

15/82

No. 6 of 1980

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 :

GARDEN CITY DEVELOPMENT BERHAD

Appellant

- and -

THE COLLECTOR OF LAND REVENUE  
FEDERAL TERRITORY

Respondent

RECORD OF PROCEEDINGS

MACFARLANES,  
Dowgate Hill House,  
London, EC4R 2SY.

Agents for:

Mah-Kok & Din,  
Kuala Lumpur,  
Malaysia.

Stephenson Harwood,  
Saddlers' Hall,  
Gutter Lane,  
London EC2V 6BS.

Agents for:

The Collector of Land  
Revenue,  
Federal Territory of  
Malaysia.

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

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B E T W E E N :

GARDEN CITY DEVELOPMENT BERHAD Appellant

- and -

THE COLLECTOR OF LAND REVENUE  
FEDERAL TERRITORY Respondent

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RECORD OF PROCEEDINGS

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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

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B E T W E E N :

GARDEN CITY DEVELOPMENT BERHAD Appellant

- and -

THE COLLECTOR OF LAND REVENUE  
FEDERAL TERRITORY Respondent

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RECORD OF PROCEEDINGS

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No. 1

ORIGINATING MOTION

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

ORIGINATING MOTION NO. 96 OF 1976

In the matter of the land held under issue document of title Certificate of Title 3443 Lot 36 Section 58, Bandar Kuala Lumpur.

AND

In the matter of Section 128, National Land Code.

20

Garden City Development Berhad Applicant

ORIGINATING MOTION

TO: Pemungut Hasil Tanah  
Wilayah Persekutuan,  
Kuala Lumpur.

TAKE NOTICE that the Court will be moved on Monday the 17th day of January 1977 at o'clock in the forenoon or so soon thereafter as counsel can be heard, by Counsel on behalf of the above-named Applicant for an order that the Pemungut Hasil Tanah Wilayah Persekutuan, do cancel the notice in Form 7A dated July 12, 1976 and served on the Applicant on the ground that

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In the High Court in Malaya

No. 1  
Originating Motion  
11th October 1976

In the High Court in Malaya

the said notice is bad in law and invalid.

Dated this 11th day of October 1976.

No. 1  
Originating Motion  
11th October 1976  
(cont'd)

|                        |   |
|------------------------|---|
| ..... Sgd. ....        | ..... Sgd. ....                                       |
| Applicant's Solicitors | Senior Assistant Registrar, High Court, Kuala Lumpur. |

This Motion is taken out by Messrs. Mah-Kok & Din, Solicitors for the Applicant above-named whose address for service is Penthouse, No. 9, Jalan Gereja, Kuala Lumpur.

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This Motion will be supported by the Affidavit of Hsu Lit Ling affirmed on the 9th day of October, 1976 and filed herein.

No. 2  
Notice of Motion  
6th January 1977

No. 2  
NOTICE OF MOTION

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

ORIGINATING MOTION NO. 96 OF 1976

In the matter of the land held under issue document of title Certificate of Title 3443 Lot 36 Section 58, Bandar Kuala Lumpur.

20

AND

In the matter of Section 128, National Land Code.

Garden City Development Berhad Applicant

NOTICE OF MOTION

TAKE NOTICE that on Monday the 17th day of January, 1977 at 10.30 o'clock in the forenoon, or as soon thereafter as he can be heard the Senior Federal Counsel appearing for and on behalf of the Government of Malaysia will move the Court for an Order that the application of the Applicant be set aside on the following grounds:-

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- (1) That the application is vague, ambiguous and wrong in law.
- (2) That the Applicant failed to make an appeal to the High Court and has already exhausted his remedies under the National Land Code.

(3) That the Court has no jurisdiction to entertain the application of the Applicant.

In the High Court in Malaya

DATED this 4th day of January, 1977.

SENIOR FEDERAL COUNSEL,  
for and on behalf of the Government  
of Malaysia.

No. 2  
Notice of  
Motion  
6th January  
1977  
(cont'd)

Dated at Kuala Lumpur the 6th day of Jan., 1977

SENIOR ASSISTANT REGISTRAR,  
HIGH COURT,  
KUALA LUMPUR.

10

TO: Messrs. Mah-Kok & Din,  
Penthouse,  
9 Jalan Gereja,  
KUALA LUMPUR.

(Solicitors for the Applicant)

This Notice of Motion was taken out by the Senior Federal Counsel for and on behalf of the Government of Malaysia whose address for service is c/o Attorney General's Chambers, Kuala Lumpur. It is supported by the Affidavit of Datuk Mohd. Othman bin Mohd. Din affirmed at Kuala Lumpur on the 24th day of December, 1976 which has been filed in Court and Served on the Solicitors for the Applicant.

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No. 3

ORDER

No. 3  
Order  
20th January  
1977.

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

ORIGINATING MOTION NO. 96 OF 1976

In the matter of the land held under issue document of title Certificate of Title 3443 Lot 36 Section 58, Bandar Kuala Lumpur  
AND

30

In the matter of Section 128,  
National Land Code

Garden City Development Berhad

Applicant

BEFORE THE HONOURABLE MR. JUSTICE HARUN

THIS 20TH DAY OF JANUARY 1977

IN OPEN COURT

In the High  
Court in  
Malaya

O R D E R

No. 3  
Order  
20th January  
1977.  
(cont'd)

UPON MOTION made unto Court on the 17th day of January, 1977 by Mr. Fong Seng Yee Senior Federal Counsel appearing for the Pemungut Hasil Tanah, Wilayah Persekutuan Kuala Lumpur AND UPON READING the Notice of Motion dated the 6th day of January, 1977, the Affidavit of Datuk Mohd. Othman bin Mohd. Din affirmed on the 24th day of December 1976, the Affidavit of Hsu Lit Ling affirmed on the 12th day of January, 1977 and the Affidavit also of Datuk Mohd. Othman bin Mohd. Din affirmed on the 14th day of January, 1977 all filed herein AND UPON HEARING Mr. Fong Seng Yee of Senior Federal Counsel appearing for the Pemungut Hasil Tanah, Wilayah Persekutuan Kuala Lumpur and Mr. Kok Wee Kiat of Counsel for the Applicant IT WAS ORDERED that the Notice of Motion do stand adjourned for argument AND the same coming for hearing on the 20th day of January, 1977 AND UPON HEARING Counsel aforesaid IT WAS ORDERED that the Notice of Motion be dismissed AND IT WAS FURTHER ORDERED that there be no order as to costs in respect of the Notice of Motion.

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Sgd.

1.55.3  
LSL

SENIOR ASSISTANT REGISTRAR,  
HIGH COURT, KUALA LUMPUR

(Note: This document was not included in the Record of Appeal filed for hearing before the Federal Court. This is now included because it is relevant to the appeal to the Privy Council).

No. 4  
Notes of  
Evidence  
18th April  
1977.  
Applicant's  
Evidence

No. 4

NOTES OF EVIDENCE TAKEN BEFORE HARUN J.

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

ORIGINATING MOTION NO. 96 OF 1976

30

Garden City Development Berhad Applicant

vs.

Collector of Land Revenue,  
Federal Territory Respondent

Mr. Kok Wee Kiat for Applicant

SFC Mr. Fong Seng Yee for Respondent

IN OPEN COURT BEFORE  
HARUN J. ON 18.4.1977

NOTES OF EVIDENCE

Kok:

40

Application to cancel Form 7A issued by the Land Office in accordance with NLC.



Copy of Form is annexed to Encl. (1) - Notice to Remedy a Breach of Condition (section 128 NLC). Condition breach - Failure to convert from agriculture to commercial.

In the High Court in Malaya

No. 4  
Notes of Evidence  
18th April 1977.  
Applicant's Evidence  
(cont'd)

Application under section 417 NLC before this Court under section 418 NLC. Land Lot 36 Section 58 Town of Kuala Lumpur - C.T. 3443.

Issue: 1. Category of Land Use.  
2. What are the conditions affecting use of said land.

10

Q. Whether these conditions are the conditions stipulated by Land Office 14 February 1975 addressed to Applicant annexed to Encl. (1).

Refers to Certificate of Title -

"Being part of the land originally granted under Lease No. 746 to H.C. Syers as appears by Certificate of Title No. 2786 now cancelled"

20

Made search of C.T. 3443 to trace it all the way back to Lease No. 746.

CT 2786 + CT 3443 was derived (Title to present land) was issued on 8 August 1909 in area 2 acres lr. 34p. C.T. 2786 issued on 22 December 1896 in area 16 acres lr. 35p - this Title was one of the sub-divided Titles C.T. 1189 in area 98 acres 2r. 10p. date of issue not known as writing had faded - but this Title was a replacement Title for C.T. 495 after a re-survey. C.T. 495 was issued on 8 March 1894 in area 101 acres 2r.37.3p.

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C.T. 495 was issued as a result of a transfer of Lease 746 on 8 March 1894.

Lease 746 was called Lease of Agriculture Land No. 746. As a result of a transfer from H.C. Syers to Loke Yew under the provisions of the Selangor Land Code 1891 - on 8th March 1894. What actually happened was that when the transfer took place Lease of Agricultural Land became Certificate of Title. Land Code 1926 - Lease of Agricultural Land is a lease for 999 years - for practical purposes a lease in perpetuity.

40

At the beginning the whole of Kuala Lumpur was agricultural land.

Section 32 Land Code 1926 - no building in agricultural land - submits by this provision land held under Certificate of Title no prohibition to building Town land defined in section 2.

In the High Court in Malaya

No. 4  
Notes of Evidence  
18th April 1977.  
Applicant's Evidence  
(cont'd)

From the Certificate of Title 495 of 1894 - declared as Town of Kuala Lumpur - submits for purposes of this application the land is Town Land.

Section 35 Land Code (1926) ceasure of cultivation conditions on land brought within town area - submits that agricultural condition imposed on land ceases. Concedes this Section applies to new land brought into town area - not to existing land - relevant to show consistency.

10

Submits that onus of proof that land is agricultural land lies on Defendants.

Section 51 NLC - Classification of land.

Section 52 - Agriculture; Building and Industry. There is no such thing as "commercial" as stated in Form 7A.

Section 53 - Land alienated before 1963 - express conditions.

Section 53(2) does not apply here as land is held under Certificate of Title - not Land Office Title - Section 5.

20

Section 53(3) - applies to this case.

Section 54 - Application of categories of land use previously alienated.

As far as Applicants are aware land in question has not been subject to an order under section 54(1). Submits State Authority had to follow section 54(2)(b) - as State Authority even if it declares must declare this land as "building land".

If no order made is there a limbo? - see section 4. Refers to Datin Siti Hajar v. Murgesu (1970) 2 MLJ. 153 @ 154 C.

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Issue No. 2:

20 July 1972 - Applicant through his surveyors made an application for sub-division of the land.

Application made Form 9A (under section 137 NLC). 26 August 1972, CLR Kuala Lumpur wrote to Applicant and requested Applicant to apply under section 124 NLC for conversion - letter dated 17 Feb. 1973 - HLL 7. At this time there were no prescribed forms to apply for conversion as they do now under the F.T. Land Rules 1975. Here (Sch. VIII or VIII) could be used. 13 April 1973 CLR again wrote asking for application to be made

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under section 124 NLC - HLL - 7A - stating that the Quit Rent was 2 cts. per sq. ft. where building land is 12 cts. per sq. ft. Letter also shows that CLR recognised that there was already a building on the land - a residence.

In the High Court in Malaya

No. 4  
Notes of Evidence  
18th April 1977.  
Applicant's Evidence  
(cont'd)

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HLL 8 - Assessment Notice - House No. 147 Jalan Ampang. Submits rightly or wrongly - Applicant applied for conversion - 14 Feb. 1975 Land Office - Heading of letter appears for first time referring to section 124(1)(b) and section 124(1)(c) NLC stating surrender of title in exchange for re-alienation - additional premium - 99 years' lease.

Surrender and re-alienation - different procedure - use Form 12A - as stated in para 3 of letter. At this stage solicitors entered into the picture. 13 May 1975 - HLL 2 - in the form of an appeal. Land Office replied rejecting the appeal on 2 March 1976 - HLL 4.

20

Submits assuming that the Govt. has right to change perpetuity title to lease - it should follow set procedure of section 124 NLC - here not followed. Section 124(2) - once approved there must be an endorsement on Document of Title - submits until endorsement, the land is not subject to these conditions. No such endorsement made on this land - either in Land Office Register or on the issue document of title - OD-2 - no endorsement - in fact stated as "condition of Use - Nil".

30

Section 124(3) - No action here on that.

Section 124(4) - consent required of Applicant - increased premium should be endorsed with consent of Applicant - submits no consent ever given.

Application under section 124 - result

1. Endorsement must be on the title.
2. Amended on imposition of new conditions, necessary to obtain consent of proprietor and other persons.

Submits here no endorsement or consent.

40

Submits if there are no conditions, then there be no breach of conditions. If so Form 7A is invalid. If so, Applicant prays Form 7A to be cancelled.

Fong:

Respondent's Evidence

Section 104 NLC - Condition and restriction run



High-rise building - Rent income much more.  
Change use of land - a change in dimension -  
submits fair exchange. No decided case on this -  
Blanket authority under section 124(5)(c).  
Receipt of Quit Rent stating for "rumah" does  
not alter use of land from "agriculture" to  
"building".  
Section 32 & 35 Land Code (1926) - do not apply  
as advantage was not taken before coming into  
force of NLC in 1965.

In the High  
Court in  
Malaya  
No. 4  
Notes of  
Evidence  
18th April  
1977.  
Respondent's  
Evidence  
(cont'd)

10

Kok:

Applicant's  
Evidence

Here State Authority had not acted under section  
54 NLC. Therefore conditions applicable to 1926  
Land Code apply.

Section 124 NLC - variation of conditions  
subsequent to title - does not deal with the  
Title itself. Forfeiture proceedings not  
commenced here.

Section 53 NLC see also section 52(5).

20

In any event Form 7A is void as there is no  
provision in land law to change from agriculture to  
"commercial". Entry in Register dated 24 Nov.  
1976 to be deleted.

Section 115(4) - dwelling-house.

Sgd. Harun

Court:

C.A.V.

Sgd. Harun  
18 April 1977.

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No. 5

JUDGMENT OF HARUN J.

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR  
ORIGINATING MOTION NO. 96 OF 1976

No. 5  
Judgment of  
Harun J.  
1st June  
1978

Garden City Development Berhad

Applicant

vs.

Collector of Land Revenue,  
Federal Territory

Respondent

In the High  
Court in  
Malaya

No. 5  
Judgment of  
Harun J.  
1st June  
1978.  
(cont'd)

JUDGMENT OF HARUN J.

This is an appeal under section 418 of the National Land Code (NLC). It concerns a piece of land held under Certificate of Title No. 3443 Lot 36 Section 58, City of Kuala Lumpur.

This land was first alienated to H.C. Syers on 20 July 1886 under Lease for Agricultural Land No. 746. It was 100 acres in area bounded on the north by Ampang Road and on the east, south and west by "Chinese gardens". There are nine express conditions on the Lease, the first being that the annual quit rent payable is \$20 and the last two:

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"(viii) That this Lease be subject to the State Land Regulations in force for the time being, and that this Land shall not be transferred, sub-divided or mortgaged, except in accordance with the provisions therein contained (Full information as to these provisions will be given in any District Land Office).

20

(ix) That this Lease may be forfeited if H.C. Syers or those claiming under him, fail to comply with any of the foregoing conditions".

On 8 March 1894 H.C. Syers transferred the land to Loke Yew and as a result Lease No. 746 was "substituted and Cancelled in exchange for Certificate of Title No. 495" the land now measuring 101 acres 2r. 37.3p. Following a re-survey, C.T. 495 was replaced by C.T. 1189 in area 98 acres 2r. 10p. The land was then sub-divided and one of the sub-divided lots measuring 16 acres 1r. 35p. was issued with C.T. 2786 on 22 December 1896. Finally C.T. 2786 was sub-divided and one of the sub-divided lots measuring 2 acres 1r. 34p. was issued with C.T. 3443 on 8 August 1909 with the endorsement:

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"Being part of the land originally granted under Lease No. 746 to H.C. Syers as appears by Certificate of Title No. 2786 now cancelled"

40

to Loke Yew who held the land until his death. On 9 June 1972, the Applicants/Appellants (hereinafter called "the Company") became the registered proprietors of the land with a residential house No. 147 Jalan Ampang standing on it.

On 20 July 1972, a firm of surveyors on behalf of the Company applied to the Collector of Land

Revenue, Kuala Lumpur in Form 9A NLC for sub-division of the land to enable part of the land to be surrendered for road widening purposes as required by the City Planning Committee before it could develop the land. On 17 February 1973 the Collector in response to the said application for sub-division replied to the Company that it should first apply for conversion under section 124 NLC. In the meantime, the Datuk Bandar, Kuala Lumpur had approved the Company's application to construct an office-cum-shopping complex on the land.

In the High Court in Malaya

No. 5  
Judgment of  
Harun J.  
1st June  
1978.  
(cont'd)

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On 13 April 1973, the Collector referred to his letter of 17 February 1973 and stated that the Quit Rent payable on the land was at the residential house rate of 2 sen per sq. ft. but as the Datuk Bandar, Kuala Lumpur had approved the construction of a commercial building thereon, the Quit Rent should be at the rate of 12 sen per sq. ft. The Quit Rent however, could only be increased by the State Authority and this was the reason why application had to be made under section 124 NLC to impose a new express condition on the land.

30

On 7 June 1973 the Company, in response to the Collector's letter of 13 April 1973, applied for conversion under section 124 NLC. The residential house on the land was demolished and in September 1974 the Company commenced building operations of the office-cum-shipping (sic) complex which was completed in December 1975 as is now known as the "Wisma Central". A Temporary Certificate of Fitness was issued up to the sixth floor on 5 January 1976. On 1 February 1974, the Federal Territory was established and the powers of the Selangor State Authority were transferred to the Land Executive Committee (hereinafter referred to as the "Land Ex. Co.") in respect of lands in the Federal Territory.

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On 14 February 1975, the Director of Lands & Mines of the Federal Territory conveyed to the Company the decisions of the Land Ex. Co. regarding its applications for conversion and sub-division to the effect that the applications will not be considered as submitted but approval will be given if the Company would first apply to surrender its perpetuity title and accept in exchange a Lease for 99 years for the portion of the land retained by them. The Company was also required to pay additional premium and new taxes amounting to \$656,471/=.

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On 13 May 1975, the Company through its Solicitors appealed to the Land Ex. Co. to reconsider their

In the High  
Court in  
Malaya

No. 5  
Judgment of  
Harun J.  
1st June  
1978.  
(cont'd)

decision on the grounds that the surrender of its  
perpetuity title in exchange for a 99-year lease  
was tantamount to deprivation of property and  
contrary to Article 13 of the Federal  
Constitution.

On 13 January 1976, the Director of Lands & Mines  
conveyed to the Company's Solicitors the decision  
of the Land Ex. Co. that its appeal had been  
rejected. The Company however say that it never  
received this letter. On 17 February 1976, the  
Director of Lands & Mines wrote to the Company  
referring to his letter of 13 January 1976 and  
stated further that the decision of the Land Ex.  
Co. of 14 February 1975 was to be implemented  
forthwith. The premium payable was however  
reduced to \$623,199/= and was payable within one  
month of 17 February 1976. The Company has  
neither made an application to surrender the  
title as suggested or paid the further premium.  
On 12 July 1976, the Collector issued a Notice in  
Form 7A under section 128 NLC as follows:

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"Whereas I the undersigned am satisfied  
that a breach of the condition schedule  
below has arisen in that.

Failure to alter condition of land use  
from Agriculture to Commercial.

Now therefore in exercise of the powers  
conferred by section 128 of the National  
Land Code I hereby require you within a period  
of three months from the date of this notice  
to take the following action to remedy this  
breach -

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From Agriculture to Commercial by payment  
of \$623,199.00 as stated in this  
Department's letter Bil. (22) dlm.  
PTG/WP/-6/305/74 dated 17 February 1976.

Dated this 12 day of July 1976.

Sgd.  
Collector of Land Revenue  
Federal Territory"

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This Notice was served on the Company on 12 July  
1976. On 11 October 1976, the Company filed its  
appeal against the decision of the Collector to  
issue the aforesaid Notice.

On 6 January 1977, the Collector filed a Notice  
of Motion to set aside these proceedings on the  
following grounds:



- (i) That the Application is vague, ambiguous and wrong in law.
- (ii) That the Applicant failed to make an appeal to the High Court and has already exhausted his remedies under the National Land Code.
- (iii) That the Court has no jurisdiction to entertain the application of the Applicant.

In the High Court in Malaya

No. 5  
Judgment of  
Harun J.  
1st June  
1978.  
(cont'd)

10 At the hearing of an earlier appeal, O.M. 44/76, dealing with similar issues, the learned Senior Federal Counsel had indicated that he was not proceeding with his application to set aside the proceedings and agreed that this appeal be heard on the merits.

The following facts are not in dispute:

- (i) Certificate of Title No. 3443 is a grant in perpetuity.
- (ii) There is no express condition regarding user of land endorsed on the title.
- 20 (iii) A residential house No. 147 Jalan Ampang stood on the land until it was demolished in 1973 or 1974.
- (iv) The quit rent on the land was imposed at the rate for a residential house.
- (v) Municipal rates were assessed at the rate for a residential house.
- (vi) The Wisma Central was built with the approval of the Datuk Bandar of Kuala Lumpur.

There are two main grounds of appeal viz:

- 30 (i) That as there was no condition regarding the use of the land there could be no breach of condition.
- (ii) That in any event the remedy of the breach is contrary to law.

Breach of Condition:

40 Is there a condition regarding user and if so what is it? The Collector says there is and that it is 'agricultural' as the title to the land clearly states that it is derived from the original Lease for Agricultural Land granted to H.C. Syers. It seems to me that if the land use is 'agricultural' then house No. 147 Jalan Ampang had existed all

In the High  
Court in  
Malaya

No. 5  
Judgment of  
Harun J.  
1st June  
1978.  
(cont'D)

these years in breach of that condition. But was there in fact a breach? I should think not because the Land Office had all along treated the land as residential for the purpose of revenue collection and it is too late now to say that the land is agricultural since the fact of such collection of revenue at the enhanced rate for a residential house has constituted an acquiescence and waiver of any breach.

In any event the title describes the land to be "situated in the Town of Kuala Lumpur ..." as early as 1909. Before the coming into force of the National Land Code the land was subject to the provisions of the Land Code FMS Cap. 138 which by section 35 enacted:

10

"When alienated land is brought within the boundaries of a town or village any condition as to cultivation of such land,... shall cease to be operative."

Further by section 32 of the same Code:

20

"(i) No town land ... shall be used for the erection of any building ... unless such land is held under ... a certificate of title."

Read together these provisions show that it was the intention of the legislature to encourage the erection of buildings and to discourage agriculture within town limits and the fact that the land here was issued with a Certificate of Title is to give effect to that intention. The only other provision which the proprietor was required to comply before erecting any building is to apply for sub-division but this was principally to enable the State to revise/increase the rent.

30

For these reasons, I find in fact and in law that before the commencement of the NLC the land ceased to be agricultural land and was town land.

It could thus be seen that there was no impediment to the building of the Wisma Central before the coming into force of the NLC on 1 January 1966. Has the new Code altered the rights of the proprietors? Section 4 NLC reads:

40

"(1) Nothing in this Act shall affect the past operation of, or anything done under, any previous land law or, so far as they relate to land, the provisions of any other law passed before the commencement of this Act:

Provided that any right, liberty, privilege, obligation or liability existing at the commencement of this Act by virtue of any such law shall, except as hereinafter expressly provided, be subject to the provisions of this Act."

In the High Court in Malaya

No. 5  
Judgment of  
Harun J.  
1st June  
1978.  
(cont'd)

10 The exceptions do not apply to this case. It follows that the rights of proprietors acquired under the old laws are preserved and subject to the provisions of the new Code.

20 The NLC contains both substantive and procedural laws. This fact explains the complexity of interpreting its provisions and the task is not made any less onerous when it is appreciated that the NLC is a law consolidating 43 separate laws dealing with land and at the same time provides the mechanics to solve problems of land administration created over a period of a hundred years. It is against this background that we have to examine any new provisions affecting old rights. One of the innovations introduced by the NLC is the method by which land use is regulated. This is achieved by declaring that all lands are subject to an implied condition as to user. There are three categories of land use:

- (i) Agriculture : Section 115 NLC
- (ii) Building : Section 116 NLC
- (iii) Industry : Section 117 NLC

30 To determine as to which particular category and land is subject to, the NLC provides that the category of land use be endorsed on the document of title: section 52(1).

To implement the scheme, two separate exercises are contemplated:

- 40 (i) The State Authority is to declare which areas of the state are for agriculture, building or industry as the case may be: section 52(2) and section 54. As far as is known, no declaration has yet been made in respect of the Federal Territory under either of these provisions.
- (ii) The endorsement of the category of land use on the titles: section 52(2) and section 54(1).

To implement this, alienated lands are placed in three separate classes, viz:

In the High Court in Malaya

No. 5  
Judgment of Harun J.  
1st June 1978.  
(cont'd)

(i) New Lands:

Lands alienated under the NLC - the endorsement is made as and when the titles are issued: section 52(2) & (3) in which event the implied conditions under section 115; or section 116; or section 117 will apply.

(ii) Old Lands:

Lands alienated before the NLC came into force : section 53, the transitional stage.

10

(iii) Declared Lands:

Lands alienated before the NLC but which have become subject to a declaration under section 54 in which event the implied conditions under section 115; or section 116; or section 117 apply, i.e. old lands subject to new laws.

In both old and declared lands the existing rights of proprietors are preserved but in the event of a breach of the new implied conditions there is provision that the land shall not be liable to forfeiture except upon payment of compensation: Section 53(4) and section 54(4).

20

The entire scheme is consistent with the modern practice of 'zoning' the country into specified areas for agricultural; industrial; commercial; residential and recreational activities and at the same time taking into account environmental protection, pollution prevention and socio-economic needs. But the implementation of the scheme is reconciled with existing rights. In other words the provisions regarding user apply to all new lands alienated under the NLC but in respect of lands alienated under the old laws these provisions are applied subject to exceptions or modifications and where necessary the payment of compensation in the event of forfeiture should there be a breach of any condition imposed by the new Code.

30

In the present case the land belongs to the class of old lands in the transitional stage and the relevant provisions of section 53 NLC that apply are:

40

"53(1) This section applies to all land alienated before the commencement of this Act other than land which, immediately before that commencement, is subject to an express condition requiring its use for a particular purpose.

(3) All other land to which this section applies shall become subject at the commencement of this Act to an implied condition that it shall be used neither for agricultural nor for industrial purposes:

In the High Court in Malaya

No. 5  
Judgment of  
Harun J.  
1st June  
1978  
(cont'd)

Provided that this condition -

10 (i) shall not prevent the continued use of any part of the land for any agricultural or industrial purpose for which it was lawfully used immediately before the commencement of this Act; and

(ii) shall not apply to any part of the land which is occupied by or in conjunction with -

(a) any building lawfully erected before that commencement, or

20 (b) any building erected after that commencement, the erection of which would (under section 116) be lawful if the land were subject instead to the category "building".

30 (4) Land shall not be liable to forfeiture under this Act by reason of any breach of any condition to which it is subject by virtue of this section except upon payment of such compensation as may be agreed or determined under section 434"

40 The land in question is not subject to an express condition requiring its use for a particular purpose and therefore section 53(1) applies. It is not used for agricultural or industrial purposes and there is therefore no breach of the implied conditions under sub-section (3). Even assuming land was agricultural, the Wisma Central was erected after the commencement of the NLC and as it is a building within the meaning of section 116(4)(b) NLC and could have been lawfully erected if the land was subject to the building category, the proviso to sub-section (3) applies.

There is no indication in the letter of 14 February 1975 that the land is to be used for any purpose other than as an office-cum-shopping complex. The Land Ex. Co. in fact approved in principle the use of the land for this precise purpose. It follows that the present use of the land is consistent with the provisions of the new

In the High  
Court in  
Malaya

No. 5  
Judgment of  
Harun J.  
1st June  
1978.  
(cont'd)

Code. In this regard it may be observed that section 53 NLC is an extension of section 35 of the FMS Land Code - the legislature first discouraging the use of town lands for agriculture and finally prohibiting it altogether.

Finally, even if there is a breach, the land is not subject to forfeiture except upon payment of compensation: Section 53(4). There is no such offer here and in fact the situation does not arise. I therefore find that the new Code has not altered the rights of the proprietors. 10

Remedy of the Breach:

I next turn to the letter of 14 February 1975 which the Collector states in his notice should be complied with in order to remedy the purported breach. Shortly the effect of this letter and the notice is that the Company is confronted with the situation that its land with the Wisma Central building on it will be forfeited to the State unless they surrender their perpetuity title in exchange for a 99 year lease. Surrender of title may only be made with the consent of the registered proprietor and the approval of the Land Ex. Co : section 195 to 198 NLC. There is no such consent here. To obtain such consent by withholding approval of applications for conversion and sub-division accompanied with a threat of forfeiture is improper and contrary to law. I have dealt at length in O.M. 44/76 with regard to the exchange of perpetuity titles for 99-year leases as conditions precedent to the approval of applications for conversion and sub-division and the law applicable to such applications. Suffice it to state here that the Land Ex. Co has no power to impose such a condition and the Company are entitled to: 20 30

- (i) Approval of its application for the imposition of category of land use "Building - Commercial" to be endorsed on the Certificate of Title under section 124 (1)(a) NLC without any surrender of title 40
- (ii) Approval of its application for sub-division under section 136 NLC and issue of title in continuation in accordance with section 202 (3)(a) NLC. 20

I hold that the notice issued by the Collector dated 12 July 1976 is void and of no effect for the following reasons:

- (i) It states incorrectly that the land is subject to the category 'agriculture' when 50

there is neither an express condition on the Certificate of Title that it be so used nor is there an implied condition for such use either under the old or new Land Codes.

In the High Court in Malaya

No. 5  
Judgment of  
Harun J.  
1st June  
1978.  
(cont'd)

- 10 (ii) It is contrary to the provisions of section 53(3) NLC in that the land could not be used for agriculture.
- (iii) It is contrary to the provisions of the proviso to section 53(3) NLC in that the land is exempted from the implied condition imposed by section 53 NLC as the Wisma Central was erected after the commencement of the NLC and the building would have been lawful under section 116 NLC if the land were subject to the category 'building'.
- 20 (iv) It is contrary to the provisions of section 53(4) NLC in that the land is not liable to forfeiture except upon payment of compensation as may be agreed or determined under section 434 NLC.
- (v) In any event the performance of the condition to remedy the purported breach under section 128 NLC is contrary to law as it is conditional on the surrender of the Certificate of Title to which the Company has not given its consent and which condition the Land Ex. Co. has no power to impose.

30 There will be an order that the Collector of Land Revenue, Federal Territory do cancel the Form 7A Notice dated 12 July 1976 issued to the Company; and

That the Collector do pay the costs of this application.

Harun J.  
Judge, High Court  
Kuala Lumpur.

Hearing & Argument 18.4.1977.  
Judgment delivered 1.6.1978.

40 Counsel:

Mr. Kok Wee Kiat of M/s. Mah-Kok & Din for Applicants.  
SFC. Mr. Fong Seng Yee for Respondent.

In the High  
Court in  
Malaya

No. 6  
Order  
1st June  
1978.

No. 6

ORDER

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

ORIGINATING MOTION NO. 96 OF 1976

In the matter of the land held under issue  
document of title Certificate of Title 3443  
Lot 36 Section 58, Bandar Kuala Lumpur

AND

In the matter of Section 128,  
National Land Code.

10

Garden City Development Berhad Applicant

BEFORE THE HONOURABLE MR. JUSTICE HARUN

THIS 1ST DAY OF JUNE, 1978

IN OPEN COURT

O R D E R

UPON MOTION made unto Court on the 17th  
day of January, 1977 by Mr. Kok Wee Kiat of  
Counsel for the Applicant above named AND UPON  
READING the Originating Motion dated the 11th  
day of October 1976, the Affidavit of Hsu Lit  
Ling affirmed on the 9th day of October, 1976,  
the Affidavit of Datuk Mohd. Othman bin Mohd.  
Din affirmed on the 24th day of December, 1976,  
the Affidavit also of Hsu Lit Ling affirmed on  
the 12th day of January, 1977, and the Affidavit  
also of Datuk Mohd. Othman bin Mohd. Din affirmed  
on the 14th day of January, 1977, all filed herein  
AND UPON HEARING Mr. Kok Wee Kiat of Counsel for  
the Applicant and Mr. Fong Seng Yee of Counsel  
for the Pemungut Hasil Tanah, Wilayah Persekutuan,  
Kuala Lumpur on the 18th day of April, 1977 IT  
WAS ORDERED that the Originating Motion do stand  
adjourned for judgment AND the same coming for  
judgment on the 1st day of June 1978 in the  
presence of Mr. Kok Wee Kiat of Counsel for  
the Applicant and Mr. Fong Seng Yee of Counsel  
for the Pemungut Hasil Tanah, Wilayah Persekutuan,  
Kuala Lumpur IT IS ORDERED that the Pemungut Hasil  
Tanah Wilayah Persekutuan Kuala Lumpur do cancel  
the notice in Form 7A dated the 12th day of July,  
1976 issued to the Applicant AND IT IS FURTHER  
ORDERED that the costs of this Originating Motion  
be paid by the Pemungut Hasil Tanah, Wilayah  
Persekutuan Kuala Lumpur to the Applicant.

20

30

40

GIVEN under my hand and the Seal of the  
Court this 1st day of June, 1978.

(SEAL) Sgd.

Senior Assistant Registrar  
High Court, Kuala Lumpur



No. 7

NOTICE OF APPEAL

IN THE FEDERAL COURT OF MALAYSIA

(APPELLATE JURISDICTION)

Federal Court Civil Appeal No. 95 of 1978

between

Collector of Land Revenue  
Federal Territory

Appellant

And

10 Garden City Development  
Berhad.

Respondent

(In the matter of Originating (sic) Motion  
No. 96 of 1976

In the High Court in Malaya at Kuala Lumpur

In the Matter of the Land held under issue  
document of title Certificate of Title 3443  
Lot 36 Section 58, Bandar Kuala Lumpur

AND

20 In the Matter of Section 128 of the  
National Land Code

Garden City Development  
Berhad

Applicant)

NOTICE OF APPEAL

30 TAKE NOTICE that the Collector of Land  
Revenue Federal Territory the Appellant above-  
named, being dissatisfied with the decision of  
the Honourable Mr. Justice Datok Harun M. Hashim  
delivered at Kuala Lumpur on the 1st day of June,  
1978, appeals to the Federal Court, Malaysia,  
against the whole of the said decision.

DATED this 22nd day of June, 1978.

(Fong Seng Yee)

Senior Federal Counsel  
for and on behalf of the Appellant.

Kepada: Ketua Pendaftar,  
Mahkamah Persekutuan,  
Malaysia,  
KUALA LUMPUR.

In the High  
Court in  
Malaya

No. 7  
Notice of  
Appeal  
22nd June  
1978.

In the High  
Court in  
Malaya

Penolong Kanan Pendaftar,  
Mahkamah Tinggi,  
Kuala Lumpur.

No. 7  
Notice of  
Appeal  
22nd June  
1978.  
(cont'd)

Tetuan Mah-Kok & Din,  
Penthouse,  
9, Jalan Gereja,  
Kuala Lumpur. 01-17

(Solicitors for the Respondent)

The address for service on the Appellant is  
c/o Attorney-General's Chambers, Jalan Raja,  
Kuala Lumpur.

10

PN.(CIVIL) 2008/26/1.

In the Federal  
Court of  
Malaysia

No. 8

MEMORANDUM OF APPEAL

No. 8  
Memorandum of  
Appeal  
7th July 1978

IN THE FEDERAL COURT OF MALAYSIA  
(APPELLATE JURISDICTION)

Federal Court Civil Appeal No. 95 of 1978

between

Collector of Land Revenue  
Federal Territory

Appellant

20

And

Garden City Development  
Berhad.

Respondent

(In the Matter of Originating Motion  
No. 96 of 1976  
In the High Court in Malaya at Kuala  
Lumpur

In the Matter of the Land held under  
issued document of title Certificate  
of title 3443 Lot 36 Section 58, Bandar  
Kuala Lumpur

30

AND

In the Matter of Section 128 of the  
National Land Code.

Garden City Development  
Berhad

Applicant)

MEMORANDUM OF APPEAL

In the Federal  
Court of  
Malaysia

No. 8  
Memorandum of  
Appeal  
7th July 1978  
(cont'd)

The Collector of Land Revenue, Federal Territory, the Appellant above-named, appeals to the Federal Court against the whole of the decision of the High Court at Kuala Lumpur given on the 1st day of June, 1978 on the following grounds:

10

(1) The Learned Judge failed to appreciate the endorsement on the Certificate of Title No. 3443 Lot 36 Section 58, City of Kuala Lumpur, that it is part of the Agricultural Lease No. 746 originally granted to H.C. Sayers

(2) The Learned Judge erred in fact in finding that there was no express condition regarding the use of land endorsed in the title

(3) The Learned Judge erred in law in holding that agricultural land cannot lawfully permit the existence of a house thereon.

20

(4) The Learned Judge was wrong in law in holding that collection of revenue at the enhanced rate for a residential house or land constituted an acquiescence and waiver of any breach and such holding is contradictory to the finding as complained of in ground (2) above.

(5) The Learned Judge erred in law in (sic) interpreting Section 35 of the Land Code FMS Cap, 138.

30

(6) The Learned Judge erred in law and in fact in finding that the land in question had ceased to be agricultural land and was town land before the commencement of the National Land Code.

(7) The Learned Judge erred in law in applying Section 53 of the National Land Code to the land in question.

(8) The Learned Judge erred in law and in fact in applying Kuala Lumpur High Court Originating Motion 44 of 1976 to the present case.

40

(9) The Learned Judge erred in law in holding that the Collector's Notice in Form 7A dated 12th July 1976 is void and of no effect.

DATED this 7th day of July, 1978.

(FONG SENG YEE)  
Senior Federal Counsel  
for and on behalf of the  
Appellant.

In the Federal Court of Malaysia  
No. 8  
Memorandum of Appeal  
7th July 1978  
(cont'd)

Kepada:

Ketua Pendaftar,  
Mahkamah Persekutuan,  
Malaysia,  
KUALA LUMPUR.

Penolong Kanan Pendaftar,  
Mahkamah Tinggi,  
KUALA LUMPUR.

Tetuan Mah-Kok & Din,  
Penthouse,  
9 Jalan Gareja,  
KUALA LUMPUR.

10

(Solicitors for the Respondent)

The address for service on the Appellant is  
c/o Attorney-General's Chambers, Jalan Raja, Kuala Lumpur.

No. 9  
Notes of  
Lee Hun  
Hoe C.J.  
8th November  
1978.

No. 9

NOTES OF LEE HUN HOE C.J.

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR

20

(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO. 95 OF 1978

Between

Collector of Land Revenue

Appellant

And

Garden City Development  
Berhad

Respondent

(In the Matter of Originating Motion  
No. 96 of 1976

In the High Court in Malaya at Kuala Lumpur

30

In the Matter of the Land held under  
issued document of title Certificate  
of Title 3443 Lot 36 Section 58,  
Bandar Kuala Lumpur

And

In the Matter of Section 128 of the  
National Land Code.

Respondent's  
submission

Garden City Development  
Berhad

Applicant)

In the Federal  
Court of  
Malaysia

Coram: Lee Hun Hoe, C.J. Borneo.  
Wan Suleiman F.J.  
Chang Min Tat, F.J.

No. 9  
Notes of  
Lee Hun  
Hoe C.J.  
8th November  
1978.  
(cont'd)

NOTES OF SUBMISSIONS

WEDNESDAY, 8TH NOVEMBER, 1978

9.30 a.m. Encik Fong Seng Yee for appellant.  
Encik Kok Wee Kiat for respondent.

Respondent's  
submission

10

FONG.

Land concerned C.T. 3443 covering 2 acres,  
1 rood 3/4 poles.

Page 42 - endorsement - being part of the  
land originally granted under Lease No. 746 to H.C.  
Sayers as appears by Certificate of Title.

My submission is that endorsement affects  
limit of use of land.

Page 53 - Original Lease No. 746.

Submit lease for agricultural use.

20

Learned Judge applied s.35 of F.M.S. Land  
Code and came to the conclusion that the land is  
no more agricultural when it was brought within  
the township.

Section 35 states:

"When alienated land is brought within  
the boundaries of a town or village any  
condition as to the cultivation of such  
land, other than a condition forbidding the  
cultivation of any particular product or  
class of products, shall cease to be  
operative."

30

Section 35 must be read subject to section 36(a)  
since the land is less than 10 acres.

CHANG.

What is your complaint?

Since application was made for conversion.

FONG.

Learned Judge made certain ruling which is  
wrong.

In the Federal  
Court of  
Malaysia

No. 9  
Notes of  
Lee Hun  
Hoe C.J.  
8th November  
1978.  
(cont'd)  
Respondent's  
Submission

CIANG.

It is per incuriam.

FONG:

Yes.

Page 68 - Learned Judge stated land is no more agricultural.

Section 40 of F.M.S. Land Code refers to express conditions running with the land.

Page 15. Form 7A issued on 12/7/76.

Page 14. Letter dated 1/2/76.

10

Page 9. Letter dated 13/5/75.

Page 7. Letter dated 1/2/75.

Breach committed by respondent had to be rectified.

Necessary for landowner to change agricultural to commercial.

If residential then from residential to commercial.

Pengarah Tanah dan Galian v. Sri Lempah Enterprise. Federal Court Civil Appeal No. 94 of 1978.

20

Suffian L.P. page 2.

Azlan, F.J. page 3. "The legal position is this.

All land alienated .....  
..... awarded".

Chang Min Tat, F.J. page 1.

Refer Land Code section 116(1).  
section 116(4)(a)

to be changed to section 116(4)(b).

30

Interest run with land section 104.

In this case Originating Motion out of three months' period.

Page 7. Letter dated 14/2/75.

Page 4. Originating Motion 14/10/76.

A period of 20 months.

See section 418 of Land Code.

Land Commissioners to be substituted Land Exco.

Submit decision of Land Exco. cannot be challenged in the High Court.

Smith's Judicial Review of Adm. Action, 2nd Edition, page 302.

Smith v. East Elloe RDC (1956) A.C. 736.

Viscount Simonds page 752:-

10

"I come then to the conclusion .....  
..... questioned".

Lord Somervell dissenting page 772:-

"This construction is strengthened by the context .....Warrington."

Jurisdiction of court after period ousted.

Lee Lee Cheng v. Seow Peng Kwang (1956)  
M.L.J. 271 extension of time cannot be granted unless expressly given.

20

Submit change from whatever it is to commercial and premium at 12 cents per square foot for commercial building correct.

Submit order of Land Exco. cannot be questioned.

KOK.

Section 418.

What I want to say is that it was already taken in the lower court and decided by the learned Judge.

Page 17. Notice of Motion.

30

On 20/1/77 learned Judge decided already decision was never appealed from.

Merits argued on Originating Motion. Heard on 18/4/77.

Judgment on 22/6/78.

A lot of confusion arose in this Court.

This matter would not have gone to court if provisions of Land Code followed.

In the Federal Court of Malaysia

No. 9  
Notes of Lee Hun Hoe C.J.  
8th November 1978.  
(cont'd).  
Respondent's Submission

Applicant's Submission

In the Federal  
Court of  
Malaysia

No. 9  
Notes of Lee  
Hun Hoe C.J.  
8th November  
1978.  
(cont'd)

Applicant's  
Submission

In Sri Lempah's case

Page 2 Lord President was talking about  
(converting) not used.

Section 124 Land Code.

correct translation given by learned Judge  
at page 66D.

Failure to alter condition of land use from  
agricultural to commercial.

Condition does not include a restriction in  
interest.

10

Section 124.

"category of land use".

See section 52(1)

agriculture building and industry.

Section 52. Conditions affecting use of  
lands alienated before commencement until  
category of land use imposed.

Learned Judge said there was no such express  
condition.

Submit history of Selangor Land Law and  
history of the land.

20

Submit section 53 is an extension of section  
35 of F.M.S. Land Code.

Learned Judge with respect wrong page 72.

"Even assuming .....applies".

Not correct.

The land does not come within section 52  
but section 53. Government must specify by  
notification in Gazette of use of land. See  
section 54.

30

Submit gist land not subject to any category.

No co-ordination between Municipality and  
Land Office.

Town Boards Enactment (F.M.S. Cap. 137).

City of Kuala Lumpur (Planning) Act, 1973.

My application was a mistake and not a  
submission to jurisdiction.



Page 29 - Para. 3 of Affidavit.

In the Federal  
Court of  
Malaysia

Under what authority or power Land Office  
can impose premium.

No. 9  
Notes of Lee  
Hun Hoe C.J.  
8th November  
1978.

All land subject to periodical revision  
of rents.

(cont'd)

See section 101 of Land Code and section  
102.

Applicant's  
Submission

Without an application under section 124  
not revision of rent except under section 101.

10

Since application was a mistake there was  
no application.

No revision of premium arises.

Rules 8 and 13 - Federal Territory Land  
Rules, 1975 (P.U.(A)98) w.e.f. 17/4/75.

Page 68-9 "In any event.....  
.....s.32..... town land."

Section 32 important.

Supporting my learned friend on section 35.

20

One important difference between this case  
and Sri Lempah's case in latter case there was  
an express condition. Here no express condition.

FONG.

Respondent's  
Submission

In construing document one has to take  
into consideration what was stated in the  
document.

Section 53 of Land Code.

My learned friend says the land does not  
come into any category.

Condition express applies.

30

Submit this land is not free from condition  
and subject to Land Code.

COURT

C.A.V.

(Sgd) Lee Hun Hoe  
Chief Justice (Borneo)  
8/11/1978.

Certified true copy:

.....  
(Puan Valerie Kueh)  
P.A. to Chief Justice  
Borneo.

In the Federal  
Court of  
Malaysia

No. 10  
Notes of Wan  
Suleiman, F.J.  
8th November  
1978.  
Respondent's  
Submission

No. 10

NOTES OF WAN SULEIMAN, F.J.

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA  
LUMPUR

(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO. 95 of 1978

Between

Collector of Land Revenue  
Federal Territory

Appellant

And

10

Garden City Development Berhad

Respondent

(In the Matter of Originating Motion  
No. 96 of 1976

In the High Court in Malaya at  
Kuala Lumpur

In the Matter of the Land held under  
issued document of title Certificate  
of Title 3443 Lot 36 Section 58,  
Bandar Kuala Lumpur.

AND

20

In the Matter of Section 128 of the  
National Land Code.

Garden City Development Berhad Applicant)

Coram: Lee Hun Hoe, C.J. Borneo,  
Wan Suleiman, F.J.  
Chang Min Tat, F.J.

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

8th November 1978:

Fong, Senior Federal Counsel, for appellant.  
Kok Wee Kiat for respondent.

30

FONG:

Ref. page 42, 43 - submits endorsement as  
limitation of use.

S.35 removes the cultivation conditions,  
but does not change the category of use of land,  
i.e. it still remains agricultural etc.

Decision in court below per incuriam and in error. Land owner still has to make an application and has done so, for conversion.

In the Federal Court of Malaysia

S.40 L.C. - Express condition runs with the land.

No. 10  
Notes of Wan Suleiman, F.J.  
8th November, 1978.  
Respondent's Submission  
(cont'd)

P.7 - application for change of condition.

Refers to Sri Lempah case.

S.116(1)(a) - (d) N.L.C.

10 (a) Respondent was seeking change from 116(4) to (b).

S.104 - Conditions to run with the land.

Validity of decision of Land Executive Committee can't be challenged in the High Court.

KOK WEE KIAT:

Applicant's Submission

S.418.

Notice of Motion - Page 17.

Affidavits - Page 19 page 29.

res judicate.

20 "Conversion" does not appear in L.C. or N.L.C.

Difference between alteration in category or use and amendment of express condition or restriction in interest mentioned in S.124(1)(c).

Trans. of Form 7A - see page 66.

Restriction "in interest" - 55 N.L.C. - see also page 9 - Subdivision, partition and amalgamation on all land dealings.

"Condition" does not include restriction in interest.

30 S.52(1) - 3 categories of land use after N.L.C. came into force.

Is there an express condition on this land - judge finds there was none.

S.53 - Extension of position existing since 1897 - judge recognises this - page 73.

S.54.

This land not subject to any category of land use - but is still subject to various laws or regulations.

In the Federal Court in Malaysia

No. 10  
Notes of Wan Suleiman, F.J.  
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Applicant's Submission  
(cont'd)

Part IX - Town Planning.

No provision to prevent Wisma Central from operating on the land. See page 29.

S.93 N.L.C.

Revision of rent - S.181.

Premium

Land Rules (Federal Territory) 19/75.

Reg. 8 on premia.

S.32 L.C.

S.20 Selangor Land Enactment 15/1897.

S.26 Selangor Land Enactment 8/1903.

S.36 and 36A L.C.

Intd. W.S.

Respondent's Submission

FONG:

Page 63 - Original Lease - construction.

C.A.V.

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Notes of Chang Min Tat F.J.  
8th November 1978.  
Respondent's Submission

No. 11.

NOTES OF CHANG MIN TAT F.J.

THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR

(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO. 95 OF 1978

Between

Collector of Land Revenue  
Federal Territory

Appellant

And

Garden City Development  
Berhad

Respondent

(In the Matter of Originating Motion  
No. 96 of 1976

In the High Court in Malaya at  
Kuala Lumpur

In the Matter of the Land held under  
issued document of title Certificate of  
Title 3443 Lot 36 Section 58, Bandar  
Kuala Lumpur

And  
In the Matter of Section 128 of the  
National Land Code

Garden City Development Berhad  
Applicant)

Coram: Lee Hun Hoe, C.J. Borneo.  
Wan Suleiman, F.J.  
Chang Min Tat, F.J.

In the Federal  
Court in  
Malaysia

No. 11  
Notes of Chang  
Min Tat F.J.  
8th November  
1978.  
Respondent's  
Submission  
(cont'd)

In Open Court,

10 This 8th day of November, 1978.

NOTES OF PROCEEDINGS RECORDED BY CHANG MIN TAT F.J.

For Appellant : Fong Seng Yee, S.F.C.  
"Respondent : Kok Wee Kiat.

S.F.C.: written submission.

Area of land important.

land derived from Lease 746 - see p.52-53 -  
which is for an agricultural use and submit  
therefore the land is agricultural.

20 J. applied s.35 F.M.S. Land Code and held  
that (p.68) since land brought within township of  
K.L. and is no more agricultural. Submit decision  
wrong and per incuriam.

S.35 removes the cultivation condition but  
does not change the category of use.

S.35 must be read subject to s.36(a) since  
land under 10 acres.

Op. s.36A

Landowner must still make an application for  
conversion and in this case has done so.

30 From 7A. (p.15) issued on July 12, 1976.  
requiring landowner within 3 months to comply with  
conditions (1) to pay increased premium \$623,199,  
and other conditions in l. d. Feb. 17 1976 (p.14).

(see l. d. Feb. 14, 1976 - p.7 re quit rent).

Breach by resp. has to be rectified, and land  
still agricultural.

Aliter, if not agricultural and residential,  
still necessary for change from residential to  
commercial and Form 7A still valid.

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Malaysia

No. 11  
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(cont'd)

Applicant's  
Submission

Refer Sri Lempah's case, but decision on  
necessity for application for conversion.

For purposes see s.116 N.L.C.

S.104 N.L.C. "interest running with the  
land."

S.5 - (p.327) restriction in interest.

Here O.M. out of the 3 months period under  
s.418 N.L.C. Actually 20 months.

Validity of action of Land Ex. Co. cannot  
be challenged in the High Court.

10

Wee:

Decision of s.418 N.L.C. on Notice of Motion  
(p.17). on 20.1.1977. Notes not included since  
no appeal.

1.d. Feb. 14 not a decision, within s.418(1).  
N.L.C. not implemented.

"Conversion" not defined, nor set out  
(neither in 1926 Land Code).

What is used is "alteration of any category  
of land use"

20

in s.124(1)(a), cp. with "amendment of any  
express condition or restriction," as used  
by Judge at p.66.

"restriction in interest" in s.5, Part 9 -  
subdivision, amalgamation and partition. Div. IV -  
dealings in alienated land.

"condition" as defined does not include a  
restriction in interest.

S.124, Category of land use - see s.52.

Three categories: agriculture, building  
and industry.

30

S.53 - land alienated before commencement  
of N.L.C. an extension of s.35 Land Code - p.73.  
J. incorrect - p.72F - re. s.116(4)(b).

Land not subject to any category of land  
use. Subject therefore to Town Boards Enactment  
(Enact. 137).

Emergency Ordinance No. 46 of 1970 and City  
of K.L. (Planning Act) 1973.

No provision in N.L.C. to prevent Wisma Central from being built on this land.

In the Federal Court in Malaysia

Follows no premium, no quit rent payable and application was a mistake and not a submission to jurisdiction.

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(cont'd)

Quit Rents:

Part VI - Div. 3. S.101.  
S.102.

10 Without an application under s.124, no increase except under s.101.

Same argument re further premium.

Fed. Land Rules: Fed. Territory Land Rules 1975 P/U.(A) 98/75.

Rules 8 and 13 in force w.e.f. 17.4.1975.

Lot 36 does not come within any category. It could be building.

Art. 13(2) Federal Constitution.

S.35 F.M.S. LC. should be read with s.32.

S.F.C.: in reply.

Respondent's Submission

20 Original title "lease for agricultural land."

S.53 N.L.C.

Court: c.a.v.

Sgd. CHANG MIN TAT

14th December, 1978.

Counsel as before.

Court:

I read judgment (written).

Concurred by Lee Hun Hoe & Wan Suleiman.

30 Appeal allowed with costs here and in the Court below. Deposit to appellant.

Sgd. CHANG MIN TAT

In the Federal  
Court of  
Malaysia

No. 12  
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No. 12

JUDGMENT OF CHANG MIN TAT, F.J.

THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA  
LUMPUR

(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO. 95 OF 1978

Between

Collector of Land Revenue  
Federal Territory

Appellant

And

Garden City Development  
Berhad

Respondent

10

(In the Matter of Originating Motion  
No. 96 of 1976

In the High Court in Malaya at  
Kuala Lumpur

In the Matter of the Land held under  
issued document of title Certificate  
of Title 3443 Lot 36 Section 58,  
Bandar Kuala Lumpur

20

And

In the Matter of Section 128 of the  
National Land Code.

Garden City Development  
Berhad

Applicant)

Coram: Lee Hun Hoe, C.J. Borneo.  
Wan Suleiman, F.J.  
Chang Min Tat, F.J.

JUDGMENT OF CHANG MIN TAT, F.J.

When the respondents as owners of the land  
in question sought to develop it and consequently  
to sub-divide it in order to surrender part or  
parts of it, under section 200 National Land Code  
(NLC), for road purposes as required by the City  
Planning Committee for the Federal Territory of  
Kuala Lumpur, they were told that they had first  
to apply for conversion under section 124 NLC of  
the category of land use to building.

30

The term conversion has been criticised as  
loosely used. It does not occur anywhere in the  
National Land Code, but it is understood by  
everyone including the respondents and their

40



solicitors that by it is meant an application to vary the category of use to which the land can be put. It may be convenient to continue to use the word conversion.

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The application for conversion was made by the respondents on June 7, 1973.

10 But without waiting for approval, the respondents obtained the consent of the Datuk Bandar, Kuala Lumpur for the construction of, and they proceeded to erect, a substantial commercial building which was completed in December 1975 and is now known as the Wisma Central. A temporary certificate of fitness for occupation up to the 6th floor was issued on January 5, 1976.

20 On February 14, 1975 (while the construction was in progress) the Director of Lands and Mines for the Federal Territory advised the Respondents of the decision of the Land Executive Committee to whom the powers of the State Authority for Selangor in respect of lands in the Federal Territory had been transferred upon the establishment of the Federal Territory on February 1, 1974, that their application would only be approved on the following conditions:

30 Document of Title : Registry Document of Title  
Nature of Document of Title : 99 year lease  
Premium : \$6.00 per square foot  
(30% of \$20/- per square foot)  
Quit rent : 12 sen per square foot  
Survey fees, etc. : Prescribed rate  
Category of land use : Building

Express conditions:

- (i) The land shall be used for shopping and office complex.  
(ii) Development on the land shall comply with the Development issued by Datuk Bandar.

40 Will you please, therefore, settle the following payment:

|                    |   |                       |
|--------------------|---|-----------------------|
| Additional Premium | : | \$643,599.00          |
| New Tax            | : | <u>12,872.00</u>      |
| Total              | : | \$656,471.00<br>===== |

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It will be observed that the category of land use would be changed or varied to building and that the most difficult pill for the landowners or any landowner to swallow, though it is believed that some are more quiescent, was the obligation to accept a leasehold of 99 years for their title in perpetuity. The respondents' appeal not to require this diminution in title was however rejected by letter dated January 13, 1976. The landowners denied that they ever received this letter but there can be no doubt that they received a following letter on or about February 17, 1976 that the decision of the Land Executive Committee was to be implemented forthwith. The premium was however reduced to \$623,199 and made payable within one month.

10

Since the respondents failed to surrender the title or pay the premium, the Collector of Land Revenue, Federal Territory served on them a notice in Form 7A under 128 NLC. The notice is as follows:

20

"Whereas I the undersigned am satisfied that a breach of the condition scheduled below has arisen in that.

Failure to alter condition of land use from Agriculture to Commercial.

Now therefore in exercise of the powers conferred by section 128 of the National Land Code I hereby require you within a period of three months from the date of this notice to take the following action to remedy this breach -

30

From Agriculture to Commercial by payment of \$623,199.00 as stated in this Department's letter Bil (22) dlm. PTG/WP/-6/305/74 dated 17 February, 1976.

Dated this 12 day of July 1976.

Sgd.  
Collector of Land Revenue  
Federal Territory"

40

The notice was dated July 12, 1976 and served the same day.

Section 128 NLC which was referred to in the notice, reads as follows:-

"128. (1) Where -

- (a) any alienated land is liable under section 127 to forfeiture to the State Authority for breach of any condition, and
- (b) it appears to the Collector that the breach is capable of being remedied by the proprietor within a reasonable time,

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the Collector shall serve, or cause to be served, on the proprietor a notice in Form 7A specifying the action required for remedying the breach, and calling upon him to take such action within the time therein specified.

20

(2) Upon the service of any notice under sub-section (1), the Collector shall endorse, or cause to be endorsed, on the register document of title to the land in question a note to the effect that the land is subject to action for breach of condition.

(3) The service of any notice under sub-section (1) shall operate as a waiver by the State Authority, conditional upon strict compliance with the requirements thereof, of the right of forfeiture existing by reason of the breach to which it relates; and -

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- (a) if the notice is complied with, the note endorsed under sub-section (2) shall be cancelled accordingly;
- (b) if the notice is not complied with, the Collector shall take action in accordance with the provisions of section 129."

40

In reply, the respondents on October 14, 1976, (somewhat beyond the 3 months specified in the notice) applied by Originating Motion for "an order that the Pemungut Hasil Tanah Wilayah Persekutuan (Collector of Land Revenue, Federal Territory) do cancel the notice.... on the ground that the said notice is bad in law and invalid." The contention which appeared in the only relevant paragraph, paragraph 8, of the affidavit in support was that "there is no expressed endorsement on the said document of title pertaining to the category of land use to which the said land is for the time being subject."

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The learned Judge, after hearing full arguments, including the contention of Senior Federal Counsel for the Collector of Land Revenue, Federal Territory that the application was vague, ambiguous and wrong in law, that the applicants had failed to make an appeal to the High Court, and had already exhausted their remedies under the NLC and that the Court had no jurisdiction to entertain the application, allowed it. From that order, the Collector of Land Revenue, Federal Territory appeals.

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The respondents now say that they were misled by the Collector of Land Revenue into making the application on June 7, 1976 for conversion. There was no necessity for the conversion to building as their land was not subject to any condition. As for their earlier application for sub-division, in Form 9A, for the purposes of providing access roads and surrendering such parts or parts of the land to the Government for such purposes, they also say it was a mistake. With the greatest of respect, if by this contention they mean seriously, that they would and could have built their complex, the Wisma Central, without any provisions for the necessary and convenient access roads and facilities or argue that they be given back such land, I do not think they have considered their own interests properly. But insofar as "conversion" is concerned, the respondents do seriously contend that there is no express endorsement on the document of title pertaining to the category of land use to which the land is subject. They were therefore entitled to do what they liked with the land, so long as they complied with the ordinary requirements of law in regard to planning and municipal or town-board control. They reinforce their argument with the suggestion that previously, despite the contention of the appellant that it was agricultural land, a substantial house No. 147 Ampang Road with an annual rateable value in 1972 of \$160,000 had been allowed to be built on the land, so that by demolishing this building and erecting in its place the Wisma Central with the permission of the Datuk Bandar Kuala Lumpur, they were only carrying on the permitted user of the land and they had not committed any breach of any condition of title.

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The basic question therefore is whether there is a condition for a specified category of land use and if so, what it is. The respondents' view of their case is that, by administrative error or omission, their land has not been classified. But as will be seen later, both the Land Code (F.M.S. Cap. 138), which was in force

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from January 1, 1928 until its repeal and replacement by the NLC on January 1, 1966 and that the NLC make classification the foundation of land administration and it would have to be a strong case for the respondents for them to succeed on this argument.

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10 "The house that Jack (Torrens) built" is a house of deliberate planning. Over the years it had been extended. In the development version that is the NLC, the development of an orderly system of land transfer, following as it did on the heels of earlier and less detailed versions, must necessarily seek to make one homogeneous system of the several practices in the country. Those who knew of the system of registration of deeds previously practised in Penang and Malacca and had gone through the trauma of an intermediate process under the National Land Code (Penang and Malacca Titles) Act 1963 can recall the difficulties of achieving a unified system. In the other states of West Malaysia, the transfer was certainly not so traumatic, but it ought to be realised homogeneity could only be achieved by filling in the blanks in the earlier and less detailed system. The NLC therefore plans a classification of land and of use. By section 51, all land above the shore-line shall be classified as (a) town land, (b) village land and (c) country land. Then the NLC provides that all lands alienated under the Act (by which is meant the NLC) shall be used for agriculture, building or industry, subject to such express conditions as may be included or endorsed on the documents of title and the implied conditions under sections 115, 116 or 117 as the case may be. And it seeks in the case of lands alienated before the commencement of the Act to make effective provisions for the absorption of such lands into the new system. These provisions are specific for each class of land and use.

40 The question for determination by this Court can therefore be answered by first determining under the previous Land Code the twin characteristics of each land holding: (1) the nature of the land title and (2) the category of use to which the land can be put, and then by ascertaining how the NLC dealt with it.

The Certificate of Title No. 3443 which is the title to the land in question reads as follows:

50 Serial No. 22976  
GOVERNMENT OF SELANGOR  
(Schedule A. Registration of Titles Enactment)  
CERTIFICATE OF TITLE NO. 3443

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Register of Titles Vol. XLII, Folio 113.

Registration District of Kuala Lumpur

quit rent Fifty Cents \$-/50

Loke Yew of Kuala Lumpur

is now proprietor, subject to such charges as are notified by memorandum written hereon, and subject to the payment at the Land Office, Kuala Lumpur of the annual Quit-rent of \$-/50 (Fifty Cents) of all that piece of land situated in the Town of Kuala Lumpur, Allotment 36 Section 58, containing by measurement 2 acres 1 rood 34 poles more or less which said piece of land, with the dimensions, abuttals and boundaries thereof, is delineated on the plan drawn on these presents and more particularly on Revenue Survey plan number 6963, deposited in the office of the Superintendent of Revenue Surveys, Selangor

10

Being part of the land originally granted under Lease No. 746 to H.C. Syers as appears by Certificate of Title No. 2786 now cancelleth.

20

It was issued before the coming into force of the F.M.S. Land Code on January 1, 1928.

There is however, a savings provision in section 1(ii) which preserves its validity:

"(ii) Nothing in this Enactment contained shall affect the past operation of or anything done under any Enactment hereby repealed, but any right, liberty, privilege, obligation or liability imposed or incurred in respect of land alienated under any previous Land Enactment shall except as hereinafter expressly provided be subject to the provisions of this Enactment."

30

Under the F.M.S. Land Code, titles to land are in the form of grants, leases of State Land, certificates of title, and extracts of mukim-registers. The mukim register contains the particulars of all land in the mukim alienated under entry therein: section 65. The issue document of title of such land is in the form of an extract from the register issued under the hand of the relevant Collector of Land Revenue: section 67. This extract is, from the office of the Collector in the Land Office of the area, generally known as a Land Office title. The other titles, grants, leases of State land and

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certificates of title, are in duplicate, one set being kept in the Registry of Titles under separate registers and dealt with by a Registrar of Titles appointed under the Code and who is a different person from the Collector. Such titles are known generically as Registry titles. There can be no doubt therefore that C.T. 3443 is a Registry Title and not a Land Office title.

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10 As for the use of the land in C.T. 3443, the certificate clearly states that the land is within the Town of Kuala Lumpur. In section 2, there is a definition of town land. It reads

"'Town land' and 'village land' mean respectively all Land included within the boundaries of a town or village declared under this or any previous Land Enactment."

20 It is clear therefore that the land had become town land on the coming into force of the F.M.S. Land Code.

30 Senior Federal Counsel for the appellant thought that the fact that the land had, as shown in the certificate of title itself, been carved out of a lease for agricultural land, in the absence of any endorsement of the use to which the land might be put on the certificate itself, preserved its characteristic of agricultural land. His reliance on section 35 of the F.M.S. Land Code which reads

"35. When alienated land is brought within the boundaries of a town or village any condition as to the cultivation of such land, other than a condition forbidding the cultivation of any particular product or class of products, shall cease to be operative."

40 to advance the argument that while it rendered the condition for cultivation inoperative, it did not eliminate it altogether, is, with respect, without foundation. This particular section, as indeed all enacted law, should not be read for anything more than what it plainly says. By definition, the land in C.T. 3443 is town land.

It now remains to see how a piece of town land held under a Registry title is dealt with on the coming into force of the NLC and how it is absorbed into the new system.

The NLC first provides a savings clause in

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section 4(1) in words identical with those in the  
F.M.S. Land Code.

"4. (1) Nothing in this Act shall affect  
the past operation of, or anything done  
under, any previous land law or, so far as  
they relate to land, the provisions of any  
other law passed before the commencement of  
this Act.

Provided that any right, liberty,  
privilege, obligation or liability existing  
at the commencement of this Act by virtue of  
any such law shall, except as hereinafter  
expressly provided, be subject to the  
provisions of this Act."

10

It next takes cognisance of the two distinctions  
of title and defines them separately as Land  
Office titles and Registry titles. They are thus  
defined.

"'Land Office title' means title  
evidenced by a mukim grant or mukim lease or  
by any document of title registered in a  
Land Office under the provisions of any  
previous land law,"  
and

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"'Registry title' means title evidenced  
by a grant or State lease or by any document  
of title registered in a Registry under the  
provisions of any previous land law."

On these statutory definitions, the  
conclusion must be reached that C.T. 3443 remains  
a Registry title.

30

It is important to note at this stage that  
under section 52, three categories of land use are  
contemplated for all lands alienated under the Act  
so that it becomes necessary that all lands  
alienated before the commencement of the Act should  
be made, at one stage or other to fall within one  
of the three categories of agricultural, building  
or industrial purpose with the implied conditions  
spelled out in sections 115, 116 and 117  
respectively.

40

In dealing with lands alienated before the  
commencement of the Act, that is with lands  
alienated before 1966, under the F.M.S. Land Code  
or any other previous land law, or rather in  
absorbing such lands into the new system, the NLC  
has clearly to make provisions to preserve such  
express conditions as are endorsed on the title and  
to impose such implied conditions as will, if  
necessary by several stages, bring the land  
completely into the general scheme of land

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management. Thus section 110 provides that express conditions and restrictions in interest (if any) on the old document of title are retained, and certain conditions, as are applicable to the case in hand are implied. Section 110, in its relevant parts, reads

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"110. Land alienated before the commencement of this Act shall be subject as from that commencement to the following conditions and restrictions in interests -

(a) such express conditions and restrictions in interest (if any) as, immediately before that commencement, were endorsed on the document of title thereto (or, in the case of a certificate of title, referred to therein);

20

(b) in the case of land to which section 53 applies, the implied condition specified in sub-section (2) or (3) of that section, as the case may be;

....."

It is not here the case of express conditions, but it is very much the case of the implied condition specified in section 53(2) or (3) as the case may be, as provided in section 110(b) above.

Section 53 reads:

30

"53. (1) This section applies to all land alienated before the commencement of this Act other than land which, immediately before that commencement, is subject to an express condition requiring its use for a particular purpose.

(2) All land to which this section applies which is at the commencement of this Act -

(a) country land, or

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(b) town or village land held under Land Office title, shall become subject at that commencement to an implied condition that it shall be used for agricultural purposes only:

.....

(3) All other land to which this

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section applies shall become subject at the commencement of this Act to an implied condition that it shall be used neither for agricultural nor for industrial purposes:

Provided that this condition -

- (i) shall not prevent the continued use of any part of the land for any agricultural or industrial purpose for which it was lawfully used immediately before the commencement of this Act; and 10
- (ii) shall not apply to any part of the land which is occupied by or in conjunction with -
  - (a) any building lawfully erected before the commencement, or
  - (b) any building erected after that commencement, the erection of which would (under section 116) be lawful if the land were subject instead to the category 'building'." 20

Now C.T. 3443 not being country land or town land held under a Land Office title, the provisions of section 53(2) do not apply, so that there is no implied condition that it shall be used for agricultural purposes only. But it is land other than country land or town land held under a Land Office title. It is town land held under a Registry title and it comes fairly and squarely within section 53(3) so that it "shall be used neither for agricultural nor for industrial purposes." The conclusion that there is to be implied a condition that it shall be used for the only other purpose left is a very tempting one to make, but it would be a wrong one to jump to. To conclude thus would be to disregard the peculiar language used in the section and to re-write it to read "it shall be used for building purposes only." The language of the sub-section must be given effect to and the only way effect can be given to the words is the interpretation that while such a piece of land may not be used for agricultural or for industrial purposes, it may not also be used for building purposes except that under the proviso (ii)(a) to sub-section (3) above, any building erected hitherto shall not constitute a breach of this 30 40

implied condition. Confirmation for this view appears to be found in the proviso (ii)(b) to sub-section (3) above.

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(cont'd)

10 Now, a date is provided in section 54 for the absorption of lands alienated before the commencement of the Act into the defined categories of land use under the NLC. On that date to be specified by the State Authority, or in the case of lands within the Federal Territory, the Land Executive Committee, not being less than a year from the date of notification, the land in the case of section 53 (3) shall be subject to the implied condition that the category of land use shall be "building": Section 54 reads:

20 "54. (1) The State Authority may, by notification in the Gazette, specify any area of the State, and prescribe a date (not being less than one year from the date on which the notification is published) on which the provisions of this section are to take effect therein; and, on the date so prescribed -

- 30 (a) all land in that area which was alienated before the commencement of this Act shall become subject to a category of land use determined as provided by sub-section (2) (which category shall, on or before that date, be endorsed on the register document of title thereto); and
- (b) the conditions to which any such land is subject shall become as mentioned in sub-section (3):

Provided that -

- 40 (i) the provisions of this section shall not apply to any land in the area which has previously become subject to any category of land use pursuant to an application by the proprietor under section 124, or to any direction given by the State Authority under sub-section (3) of section 147 on sanctioning its amalgamation with any other land; and
- (ii) the State Authority may in any such notification exempt any land in the area from the operation of this section.

(2) The category of land use to which land becomes subject by virtue of this section

In the Federal  
Court of  
Malaysia

No. 12  
Judgment of  
Chang Min Tat  
F.J.  
14th December  
1978.  
(cont'd)

shall be -

(a) in the case of land previously subject to the implied condition specified in sub-section (2) of section 53, the category 'agriculture';

(b) in the case of land previously subject to the implied condition specified in sub-section (3) of that section, the category 'building';

(c) in the case of land previously subject to any express condition requiring its use for a particular purpose, such category as is appropriate to that purpose. 10

(3) Where any land becomes subject to a category of land use by virtue of this section -

(a) it shall become subject also to such express conditions as the State Authority may have directed under section 123, and to such implied conditions as are applicable thereto by virtue of section 115, 116 or 117; and 20

(b) all conditions to which the land was previously subject shall cease to have effect, except those implied under section 114.

(4) Land becoming subject to a category of land use by virtue of this section shall not be liable to forfeiture under this Act by reason of any breach of any condition to which it becomes subject as mentioned in paragraph (a) of sub-section (3) except upon payment of such compensation as may be agreed or determined under section 434: 30

Provided that this sub-section does not apply to any express condition which has been subsequently varied on the application of the proprietor under section 124. 40

(5) Copies of any notification under this section shall be published in accordance with section 433."

Neither the High Court nor the Federal Court has been advised whether action has been taken under section 54. I shall assume, as it appears

in all probability to be so from the evidence in this case, that there has been no notification of any such date.

In the Federal Court of Malaysia

No. 12  
Judgment of  
Chang Min Tat  
F.J.  
14th December  
1978.  
(cont'd)

10 This means, if somewhat inconveniently, that town or village land held under a Registry title under the previous Land Code which is caught under section 53(3) or section 53(3) land, is in a sort of "limbo". It is certainly neither for agricultural nor for industrial purposes. Nor it is for building purpose. Until action is taken under section 54 or the landowner applies under section 124, it does not become subject to building purpose.

20 It may seem somewhat incongruous that section 53(3) land which is eventually to be used for building purpose since it could not be used for any other purpose should have to be subject to an application under section 124 for an "alteration" of the category of land use. But the heading of this section does not convey its full scope. The provisions include an application for the imposition of any category. Section 124 reads:

"124(1) The proprietor of any alienated land may apply to the State Authority under this section for -

30 (a) the alteration of any category of land use to which the land is for the time being subjected or, Where it is not so subject for the imposition of any category thereon:

....."

The words underlined thus impose on the landowner of section 53(3) land which has not had the benefit of action under section 54 the duty to apply for the imposition of the category of use for building, if he proposes to build thereon any building of the type listed in sub-section (4) to section 116, *inter alia*, for (a) residential purposes and (b) administrative or commercial purposes.

40 For these reasons, I come to the conclusion that the respondents have failed in erecting their Wisma Central to apply as they must do, for the imposition of the category "building" to their title and that this failure is a breach of condition, by reason of which action under section 128 may be taken. The action taken however under this section by the notice in Form 7A was for failure to alter the condition of land use from agriculture to commercial. The respondents contend that their  
50 land was not agricultural and I would agree but with

In the Federal  
Court of  
Malaysia

No. 12  
Judgment of  
Chang Min Tat  
F.J.  
14th December  
1978.  
(cont'd)

respect not for the reasons advanced by them. Further there is no specific category of land use known as commercial. The Collector of Land Revenue was therefore wrong in his notice but the Director of Lands and Mines used the correct word "building" in his advice of February 14, 1975 and it could not be said that the respondents were misled or that the mistake was so fundamental that the whole proceedings should be voided. If they had correctly advised themselves on the law as to their proper duties before undertaking the construction of their office and shopping complex, they would have known that they should first apply for the imposition of the category of land use for their land which at the relevant time had no category of land use.

10

Senior Federal Counsel for the appellant also took objection to the hearing of respondents' motion on the ground that the appeal to the High Court from the decision of the Director of Lands and Mines Federal Territory made on February 17, 1976 exceeded the 3 months allowed in section 418 NLC for such an appeal by about 17 months. Section 418 reads:

20

"418. (1) Any person or body aggrieved by any decision under this Act of the State Commissioners, the Registrar or any Collector may, at any time within the period of three months beginning with the date on which it was communicated to him, appeal therefrom to the Court.

30

(2) Any such appeal shall be made in accordance with the provisions of any written law for the time being in force, relating to civil procedure; and the Court shall make such order thereon as it considers just.

(3) In this section 'decision' includes any act, omission, refusal, direction or order."

40

I am of the view that that decision was a decision within the scope of this section. With respect, I do not see how time should run from the date of the notice in Form 7A and not from the decision but even then, the appeal made by Originating Motion was out by a day at least. It was of course open to the respondents to apply for an extension of time. I have however dealt with the appeal in substance rather than on procedure, as being more satisfactory and, also in the order in which Senior Federal Counsel conducted the appeal.

50

10 It is to be appreciated that the Federal Court has since in Civil Appeal No. 94 of 1978, Pengarah Tanah dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn. Bhd. (unreported) held that in an application for alteration of the category of land use, the State Executive Committee may not require the landowner to accept a lease of 99 years for his title in perpetuity. I am now advised that it is not in the contemplation of the State Executive Committee to appeal from the decision in the Sri Lempah case and I therefore expect that the State Executive Committee will now indicate that the respondents are not required to accept a diminution in the title. The payment of a substantial premium or new quit rents did not arise in that case since the landowner agreed to such payments neither did the question of surrender for roads, etc. which it had applied to surrender. Here the respondents still resisted the payment of the premium and the increased quit rent; they must be left to consider whether in the light of this judgment, they should not welcome the offer made to accept payment even at this late stage.

20 But for the reasons given, I would allow the appeal with costs here and in the Court below.

30 CHANG MIN TAT  
(TAN SRI DATUK CHANG MIN TAT)  
JUDGE,  
FEDERAL COURT, MALAYSIA.

Kuala Lumpur,  
14th December, 1978.

Lee Hun Hoe, C.J. Borneo and Wan Suleiman, F.J. concurred.

Date of Hearing: 8th November, 1978.

Encik Fong Seng Yee, Senior Federal Counsel for Appellant.

Encik Kok Wee Kiat for Respondent.

40 Solicitors Messrs. Mah-Kok & Din.

In the Federal Court of Malaysia

No. 12  
Judgment of Chang Min Tat F.J.  
14th December 1978.  
(cont'd)

In the Federal  
Court of  
Malaysia

No. 13  
Order of the  
Federal Court  
14th December  
1978.

No. 13.

ORDER OF THE FEDERAL COURT

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA  
LUMPUR

(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO. 95 OF 1978

Between

Collector of Land Revenue  
Federal Territory

Appellant

And

10

Garden City Development  
Berhad.

Respondent

(In the Matter of Originating Motion  
No. 96 of 1976

In the High Court in Malaya at  
Kuala Lumpur

In the matter of the land held under  
issued document of title Certificate  
of Title 3443 Lot 36 Section 58  
Bandar Kuala Lumpur

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And

In the Matter of Section 128 of the  
National Land Code

Garden City Development  
Berhad.

Applicant)

CORAM: LEE HUN HOE, CHIEF JUSTICE, HIGH COURT,  
BORNEO;  
WAN SULEIMAN, JUDGE, FEDERAL COURT, MALAYSIA;  
CHANG MIN TAT, JUDGE, FEDERAL COURT, MALAYSIA.

IN OPEN COURT

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THIS 14TH DAY OF DECEMBER 1978

O R D E R

THIS APPEAL coming on for hearing on the  
8th day of November, 1978 in the presence of  
Encik Fong Seng Yee, Senior Federal Counsel  
appearing for and on behalf of the Appellant  
abovenamed and Encik Kok Wee Kiat of Counsel for  
the Respondent AND UPON READING the Record of  
Appeal filed herein AND UPON HEARING Counsel as  
aforesaid IT WAS ORDERED that this appeal do  
stand adjourned for judgment AND the same coming

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on for judgment this day in the presence of Encik Lim Heng Seng, Federal Counsel appearing for and on behalf of the Appellant abovenamed and Encik Kok Wee Kiat of Counsel for the Respondent abovenamed, IT IS ORDERED that the Appeal be and is hereby allowed AND IT IS ORDERED that the order of the High Court, Kuala Lumpur given on the 1st day of June, 1978 be and is hereby set aside AND IT IS FURTHER ORDERED that the Respondent do pay the costs in the Court below and the costs of this Appeal to be taxed by the proper officer of the Court.

In the Federal Court of Malaysia

No. 13  
Order of the Federal Court  
14th December 1978.  
(cont'd)

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GIVEN under my hand and the Seal of the Court this 14th day of December, 1978.

CHIEF REGISTRAR,  
FEDERAL COURT, MALAYSIA.

No. 14.

NOTICE OF MOTION FOR CONDITIONAL  
LEAVE TO APPEAL

No. 14  
Notice of Motion for Conditional Leave to Appeal  
6th March 1979

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IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR

(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO. 95 OF 1975

BETWEEN

Collector of Land Revenue  
Federal Territory Appellant

AND

Garden City Development Berhad Respondent

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(In the Matter of Originating Motion No. 96 of 1976)

In the High Court in Malaya at Kuala Lumpur

In the Matter of the Land held under issued document of title Certificate of Title 3443 Lot 36 Section 58,  
Bandar Kuala Lumpur

AND

In the Matter of Section 128 of the National Land Code.

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Garden City Development Berhad Applicant

In the Federal  
Court of  
Malaysia

No. 14  
Notice of  
Motion for  
Conditional  
Leave to  
Appeal  
6th March 1979  
(cont'd)

NOTICE OF MOTION

TAKE NOTICE that on Monday the 19th day of March 1979 at 9.30 o'clock in the forenoon or as soon thereafter as Counsel can be heard Counsel for the abovenamed Respondent will move the Court for an order that Conditional leave to appeal to His Majesty the Yang di-Pertuan Agung be granted to the Respondent against the order of the Federal Court dated the 14th day of December 1978 and for a further order that execution of the Judgment appealed from be stayed pending the Appeal.

10

Dated this 6th day of March 1979.

.....  
Solicitors for the Respondent abovenamed  
.....  
Chief Registrar  
Federal Court,  
Kuala Lumpur.

To: Senior Federal Counsel  
for and on behalf of the Appellant  
c/o Attorney-General's Chambers  
Jalan Kaja,  
Kuala Lumpur.

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Filed this 9th day of January 1979.

.....  
Chief Registrar,  
Federal Court,  
Kuala Lumpur.

This Notice of Motion is filed by Messrs. Mah-Kok & Din, Solicitors for the Respondent abovenamed whose address for service is Podium, Bangunan Bank Kakyat, Jalan Tangsi, Kuala Lumpur.

This Notice of Motion is supported by the Affidavit of Kok Wee Kiat affirmed on the 8th day of January 1979 and filed herein.

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No. 15

ORDER OF THE FEDERAL COURT GRANTING  
CONDITIONAL LEAVE TO APPEAL

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT  
KUALA LUMPUR

(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO. 95 OF 1978

BETWEEN

Collector of Land Revenue  
Federal Territory

Appellant

AND

Garden City Development Berhad

Respondent

(In the Matter of Originating Motion  
No. 96 of 1976)

In the High Court in Malaya at Kuala Lumpur

In the Matter of the Land held under  
issued document of title Certificate  
of Title 3443 Lot 36 Section 58  
Bandar Kuala Lumpur

AND

In the Matter of Section 128 of the  
National Land Code.

Garden City Development Berhad

Applicant)

CORAM: LEE HUN HOE, CHIEF JUSTICE, HIGH COURT  
IN BORNEO;  
WAN SULEIMAN, JUDGE, FEDERAL COURT, MALAYSIA;  
ABDUL HAMID, JUDGE, FEDERAL COURT, MALAYSIA

IN OPEN COURT  
THIS 19TH DAY OF MARCH 1979

O R D E R

UPON MOTION made unto Court this day by  
Encik Ong See Seng of Counsel for the Respondent  
and Encik Lim Heng Seng, Federal Counsel appearing  
for and on behalf of the Appellant AND UPON READING  
the Notice of Motion dated the 9th day of January,  
1979 and the Affidavit of Kok Wee Kiat affirmed on  
the 8th day of January 1979 and filed herein IT IS  
ORDERED that the Respondent above named be and is  
hereby leave to appeal to His Majesty the Yang di-  
Pertuan Agong against the Order of the Federal  
Court dated the 14th day of December 1978 upon  
the following conditions:-

In the Federal  
Court of  
Malaysia

No. 15  
Order for  
Conditional  
Leave to  
Appeal  
19th March 1979

In the Federal Court of Malaysia  
No. 15  
Order for Conditional Leave to Appeal  
19th March 1979.  
(cont'd)

- (a) that the Respondent do within three (3) months from the date hereof enter into good and sufficient security to the satisfaction of the Chief Registrar Federal Court, Malaysia in the sum of M\$5,000.00 (Ringgit Five thousand only) for the due prosecution of the Appeal and the payment of all such costs as may become payable to the Appellant not obtaining an Order granting him Final Leave to appeal or of the Appeal being dismissed for non-prosecution or of the Yang di-Pertuan Agong ordering the Respondent to pay the Appellant's costs of the Appeal as the case may be; and 10
- (b) that the Respondent do within the said period of three (3) months from the date hereof take the necessary steps for the purpose of procuring the preparation of the Record and for the despatch thereof to England. 20

AND IT IS ORDERED that execution of the aforesaid Judgment appealed from be suspended pending the Appeal.

AND IT IS LASTLY ORDERED that the costs of and incidental to the Application hereof be costs in the cause.

Given under my hand and Seal of the Court this 19th day of March, 1979.

.....  
CHIEF REGISTRAR,  
FEDERAL COURT,  
MALAYSIA.

30

No. 16  
Order Granting Final Leave to Appeal to His Majesty the Yang di-Pertuan Agong  
19th September 1979.

No. 16

ORDER GRANTING FINAL LEAVE TO APPEAL  
TO HIS MAJESTY THE YANG DI-PERTUAN  
AGONG

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT  
KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 95 OF 1978

BETWEEN

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|   |     |             |  |
|---|-----|-------------|--|
| The Collector of Land Revenue<br>Federal Territory  | AND | Appellant   | In the Federal<br>Court of<br><u>Malaysia</u>  |
| Garden City Development Berhad  |     | Respondent  | No. 16<br>Order Granting<br>Final Leave to<br>Appeal to His<br>Majesty the<br>Yang di-Pertuan<br>Agong |
| (In the matter of Originating Motion No.<br>96 of 1976 in the High Court in Malaya<br>at Kuala Lumpur |     |             | 19th September<br>1979.<br>(cont'd)  |
| between   |     |             |  |
| Garden City Development Berhad  |     | Appellant   |  |
| And   |     |             |  |
| The Collector of Land Revenue,<br>Federal Territory   |     | Respondent) |  |

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CORAM: RAJA AZLAN SHAH, ACTING LORD PRESIDENT,  
MALAYSIA  
CHANG MIN TAT, JUDGE, FEDERAL COURT, MALAYSIA  
IBRAHIM BIN ABDUL MANAN, JUDGE, FEDERAL COURT  
MALAYSIA

IN OPEN COURT

THIS 19TH DAY OF SEPTEMBER 1979

20

O R D E R

UPON READING the Notice of Motion on behalf of the Respondent dated the 22nd day of August 1979 filed herein AND UPON HEARING the Counsel for the Appellant and the Respondent AND UPON READING the Affidavit of Kok Wee Kiat in support of the said motion IT IS ORDERED that final leave be granted to the Respondent to appeal to His Majesty the Yang di-Pertuan Agung against the decision of this Honourable Court given on the 14th day of December 1978 in the above Federal Court Civil Appeal No. 95 of 1978 AND IT IS FURTHER ORDERED that the costs of and incidental to this application be costs in the cause.

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Given under my hand and the Seal of the Court this 19th day of September 1979.

Chief Registrar,  
Federal Court, Malaysia,  
Kuala Lumpur.

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This Order is filed by Mah-Kok & Din, Solicitors for the Respondent abovenamed and whose address for service is Podium, Bangunan Bank Rakyat, Jalan Tangsi, Kuala Lumpur.

In the High  
Court in  
Malaya

EXHIBITS

No. 17

No. 17  
Affidavit of  
Hsu Lit Ling  
9th October 1976

AFFIDAVIT OF HSU LIT LING

IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR

ORIGINATING MOTION NO. 96 OF 1976

In the matter of the land held under  
issue document of title  
Certificate of Title 3443 Lot 36  
Section 58, Bandar Kuala Lumpur.

AND

In the matter of Section 128,  
National Land Code.

10

Garden City Development Berhad

Applicant

A F F I D A V I T

I, HSU LIT LING (NRIC NO. 3238970) of No. 30  
Jalan SS 22/5, Damansara Utama, Selangor do hereby  
solemnly affirm and say as follows:-

1. I am the Planning Officer of the Applicant  
and am duly authorised to make this Affidavit.

2. The Applicant is the registered proprietor  
of the land held under Certificate of Title No.  
3443 Lot No. 36 Section 58, Town of Kuala Lumpur  
(hereinafter referred to as "the Said Land").

20

3. On or about 14th day of February 1975, the  
Pengarah, Tanah dan Galian Wilayah Persekutuan,  
Kuala Lumpur, wrote to the Applicant. A xerox  
copy of the letter is annexed hereto and marked  
"HLL-1".

4. On or about 13th day of May 1975, the  
Applicant's solicitors, Messrs. Mah-Kok & Din,  
wrote to the Pengerusi, Jawatan Kuasa Kerja  
Tanah, Wilayah Persekutuan Kuala Lumpur with a  
carbon copy to the Pengarah, Tanah dan Galian,  
Wilayah Persekutuan Kuala Lumpur. A xerox copy  
of the said letter is annexed hereto and marked  
"HLL-2".

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5. At the said Pengarah's request made on or  
about 26th day of June 1975, the said solicitors  
forwarded a translation of "HLL-2" in Bahasa  
Malaysia to the said Pengarah on or about 28th  
day of July 1975. A xerox copy of the said  
translation is annexed herewith and marked  
"HLL-3".

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6. On or about 2nd day of March 1976, the said Pengarah wrote referring to the Applicant's solicitors' letter dated the 13th day of May 1975. A xerox copy is annexed hereto marked "HLL 4".

In the High Court in Malaya

No. 17  
Affidavit of Hsu Lit Ling  
9th October 1976.  
(cont'd)

7. On or about 12th day of July 1976, the Applicant was served with Form 7A of the National Land Code. A xerox copy is annexed hereto marked "HLL-5".

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8. On the 8th day of October 1976, the Applicant's solicitors, Messrs. Mah-Kok & Din, caused a search to be made on the register document of title to the said Land and found no expressed endorsements on the said document of title pertaining to the category of land use to which the said Land is for the time being subject.

AFFIRMED at Kuala Lumpur  
this 9th day of October  
1976 at 10.20 a.m. ) Sgd.

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Before me,

Sgd.  
.....  
Commissioner for Oaths  
Kuala Lumpur

No. 17

TRANSLATION OF EXHIBIT "HLL-1" TO THE  
AFFIDAVIT OF HSU LIT LING

No. 17  
Translation of Exhibit "HLL-1" to the Affidavit of Hsu Lit Ling  
14th February 1975.

ref: (7)dlm.PTG/WP.6/305/74 LAND DEPARTMENT  
FEDERAL TERRITORY  
OFF JALAN  
PEKELILING  
KUALA LUMPUR  
14th February 1975.

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FOR SERVICE

M/s. Garden City Development Berhad,  
c/o M/s Syarikat Jurukur Malaysia,  
6th Floor, Bangunan Lee Yan Lian,  
Jalan Tun Perak,  
KUALA LUMPUR.

Sirs,

Application for

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- (i) Cancellation of Express Condition Pursuant to Section 124 (1)(b) National Land Code found on C.T.3443 Lot 36 Section 58 Kuala Lumpur City and to impose new express

In the High Court in Malaya

No. 17

Translation of Exhibit "HLL-1" to the Affidavit of Hsu Lit Ling 14th February 1975.

(cont'd)

conditions under Section 124(1)(c) National Land Code in order that this land may be used for building of 7-storey shopping and office complex

- (ii) To surrender part of the land according to Section 200 National Land Code for purposes of road repairs

I am directed to inform that the Land Executive Committee, Federal Territory has considered this application and based on the regulations as stipulated your application as forwarded will not be considered. However, the Committee shall approve the surrender of Land Title CT.3443 Lot. 36 Section 58 Kuala Lumpur City when the appropriate official application has been forwarded. The Committee shall then approve grant of title to you as regard the balance lot which is included in Lot 36 Section 58 Kuala Lumpur City after exclusion of the area necessary to be surrendered for road repairs as shown in the plan of the Kuala Lumpur City Planner Re: 110A/72 with conditions and payments as follows:

Document of Title: Registered Document of Title.

Nature of Title: 99-year lease

Premium: \$6.00 per square foot (30% from \$20/- per sq. ft.)

Annual Rent: 12 cts. per sq. foot.

Survey Fees and other payments: Rate as fixed.

Nature of Land Use: Building.

Express Condition

- (i) This land shall be used only for shopping and office complex.
- (ii) Building on this land shall comply with building order as issued by the City Mayor.

In the circumstances, please make the following payments :

|                     |                  |  |
|---------------------|------------------|--|
| Additional premium: | \$643,599.00     |  |
| New Rent:           | <u>12,872.00</u> |  |
|                     | \$656,471.00     |  |
|                     | =====            |  |

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Attached herewith are 3 copies of Form 12A for your action if this approval is agreed to. Complete the said form and return it together with Title CT. 3443 Kuala Lumpur City so that action of realienation may be taken. You are also required to complete Land Application Form (Schedule 2) in two copies to exclude the said land.

In the High Court in Malaya

No. 17  
Translation of Exhibit "HLL-1" to the Affidavit of Hsu Lit Ling 14th February 1975.  
(cont'd)

Yours sincerely,

Sgd. ABDUL MALEK BIN AHMAD  
for the Director,  
Land and Mines Wilayah Persekutuan,  
Kuala Lumpur.

No. 17

EXHIBIT "HLL-2" TO THE AFFIDAVIT OF  
HSU LIT LING

No. 17  
Exhibit "HLL-2" to the Affidavit of Hsu Lit Ling 13th May 1975.

MAH KOK & DIN

Kuala Lumpur: May 13, 1975

DATE STAMPED 15 MAY 1975

Our ref: K/3604/GCD

Tuan,

Re: Permohonan untuk:

1) Pembatalan syarat Nyata mengikut seksyen 124(i)(b) Kanun Tanah Negara yang terdapat keatas C.T. 3443 Lot 36 seksyen 58 Bandar Kuala Lumpur dan menyenahan syarat nyata yang baru di bawah seksyen 124(i)(c) Kanun Tanah Negara supaya tanah ini boleh di gunakan untuk kompleks perkedaian dan pejabat 7 tingkat.

2) Menyerahkan balik sebahagian tanah mengikut seksyen 200 Kanun Tanah Negara untuk tujuan perbaikan jalan

We are acting for Garden City Development Berhad of Lot 2.142, 1st Floor, Wisma Central, Kuala Lumpur.

2. We refer to the letter from Pengarah Tanah dan Galian Wilayah Persekutuan, Kuala Lumpur, Bil. (7) dlm P.T.G./WP 6/305/74 dated 14th February 1975 a photocopy of which is annexed herewith. Your attention is drawn to the conditions offered by the

In the High  
Court in  
Malaya

No. 17  
Exhibit "HLL-2"  
to the Affidavit  
of Hsu Lit Ling  
13th May 1975.  
(cont'd)

Jawatan Kuasa Kerja Tanah Wilayah Persekutuan on the realienation of the balance of the above-mentioned land after part of the same has been taken for purpose of road widening as required by City of Kuala Lumpur Planning Committee in its approval of planning permission. Our client is particularly aggrieved by condition 2(i.e. lease of 99 years) which reduces its interests in the said land from a right in perpetuity to a mere lease of 99 years.

10

3. Our client instructs that the said condition 2 is unfair and inequitable and we are instructed to appeal to the said Jawatankuasa for its careful and cautious reconsideration based on the following grounds:-

(i) That the rules of "surrender and realienation" made and adopted by the said Jawatankuasa is merely procedural in nature and it does not give the said Jawatankuasa a right to deprive or adversely restrict our client of its full interest in the said land.

20

(ii) In addition, a reduction of interest from a right in perpetuity to 99 years lease in effect tantamount to a substantial deprivation of our client's property and hence contrary to Article 13 of the Federal Constitution which provides:

"13. Rights to property.

(1) No person shall be deprived of property save in accordance with law.

30

(2) No law shall provide for the compulsory acquisition or use of property without adequate compensation."

(iii) The City of Kuala Lumpur Planning Committee has imposed in its planning permission and our client has agreed to surrender part of the said land for road widening at a nominal value of \$1.00. The imposition by the said Jawatankuasa to reduce its interest in the said land to 99 years lease would inflict further and unbearable loss to our client.

40

(iv) The imposition of condition 2 caused great hardship to our client in that:

(a) the said land is now subjected to a charge in favour of Malayan Banking

Berhad who are unlikely to agree to surrender the existing title; and

In the High Court in Malaya

(b) in the event that the title is not surrendered, the said land will remain undeveloped.

No. 17 Exhibit "HLL-2" to the Affidavit of Hsu Lit Ling 13th May 1975. (cont'd)

4. In view of the above our client would appreciate if the said Jawatankuasa would kindly reconsider the application.

10

Yang benar,

Sgd.

Pengurus,  
Jawatan Kuasa Kerja Tanah  
Wilayah Persekutuan,  
KUALA LUMPUR.

Melalui:

Pengarah Tanah dan Galian, Wilayah Persekutuan,  
Jabatan Tanah Wilayah Persekutuan,  
Off Jalan Pekeliling,  
KUALA LUMPUR.

20

c.c. Clients.

This is the Exhibit Marked "HLL-2" referred to in the Affidavit of Hsu Lit Ling sworn to before me this 9th day of Oct. 1976.

Commissioner for Oaths  
Kuala Lumpur.

30

No. 17

TRANSLATION OF EXHIBIT MARKED "HLL-3"

Translation

Kuala Lumpur: May 13th, 1975

(12) dlm. PTG/WP.6/305/74  
K/3604/CCD

No. 17 Translation of Exhibit "HLL-3" to the Affidavit of Hsu Lit Ling - 13th May 1975

40

Sir,

Re: Application for:

- 1) Cancellation of Express Condition Pursuant to Section 124(i)(b) National Land Code found on CT.3443 Lot 36 Section 58 Kuala Lumpur City and to impose new express conditions under section 124(i)(c) National Land Code in order

In the High Court in Malaya

No. 17  
Translation of Exhibit "HLL-3" to the Affidavit of Hsu Lit Ling - 13th May 1975 (cont'd)

that this land may be used for building of a 7-storey shopping and office complex.

- 2) To surrender part of the land according to Section 200 National Land Code for purposes of road repairs.

---

We represent Garden City Development Berhad of Lot 2.142 1st Floor, Wisma Central, Kuala Lumpur.

2. We refer to the letter from the Director of Lands and Mines Federal Territory, Kuala Lumpur, No. (7) dlm.P.T.G./WP6/303/74 dated 14th February, 1975, a xerox copy of which is annexed herewith. Your attention is drawn to the conditions offered by the Land Executive Committee, Federal Territory on the realienation of the balance of the above-named land whereby part of the land has been acquired for purposes of road widening by the City of Kuala Lumpur Planning Committee in its approval of planning permission. Our client is very much aggrieved by Condition 2 (i.e. lease of 99 years) which reduces the value of the said land from a right in perpetuity to a mere 99 years.

10

20

3. Our client is of the opinion that the said condition is unfair and inequitable and we are instructed to appeal to the committee for its careful scrutiny based on the grounds as follows:-

i) That the rules of "surrender and realienation" made and adopted by the said Committee is merely procedural in nature and does not give the said Committee a right to deprive or adversely restrict our clients of its full interest in the said land.

30

ii) In addition, a reduction of interest from a right in perpetuity to 99 years lease in effect tantamount to a substantial deprivation of our client's property and hence contrary to Article 13 of the Federal Constitution.

iii) The City of Kuala Lumpur Planning Committee has imposed in its planning permission and our client has agreed to surrender part of the said land for road widening at a nominal value of \$1.00. The decision of the Committee to reduce its interest in the said land to 99 years lease would inflict unbearable loss to our client.

40

iv) The imposition of condition 2 caused great hardship to our client in that:

(a) the said land is now subjected to a charge in favour of Malayan Banking Berhad who are unlikely to agree to surrender the existing title.

In the High Court in Malaya

(b) in the event that the title is not surrendered the said land will remain undeveloped.

No. 17  
Translation of Exhibit "HLL-3" to the Affidavit of Hsu Lit Ling - 13th May 1975  
(cont'd)

4. In view of the above our client would appreciate if the said Committee would kindly reconsider the application.

Yours truly,  
signed.

Chairman,  
Land Executive Committee  
Federal Territory,  
KUALA LUMPUR.

through:

Director of Lands and Mines, Federal Territory,  
Land Department of the Federal Territory,  
Off Jalan Pekeliling,  
KUALA LUMPUR

c.c. Clients.

No. 17

TRANSLATION OF EXHIBIT "HLL-4" TO THE AFFIDAVIT

Translation

LAND DEPARTMENT FEDERAL TERRITORY,  
OFF JALAN PEKELILING,  
KUALA LUMPUR.

No. 17  
Translation of Exhibit "HLL-4" to the Affidavit of Hsu Lit Ling - 2nd March 1976

2nd March, 1976.

Our Ref: (24)dlm.PTG/WP.6/305/74

M/s. Mah-Kok & Din,  
Advocates and Solicitors,  
P.O. Box 2625,  
Kuala Lumpur 01-02.

Sirs,

Application for:-

(i) Cancellation of Express condition Pursuant to Section 124(i)(b) National Land Code found on CT.3443 Lot 36 Section 58 Kuala Lumpur City and to impose new express

In the High  
Court in  
Malaya

No. 17  
Translation  
of Exhibit  
"HLL-4" to  
the Affidavit  
of Hsu Lit  
Ling - 2nd  
March 1976.  
(cont'd)

conditions under section 124(i)(c)  
National Land Code in order that this land  
may be used for building of a 7-storey  
shopping and office complex.  
and

- (ii) To surrender part of the land according to  
section 200 National Land Code for purpose  
of road repairs
- 

With reference to your letter No. K/3604/GCD  
dated 17th February, 1976, in respect of the above,  
forwarded herewith is a photostat copy of the  
approval which have been amended so that the  
additional premium imposed is only \$623,199/- and  
to be paid within a period of one month as required.

10

Other conditions remain the same as contained  
in letter of approval No. (7)d1m.PTG/WP.6/305/74  
dated 14th February, 1975. Your letter K/3604/GCD  
dated 13th May, 1975 refers.

This application shall be revoked if the  
above additional payment is not made within the  
period as stated above and action against Breach  
of Condition under Section 125 of the National Land  
Code will be taken.

20

That is all.

I am Sir, your obedient servant,  
sgd. Abdul Samad bin Sabri  
for. the Director of Lands and Mines,  
The Federal Territory,  
Kuala Lumpur.

No. 17  
Translation  
of Exhibit  
"HLL-5" to  
the Affidavit  
of Hsu Lit  
Ling - 12th  
July 1976.

No. 17

30

TRANSLATION OF EXHIBIT "HLL-5"

NATIONAL LAND CODE

FORM 7A

(Section 128)

NOTICE TO REMEDY A BREACH OF CONDITION

To M/s Garden City Development Bhd.,  
of M/s Mah-Kok & Din, Advocates & Solicitors  
Penthouse, 9 Jalan Gereja, Kuala Lumpur.

proprietor of the land scheduled below.

Whereas I the undersigned am satisfied that a breach of the condition schedules below has arisen in that-

In the High Court in Malaya

Failing to amend the condition of land use from that of Agricultural to Commercial.

No. 17  
Translation of Exhibit "HLL-5" to the Affidavit of Hsu Lit Ling - 12th July 1976.  
(cont'd)

Now therefore in exercise of the powers conferred by section 128 of the National Land Code I hereby require you within a period of 3 months from the date of this notice to take the following action to remedy this breach-

10

From Agricultural to Commercial on payment in the sum of \$623,199.00 as contained in the letter of this Department No.(22)d/m. PTG/WP-6/305/74 dated 17th February, 1976.

Dated this 12th July, 1976.

Collector: sgd. Collector of Land Revenue  
Federal Territory.

SCHEDULE OF LAND AND OF CONDITION

City of Kuala Lumpur Lot/L.O. No. 36  
Description and No. of Title: Registration  
(No.C.T.3443)

20

Area: 2a. 1r. 34p.

Condition Breached: Using Agricultural land for Commercial purposes.

No. 18

No. 18  
Affidavit of  
Datuk Mohd  
Othman - 24th  
December 1976

AFFIDAVIT OF DATUK MOHD OTHMAN

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

ORIGINATING MOTION NO. 96 OF 1976

In the matter of the land held under issue document of title Certificate of Title 3443 Lot 36 Section 58, Bandar Kuala Lumpur.

30

And

In the matter of Section 128, National Land Code.

Garden City Development Berhad

Applicant

In the High  
Court in  
Malaya

A F F I D A V I T

No. 18  
Affidavit of  
Datuk Mohd  
Othman - 24th  
December 1976  
(cont'd)

I, Datuk Mohd Othman bin Mohd Din Pengarah Tanah dan Galian Wilayah Persekutuan and also Pemungut Hasil Tanah Wilayah Persekutuan of Jabatan Tanah Wilayah Persekutuan, off Jalan Pekeliling Kuala Lumpur O2-17, do hereby solemnly affirm and say as follows:

1. On or about the 7th day of June, 1973 the Applicant applied to the Pemungut Hasil Tanah, Pejabat Daerah dan Tanah Kuala Lumpur under section 124 of the National Land Code for conversion of agricultural land held under Certificate of Title 3443 Lot 36 Section 58, Bandar Kuala Lumpur, a copy of which is annexed hereto and marked "OD-1". A copy of the Particulars of Title is also annexed hereto and marked as "OD-2". 10

2. Sometime in September 1974 the Applicant commenced operations for the building of a seven storey office and shopping complex, now known as Wisma Central, on the land referred to in paragraph 1 above. Only Temporary Certificate of Fitness was issued up to six floor on 5th January 1976. 20

3. The building known as Wisma Central is now used for office purposes and a shopping complex, that is, for commercial purposes, which is a contravention under section 115 of the National Land Code with the condition for use of land now endorsed on the Certificate of Title as in annexure marked "OD-2". 30

4. On 1st day of February 1974 the Wilayah Persekutuan Kuala Lumpur was promulgated by an Act of Parliament and under an order proclaimed by the Yang di-Pertuan Agong vide P.U.(A) 56 of 1974 references to the State Authority in the National Land Code was modified to read as the Land Executive Committee/Jawatan-kuasa Kerja Tanah for purposes of the Wilayah Persekutuan.

5. On or about the 14th day of February, 1975, the Pengarah, Tanah dan Galian Wilayah Persekutuan, Kuala Lumpur conveyed to the Applicant the decision of the Jawatankuasa Kerja Tanah Wilayah Persekutuan regarding the application (annexure marked "OD-1") as in copy of letter marked "HLL-1" in the affidavit of Hsu Lit Ling dated 9th October, 1976. 40

6. On or about the 13th day of May, 1975, the Applicant's solicitors, Messrs. Mah-Kok & Din, appealed to the Pengerusi, Jawatankuasa Kerja 50



Tanah Wilayah Persekutuan, Kuala Lumpur as in copy of letter marked "HLL-2" in the above-mentioned affidavit.

In the High Court in Malaya

No. 18  
Affidavit of  
Datuk Mohd  
Othman - 24th  
December 1976  
(cont'd)

10 7. On or about the 13th day of January, 1976 the Pengarah, Tanah dan Galian Wilayah Persekutuan Kuala Lumpur conveyed to the Applicant's solicitors the decision of the Jawatankuasa Kerja Tanah Wilayah Persekutuan that the appeal mentioned in paragraph 6 above had been rejected. Copy of this letter is annexed hereto and marked "OD-3".

20 8. On or about the 17th day of February 1976 the Pengarah Tanah dan Galian Wilayah Persekutuan conveyed to the Applicant the decision of the Jawatankuasa Kerja Tanah Wilayah Persekutuan regarding the appeal mentioned in paragraph 6 above that the decision of the Jawatankuasa Kerja Tanah as conveyed by the letter dated 14th February 1975 (not 16th February 1975 as stated) was to be implemented forthwith. The Pengarah Tanah dan Galian in the same letter amended the further premium payable from \$643,599/= to \$623,199/=. Also conveyed to the Applicant was the precondition that the further premium of \$623,199/= was to be paid within one month from the date of the letter. Copy of this letter is annexed hereto and marked "OD-4".

30 9. The Applicant failed to make a fresh application and pay the further premium within the period of one month as suggested in the letter dated 14th day of February 1975 (annexure "HLL-1") as amended by the letter dated 17th February 1976, (annexure "OD-4") and allowed the continued contravention of use of the land from "Agricultural" to "Commercial".

40 10. The land under Certificate of Title as in annexure "OD-2" is liable under section 127 of the National Land Code to forfeiture to the Government of the Federation for the breach as stated in paragraph 3 above and since it appears to the Collector/Pemungut Hasil Tanah Wilayah Persekutuan that the breach is capable of being remedied by the proprietor within a reasonable time, the Collector/Pemungut Hasil Tanah Wilayah Persekutuan served on the Applicant a notice in form 7A dated 12th July, 1976 copy of which is annexed as "HLL-5" in the abovementioned affidavit.

50 AFFIRMED by the abovenamed )  
Datuk Mohd Othman bin Mohd ) Sgd.  
Din at Kuala Lumpur on the ) .....  
24th day of December, 1976 )  
at 10.45 a.m.

In the High  
Court in  
Malaya

BEFORE ME,

Sgd.

Commissioner for Oaths  
High Court, Kuala Lumpur.

No. 18  
Affidavit of  
Datuk Mohd  
Othman - 24th  
December 1976.  
(cont'd)

This Affidavit is filed by the Senior Federal  
Counsel for and on behalf of the Pemungut Hasil  
Tanah, Kuala Lumpur address for service is c/o  
Attorney-General's Chambers, Kuala Lumpur.

No. 18  
Translation  
of Exhibit  
"OD-1" to  
the Affidavit  
of Datuk Mohd  
Othman - 7th  
June 1973

No. 18

TRANSLATION OF EXHIBIT "OD-1"

10

Translation GARDEN CITY DEVELOPMENT SDN BHD.,  
AIA Building, Jala Ampang,  
Kuala Lumpur.

Ref:(12)in PHT.KL 6/2268/72 7th June, 1973.

Collector of Land Revenue,  
District & Land Office,  
Kuala Lumpur.

Sir,

Application for sub-division of  
Land Lot 16, Section 58, Kuala  
Lumpur City.

20

We refer to your letter Ref:(12) dlm PHT.KL  
6/2268/72.

We officially apply for conversion of condition  
under Section 124, National Land Code and attach  
herewith a cheque PBB No. 361446 in the sum of  
\$10.00 as registration fee.

That is all.

Yours truly,  
GARDEN CITY DEVELOPMENT SDN. BHD.,

30

sgd.  
C.Y. Wong.

c.c. Syarikat Jurukor Malaysia (Bhd.),  
6th Floor, Lee Yan Lian Building,  
Kuala Lumpur.

No. 18

In the High  
Court in  
Malaya

TRANSLATION OF EXHIBIT MARKED "OD-2"

PARTICULARS OF TITLE

|                          |   |
|--------------------------|---|
| Title No. C.T. 3443      | Lot No. 36 Section 58                     |
| District of Kuala Lumpur | City of Kuala Lumpur.                     |
| Area of Land: 2a.1r.34p. | Annual Rent: 32,146.00                    |
| Nature of Land use: Nil  | Date of Registration:<br>6th August 1909. |

No. 18  
Translation  
of Exhibit  
"OD-2" to the  
Affidavit of  
Datuk Mohd  
Othman - 16th  
December 1976

PROPRIETOR: Garden City Development Sdn. Bhd.

Express Condition:

See Annexure 'A'

Restrictions of interest: - nil.

Encumbrances: See annexure 'B'

Dated: 16th December, 1976      sgd & sealed.

(Tan Kian Poi)  
Registrar of Land Titles,  
Federal Territory.

10

In the High  
Court in  
Malaya

No. 18  
Translation  
of Exhibit  
"OD-2" to the  
Affidavit of  
Datuk Mohd  
Othman - 16th  
December 1976.  
(cont'd)

ANNEXURE 'A'

Syarat-syarat Nyata seperti yang terdapat dalam  
Suratan Hakmilik Asal Lease for Agricultural  
Land No. 746:

- (i) That the Quit Rent of \$20/= cents annually be paid by H.C. Syers, or those claiming under him, into the Land Office of the District on the first day of January, 1887, and on the same date in each succeeding year, in advance without demand. 10
- (ii) That all minerals upon or beneath this land be reserved for the Government, and that all reasonable facilities will be afforded to the Government for taking the same on payment of compensation for damage actually sustained by the holder of the Lease. 20
- (iii) That the Government may resume the whole or any portion of this Land, if it shall hereafter be required for any public purpose, upon the same terms as in paragraph two.
- (iv) That the Government may take any road-making material, on the same terms as in paragraph two. 30
- (v) That the Government may take, or grant licenses for taking any timber or other natural produce upon this Land.
- (vi) That the Government may control all water-courses, and that this Land shall continue to be subject to all existing rights of way and other easements. 40
- (vii) The Land-marks defining the boundaries of this Land, will be set up and maintained to the satisfaction of the Collector of Land Revenue, or other Officer appointed for the time being by the Government.
- (viii) That this Lease be subject to the State Land Regulations in force for the time being, and that this Land shall not be transferred, subdivided or mortgaged, except in accordance with the provisions therein contained (Full information as

to these provisions will be given in any District Land Office).

In the High Court in Malaya

- (ix) That this Lease may be forfeited if H.C. Syers or those claiming under him, fail to comply with any of the foregoing conditions.

No. 18  
Translation of Exhibit "OD-2" to the Affidavit of Datuk Mohd Othman - 16th December 1976 (cont'd)

ENCUMBRANCES

ANNEXURE 'B'

No. 13338 Lease Volume XXX Folio 141

FROM: Garden City Development Private Limited.

To: National Electricity Board, Malay States. For the period of 30 years and beginning on the 1st April, 1973 and terminating on the 31st March, 2003 (that part of the land coloured in red as specified on the plan attached to the lease).

Presented and Registered at Kuala Lumpur, 26th July, 1973 at 3.30 o'clock in the afternoon.

sgd. Zulkifli bin Sharif  
Registrar.

In the High  
Court in  
Malaya

No. 18  
Translation  
of Exhibit  
"OD-2" to the  
Affidavit of  
Datuk Mohd  
Othman - 16th  
December 1976.  
(cont'd)

No. 1567/76 Charge Vol.43 Folio 186

FROM: Garden City Development Berhad.

TO: MALAYSIA BORNEO FINANCE CORPORATION (M)  
Berhad.

Presented & Registered at the Land Office, Federal  
Territory, on 23rd August, 1976 at 9.10 a.m.

sgd. Abdullah bin Manap  
Registrar.

---

No. 391/76 Exempt Tenancy Vol. 1 Folio 18

Tenancy Exempt claimed by The Prudential Assurance  
Company Limited for a period of 2 years beginning  
8th May, 1975 terminating 7th May, 1977.

10

Presented & Registered at the Land Office, Federal  
Territory, on 6th September, 1976, 9.20 a.m.

Sgd. Abdullah bin Manap  
Registrar.

---

No. 8140/76 Personal Caveat Vol. 1 Folio 63.

Lodged by Citibank N.A.

Recorded in the Register on 8th September, 1976  
at 11.16 a.m.

20

Sgd. Abdullah bin Manap  
Registrar.

---

No. 511/76 Misc. Dec. Vol. 3 Folio 192.

Land subject to action for breach of condition.

Registered on 24th November, 1976 at 9.36 a.m.

FILE: PTG/WP.6/305/74.

Sgd. Tan Kia Poi  
Registrar

---

sgd. REGISTRAR OF LAND TITLES  
FEDERAL TERRITORY

30

No. 18

TRANSLATION OF EXHIBIT MARKED "OD-3"

Translation

(19)d1m.PTG/WP.6/305/74

13th January, 1976

REGISTERED LETTER

M/s Mah-Kok & Din,  
Advocates & Solicitors,  
Penthouse,  
9 Jalan Gereja,  
Kuala Lumpur.

Sir,

Application for extension of period of  
proprietorship on lot to be excluded  
from Federal Lease for a period of 99  
years to Free Hold Title on Lot 36  
Section 58, Bandar Kuala Lumpur

I have the honour to inform that the Land  
Executive Committee, Federal Territory, which had  
met on 8th December, 1975 had considered your  
application as above and the Committee rejected  
this application.

That is all.

I am, your obedient servant,

sgd.  
(Abdul samad bin Sabri)  
for the Director,  
Lands & Mines,  
Federal Territory,  
Kuala Lumpur.

In the High  
Court in  
Malaya

No. 18  
Translation  
of Exhibit  
"OD-3" to the  
Affidavit of  
Datuk Mohd  
Othman - 13th  
January 1976

10

20

30

No. 18

TRANSLATION OF EXHIBIT MARKED "OD-4"

Translation

17th February, 1976

Registered

M/s Garden City Development Bhd.,  
c/o M/s Mah-Kok & Din,  
Advocates & Solicitors,  
Penthouse,  
9 Jalan Gereja,  
Kuala Lumpur.

No. 18  
Translation  
of Exhibit  
"OD-4" to the  
Affidavit of  
Datuk Mohd  
Othman - 17th  
February 1976

In the High  
Court in  
Malaya

No. 18  
Translation  
of Exhibit  
"OD-4" to the  
Affidavit of  
Datuk Mohd  
Othman - 17th  
February 1976  
(cont'd)

Sir,

Application for:-

(i) Cancellation of Express Condition Pursuant to Section 124(i)(b) National Land Code found on CT.3443 Lot 36 Section 58 Kuala Lumpur City and to impose new express condition under section 124(i)(c) National Land Code in order that this land may be used for building of a 7-storey shopping and office complex. 10

and

(ii) To surrender part of the land according to section 200 National Land Code for purpose of road repairs

---

I refer to the letter from this Department No. (19) in the same series dated 13th January, 1976 and to inform that the approval as extended to you vide letter of this Department No. (7) in the same series dated 16th February, 1975 shall remain in force. However, the additional premium stated in the said letter is altered, i.e. according to the area of the new plots which have been approved by the Land Executive Committee, Federal Territory according to Plan R/S No. 110A/72. The said payment is as follows:- 20

Additional Premium: - \$623,199.00

2. The above payment in the sum of \$623,199.00 is according to the approximate calculation of the area of the land to be issued with the new title, i.e. in the total area of about 103,866.50 square feet @ \$6/- per square foot. Additional payment shall be further imposed when the actual area of the land is known on completion of surveying. 30

3. Please remit the said payment within a period of one month from the date of this letter.

That is all I am, your obedient servant,  
sgd. Abdul Samad b. Sabri.



AFFIDAVIT OF HSU LIT LING

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

ORIGINATING MOTION NO. 96 OF 1976

In the matter of the land held under  
issue document of title Certificate of  
Title 3443 Lot 36 Section 58, Bandar  
Kuala Lumpur

AND

10 In the matter of Section 128, National  
Land Code.

Garden City Development Berhad

A F F I D A V I T

I, HSU LIT LING (NRIC No. 3238970) of No. 30,  
Jalan SS 22/5, Damansara Utama, Selangor do hereby  
solemnly affirm and say as follows:

- 20 1. I refer to my Affidavit made on the 9th day  
of October 1976 (hereinafter referred to as "my  
Affidavit") and to the Affidavit of Datuk Mohd.  
Othman bin Mohd. Din affirmed on the 24th day of  
December 1976 and filed herein (hereinafter  
referred to as "Datuk Mohd. Othman's Affidavit").
- 30 2. Prior to the Application referred to in  
paragraph 1 of Datuk Mohd. Othman's Affidavit  
(OD-1), the Applicant had on or about July 20, 1972  
through Syarikat Jurukur Malaysia (Sdn.) made an  
application for the subdivision of the said Land  
referred to in Paragraph 2 of my Affidavit vide  
Form 9A of the National Land Code. A xerox copy  
of the relevant letter is annexed hereto and  
marked "HLL-6". A receipt of the \$20.00 fees  
paid referred to in "HLL-6" is annexed hereto  
and marked "HLL-6A".
- 40 3. The Application (OD-1) was a mistake in law.  
The Applicant was misled by the request of the  
then Pemungut Hasil Tanah, Kuala Lumpur vide his  
standard-form letter dated February 17, 1973 a  
copy of which is annexed hereto and marked "HLL-7".  
This request was reiterated in the said Pemungut  
Hasil Tanah's letter dated April 13, 1973, xerox  
copy of which is annexed hereto and marked "HLL-7A".
4. In fact, prior to the construction of Wisma  
Central a building namely house No. 147, Jalan Ampang,  
Kuala Lumpur was already erected on the land. I  
annex hereto a notice requiring payment of  
assessment issued by the Dewan Bandaraya Kuala

In the High Court in Malaya

No. 19  
Affidavit of  
Hsu Lit Ling  
12th January  
1977.  
(cont'd)

Lumpur dated November 9, 1972 and marked "HLL-8". The said building was demolished to make way for the construction of Wisma Central. I am advised and verily believe that conversion to building land, if necessary, was already done when the said house No. 147, Jalan Ampang, Kuala Lumpur was erected. I am also advised and I verily believe that in law no conversion was necessary either under the Land Code 1926 now repealed or the National Land Code, now in force.

10

5. With reference to paragraph 1 of Datuk Mohd. Othman's Affidavit I annex hereto a copy of the issue document of title to the Said Land namely C.T. 3443, Lot 36, Section 58, Bandar Kuala Lumpur and marked "HLL-9". I also annex hereto marked "HLL-9A" a xerox copy of the official search made by my solicitors on or about October 18, 1976. A xerox copy of the receipt acknowledging the fees in respect of the official search is also annexed hereto and marked "HLL-9B".

20

6. The letter (OD-3) referred to in paragraph 7 of Datuk Mohd. Othman's Affidavit was never received by the Applicant's solicitors. In any event that letter made no reference to the rejection of the Applicant's application under Section 124 of the National Land Code nor, I am advised and verily believe, that it comes within the meaning of "decision" under Section 418 of the National Land Code.

7. I am also advised and verily believe that the letter dated February 17, 1976 (OD-4) does not constitute a "decision" within the ambit of Section 418 of the National Land Code. With reference to paragraph 9 of Datuk Mohd. Othman's Affidavit the Applicant denies that it has ever contravened the use of the Said Land as provided for under the National Land Code. I am advised and verily believe that there is no "commercial" category use of land under the National Land Code.

30

8. There has been no rejection as such of the Applicant's application under Section 124 of the National Land Code or the Applicant's application under Section 137 vide Form 9A, of the National Land Code.

40

AFFIRMED at Kuala Lumpur }  
this 12th day of January } Sgd.  
1977 at 9.30 a.m. }

Before me

Sgd.  
.....  
Commissioner for Oaths  
Kuala Lumpur.

50

No. 19

TRANSLATION OF EXHIBIT "HLL-6"

SHARIKAT JURUKUR MALAYSIA(SDN)  
P.O. Box No. 242,  
Kuala Lumpur,  
Malaysia.

20th July, 1972

In the High  
Court in  
Malaya

No. 19  
Translation  
of Exhibit  
"HLL-6" to  
the Affidavit  
of Hsu Lit  
Ling - 20th  
July 1972

10 Collector of Land Revenue,  
Land Office,  
Kuala Lumpur.

Sir,

Sub-division of Lot 36 Section  
58, City of Kuala Lumpur

20 According to the condition imposed on the approval given to develop the above lot, the proprietor is required to apply for sub-division of the lot so that he could transfer the title of the land required for road widening. Thus, as representatives of the proprietor, we submit herewith the following:

- (i) Form 9A - 3 copies
- (ii) Sub-division Plan SEL/1485/B - 5 copies
- (iii) a cheque for the sum of \$20/-.

Please be informed that the said land has been subjected to a charge in favour of the Malayan Banking Bhd. The proprietor is in the process of asking the Malayan Banking Bhd. to agree to this application and the said letter will be sent to you soon.

30 Yours truly,  
sgd.  
C.M. NARAYANAN  
Surveyor

c.c. City Engineer, K.L.  
City Architect, K.L.  
Mr. Leong Ah Nai - 2 copies of the letter  
attached for transmission  
to Town Engineer and  
Architect

40 Garden City Development Sdn. Bhd.

In the High  
Court in  
Malaya

No. 19

TRANSLATION OF EXHIBIT "HLL-6A"

No. 19  
Translation  
of Exhibit  
"HLL-6A" to  
the Affidavit  
of Hsu Lit Ling  
25th July 1972

RECEIPT

GOVERNMENT OF MALAYSIA

Kuala Lumpur Department: Land  
From: Garden City Development Sdn. Bhd.  
Twenty only

---

| H.T. 1972  | \$        | c         |    |
|--|-----------|-----------|----|
| Application for sub-division<br>Lot 36 sec. 58<br>City of Kuala Lumpur | 20        | 00        | 10 |
| No. <u>352200</u><br><u>15.7.72</u>                                    |           |           |    |
| Total  | <u>20</u> | <u>00</u> |    |

---

=====

Signature: sgd.

Date: 25.7.72

No. 19  
Translation  
of Exhibit  
"HLL-7" to  
the Affidavit  
of Hsu Lit  
Ling - 17th  
February 1973

No. 19

TRANSLATION OF EXHIBIT "HLL-7"

Translation District & Land Office,  
(6)d.lm.PHT.KL, Kuala Lumpur. 20  
6/2268/72  
17th February, 1973.

Garden City Development Sdn. Bhd.,  
7th Floor,  
AIA Building,  
Ampang,  
Kuala Lumpur.

Application for sub-division of Lot  
36, Section 58, City of Kuala Lumpur

With reference to your application as above, 30  
you have applied under Section 124 National Land  
Code to alter the condition/impose an appropriate  
express condition on this land.

Registration fee for this application is \$10/-.

Yours sincerely,  
Sgd. (Sulaiman Khan)  
Collector of Land Revenue,  
Kuala Lumpur.

No. 19

TRANSLATION OF EXHIBIT MARKED "HLL-7A"

In the High  
Court in  
Malaya

Translation

(12)d1m.PHT.KL.6/2268/72 District/Land Office,  
Kuala Lumpur.  
13th April, 1973.

No. 19  
Translation  
of Exhibit  
"HLL-7A" to  
the Affidavit  
of Hsu Lit  
Ling - 13th  
April 1973

M/s Garden City Dev. Sdn. Bhd.,  
7th Floor, AIA Building,  
Ampang Road,  
Kuala Lumpur.

10

Sir,

Application for sub-division of Lot  
36 Section 58 City of Kuala Lumpur

I refer to the letter of this office No. (8)  
in the same series dated 17.2.73 and to inform  
that C.T. 3443 Lot 36 Section 58 City of Kuala  
Lumpur is now subject to annual rent according to  
the rate of residential building (i.e. 2 cents  
per sq. foot) while according to the nature of  
the land use according to the proposal approved  
by the City Mayor, Kuala Lumpur, it is for  
commercial and office complex (i.e. commercial  
building).

20

2. As rent for business premises is 12 cts.  
per sq. foot and may only be increased by the  
State Authority, you are required to make an  
application under Section 124, National Land Code  
for imposition of a new and appropriate express  
condition and for rent amendment by the State  
Authority.

30

Yours sincerely,

Sgd.  
(Sulaiman Khan)  
Collector of Land Revenue,  
Kuala Lumpur

c.c. M/s Syarikat Jurukur Malaysia (sdn.)  
P.O. Box 242,  
Kuala Lumpur.

SEL/1485/23

In the High  
Court in  
Malaya

No. 19  
Translation  
of Exhibit  
"HLL-8" to  
the Affidavit  
of Hsu Lit  
Ling - 9th  
November 1972

No. 19

TRANSLATION OF EXHIBIT MARKED "HLL-8"

CITY HALL OF KUALA LUMPUR

Notice to Revise List of Assessment

(Under Sections 39 & 43 Town Board Enactment  
(F.M.S. Cap. 137))

No. 0622

Mr. Like Wan Yat  
Room No. 202, Loke Yew Building,  
Jalan Belanda, Kuala Lumpur.

10

Notice is hereby given that the Mayor, City  
of Kuala Lumpur, shall revise the list for next  
year on 3-12-1972 and the following holdings have  
been included as particularised hereunder:

Lot No: 36

Section/Mukim of: 58

House No. 147

Place: Ampang Road.

Annual Value: \$160,000

Any person aggrieved on any of the grounds  
specified in Section .... of the Town Board  
Enactment (F.M.S. Cap 137) may make objection in  
writing to the Mayor, Kuala Lumpur, c/o  
Municipality Assessment and Property Dept., City  
Hall, Kuala Lumpur any time before 10 days from  
the date as fixed for the listing of assessment  
as abovementioned.

20

sgd. City Hall Assessor,  
for the Mayor, City Hall,  
Kuala Lumpur.

30

Dated: 9th November, 1972.

See overleaf in respect of Sections 39, 40 and  
43 Town Board Enactment.



In the High Court in Malaya.

No. 19

Exhibit 'HLL-9' to the Affidavit of Hsu Lit Ling (Continued)

In witness whereof I have hereunto signed my name and affixed my seal, this 12th day of August 1923.

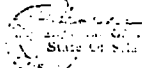


Dr. E. S. ... Registrar of Wills

Transmission by Death in consequence of the death of the above-named Loke Yew ... transmitted to Cheung Yek Choi, Liew Weng Chee, Choo Yee Peng and Loke Wan Wye as representatives appointed by Grant of Probate of Will dated 11th April, 1917, and subsequent orders of Court dated 15th May 1918 and 22nd January 1922. Folio 14 Folio 77

Transfer of ... From Cheung Yek Choi (otherwise written Cheung Yek Choy) Liew Weng Chee, Liew Kia Peng, and Loke Wan Wye (otherwise known as Alun Loke and as Loke Wan Wye) as representatives of Loke Wan Yat Produced & entered before me at 12 o'clock in the forenoon

No. 20112 Charge Volume CIV Folio 16 From Loke Wan Yat To The Yokohama Specie Bank Limited. Presented & Registered at K. Lumpur, 3rd. August 1923 At 3.30 o'clock in the afternoon.



NO: 27660 REGISTER OF DISCHARGES VOLUME XLIX FOLIO 16 DISCHARGE OF CHARGE NO: 20112 VOLUME CIV FOLIO 16 BY THE YOKOHAMA SPECIE BANK, LIMITED. PRESENTED & REGISTERED AT KUALA LUMPUR 15TH MAY, 1923 AT 12.11 O'CLOCK IN THE AFTER-NOON.

Dr. Registrar of Wills

This is the Exhibit Marked 'HLL-9' referred to in the Affidavit/Statutory Declaration/Petition of Hsu Lit Ling sworn to before me this 12th day of August 1923

Commissioner for Oaths Kuala Lumpur



HLL-9.

In the High Court in Malaya

NO. 51933 Lease...  
LOKE WAN YAT REALTY...  
AT 2.32

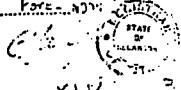
*S. S. S. S.*

NO. 51933 Lease...  
LOKE WAN YAT REALTY...  
AT 2.32

Federal Lands Commissioner...  
at Kuala Lumpur...  
on 2nd December 1964

PRESENTED & REGISTERED AT KUALA LUMPUR...  
ON 11.12.64

NO. 91611 Lease...  
LOKE WAN YAT REALTY...  
AT 2.32



*Atty*

NO. 15064 Charge...  
MALAYAN BANKING BERHAD...  
AT 9.32

*[Signature]*

NO. 15064 Charge...  
GARDEN CITY DEVELOPMENT...  
AT 9.34

*[Signature]*

NO. 7961/75 DAFTAR MELEPASKAN GADAIAN...  
JILID 21 FOLIO 21...  
MELEPASKAN GADAIAN PADA GADAIAN NO...  
15064 JILID CCCXY FOLIO 83...  
OLEH First National City Bank...  
New York

PLAN  
of Allotment 36 Section 38...  
TOWN OF KUALA LUMPUR...  
Scale: Two Chains to an Inch.

DIPERSEPAHKAN & DIDaftarkan DI KUALA LUMPUR PADA 24<sup>th</sup> Disember 1975  
JAM 10.30

No. 19 Exhibit HLL-9 to the Affidavit of Hsu Kit King (Continued)

In the High Court in Malaya

No. 19 Exhibit 'HLL-9' to the Affidavit of Hsu Lit Ling (Continued)

42951 Tanah c.2x0v. 44.  
Laka atas plot No. 36  
Lot. 36  
Garden City Development Sdn. Bhd.  
Sdn. Bhd.  
DISEDIAKAN DI NEGARA MALAYA 9.3.1972  
12.05.1972 IN THE FORE

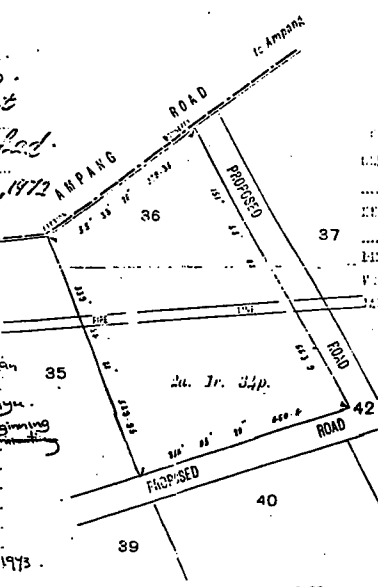
*[Handwritten signature]*

42952 Charge c.2x0v. 120.  
Garden City Development Sdn. Bhd.  
Malayan Banking Berhad.  
DISEDIAKAN DI NEGARA MALAYA 9.3.1972  
12.05.1972 IN THE FORE

*[Handwritten signature]*

13332 Tanah VOLUNT. K.A.A. FC116. 141.  
Garden City Development Sandtuan Berhad.  
Lembaga Elektrik Negara Tanah Melayu.  
the fixed period of 30 years and beginning on 1st April 1973 and terminating on 31st March 2003. That part of land coloured in red as shown in the plan attached hereto.  
DISEDIAKAN DI NEGARA MALAYA 26.7.1973

*[Handwritten signature]*



Reference to Register of Plans No: 6963. G 23.

Examined by *[Handwritten signature]*

OLIH Garden City Development Berhad

41

First National City Bank  
New York  
DISEDIAKAN DI JABATAN TANAH  
MELAYU BERSEKUTUAN PADA 24th Disember 1975  
10.02

*[Handwritten signature]*

542/76 GADAIAN JILID 32 FOLIO 1  
OLIH Garden City Development Sdn. Bhd.

Malaysian International Bankers Berhad.  
DISEDIAKAN DI JABATAN TANAH MELAYU BERSEKUTUAN PADA 24th Januari 1975  
9.40

*[Handwritten signature]*

DAFTAR MELEPASAN GADAIAN  
JILID 29 FOLIO 2  
GADAIAN PADA GADAIAN  
JILID 20 FOLIO 185  
OLIH First National City Bank  
New York  
DISEDIAKAN DI JABATAN TANAH MELAYU BERSEKUTUAN PADA 11th Januari 1975  
7.20

TRANSLATION OF EXHIBIT MARKED "HLL-9A"

No.19  
Translation  
of Exhibit  
"HLL-9A" to  
the Affidavit  
of Hsu Lit  
Ling - 19th  
October 1976  
(contd.)

Translation

SCHEDULE XIV

(Rule 37)

FEDERAL TERRITORY LAND RULES,  
1975

CERTIFICATE OF OFFICIAL SEARCH

10 This is to certify that an official search has  
been made in pursuance of section 385 of the  
National Land Code in respect of the following  
land :

\*Town/Kuala Lumpur, Lot No. 36 Sec. 58.

Description and No. of title CT.3443,  
Area: 2a. 1r. 34p.

and that at the date and time of issue of this  
certificate the particulars of the said land are  
as follows:

- 20 1. Proprietor: Garden City Development Sdn. Bhd.  
\* registered as trustee/s  
registered as representative/s
2. Summary of all effective memorials and other  
entries on the register document of title.  
(See overleaf).
3. Particulars of instruments of dealing  
presented for registration but not yet  
registered. -Nil-
4. Particulars of applications for-
- 30 (a) the endorsement of a tenancy exempt  
from registration; or
- (b) the entry of a caveat; or
- (c) registration "as trustee" or "as  
trustees"; or
- (d) registration "as representative" or "as  
representatives"; or
- (e) registration pursuant to section 349 of  
the National Land Code
- (by the Official Assignee)  
made but not yet disposed of.
- 40 Nil.

In the High  
Court of  
Malaya

No.19  
Translation  
of Exhibit  
"HLL-9A" to  
the Affidavit  
of Hsu Lit  
Ling - 19th  
October 1976  
(contd.)

- (5) Particulars of copies of prohibitory or other orders presented to or served on the Registrar/Collector pursuant to the National Land Code or any other written law.

Nil.

Time of Issue: 10.40 am/pm Date of issue:19.10.76

Fee paid \$20

Receipt No. AB770469

seal of Registrar of Titles/  
Federal Territory.  
The Registrar of Titles  
Federal Territory.

10

---

\*delete as appropriate

No. 13338 Lease Vol.XXX Fol.141

From Garden City Development Sendirian Berhad.

To: the National Electricity Board, States of Malaya for a period of 30 years and beginning on the 1st April, 1973 and terminating on the 31st March, 2003 (That part of the land coloured in red as specified on the plan attached to the lease).

20

Dated: 26th July, 1973 at 3.30 p.m.

?

No. 1567/76 Lease Vol.43 Fol.186.

by: Garden City Development Berhad.

To: Malaysia Borneo Finance Corporation (M) Berhad.

Date: 23rd August, 1976 at 9.10 a.m.

No. 391/76 Exempt Tenancy Vol. 1 Fol. 18.

Tenancy Exempt claimed by the Prudential Assurance Company Limited for a period of 2 years with effect from 8th May, 1975 to 7th May, 1977.

30

Dated 6th September, 1976 at 9.20 a.m.

---

No. 19

In the High  
Court in  
Malaya

TRANSLATION OF EXHIBIT MARKED  
"HLL-9B"

No.19

Translation  
of Exhibit  
"HLL-9B" to  
the Affidavit  
of Hsu Lit  
Ling - 18th  
October 1976

Translation

K/3604/GCD

RECEIPT

MALAYSIA

STATE OF FEDERAL TERRITORY

Place: KUALA LUMPUR DEPT.

Received from Mah-Kok & Din

10

Dollars Twenty only  
and cents

| 1976 | \$ | c |
|------|----|---|
|------|----|---|

Official Search CT 3443

Lot 36

Sec. 58 BKL

20

00

From: To:

P.l. reply file away

P.l. get file for

4 NOV 1976

20

RECEIVED

P.l. KIV days

P.l. open/close file/folder.

(Ch.No: 428119/12.10.76)

Total

20

00  
=====

AB 770469

Signature: sgd.

Dated: 18.10.76

In the High  
Court in  
Malaya

No. 20

AFFIDAVIT OF DATUK MOHD OTHMAN

No.20  
Affidavit of  
Datuk Mohd  
Othman - 14th  
January 1977

ORIGINATING MOTION NO. 96 OF 1976

In the matter of the land held under  
issue document of title Certificate of  
Title 3443 Lot 36 Section 58, Bandar  
Kuala Lumpur.

And

In the matter of Section 128,  
National Land Code.

10

Garden City Development Berhad

Applicant

A F F I D A V I T

I, DATO' MOHD OTHMAN BIN MOHD DIN Pengarah  
Tanah dan Galian Wilayah Persekutuan and also  
Pemungut Hasil Tanah Wilayah Persekutuan, Off  
Jalan Pekililing, Kuala Lumpur 02-17, do hereby  
solemnly affirm and say as follows:

1. I refer to the Affidavit of Hsu Lit Ling  
dated 12th January, 1977.

2. The request by the then Pemungut Hasil Tanah,  
Kuala Lumpur, as stated in copies of letters marked  
"HLL-7" and "HLL-7A" was not misleading and in fact  
the letter marked "HLL-7A" specifically informed  
the Applicant of the requirement to change the use  
of land for C.T. 3443 Lot 36, Seksyen 58, Bandar  
Kuala Lumpur to commercial complex and office (that  
is, commercial building).

20

3. With reference to paragraph 5 of the Affidavit  
of Hsu Lit Ling dated 12th January, 1977 I annex  
hereto a photostat copy of the Original Grant for  
Agricultural Lease No. 746 to H.C. Syers and  
marked "OD-5".

30

4. The annexure marked "OD-3" attached to my  
Affidavit dated 24th January, 1976 was sent by A.R.  
Registered letter No. 873 to the Solicitors of the  
Applicant Tetuan Mah-Kok & Din.

5. With reference to paragraph 7 of the Affidavit  
of Hsu Lit Ling dated 12th January, 1977 the  
annexure marked "OD-4" to my Affidavit dated 24th  
December, 1976 was merely a correction of the  
further premium payable from \$643,599.00 to \$623,199.00,  
that is, not considering the area surrendered for  
road. The decision of the Jawatankuasa Kerja Tanah  
regarding the application for conversion of use of  
land was conveyed in the letter of the Pengarah

40

Tanah dan Galian Wilayah Persekutuan, Kuala Lumpur dated 14th February, 1975 marked "HLL-1" in the Affidavit of Hsu Lit Ling dated 9th October, 1976.

No.20 Affidavit of Datuk Mohd Othman-14th January 1977 (Contd.)

AFFIRMED by the abovenamed )  
Dato' Mohd Othman bin Mohd ) Sgd.  
Din at Kuala Lumpur on the ) .....  
14th day of January 1977 )  
at 11.50 a.m.

BEFORE ME,

10

Sgd.  
.....  
Commissioner for Oaths  
Kuala Lumpur.

This Affidavit is filed by the Senior Federal Counsel for and on behalf of the Pemungut Hasil Tanah, Kuala Lumpur address for service is c/o Attorney-General's Chambers, Kuala Lumpur.



In The High Court in Malaya

No. 20

Exhibit "OD-5" to the Affidavit of Datuk Mohd Othman

14th January 1977

Additional to order of 17/5/77  
EXHIBIT OD-5

STREET OF *Juala Timpan*

No. 746

This Lease is granted by the Sultan of Selangor, Acting by the Majesty's Resident, to *H. B. Yusoff*

under him, in perpetuity from the *1st* day of *July* 1886, for that portion of Land in the District of *Ampang* estimated to contain *100* Roods

more or less, and bounded as follows:—  
*Ampang Road.*

*Chinnay Gardens*

conditions:—  
Quit-rent of *20* cents annually to be paid by *H. B. Yusoff*

under him, in the Land Office of the District, on the first day of January, 1887, and on each succeeding year, in advance, without demand, and that all minerals upon or beneath this Land be reserved for the Government, and that all compensation afforded to the Government for taking the same on payment of compensation for damages shall be paid to the holder of the Lease.

The Government may resume the whole or any portion of this Land, if it shall hereafter be required upon the same terms as in paragraph two.

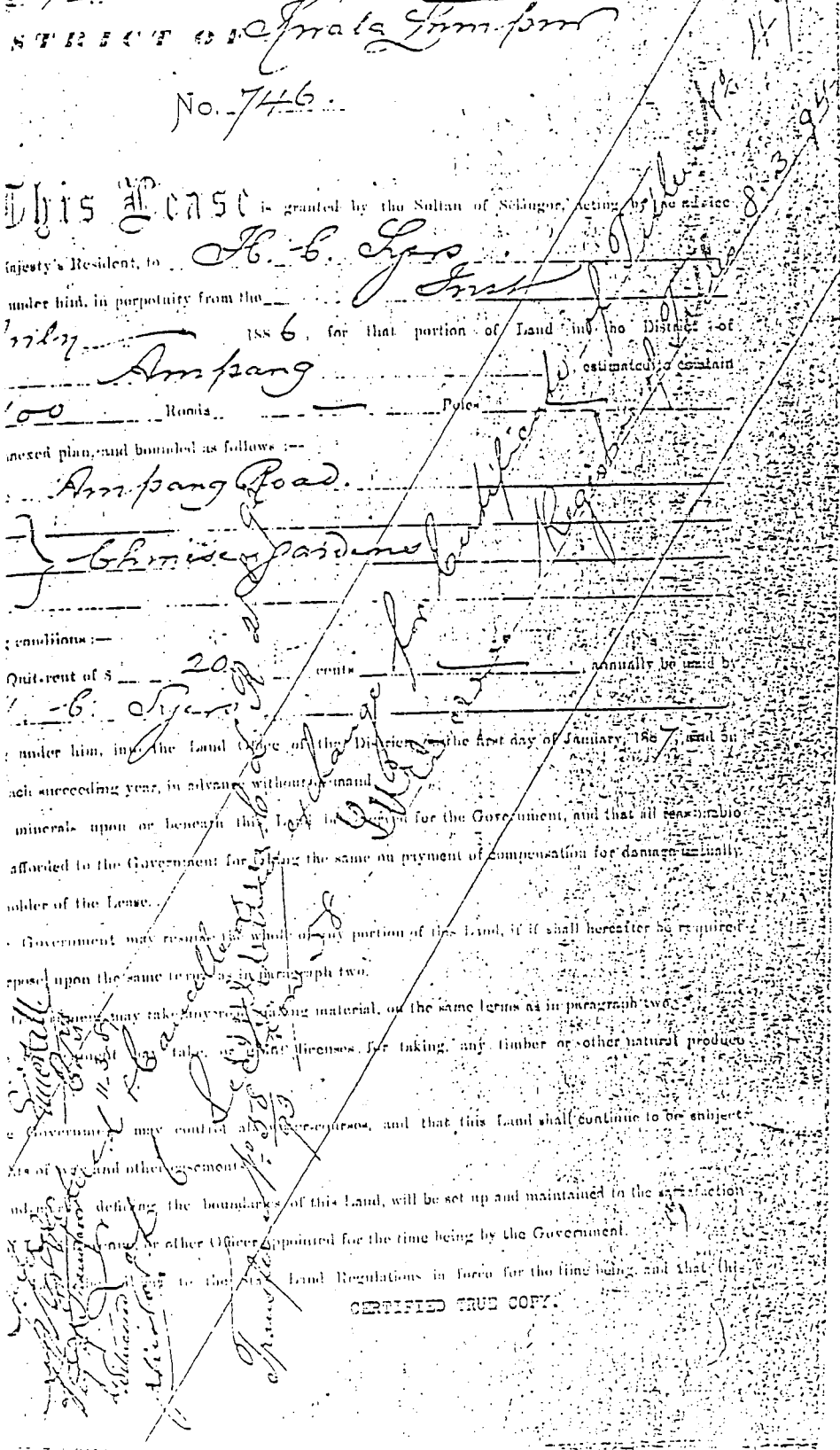
The Government may take any stone or building material, on the same terms as in paragraph two, and may take, or grant licenses for taking, any timber or other natural produce on the same terms as in paragraph two.

The Government may control all the operations, and that this Land shall continue to be subject to the provisions of the Land Regulations in force for the time being, and that the boundaries of this Land, will be set up and maintained in the manner directed by the Government.

and that the boundaries of this Land, will be set up and maintained in the manner directed by the Government.

to the provisions of the Land Regulations in force for the time being, and that this

CERTIFIED TRUE COPY.





... provisions will be given in any District Land Office  
... be forfeited if A. C. Lopez  
... fail to comply with any of the foregoing conditions

in Selangor on the

1886

W. ...  
Treasurer Selangor  
of the

1886

J. D. Rogers  
Atty. General  
Selangor

1886

...  
...

...



This is the Exhibit marked OD-5  
referred to in the Affidavit  
of ... sworn to  
before me this ... day of ...  
1977

Sel. Low Joo Kim  
Commissioner for Oaths  
High Court, Kuala Lumpur.

54 In The High Court in Malaya

No. 20  
Exhibit "OD-5" to the Affidavit of Datuk Mohd Othman  
14th January 1977



No. 21

In the Federal  
Court in  
Malaya

AFFIDAVIT OF KOK WEE KIAT

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT  
KUALA LUMPUR

(Appellate Jurisdiction)

No. 21  
Affidavit of  
Kok Wee Kiat  
8th January  
1979.

FEDERAL COURT CIVIL APPEAL NO. 95 OF 1978

BETWEEN

Collector of Land Revenue  
Federal Territory

Appellant

AND

Garden City Development Berhad

Respondent

(In the Matter of Originating Motion  
No. 96 of 1976)

In the High Court in Malaya at Kuala Lumpur

In the Matter of the land held under  
issued document of title Certificate of  
Title 3443 Lot 36 Section 58, Bandar  
Kuala Lumpur

AND

In the Matter of Section 128 of the  
National Land Code

Garden City Development Berhad

Applicant

A F F I D A V I T

I, KOK WEE KIAT of full age and care of  
Messrs. Mah-Kok & Din, Podium, Bangunan Bank  
Rakyat, Jalan Tangsi, Kuala Lumpur do hereby  
affirm and say as follows:

1. I am the Solicitor for the Respondent herein  
and have due authority to make this Affidavit.

2. I crave leave to refer to the order made  
herein.

3. The Respondent is desirous of appealing to  
His Majesty the Yang DiPertuan Agung from the said  
order.

4. The Appeal involves directly or indirectly  
some claim or illegible to or respecting property  
or civil right of the value upwards of ringgit  
Twenty-five thousand only (M\$ 25,000.00).

In the Federal  
Court in  
Malaya

No. 21  
Affidavit of  
Kok Wee Kiat  
8th January  
1979.  
(cont'd)

5. In the alternative I verily believe and am of the opinion that the case is one from its nature a fit one for appeal.

6. The Respondent undertakes to abide by any order imposing the usual conditions for leave to appeal.

AFFIRMED at Kuala Lumpur )  
this 8th day of January )  
1979 at 3.30 p.m. )

Before me,

10

Commissioner for Oaths  
Kuala Lumpur

This Affidavit is filed by Messrs. Mah-Kok & Din, Solicitors for the Respondent abovenamed whose address for service is Podium, Bangunan Bank Rakyat, Jalan Tangsi, Kuala Lumpur.

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

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B E T W E E N :

GARDEN CITY DEVELOPMENT BERHAD Appellant

- and -

THE COLLECTOR OF LAND REVENUE  
FEDERAL TERRITORY Respondent

---

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RECORD OF PROCEEDINGS

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MACFARLANES,  
Dowgate Hill House,  
London, EC4R 2SY.

Agents for:

Mah-Kok & Din,  
Kuala Lumpur,  
Malaysia.

Stephenson Harwood,  
Saddlers' Hall,  
Gutter Lane,  
London EC2V 6BS.

Agents for:

The Collector of Land  
Revenue,  
Federal Territory of  
Malaysia.