer expressed the view that it was highly unlikely that between the 5th November 1963 and the 4th June 1964 the value of land had rocketted up to \$30/- per square foot, which was the amount claimed by the owners. The report then proceeded to consider recent sales of lands in the immediate vicinity where the lands sold were over one acre in area, were also capable of flat or other types of residential development and had in fact been purchased with a view to such development. The following were instanced:

- (1) Lots 29 and 56 in Section 85a with an area of 2.85 acres and 3.091 acres respectively were purchased on the 29th September, 1962 at \$1/12 and 65 cents per square foot respectively.
- (2) Lot 2285 in Section 86A with an area of 1.437 acres was sold on the 14th March, 1963 at \$6.39 per square foot.

(3) Lot 21 in Section 47 with an area of 1.322 acres was sold on the 17th August 1962 at \$2.50 per square foot.

Having regard to the prices that these lots fetched the Valuation Officer expressed the view that the sale price of the half undivided share of the land in question seemed slightly high.

10 The Valuation Officer considered that sales other than those in the immediate vicinity, such as those at Jalan Ipoh, could offer no evidence of value for determining the market value in question, by virtue of their location, distance, area and  
20 dissimilarity in use. These latter were in an established shopping area and a good shopping street and were, therefore, meant for the development of shops and other commercial uses. The section of Jalan Pekeliling in question, however, was a residential area, and sales for comparison purposes should be restricted to this precinct.

The further point was made that a shop, flat or bungalow lot usually has an area of 2,000 square foot, 1,600 square feet or 6,000 square feet respectively. Such a lot would, by virtue of the smallness of its area, invariably fetch a very much higher price and could not be made the basis of valuation for a  
30 larger plot of land.

The figure fixed by the Valuation Officer in the report as the market value under paragraph 2 (a) of the First Schedule to the Act as at the 4th June 1964 was \$3 per square foot, giving a total of \$2,975,190 for the whole area of the lands under acquisition.

8. The Valuation Officer listed the following factors as the matters he had taken into  
40 account in arriving at this figure as the market value.

- (1) The land acquired comprised a total area of 22.767 acres. "A prospective purchaser buying a piece of land of this size in the Town of Kuala Lumpur would invariably expect a reduction in value as an inducement to take over the bulk of the property as a whole and a sufficient margin of profit for the risk undertaken to justify embarking on development." 10
- (2) The rear portion and the north west corner were covered with numerous squatters. This raised great problems from the development point of view and depreciated the value of the land.
- (3) This Section of Jalan Pekeliling was not only not a commercial area but also a poorer residential area of Jalan Pekeliling.
- (4) The land was irregular in shape, slightly elevated at the rear and bisected by a rectangular strip of State Land. Development would entail a comprehensive system of roads involving about four acres of land. 20
- (5) The previous sale of the land, which took place only seven months before the 4th June 1964.
- (6) Other recent sales in the immediate vicinity. 30
- (7) There was unlikely to be an immediate demand for good-class flats in the locality in view of the number of such flats that were being or would soon be erected on the adjoining lands, and each phase of development would satisfy demand to a great extent. Demand for flats was on the decline and banks were reluctant to lend monies for the purchase of flats. 40  
The locality was not an important

shopping area, there being an established and important shopping area too near it, namely Jalan Ipoh.

- 10 9. On the 17th December, 1964 the Appellant made a Written Award of Compensation in respect of the lands, awarding a total compensation of \$2,975,190,00 and apportioning the award amongst the persons interested in the lands according to their respective interests, as therein specified. The award was apportioned inter alia as to \$1,487,595,00 to the 1st Respondent in respect of a  $\frac{1}{2}$  share of the lands and as to \$247,932,50 to the 2nd Respondent in respect of a  $\frac{20}{240}$  share.
10. The grounds on which the Appellant determined the amount of compensation which he awarded were stated by him as follows :-

20 The lands to be acquired are not situated within the commercial centre of the Town but in a comparatively poor residential section. As a whole they are irregular in shape and development would therefore entail considerable loss of land for a comprehensive road system which will be necessary. There are numerous squatters on the lots at the rear and north-west corner. A private developer would therefore have to spend

30 [a] considerable sum in any effort to evict these squatters. This tends to reduce the value of the lands.

An undivided share of the lands to be acquired was sold by Deivarayan Chettiar to the present nine co-owners at \$2.20 cts per sq.ft. on 5th November, 1963.

40 The lands to be acquired totalled 22.763 acres. Any prospective buyer of land of this size would inevitably expect a lower price than would be the case if he were to buy a smaller area.



Record

Under the circumstances, I value the land at \$3/- per sq.ft. and award a total compensation of \$2,975,190/- to be divided amongst the owners according to their respective shares in the lands.

13 11. By a Notice of Award and Offer of  
14 Compensation dated the 17th December, 1964 and  
a Notice of Award and Offer of Compensation  
dated the 28th December 1964 the Appellant  
informed the 2nd Respondent and the 1st  
Respondent respectively of the making of the  
award and in accordance therewith offered  
them the respective sums of \$247,932,50 and  
\$1,487,595,00 as full compensation for their  
respective interests in the lands. 10

16 12. Thereafter the Respondents and the other  
18 persons interested in the lands made  
Applications under Section 38 of the Act,  
objecting to the amount of compensation awarded  
as being insufficient and requiring the  
Appellant to refer the matter to the Court for  
its determination. 20

20 The Appellant duly referred the matter to  
the High Court of Malaya at Kuala Lumpur.

13. One of the Applicants died before the  
hearing, but the remaining nine Applications  
were, by consent, heard together.

At the hearing it was agreed

(a) that it was not necessary to value  
the land held under each title  
separately, the lands being contiguous,  
so that the land was in fact in one  
lot; 30

(b) the material date for the purpose of  
valuation was the 4th June, 1964.

It was also not in dispute that the land  
was "situated approximately two miles from the  
centre of Kuala Lumpur town on the north side  
of Jalan Pekeliling about 200 feet from its

10 junction with Jalan Pahang to the east and about 350 yards from its junction with Jalan Ipoh to the west, with a total frontage of approximately 1,420 feet along Jalan Pekeliling. On the west it is bounded by Sungei Gombak. Immediately at its rear on the north side are the Tuberculosis Hospital and Clinic and numerous squatters' huts which constitute Kampong Siam. Next to the Hospital with road frontage on Jalan Pahang are lots 29, 56 and 1, and almost directly opposite to Lot 29, across Jalan Pahang, is Lot 2285. To the south of the land acquired, across Jalan Pekeliling, are Lots 95, 96, 97, 98, 12 and 21. All this is shown in the plans which have been put in evidence and marked as P.9 and D.12."

20 The amount claimed by the Applicants as compensation was at the commencement of the hearing reduced from \$30/- per square foot to \$12/- per square foot.

14. The 1st respondent gave evidence in support of his application. He said that he was the registered owner of an undivided half share in the lands acquired. He had been arranging to develop this land for a long time and in 1957 had had a plan (P.2) prepared for this purpose.

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30 The other half share in the land had been acquired in 1962 by one Devarayan Chettiar. Devarayan Chettiar did not live permanently in Malaya and was an Indian resident. He lived in Malaya for four years in all but had to return to India in 1964 because of visa problems. The witness said that he was not in Malaya when Devarayan Chettiar sold his  $\frac{1}{2}$  share of the land in November 1963 but he gave evidence as to the circumstances of the sale. Devarayan Chettiar had to leave the country by the middle of 40 1964, and to escape the Indian Capital Gains tax he had to sell the land. He (Devarayan Chettiar) did not know much about the values of land in Malaya and sold the land at an extremely low price, namely \$2.20 per square foot. At that time the proper price would

Record

have been \$20 to \$21 per square foot. By selling at the price he did Devarayan Chettiar lost about ten million dollars. Devarayan Chettiar had asked the witness to join him in selling the land, "because nobody would want to buy an undivided share" but the witness had not been interested in selling the land because he wanted to develop it. The witness was not interested in buying Devarayan Chettiar's share either because he had no money. In cross-examination however he said that nothing was done to develop the land after 1962 "because Devarayan Chettiar did not want to join me" and that he (the witness) did have money to develop. He had about \$200,000 and could get the rest of the money from the bank, as he had properties which he could mortgage to the bank.

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The witness referred to the occupation of some of the land by the military authorities and said that they had vacated the land after Devarayan Chettiar sold his share and before the acquisition.

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With regard to plans for development of the land, the witness said that P 2 had been approved in 1957 and Devarayan Chettiar was aware of the development plans. However the witness abandoned his plan after the other owners had put up their plan (P.4), but P.4 was not sent to the Municipality for approval. The irregularity of the land had been overcome in 1958 by reason of the adjustment shown in a plan sent to him by the Land Office (P.3), which set out the arrangement regarding adjustment of land between owners of the land and the Government.

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15. A similar account of the circumstances in which Devarayan Chettiar had sold his interest in the land in November 1963 was given by several other of the witnesses. These were Pong Kein Ngor (one of the owners of the land who had purchased from Devarayan Chettiar) Palaniappa Chettiar and Ng Chong Gong (the chairman of 2 companies which were purchasers from Devarayan Chettiar).

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Palaniappa Chettiar said that Devarayan Chettiar had obtained his  $\frac{1}{2}$  share of the land in question when a firm known as the R.M.P. partnership had been dissolved and its assets distributed amongst the partners in 1962. Devarayan Chettiar, who had come to Malaya 3 years before in order to get his share of the lands, tried to sell the property, but no one came forward to buy. It was a big property and he could not sell it on his own. If he had gone to India without selling the land he would have had to pay capital gains tax. His current visit pass was until June 1964 and he had to sell before April 1964 to avoid the tax.

This witness said that he had been looking after lots 95 and 96 which were opposite the land in question. In 1964 brokers offered him \$10/- a square foot for these lots, but the sale did not go through because the owner wanted \$12/- per square foot. (The owner of these plots was not called to give evidence).

In cross-examination this witness said that he knew that when the R.P.M. firm was dissolved, the lands in question were, for the purpose of their apportionment, valued at \$45,000 per acre (approximately \$1.03 per square foot). He added that he did not know whether \$2.20 per square foot was a fair price for the land in November 1963.

Ng Chong Geng, who had negotiated on behalf of all the purchasers when Devarayan Chettiar's interest in the lands was acquired in November 1963, described how he had first offered \$2/- per square foot. When this was turned down, he had offered \$2.20 per square foot, which offer was accepted.

Evidence as to the liability to and the incidence of capital gains tax in India was given by an Indian accountant, A. Varadachari, who referred to the relevant statutory provisions which were applicable.

Record

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16. The witness whose testimony was principally relied upon by the applicants to establish the value of the land was Collin Harold Williams, a valuer and estate agent of Kuala Lumpur. He had prepared a report on the 17th May 1966 (produced as P.8) in which he had valued the lands as at the 4th June 1964 at \$12/- per square foot. He had also prepared a plan of the lands in question and the other lands mentioned in his report, which he produced as P.9. The evidence he gave followed and enlarged upon his report. 10

In making his valuation Mr. Williams disregarded entirely the sale of the land in question at \$2.20 per square foot in November 1963, taking the view that this did not represent a true market value of the land. He based himself mainly on 19 previous sales of lands in different parts of Kuala Lumpur. The substance of his evidence was that there was a very substantial rise in the prices of lands over the period 1962 to 1964 and that, having considered all the sales which were nearest in point of time, he came to the conclusion that the market value of the land in question was \$12/- per square foot. However the 19 sales which he took into consideration in arriving at his valuation (which were listed in his report) were, with 3 exceptions (sales Nos. 1, 7 and 8) admittedly in different localities, and all 19 were sales in respect of land below 3 acres in area, 14 being less than 2 acres and 7 less than 1 acre. 20 30

Mr. Williams agreed that sales Nos. 1, 2 and 3 in his report could be ignored. He said that he did not rely on sale No.4, and placed very little emphasis on sales Nos. 5 and 6, which showed a drop in price in the Jalan Raja Laut area between March 1963 and October 1964 "entirely against the market trend". 40

Sale No. 7 was of land in Pahang Road (Lot 2285), close to the land acquired.

As to this sale, the evidence in the case showed that it was in fact a sale by a director to his company, of which company it would seem a brother of the vendor was one of the other 2 directors. Mr. Williams said that he did not know that this was a sale by a director to his company and agreed that, if this were so, it would not be a reliable comparison.

10           Sale No.8 was also of land in Pahang Road (Lot 1) but a bit further away from the land acquired. Mr. Williams said that this was an unregistered sale and that "if the sale took place, it would be reliable", but that he understood the sale had not taken place up to then. (This in fact was not a completed sale at all, but an agreement to sell. The written agreement was in evidence and showed that a small portion of the agreed  
20 purchase price was paid on the date of the agreement and the payment of the balance of the purchase price was subject to various conditions. Moreover the so-called purchase price of \$7.90 per square foot included expenses to be incurred to remove and to evict squatters on the land, and it also included payment of quit rents and assessments until the time that vacant possession of the land was to be given to the purchasers.)

30           Sale No.9 was of 1.240 acres of land in the village of Setapak beyond the third mile, Pahang Road in November 1964 at \$4.62 per square foot. Sales 10, 11 and 12 were in respect of lands in Ipoh Road at prices ranging from \$5.90 to \$15.16 per square foot, the higher prices being for small sub-divided lots for terrace houses. Sale No.13 was in respect of terrace lots off Sentul Road sold  
40 in July 1974 at prices varying from \$3.90 to \$5.00 per square foot. Sales 14, 15, 16, 17 and 18 were in respect of lands in Imbi Road approximately three miles away from the land acquired. Sale 19 was in respect of terrace lots behind Treacher Road, sold in October 1964 at \$21.32 per square foot.

17. Mr. Williams said that he made a cross-check of his valuation by considering what could be obtained by selling the land as sites for flats. For this purpose he adopted a density of 54 flats per acre and, taking the land price per flat at \$9/-, arrived at a value of \$486,000 per acre or \$11.15 per square foot.

In cross-examination he was referred to Sale No.13 in his list, which was a sale of lands in the Sentul Area at prices from \$3.90 to \$5/- per square foot. This area was more developed than the area of the acquired land. The price was only \$2/- per foot. 10

In cross-examination also he admitted that according to the plan put up in 1957 (P.2) there was to be a density of only 8 to 9 units per acre. According to the new plan (P.4), which was prepared in 1964 but never submitted, there were to be 40 residential units per acre, calculated over the whole area. He added 20

"I assumed that the plan (P.4) would be approved by the planning authority. I assumed that the planning authority would approve 54 units per acre. I also assumed that when the project was completed there would be immediate demand for the units."

In his view, although from 1964 onward the demand for housing units was on the decline and there was in 1964 definitely a fall in the demand for flats in tower blocks, there was no fall in the demand for terrace flats. The sort of development he envisaged on the land in question was for three-storey flats. 30

18. Mr. Williams did not agree with the Government Valuer in attaching importance to the sales of Lots 29 and 56 at Pahang Road, which were sold on the 29th September 1962 at \$1.12 and 65 cents per square foot respectively. However, he agreed that these lots were immediately adjacent to Lot 1 (a sale of which 40

was relied on in his report as Sale No.8), that Lot 2285 (Sale No.7) was in the same road, and that Lots 29 and 56 were the best of these four lots, being both level land, whereas the other lots were below the level of the road. His conclusion as to the sales of Lots 29 and 56 was that they "were out of the general trend even on the 29th September 1962".

10 He disagreed also with the view of the Government Valuer that a prospective purchaser buying a piece of land of the size of the land in question would invariably expect a reduction in price.

He agreed however that the land was sited in a poorer section of Jalan Pekeliling in the sense that poorer people live there.

20 He agreed also that there were squatters on the land at the time of acquisition and there was a tongue of State land protruding into the land, adding that he understood that the owners had made arrangements to overcome that disadvantage but that he knew that no exchange of land in fact took place.

19. For the Appellant, Lim Mow Chin gave evidence, producing the report which he had made in December 1964 (D.13) and the plan he made in connection therewith (D.12). His evidence largely followed D.13. The value he put on the land at the date of acquisition was \$3/- per square foot.

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30 He said he had inspected the land on the 10th October 1964. The rear portion of the land was slightly elevated, the shape irregular, the north-west corner covered with numerous squatter houses.

40 It was sited in a predominantly residential area, the poorer section of Circular Road. There was the Tuberculosis Hospital almost adjoining the land and at the



back of it was a very large piece of mining land.

He had found no sales of a similar piece of land of similar size in the area, apart from the previous sale of the land under acquisition on the 5th November 1963. He based his valuation mainly on that previous sale, increasing the figure by an appropriate amount to take into account the general rise in values between the 5th November 1963 and the 4th June 1964. His estimate of the general rate of appreciation of land values in Kuala Lumpur between 1963 to 1964 was that it averaged from 30 to 40 per cent. Between the date of the previous sale and the date of acquisition he had allowed an increase of about 40 per cent. 10

He rejected the suggestion that in the circumstances of the present case reliance could not be placed on the previous sale of November 1963 because it was a sale of an undivided share, pointing out that if the land area is very big the Torrens allowance for an undivided share does not apply because any imprudent sacrifice by either party may result in a big loss. An undivided share would fetch a lower price only where the lot sold was small. 20

The witness said that he had checked the calculation based upon the previous sale against other previous comparable sales in the same area listing these and referring particularly to Lot 29, Lot 56 and Lot 21 (which had been instanced in his Report). Making the appropriate allowance for appreciation, the price of \$2.20 for the land acquired in November 1963 was not out of line with the other sales in the vicinity. The sales were not comparable to the land acquired in terms of size, but they were of equivalent potentiality and in the same locality. 30

The 19 sales mentioned by Mr. Williams, apart from two instances of sales in the vicinity of the land acquired, were not comparable sales. They were sales of lands 40

in better commercial or residential areas, most of them were several miles away from the land acquired and they were different in size and situation. The sale of Lot 2285 was a sale by a director to his company and did not merit serious consideration.

The factors he had considered in arriving at his valuation were as stated in his Report, namely

- 10           (1) size. It was a principle of valuation that smaller lots fetch higher values than bigger lots. This was because there was a very great risk in owning or developing a bigger piece of land and there might be difficulty in selling it. It was true that the land under acquisition consisted of several titles and it would be possible to
- 20           dispose of it title by title. However, if the best sites were disposed of separately, there would be great difficulty in selling the poorer sites and to dispose of the land site by site would take a longer time. Moreover, the plan that had been approved in 1957 for the development of 212 units (P.2) indicated an intention to develop the
- 30           land as a whole. So far as he knew, there never was any intention to develop the land piece by piece;
- (2) the presence of squatters on the land;
- (3) the condition of the neighbourhood;
- (4) the slope of the land;
- (5) the previous sale of the land in November 1963;
- (6) other sales in the immediate vicinity;
- 40           (7) the demand for flats in the area,

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i.e. the potentiality of the land.  
The demand for flats had started to decline just before the 4th June 1964. The demand for terrace houses also was not very good.

61 20. Mr. Watkinson, a senior official from the Federal Department of Town and Country Planning was called by the Appellant and gave evidence that the land was zoned as an "Open Development" area in June 1964 (and still 10 zoned as such at the date of hearing). The density of development to be recommended for the area would be 200 persons per acre and this would be subject to the legal requirements to alter the zoning. He would resist terrace development in the area, principally because the density would go too high.

The plan P.4 had not been submitted to his Department for approval. He would not recommend it because there was as yet no legal 20 requirement to ensure the provision of the obviously desirable amenities. Also it did not accord with the present zoning and would be inconsistent with policy.

Development of the land to allow 40 flats per acre would be recommended for approval, subject to normal legal requirements i.e. approval of layout.

It was true that the Government proposal for the land was for development to a 30 much greater density than 40 units per acre. The Ministry of Housing was the authority for making the change in the zoning which would be required and the change of zoning would be subject to objection, with final decision from the Minister.

Insofar as the 1957 plan (P.2) and the plan P.3 (showing the Government proposals for an exchange of land with the owners) contained provision for terrace houses, they were 40 illegal, since "Open Development" did not permit terrace houses. Blocks of flats fell under "Open Development", and the greater

density proposed by the Government was still within this zoning. A private owner could have the same degree of development, if he provided amenities.

10 Mr. Watkinson concluded that he would not recommend the building of terrace houses on the land under acquisition. He would recommend the building of blocks of flats with enough space for other amenities. However in June 1964 the demand for tower blocks was on the decline.

20 21. The Appellant also called Koh Eng Lim, the Administrative Officer of the Ministry of Housing, one of whose duties it was to take a census of the areas required for development by the Government. His evidence was that a census of this area was taken in July 1965, when it was found that there were 181 squatter houses on the land, with 272 squatter families in addition to 60 bachelors and widows.

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22. On the 28th February 1967 the High Court (Gill J.) delivered Judgment, holding that the Respondents and the other owners of the land had failed to prove that the compensation awarded to them was inadequate.

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30 The learned Judge rejected as unreliable and partisan the evidence of the 1st Respondent and Palaniappa Chettiar as to the circumstances in which an undivided half-share in the land was sold by Devarayan Chettiar in November 1963. He added that, if the case of the applicants was that the land was sold cheap, they could have called Devarayan Chettiar himself as a witness or had his evidence taken on commission. This they had not done.

40 The applicants had failed to prove that the price paid for the land in November 1963 was substantially below the market value. Most of the sales relied upon by Mr. Williams in arriving at his valuation were of lands not in the neighbourhood or vicinity of the

lands acquired. The only ones in the neighbourhood were of Lot 2285 (Sale No.7) and of Lot 1 (Sale No.8). These were to be rejected, for the former was not a sale in the open market, being by a director to his company, and as such admitted by Mr. Williams to be not a reliable comparison, and the latter was not a sale at all.

As to the potentialities of the land, its potential and intended use was for building. 10  
A plan for its development as a building site had been prepared in 1957 (P.2) and Devarayan Chettiar knew about the plan. At the date of acquisition the new plan (P.4) was not submitted for approval to the appropriate authority and it was impossible to say it would have been approved as such. The potentialities of the land were to be measured by the evidence of the prices paid in the neighbourhood for land immediately required for like purposes. 20  
Sub-dividing the land hypothetically into lots and then valuing the land on the basis of the prices which each lot would fetch was not the basis on which a large piece of land ought to be valued.

The learned Judge held that the recent sale of the land itself in November 1963 afforded the best evidence of the market value. Having regard to the area of the land, the size of the share sold and the circumstances of 30  
the sale, the fact that the previous sale was of an undivided share did not materially affect the price then paid. Moreover, the recent sale of the land acquired could be checked with prices paid in the past for similar land in the neighbourhood. Making the appropriate allowance for the all-round increase in land values, the price paid in September 1962 for Lot 29 (which in any event was much smaller 40  
than the land acquired and would therefore fetch a higher price), tallied with the price paid in November 1963.

The learned Judge concluded that the sale price of the land in November 1963 reflected its correct market value.

His findings on the evidence before him was that the value of \$3/- per square foot reflected not only the general increase in the price of land annually but also a reasonable allowance for the fact that its previous sale was of an undivided half-share.

10 In so finding he disagreed with the opinions expressed by the 2 assessors who sat with him that the compensation awarded was in fact inadequate.

The Court accordingly Ordered that the applications of the Respondents be dismissed with costs. 101  
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23. By Notices of Appeal dated respectively the 6th March 1967 and the 28th March 1967 the 1st Respondent and the 2nd Respondent appealed against the decision of the High Court to the Federal Court of Malaysia Holden at Kuala Lumpur. 104  
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24. The other owners, whose Applications were likewise dismissed by the High Court, also appealed to the Federal Court.

25. On the 15th May 1967 the Federal Court by consent ordered that the Appeal of the 1st Respondent should be heard as a test Appeal and that the parties in the Appeals preferred by the other owners should be bound by any Order to be made in such Appeal. 116

26. On the 20th February 1968 the Federal Court delivered Judgment allowing the Appeal. 285

40 Ong Hock Thye F.J., who delivered the Judgment of the Court, wholly rejected the sale of an undivided half share of the land in November 1963 by Devarayan Chettiar as a basis for assessing the compensation payable, holding that "sales of undivided interests in land involve so many practical and potential

difficulties for the purchaser that they can hardly be considered as a reliable guide to market value, unless the most thorough enquiry is made into the special circumstances of each case". The learned Federal Judge held also that the trial Judge had been wrong in rejecting the evidence of the 1st Respondent and of Palaniappa Chettiar as unworthy of credit and that the Respondents had discharged the onus of proof "to the extent of showing that \$2.20 was not even prima facie the true market value of the undivided half-interest on November 5th 1963". 10

27. The learned Federal Judge made the following further criticisms of the Appellant's award:

- (a) there was "an omission to take into account" that there was an Army camp on the site in November 1963 which was not there when the Government Valuer inspected the land on the 1st October 1964 and, according to the 1st Respondent, was removed after November 1963 and before June 1964. 20

The learned Federal Judge quoted the evidence of the Government Valuer that (1) records showed that the camp was demolished in 1962 and (11) that the Government lease expired in 1961. However, he dismissed the former as hearsay and the latter as proving nothing. 30

- (b) the Government Valuer was in error in considering that a prospective purchaser buying land of the size of 22.763 acres would expect a reduction in value as an inducement to take over the bulk of the property as a whole. The Federal Judge based this criticism on the fact that the land comprised seven separate units, held under separate titles, so that "there never was any compulsion on any 40

prospective purchaser in open market to take more than he needed or could pay for".

(c) the Government Valuer was in error in thinking that the land under acquisition was irregular in shape. The shape of the land had been improved by P.3.

10 28. The learned Federal Judge, rejecting the Appellant's award, proceeded to make his own assessment of the market value of the land.

He rejected the sale of Lot 29 as affording any basis for comparison and, accepting the evidence of Mr. Williams in general, took the sale of Lot 2285 (Sale No.7 in Mr. Williams' list) and of Lot 1 (Sale No.8) as true reflections of market value at the relevant time.

20 The learned Federal Judge arrived at a figure of \$8 per square foot, which for the area of 991,730 square feet would amount to \$7,933,840. He deducted \$200,000 for squatter clearance, leaving a balance of \$7,733,840. He then deducted 10 per cent of this figure to cover any other factor in the Appellant's favour that he may have overlooked and awarded a sum of \$6,960,456 or \$7.09 per square foot.

30 The Order of the Federal Court made on the 20th February 1968 was that the Appellant pay to the Respondents and to the other appellants in the appeals to that Court in the proportion of their respective shares the sum of \$6,960,456.00 less the sum of \$2,975,190.00 already paid with interest from the 26th June 1965 and that there should be no costs in the appeals or in the Court below. 319

40 29. By an Order dated the 13th May 1968 the Federal Court granted the Appellant Leave to Appeal upon the conditions thereby provided against its Judgement and Order dated the 20th February 1968 and also granted the 321



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Respondents Conditional Leave to Cross Appeal against that part of the Judgment and Order of the Federal Court by which there was deducted from the compensation awarded to them ten per cent to cover unforeseen contingencies provided a principal appeal should be presented by the Appellant and Ordered that the Cross Appeals by the said Respondents should be consolidated and that both Cross Appeals should be consolidated with the Principal Appeals of the Appellant and that the consolidated appeals be heard on one printed transcript with a printed case on each side. 10

327 30. By an Order dated the 19th August 1968 the Federal Court of Malaysia granted the Appellant Final Leave to Appeal and the Respondents Final Leave to Cross Appeal.

31. The Appellant humbly submits that these Appeals should be allowed with Costs and the Cross Appeals of the Respondents dismissed with Costs and the Respondents be ordered to pay the Appellant's Costs in both Courts below for the following amongst other 20

R E A S O N S

1. BECAUSE the Appellant's award was correct for the reasons stated by him and it should be upheld.
2. BECAUSE the Respondents failed to show that the Appellant's award was inadequate.
3. BECAUSE the Government Valuation Officer applied the correct principles in determining the amount of compensation payable. 30
4. BECAUSE on the evidence before it the High Court was entitled to find that \$3/- per square foot was the correct amount at which to assess compensation, and rightly so found.

5. BECAUSE the High Court had the advantage of seeing and hearing the witnesses and its findings of fact should be upheld.
6. BECAUSE it was for the Respondents to show that the price at which Devarayan Chettiar sold his share of the land on the 5th November 1963 was not its market value at that time, and they failed so to do.
7. BECAUSE the Respondents failed to call Devarayan Chettiar or otherwise tender evidence by him, and their failure so to do gives rise to an inference that his testimony would have been adverse to them.
8. BECAUSE the sale of the 5th November 1963 was the best evidence on which to base an assessment of the value of the same land 7 months later.
9. BECAUSE in the circumstances of the case, including the size of the land, the size of the share sold and the purpose for which it was held and would be used, the fact that the sale in November 1963 was of an undivided half-share had no or no appreciable effect on the price then obtained.
10. BECAUSE the evidence adduced by the Respondents to show that there were special circumstances which led in November 1963 to the land being sold at less than its market value was, insofar as it was admissible, insufficient and unacceptable and was rightly rejected by the learned Trial Judge.
11. BECAUSE it was common ground throughout the proceedings that the lands in question should be valued as one unit and not as 7 separate units under 7 titles.

12. BECAUSE it was apparent that at all material times it was and would be contemplated by all persons interested in purchasing or developing the land that it was to be developed and dealt with as one unit and not piecemeal.
13. BECAUSE in view of the irregular shape of the land it would not be advantageous to sell it title by title.
14. BECAUSE in assessing the compensation payable allowance must necessarily be made for the fact that a larger piece of land is of less value pro rata than a smaller, and will fetch a smaller price. 10
15. BECAUSE the appreciation of land values in Kuala Lumpur between November 1963 and June 1964 was less than 40% and the award of \$3/- per square foot took account of the appreciation which had taken place.
16. BECAUSE the learned trial Judge in assessing the compensation that was payable took fully into account the potentialities of the land and all other relevant factors. 20
17. BECAUSE the land was at all material times zoned for "Open Development".
18. BECAUSE the plan P.2 showed and would show a prospective purchaser what development would be permitted by the town planning authority no less in June 1964 than in November 1963. 30
19. BECAUSE the plan F.4 was never approved or submitted for approval.
20. BECAUSE there was no or no sufficient evidence that P.3 was ever finalised or approved.
21. BECAUSE the 19 sales put forward by Mr. Williams for purposes of comparison were not comparable.

22. BECAUSE the sale of Lot 2285 was not a sale in the open market and was rightly admitted by Mr. Williams to be not a reliable comparison.
23. BECAUSE the transaction relating to Lot 1 which took place in April 1964 was such that it did not provide any basis at all for valuation of other land in the neighbourhood.
- 10 24. BECAUSE the sales of Lots 29 and 56 on the 29th September 1962 and of Lot 21 on the 17th August 1962 are comparable sales and support the assessment arrived at by the Appellant and by the learned trial Judge.
- 20 25. BECAUSE the evidence of Lim Mau Chin that the Army camp which was formerly on the land was demolished in 1962 and that the Government lease expired in 1961 was not objected to or challenged and should have been taken into account by the Federal Court.
26. BECAUSE the Judgment of the High Court dated the 28th day of February 1967 was right for the reasons therein stated.
27. BECAUSE the Federal Court was entitled to deduct 10 per cent of \$7,733,840 from its award and rightly did so for the reasons stated by it.

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MONTAGUE SOLOMON.

33 OF 1968

IN THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL

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O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA  
HOLDEN AT KUALA LUMPUR  
(APPELLATE JURISDICTION)

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B E T W E E N :

COLLECTOR OF LAND REVENUE  
Appellant

- and -

A.K.A.C.T.V. ALAGAPPA CHETTIAR  
& ANOTHER Respondents

*(and Cross Appeals ~~to be stated~~)*

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CASE FOR ~~THE ABOVE-NAMED~~  
~~APPELLANT~~, THE COLLECTOR  
OF LAND REVENUE

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*Lodge 29 Feb 1968*

STEPHENSON HARWOOD & TATHAM,  
Saddlers' Hall,  
Gutter Lane, Cheapside,  
London, E.C.2.

Solicitors for the Appellant