

32/84

Nos. 39 and 40 of 1982

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N:

Appeal No.39 of 1982

UNITED MALAYAN BANKING CORPORATION BERHAD Appellants

- AND -

PEMUNGUT HASIL TANAH, KOTA TINGGI Respondent

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A N D B E T W E E N:

Appeal No. 40 of 1982

JOHORE SUGAR PLANTATION & INDUSTRIES BERHAD Appellants

- AND -

PEMUNGUT HASIL TANAH, KOTA TINGGI Respondent

CASE FOR THE APPELLANTS, UNITED MALAYAN BANKING CORPORATION
BERHAD, IN APPEAL NO. 39 OF 1982

RECORD

- 20 1. This is an Appeal from the Judgment of the Federal Court of Malaysia (Wan Suleiman, Salleh Abas F.JJ. and Abdoolcader, J) dated the 25th August, 1981, (its Order being dated the 12th August, 1981) which allowed the Respondent's appeals from a Judgment of the High Court in Malaya sitting at Johore Bahru (Gill, C.J.) dated the 6th March, 1981, which held that relief from the forfeiture appearing in the Johore Government Gazette Notification No.1136 dated the 15th September 1977 (whereby some 20,680 acres of land in Johore were forfeited) should be granted and the forfeiture set aside. pp.107-123 pp.125-126 pp.62-71 pp.71-72
- 30 2. The issues raised by this appeal are as follows:-

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(1) whether it is an essential step in the statutory procedure laid down in the National Land Code (Act 56 of 1965 - "the Code") that the notice of demand in the Form 6A should accurately set out the amount of the arrears of rent and fees due and whether a failure to do so results in a purported forfeiture based upon a demand for more than was lawfully due being invalid; 10

(2) whether it is open to the Courts in Malaysia to grant relief from forfeiture in respect of alienated land (defined in S.5 of the Code as "... any land ... in respect of which a registered title for the time being subsists, whether final or qualified, whether in perpetuity or for a term of years and whether granted by the State Authority under (the Code) or in the exercise of power conferred by any previous land law ...". 20

3. A further point, which is alternative to the issue set out in paragraph 2(1) above, arises which was not argued in the courts below, namely, whether it is contrary to Article XXXVI of the Constitution of the State of Johore to demand in the course of the statutory procedure leading to a forfeiture more than is lawfully due by way of arrears of rent and fees. Article XXXVI aforesaid reads as follows: 30

"No tax or rate shall be levied by or for the purposes of the State except by or under the authority of law".

pp.62-63
69-70
pp.108-110

4. The essential facts of this case are set out in the judgments of the Chief Justice and of the Federal Court and may be summarized as follows:-

(1) The other Appellants (Johore Sugar Plantation and Industries Berhad, a public company incorporated in Malaysia) were the registered proprietors of some 20,680 acres of land in the Mukim of Sungei Tiram, in the District of Kota Tinggi, which had been alienated to them in 1966 for a term of 99 years under S.76 of the Code. 40

(2) There were certain conditions of such alienation including the reservation of an annual rent, which did not fall into arrears until 1977. 50

- (3) The other Appellants by three charges made respectively in 1973 and 1975 charged the land to these Appellants to secure the granting of banking facilities.
- (4) In November, 1977 the total amount outstanding under the three charges exceeded the sum of \$5 million.
- 10 (5) In the year 1977 when the rent fell into arrears, the Respondent issued Form 6A pursuant to s.97(1) of the Code in respect of the arrears of rent, education rate and notice fees and served the same upon both Appellants.
- (6) The amount claimed by Form 6A exceeded the amount which was lawfully due, in that it demanded \$5.00 in respect of notice fees whereas the sum lawfully due was \$2.00. No finding of fact has been made as to the amount of the excess but both before the Chief Justice and the Federal Court the Respondent conceded that more than the amount due in respect of notice fees was demanded in Form 6A. p.45 11.25-27 p.49 11.10-13 p.60 11.15-25
- 20 (7) Due to a misunderstanding between the two Appellants, the amount demanded in Form 6A was not paid.
- (8) By Order made on the 7th September, 1977, the Respondent accordingly declared the land forfeit to the State Authority pursuant to S.100 of the Code.
- 30 (9) A notification of the forfeiture in Form 8A was published on the 15th September, 1977, by the Respondent pursuant to S.130(1) of the Code.
- (10) On the 17th November, 1977, the other Appellants applied to the State Authority for annulment of the forfeiture under S.133(1) of the Code but their application was refused by a letter dated the 29th November, 1977.
- 40 5. By Notices of Motion respectively dated the 7th and 14th December, 1977, both Appellants sought an order setting aside the forfeiture published in the Johore Government Gazette Notification No.1136 dated the 15th September, 1977. pp.2-3 pp.15-16
6. Both motions were heard by Gill, C.J., sitting in the High Court in Malaya at Johore Bahru on the 7th December, 1978. pp.42-50
7. On the 6th March, 1979, the learned Chief Justice delivered judgment granting relief against forfeiture and ordered that the forfeiture be set aside upon the other Appellants paying within six pp.62-70 pp.71-72
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p.64 11.16-34	months all the quit rents due and any money payable by way of penalty together with the Respondent's costs. As to the first issue in this Appeal, Gill, C.J., held that the alleged excess in the amount demanded in the Form 6A "Notice of Demand: Arrears of Rent", then alleged to be some \$6,000, was no more than an "irregularity in the form or service" of that notice within S.134(2) of the Code which was not of a significant nature. Thus, as provided by S.134(2), the notice could not be set aside. As to the second issue in this Appeal, the learned Chief Justice held that in dealing with an appeal under S.418 of the Code the Court in the exercise of its inherent equitable jurisdiction had the power to grant relief against forfeiture. In his view, the Court's equitable jurisdiction to grant relief against forfeiture was not excluded expressly or implication by the provisions of the Code (and he particularly dealt with SS.134, 237 and 418). Having held that the Court did have jurisdiction to grant relief from forfeiture, the learned Chief Justice found that it was just and equitable in all the circumstances of the case for him to exercise the Court's discretion in favour of both Appellants to grant the relief sought.	10
p.69 1.36- p.70		
pp.64-69		20
p.70 11.38 - end		
pp.73-74 pp.74-75 pp.77-80	8. By Notices of Appeal, both dated the 6th March, 1979, the Respondent appealed to the Federal Court: the grounds of appeal are set out in a Memorandum of Appeal dated the 30th April, 1979.	30
pp.100-106	9. The appeal to the Federal Court was heard on the 11th and 12th August, 1981. The Federal Court (Wan Suleiman, Salleh Abas, F.JJ. and Abdoolcader, J.) allowed the Respondent's appeal with costs on the 12th August, 1981, Abdoolcader, J. delivering the Federal Court's judgment on the 25th August, 1981, reversing the judgment of Gill, C.J.	40
p.114 11.27-35	10. <u>As to the first issue of this Appeal,</u> the Federal Court, in agreeing with the learned Chief Justice, noted that it had been accepted on behalf of the Respondent that there was an excess of some \$3.00 in respect of the notice fee demanded and held that such excess fell within S.134(2) of the Code as a mere "irregularity in the form of service of the notice" Form 6A which was not of a significant nature. <u>As to the second issue in this Appeal,</u> the Federal Court held that the Courts in Malaysia have no jurisdiction to grant relief from the forfeiture of alienated land. The	50
p.114 1.36 - p.115		
pp.115-122		

reasoning of the Federal Court may be summarized in the following propositions:-

- 10 (a) S.418 of the Code in providing for an appeal to the High Court was to be read subject to the defined restrictions set out in S.134(2), with the result that an order of forfeiture could "only be set aside on the grounds circumscribed by S.134(2) and then not too lightly for insubstantial cause". p.116 11.4-30
- (b) S.3(1) of the Civil Law Act, 1956, introducing into West Malaysia the application of the common law of England and the rules of equity as administered in England on the 7th April, 1956, is subject to the saving provision, "Save so far as other provision has been made or may hereafter be made by any written law in force in Malaysia" p.116 11.31-40
- 20 (c) There is specific provision in S.133 of the Code for relief against forfeiture vested in the State authority in its absolute discretion and not in the court. p.116 11.41-49
- (d) There is specific provision for the State Authority to re-alienate the land to the other Appellants at any time. p.116 1.49- p.117 1.5
- (e) S.134(2) specifically restricts the grounds on which an order of forfeiture in respect of alienated land can be set aside. p.117 11.6-18
- 30 (f) "It is therefore abundantly clear that the Code does not contemplate any power or right in the court to grant equitable relief against forfeiture." p.117 11.19-23
- (g) There is no provision in the Code for the Court to grant relief from forfeiture by the State Authority of alienated land, whereas in the case of the forfeiture of a lease granted by proprietor of alienated land there is such provision in S.237 of the Code. p.117 11.23-30
- 40 (h) The matter of forfeiture comes within the scope of the word "tenure" in S.6 of the Civil Law Act which precludes the introduction into Malaysia or any of its States of any part of the law of England relating to the tenure or conveyance or assurance of or succession to any immovable property or any estate, right or interest therein. p.117 11.31-45
- 50 (i) The relevant provisions of the Code provide a complete code and there can be no legitimate recourse to look beyond its specific terms to seek any relief for the alleviation of any complaint of hardship. p.117 1.46- p.118 1.5

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p.123
p.125-126

11. Accordingly, the Federal Court ordered that the Respondent's appeals be allowed and that the Order of the High Court setting aside the forfeiture itself be set aside.

pp.127-128

12. On the 6th March, 1982, both Appellants were granted final leave to appeal to His Majesty the Yang Di-Pertuan Agong.

13. As to the first issue in this Appeal, it is respectfully submitted that the order of forfeiture made by the Respondent pursuant to S.100 of the Code was made contrary to the provisions of the Code, in that the Form 6A "Notice of Demand: Arrears of Rent" upon which such forfeiture was based demanded more than was lawfully due. The admitted excess of \$3.00 in the amount of the notice fee lawfully due was, it is respectfully submitted, a matter of substance and not a mere irregularity within S.134(2) of the Code whether of "form or service" and whether generally or having regard to the provisions of S.100 of the Code.

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(a) which imposes upon the Collector a duty not to accept the tender of a lesser amount than the sum demanded by his notice of demand in Form 6A; and

(b) which imposes the further duty upon the Collector to make an order declaring the land forfeit, if at the expiration of the relevant period of one month the whole of the sum demanded in Form 6A has not been tendered to him.

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14. It is respectfully submitted that the Code provides for a certain specified procedure to be followed before the Collector's duty to make an order declaring the land forfeit can arise. That procedure is set out in SS.97-100 of the Code. It is respectfully submitted that, having regard to the consequences of a forfeiture, whereby the land reverts to the State Authority as State land free from all titles and interests (see S.131 of the Code), strict compliance with the statutory procedure is required subject only to the limited saving provision as to irregularities in the form or service of any relevant notice, in this case, the Form 6A.

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15. It follows, therefore, it is respectfully submitted, that the demand in the Form 6A of a sum exceeding that which is lawfully due or payable, however large or small the excess, is fatal to the validity of any subsequent forfeiture based upon the failure to pay such

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excessive demand. Accordingly, the forfeiture, the subject-matter of this Appeal, was invalidly made and should be set aside.

10 16. As an alternative to the first issue in this Appeal, it is respectfully submitted that the demand in the Form 6A of a sum exceeding that which was lawfully due or payable contravened Article XXXVI of the Constitution of the State of Johore in that such excessive demand constituted the levying by or for the purposes of the State of a tax or rate except by or under the authority of law. Accordingly, the demand in the Form 6A was invalid and of no effect and invalidated the purported forfeiture based upon the failure to meet the excessive demand in it.

20 17. As to the second issue in this Appeal, these Appellants make their submissions on the footing that the forfeiture was validly made on the 15th September, 1977. It is proposed to deal in turn with each part of the Federal Court's reasoning as summarized in paragraph 10(a)-(i) above.

30 As to paragraph 10(a) above, it is necessary to look at SS.134 and 418 of the Code as a whole. S.134 contemplates a proceeding where it is the validity of a forfeiture that is in question. The proceedings the subject-matter of this Appeal do not, insofar as the second issue is concerned, seek to challenge the validity of the forfeiture. They are brought to obtain relief against a forfeiture which is assumed to be validly made and effective. It is respectfully submitted that S.134(2) is properly to be construed as applying to proceedings (or any part of a proceeding) where the validity of a forfeiture is in question. S.134(2) is not effective to exclude the remedy of relief from forfeiture and was never intended to be so.

40 As to paragraph 10(b)-(d) above, there is no specific provision for relief from forfeiture in respect of alienated land in any sense equivalent to or in substitution for the equitable remedy of relief from forfeiture, whether in S.133(1) & (2) or S.133(3) of the Code. The provisions in S.133 do not amount to "other provision" in S.3(1) of the Civil Law Act, 1956.

As to paragraph 10(e) above, it is respectfully submitted that S.134(2) of the Code is not a general provision but applies to limit the circumstances in which a forfeiture may be set aside in cases where the validity of a forfeiture is challenged.

50 As to paragraph 10(f) above, it is respectfully submitted that the Code in S.418 plainly contemplates the power and right in the Courts in Malaysia to grant equitable

relief against forfeiture. The wording of S.148(1) includes an appeal which does not challenge the validity of a forfeiture and thus, it is respectfully submitted, makes provision for such an appeal: that construction of S.418(1) is perfectly consistent with S.134. By S.418(2) the Court may make such order on an appeal "as it considers just", thus making it plain that the Code is either recognizing an existing jurisdiction to grant equitable relief from forfeiture or expressly giving jurisdiction to grant such relief. It is respectfully submitted that S.418(2) is recognizing an existing jurisdiction. If S.134 was a general provision excluding the jurisdiction to grant equitable relief from forfeiture, there could be no purpose in providing in S.418(2) for the Court to make such order "as it considers just" because in all appeals in respect of the forfeiture of alienated land the Court would not be entitled to extend its concern beyond an examination of the validity of the forfeiture itself.

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As to paragraph 10(g) above, the absence of a provision equivalent to S.237 of the Code applying to alienated land does not mean that it was intended that the equitable remedy of relief from forfeiture should be excluded in the case of alienated land. It is respectfully submitted that the absence of such equivalent provision indicates (or at least is perfectly consistent with a conclusion) that the jurisdiction to grant equitable relief from forfeiture was to remain available to the Courts in Malaysia.

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As to paragraph 10(h) above, it is respectfully submitted that the word "tenure" does not include rules of equity or the equitable remedy of relief from forfeiture and that such equitable relief is not, therefore, excluded by S.6 of the Civil Law Act, 1956. If and insofar as the case of East Union (Malaya) Sdn Bhd. -v- Government of the State of Johore & Government of Malaysia (1981) 1 M.L.J. 151 decided to the contrary, it is respectfully submitted that it was wrongly decided and should be overruled.

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As to paragraph 10(i) above, on its face the Code in dealing with the forfeiture of alienated land is incomplete as it makes no specific (express) provision for relief from forfeiture. It is respectfully submitted that the Code was thus recognizing the existing jurisdiction to grant equitable relief from forfeiture.

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18. It is respectfully submitted that nowhere in the Code is equitable relief from forfeiture excluded whether expressly or by implication.

19. These Appellants respectfully submit that the Judgment of the Federal Court was wrong and ought to be reversed and that this appeal ought to be allowed with costs for the following (among other)

R E A S O N S

1. BECAUSE the statutory procedure for the forfeiture of alienated land was not followed;
- 10 2. BECAUSE the forfeiture was not validly made;
3. BECAUSE the demand in the Form 6A was unconstitutional and void, thus invalidating the forfeiture;
4. BECAUSE in the alternative, it is open to the Courts in Malaysia to grant equitable relief from forfeiture;
5. BECAUSE the learned Chief Justice correctly exercised his discretion to grant relief from forfeiture.

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STUART N. McKINNON

CHIN YEW MENG

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COUNCIL

ON APPEAL

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BETWEEN:

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Appellants

- AND -

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BERHAD
Appellants

- AND -

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Respondent

CASE FOR THE APPELLANTS, UNITED MALAYAN
BANKING CORPORATION BERHAD

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