

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL
FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N:

A

Appeal No. 39 of 1982

UNITED MALAYAN BANKING CORPORATION BERHAD Appellants

- and -

PEMUNGUT HASIL TANAH, KOTA TINGGI Respondent

B

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

C

CASE FOR THE APPELLANTS JOHORE SUGAR PLANTATION
& INDUSTRIES BERHAD

Record

1. This is an appeal from an Order dated the 12th August 1981 of the Federal Court of Malaysia (Wan Suleiman, Judge, Federal Court, Malaysia; Salleh Abas, Judge, Federal Court, Malaysia; E. Abdulcader Judge, High Court, Malaya) which allowed the Respondent's appeals from an Order dated the 6th March 1979 of the High Court of Malaya at Johore Bahru (Tan Sri S.S. Gill, Chief Justice, Malaya) whereby it had been ordered that the forfeiture appearing in the Johore Government Gazette Notification No. 1136 dated 15th September 1977 (whereby certain land was declared to be forfeited) should be set aside. p. 125

D

whereby it had been ordered that the forfeiture appearing in the Johore Government Gazette Notification No. 1136 dated 15th September 1977 (whereby certain land was declared to be forfeited) should be set aside. p. 71

F

2. In these Appellants' Case all references to Sections are to Sections of the National Land Code (Act 56 of 1965 of Malaysia) which is in turn referred to compendiously as "the National Land Code", and references to Forms are to the Forms of Notice prescribed by the First Schedule thereto.

G

Record

The term "alienated land" is used in the sense in which that term is used in the National Land Code which defines it in Section 5 as "...any land... in respect of which a registered title for the time being subsists, whether final or qualified, whether in perpetuity or for a term of years, and whether granted by the State Authority under the National Land Code or in the exercise of powers conferred by any previous land law...."

A

3. The questions for decision in this Appeal are:

B

(1) Whether any inaccuracy in the amount alleged as the arrears of rent and fees in the Form 6A (re: 'Notice of demand: arrears of rent') prevents that Notice from being a good compliance with the statutory requirements for the forfeiture of the land comprised in the title to which the Notice refers;

C

- and -

D

(2) Whether in Malaysia the Court may relieve the forfeiture of alienated land.

4. (a) The principal facts of the case are set out in the judgments of the Chief Justice and in that part of the judgment of the Federal Court entitled "EXORDIUM: EPITOME OF EVENTS"

E

(b) It will be these Appellants' contention that the second issue to be decided in this Appeal does not turn upon any fact which is particular to this case, but is a question of the extent of the jurisdiction of the Malaysian Courts. The facts of this case are therefore summarised below with extreme brevity.

F

5. Summary of facts

(a) In December 1966 20,680 acres of land in the District of Kota Tinggi, Johore, were alienated under Section 76 by the State Authority of Johore to these Appellants as registered proprietor for a term of 99 years.

G

(b) These Appellants then charged the said land to the other Appellants (United Malayan Banking Corporation Berhad) under three charges.

H

(c) The amount outstanding in respect of those charges in November 1977 was over \$5 million.

(d) When the land was alienated it was undeveloped and largely jungle; but these Appellants have

I

expended some \$18 million to develop the land as a sugar cane plantation and an integrated sugar refinery.

A (e) The rent payable under Section 76 (b) as consideration for the alienation and due to the State Authority was paid as and when due until 1977.

(f) The rent for the year 1977 was not paid.

B (g) The Collector served notice pursuant to Section 97 (1) in Form 6A in respect of the arrears of rent and education rate upon these Appellants and upon the Bank. p. 11
p. 12

C (h) The amount claimed by the Notice exceeded that which was actually due, but no finding of fact has been made as to the amount of the excess. p. 64 1.16

D (i) Neither Appellant paid the arrears of rent within three months of the service of the Notices by the Collector, this default resulting from a failure of communication between these Appellants and the Bank (their chargees).

(j) Pursuant to Section 100 the Collector by Order made the 7th September 1977 declared the land forfeit to the State Authority.

E (k) Pursuant to Section 130(1) the Collector published in the State Government Gazette a notification of forfeiture in Form 8A on 15th September 1977.

F (l) 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.

G 6. (a) In his judgment Chief Justice Gill held as to the first issue in the Appeal that the reference in the Form 6A to an amount in excess of the true arrears of rent was an "irregularity" which was not of a significant nature, so that Section 134(2) prevented the Court from setting the Notice (or forfeiture) aside on the grounds of irregularity. p. 62
p. 69 1.40

H (b) Upon the second question now arising in this Appeal he held that "in dealing with an appeal under Section 418 of the National Land Code /the/ Court in the exercise of its inherent equitable jurisdiction has the power to grant relief against ... forfeiture." He considered that the provisions of the National Land Code p. 69 1.40

I

Record

- p. 69 dealing with alienated land and the forfeiture thereof to the State Authority by the Collector of Land Revenue (the Respondent) (and especially Sections 134, 237 and 418) did not by implication exclude such equitable jurisdiction. He further considered that given that he has jurisdiction to grant relief from forfeiture, it was just and equitable in the circumstances of this case that he should do so. A
- p. 70 B
- p. 107 7. (a) The Federal Court (Wan Suleiman, Judge, Federal Court, Malaysia; Salleh Abas, Judge, Federal Court, Malaysia; E. Abdulcader, Judge, High Court, Malaya) in a single written judgment reversed the Chief Justice. C
- p.114 1.20 (b) On the first issue raised by this Appeal they concurred with him and held that to the inaccuracy as to the amount of the arrears p.115 1.20 of rent referred to in Form 6A did not avoid that Notice or prevent a forfeiture in reliance upon that Notice because the error as to the amount was an "irregularity" not of a significant nature and Section 134(2) applied. D
- p. 116 (c) On the second issue the Federal Court held that the Court had no jurisdiction to entertain any appeal for relief from the forfeiture of alienated land. E
- p. 116 8. The reasoning of the Federal Court in respect of the second question raised by this Appeal may be summarised thus: F
- p. 116-117 (1) Section 3 (1) of the Civil Law Act, 1956 which introduces the application of English Common Law and rules of equity in West Malaysia was subject to the saving provision; "Save so far as other provision has been made or may hereafter be made by any written law in force in Malaysia..." G
- p. 117 1.10 (2) Section 133 (1) and (2) expressly provided for relief from forfeiture in respect of alienated land, but expressly gave to the State Authority an absolute discretion whether to act under those provisions or under sub-section 133(3) (whereunder the State Authority may re-alienate upon new terms to the former tenant). H
- p. 117 1.10 (3) "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 I
- J

aside in an appeal to the Court under Section 418".

p. 117 1.20

A

(4) Therefore the National Land Code did not contemplate that the Court should have any jurisdiction to grant relief against the forfeiture of alienated land.

p. 117 1.25

B

(5) In respect of the forfeiture of alienated land there is contained in the National Land Code no corresponding provision to Section 237 (whereby power is conferred upon the Court to relieve against the forfeiture of leases granted by the proprietor of alienated land).

p. 117 1.32

C

(6) Section 6 of the Civil Law Act precluded the introduction into Malaysia of any part of the law of England relating to the tenure or conveyance or assurance of or succession to any immovable property or any estate right or interest therein. That precluded any application of the law of England (including equity) "to the matter of forfeiture in this case which without doubt comes within the scope of the term 'tenure' in Section 6 of that Act."

D

E

9. The Federal Court therefore concluded that:

p. 117 1.46

F

G

"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 proprietor of alienated land on the other in 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".

10. As to the first issue, these Appellants say that:

H

I

(a) The mis-statement of the amount due in Form 6A is not an "irregularity in the form or service" of the Notice at all, and that those words in Sub-section 134(2) contemplate a Notice which is insubstantially different in wording to that which is prescribed for Form 6A by the First Schedule to the National Land Code.

(b) That the wrong amount be alleged to be due and unpaid means that the requirements of Section 97 have not been complied with.

Record

(c) The provisions of Sections 98, 99 and 100 show that the Collector has no power to accept a lesser sum than that referred to in the Notice of demand (Form 6A) and must (by Section 100) declare land forfeit if the sum referred to in his Form 6A is not paid. Unless the Form 6A is valid only if it refers to the true arrears, the effect of Sections 97, 98, 99 and 100 would be that any figure could be included in the Form 6A and if that amount be not paid the Collector could forfeit. This is an unreasonable and clearly unintended construction of these Sections. The precision and mandatory requirements of Sections 99 and 100 necessarily mean that Section 97 must be read as referring only to arrears of rent actually due.

A

B

C

(d) Further or alternatively, since the forfeiture of alienated land destroys the proprietor's estate in the land, strict compliance with all requirements as to the forfeiture process is needed in order validly to forfeit the land.

D

(e) Accordingly, however small the excess claimed on the Notice, that excess defeats the Notice and the purported forfeiture which was consequent upon the Notice.

E

11. For the purposes of their argument as to the second issue in this Appeal, it is accepted by these Appellants that upon the publication of the said notification on 15th September 1977 the forfeiture took effect, so that the estate of these Appellants in the land the subject of the Collector's Order determined on 15th September 1977.

F

12. As to the second issue in this Appeal these Appellants contend that

G

(a) In its reliance upon Section 134 the Federal Court overlooked the true nature of relief from forfeiture, regarding the Appellants' claims for relief as impugning the validity of the forfeiture as opposed to being a step subsequent to a forfeiture which recognises the validity and effect of the forfeiture but applies a relieving or forgiving power thereto with retrospective effect.

H

I

(b) A distinction which the Federal Court ignored has to be drawn in this case between three separate types of proceedings, viz:

(i) A challenge to the validity of a forfeiture: the result of a successful

J

appeal of this type is to establish that no forfeiture (that is to say no valid forfeiture) has occurred, so that the original estate still subsists.

A (ii) A petition to the State Authority asking
it to "annul" the forfeiture under
B Section 133 (which would be the equivalent
of the "landlord" granting relief from
forfeiture by agreement with the tenant
without intervention by the Court),
and

(iii) An application to the Court (albeit
procedurally in name an "appeal")
seeking relief from forfeiture.

C (c) Section 418 (1) is a procedural
Section introducing a three month "limitation
period" in order to achieve speedy finality as
to title and ownership of land. Its reference
D to "appeal" embraces what is described in
Paragraph 12 (b) (iii) above in English
terminology as an "application", that is to say,
it includes an appeal which does not challenge the
validity of the forfeiture but seeks relief from
a valid and completed forfeiture.

E (d) Section 418 (2) is substantive (as
opposed to procedural) in its effect, in that
this sub-section provides that "the Court shall
make such order ... as it considers just".
F EITHER that provision recognises the inherent
jurisdiction, permitting the Court to relieve
the forfeiture if it states that it would be
"just" to do so, or it replaces the inherent
jurisdiction with an expressly conferred juris-
G diction to replace the decision of the Collector
to forfeit the land with such other order as is
"just", so that it corresponds in respect of
alienated land to the provisions of Section 237
in respect of land by the proprietor let upon
lease.

H (e) There would be no need for the statute
to confer a power to do that which was "just"
if all that the Court could do was to examine
the validity of the forfeiture, for example
I ascertaining whether appropriate notices had
been given and appropriate time limits had been
observed. The formulation of words which
permits the Court to do that which is "just"
indicates that it is envisaged that the Court
shall supplement the strict legal rules, just
J as historically the supplementary jurisdiction
of equity evolved.

Record

(f) Accordingly, far from excluding the Court's jurisdiction to relieve from forfeiture, the National Land Code confers a jurisdiction upon the Court (alternatively recognises that such jurisdiction exists).

A

13. Further or alternative to the contentions set out in Paragraph 12 above, these Appellants contend that

(a) If Section 418(2) does not confer power upon the Court to relieve from forfeiture, nevertheless the National Land Code does not expressly or by implication exclude from application in Malaya the English equitable doctrines or concepts of penalties and forfeiture and relief from penalties and forfeitures.

B

C

(b) Therefore, it is necessary to decide whether the Civil Law Act of 1956 excludes from Malaysian law the English rules as to relief from forfeiture.

D

(c) Those rules are "rules of equity" incorporated and adopted into Malaysian law by Section 3 of the Civil Law Act, and are not provisions relating to 'tenure' for the purposes of Section 6 of that Act. If and insofar as the decision in East Union (Malaya) Sdn. Bhd. v. Government of the State of Johore and Government of Malaysia (1981) 1 M.L.J. 131 is inconsistent with this submission, that case should be overruled.

E

F

(d) If the express statutory provisions of Section 237 (analogous to Section 146 of the English Law of Property Act 1925) exclude the English rules in respect of the relief of the forfeiture of land leased by the proprietors thereof to tenants, that does not mean that the like exclusion is achieved in respect of proprietorship of alienated land; rather, the omission of provisions corresponding to Section 237 in Part 8 of the National Land Code (that is to say, Sections 130 to 134 thereof) means that the English equitable rules are not excluded, so that the State Authority's right to forfeit is to be seen as security for the rent reserved to it, and not as a statutory procedure which is sui generis.

G

H

I

14. These Appellants further contend that the proprietorship of alienated land where a rent is reserved to the State Authority is the grant to the proprietor of a term of years: the special provisions of the National Land Code are necessary only in order to impose a different method of

J

A conveyancing (the "Torrens System") and do not create a different form of ownership, and the learned trial judge was correct in his observations, and in adopting the observations of Taylor J. in Wilkins v. Kannammal (1951) M.L.J.99, 100 that:

B "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."

C 15. These Appellants respectfully submit that the judgment of the Federal Court was wrong and ought to be reversed, and that this Appeal ought to be allowed with costs, and the Order of the trial judge restored for the following (among other):

R E A S O N S

D 1. BECAUSE the procedure which must be complied with under the National Land Code before alienated land can be forfeit was not complied with

Alternatively:

E 2. (a) BECAUSE Section 418 (2) of the National Land Code recognises or confers jurisdiction upon the Court to relieve a forfeiture of alienated land, or

F (b) BECAUSE the English rules as to relief from forfeiture apply.

3. And BECAUSE the learned trial judge correctly exercised his discretion to relieve the forfeiture.

JOHN STUART COLYER

G P. S. GILL

Nos. 39 and 40 of 1982
IN THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL

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 BETWEEN:

Appeal No. 40 of 1982

JOHORE SUGAR PLANTATION &
INDUSTRIES BERHAD Appellants

- and -

PEMUNGUT HASIL TANAH,
KOTA TINGGI Respondent

CASE FOR THE APPELLANTS, JOHORE
SUGAR PLANTATION & INDUSTRIES
BERHAD

TURNER KENNETH BROWN
1 Raymond Buildings,
Gray's Inn,
London WC1R 5BJ

Ref: GRB/24

Solicitors for the Appellants