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No. 34 of 1977

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL

FROM THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

IN THE MATTER OF CIVIL SUIT NO 586 of 1975 IN THE HIGH COURT OF KUALA LUMPUR

BETWEEN :-

STATION HOTELS BERHAD	Appellants (Defendants)
- and -	
MALAYAN RAILWAYS ADMINISTRATION	Respondents (Plaintiffs)

CASE FOR THE APPELLANTS

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1. This is an Appeal from the judgment and order of the Federal Court of Malaysia (Appellate Jurisdiction) (Gill, C.J. and Ali, F.J. Ong F.J. dissenting) given and made the 13th November, 1976, upholding the decision of the High Court in Malaysia at Kuala Lumpur (Chong, J.), given the 3rd May, 1976 in favour of the Respondents (then the Plaintiffs). pp.32-33

2. The Respondents, by their Statement of Claim specially indorsed on their Writ dated the 18th April, 1975 asserted: that they were the registered owners of premises known as the Station Hotel, Kuala Lumpur; that they had leased the said premises to the Appellants for a term of five years from the 1st January, 1968; that the lease had been extended to the 30th June, 1974; that on the 27th February, 1975 they had served one month's notice to quit upon the Appellants; and that the Appellants had failed to yield up the said premises. Inter alia they sought possession and double rent at M. $4,000 per month, from 1st April, 1975 to the date of possession. The Appellants, by their Defence and Counterclaim dated 12th May, 1975 admitted that the Plaintiffs were the registered owners of the premises, and also admitted the agreements. They asserted that the Plaintiffs were not entitled to possession.

(a) By reason of various provisions of the Constitution of Malaysia; and/or

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(b) Because the premises were controlled and protected under the provisions of the Control of Rent Act, 1966.

They counterclaimed M. $91.068 as sums paid since the coming into force of the 1966 Act in excess of the fair rent for the premises and recoverable by reason of the provisions of that Act. By their Reply and Defence to Counterclaim dated 16th May, 1975 the Respondents asserted, inter alia, that:

pp.10-11 (a) the Appellants were not entitled to protection under the Constitution, and (b) the premises were not rent controlled premises within the Control of Rent Act and that the Appellants were not entitled to the protection afforded by that Act.

3. The relevant statutory provisions are set out in the Appendix to this case.

4. It was not in dispute that the Station Hotel was "premises", as defined by the Control of Rent Act. Further that it was therefore "controlled premises", within the Act and subject to the provisions thereof unless it fell within one or more of the categories of premises set out in Section 4(2). As to these, it was not in dispute that none of sub-sections (a), (c), (d) or (e) had any application. As to sub-section (b) it was not suggested that the hotel was the property of the Government of any State. "Property of the Government of the Federation" is not defined in the Act.

pp.12-13 5. The Respondents took out an Order XIV summons for final judgment. The Secretary and Chief Administrative Officer of the Respondents deposed

pp.13-15 to an Affidavit in support of the application. The Affidavit exhibited the various agreements. They describe the Respondents as "a corportion sole by virtue of Section 4 (i) of the Railway

pp.16-20 Ordinance 1948". The Manager of the Appellants deposed to an affidavit resisting the application, the affidavit asserted, inter alia, that the burden of proving the premises fell within a category exempted from the provisions of the Control of Rent Act lay upon the Respondents, who had not provided "any or sufficient evidence" to discharge this burden.

pp.20-31 6. In his judgment in the High Court, Chang, J. said that although the application was for judgment under Order 14, the pleadings "mainly"

pp.20-21 raised defence of law, so the application could be treated as a proceeding in lieu of demuirer and disposed of as such under Order 25. He then dealt with the application in this way, found for the Respondents and made an order for

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possession. The order as worked out, apparently by Counsel, ordered the delivery up of the hotel and the payment of the claimed double rent, at M.$4.000 per month. The counterclaim, it would appear, was left to proceed. From this decision the Appellants appealed. In their Memorandum of Appeal they claimed, inter alia, that the Learned Judge was wrong in holding that there were no triable issues and in granting summary judgment. They asserted that they ought to have been given unconditional leave to defend.

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pp.35-37

7. The issues arising on this appeal are:

(a) Whether, in all the circumstances, the Learned trial Judge erred in dealing with the matter, of his own volition, under Order 25.

(b) Whether or not the Learned Judge so erred or did not so err, whether the action was such as could properly be disposed of summarily. If it could properly be so disposed of, whether or not the action should have been struck out. If it could not properly be so disposed of, whether or not leave to defend should be given and, if so, on what (if any) terms.

(c) If summary disposal of the claim was proper and if the action ought not to have been struck out. Whether the fact that the hotel was registered in the name of the Federal Lands Commissioner (if, indeed, it was so registered) is relevant to the issue whether or not the hotel was "the property of the Government of the Federation" (an expression which is not defined in the Control of Rent Act, 1966).

(d) If registration is relevant, whether or not Chang, J. in the High Court, and Gill, C.J. and Ali, F.J. in the Appeal Court erred in the manner in which they dealt with the Respondents' pleaded assertion (admitted by the Appellants) that they were the registered owner of the hotel. Further, if they so erred, the consequences of such error.

(e) Whether or not the hotel was the "property of the Government of the Federation" and, if so, excepted from the provisions of the Control of Rent Act, 1966.

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8. In his judgment, Chang, J. said the following, as to the facts heard (and these facts were never
pp.20-31 in dispute). The original lease had been for five years from 1st January, 1968. It had never
p.21 1.10 been registered but there could be no doubt as to its effectiveness as an agreement to lease. It had been extended, by agreement, for one year to 31st December, 1973. Thereafter the Appellants had held over, paying monthly rent. The Respondents had given one calendar months' notice to quit, the month expiring on 31st March, 1975.

9. As to the rent control defence, there was evidence, not denied, that the hotel was erected
p.21 1.45 before 31st January, 1948. The hotel premises were therefore rent-controlled unless they fell within any of the exceptions in Section 4 (2)(b) or (c) of the Act. The Appellants had argued that the Railway Administration was, neither the Government of Federation, nor of any State, nor was it a municipality. The Respondents
p.22 1.35 had relied entirely upon the Railway Ordinance, Section 4 (1A). Both submissions missed the mark. The question must be "in whom was the land vested?" By Section 15 (1) of the Railway Ordinance, all property moveable and immoveable which :

(a) prior to the Ordinance, vested in the Governor of the Malayan Union for the purposes of the Malayan Railway, or which

(b) between 1946 and 1948 had been acquired by His Majesty or the Governor of the Malayan Union, or any officer of Government for the same purposes;

vested, from commencement of the Ordinance without any conveyance in the Federal Lands Commissioner for the purposes of the Malayan Railway. The Federal Lands Commissioner was an officer, incorporated under the Federal Lands Commissioner Ordinance, No. 44 of 1957, for the vesting in him of all properties until then vested in the Chief Secretary. His Lordship did not think it necessary to take the history of the land back to 1935 to the days of the Federated Malay States.
p.23 1.33 In his view the hotel was the property of the Government of the Federation, vested in the Federal Lands Commissioner for the purposes of the Malayan Railway Administration. This defence failed.

10. The Appellants had raised two other defences, each of which invoked the Constitution. The first was that repossession offended the

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fundamental right provision contained in Article 13 i.e. that no person shall be deprived of property save in accordance with law, and that as law shall provide for the compulsory acquisition or use of property without adequate compensation. His Lordship could not accept that there was any infringement of this right. Where premises were outside the Control of Rent Act, the relationship between Landlord and Tenant was one of contract or common law. The Government was in the position of a private Lessor. Here, the lease had expired by effluxion of time. The Appellants had no "property" within the meaning of Article 13. Further, if the Appellants wished to say they had been deprived by a law, they must indicate what that law was, and how it was ultra vires by reason of not providing for compensation. This defence failed. p.28 l.33

11. The second Constitutional defence invoked Article 153, Clauses 7 and 8. Article 153 gives certain protection to Malays receiving, inter alia, certain rights and privileges. In the present case there was no right upon which the Article could operate. This defence also failed. There must be an order for possession. p.29 l.30

12. In the Court of Appeal, Gill, C.J. said it was not in dispute that: the tenancy terminated on the 31st March, 1975, by reason of the notice; the Respondent was a corporation sole with power to grant leases of immoveable property and railway reserves, and to sue or be sued; "railway land" was vested in the Federal Lands Commissioner for the purposes of the Malayan Railway; and the premises were built before 31st January, 1948. Dealing with the two defences which relied on the Constitution, his Lordship referred to the learned trial judge's finding in respect of the Article 13 defence. By complication, he appeared to agree with these findings, saying that, as Article 13 had been abandoned by the Appellants, he did not think it necessary to deal with the question. The Article 153 defence had been argued on the appeal. His Lordship said that a permit or licence to operate the hotel could only attach to the tenure of the premises. Where a person had lost his right to a lease there could be no reasonable expectation for the issue or renewal of licences or permits. His Lordship entirely agreed with the reasons advanced by Chang, J. for rejecting this defence. pp.38-43 p.40 l.26 p.41 l.1 p.41 l.6 p.42 l.26

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13. The second ground of appeal which had been argued was that the Learned Trial Judge was wrong in finding that the Appellants were not protected tenants. It had been argued that, as the land on which the hotel stands was vested in the Federal Lands Commissioner for the purposes of the Malayan Railway, the owner of the land was the Malayan Railway, a statutory corporation, the Commissioner being a Trustee. His Lordship thought this argument to be untenable, because the fact that the land was vested in the Commissioner, an officer of the Federal Government
p.41 l.39 appointed for that purpose, showed that the land belonged to the Government. He disposed of the point that the Respondents had pleaded that they, not the Commissioner, were the registered owners by saying that the Respondents were empowered to enter into contracts in respect of the land, and to sue on them (as they had done here). The right of the Respondents to sue to recover the land had never been in question: it had never been the Appellants' case that the wrong person was suing.

p.42 l.7 14. Assuming, however, that the land belonged to the Respondents, and not to the Government, then it was still exempt from the Control of Rent Act because, by reason of Section 4 (1A) of the Railway Ordinance, the Act applied to the Railway Administration in the same manner as it did to the Government. Although the Learned Trial Judge thought this argument by the Respondent missed the mark. Gill, C.J. thought the Section was the complete answer to the Appellants' claim.

15. The Appellants had asserted that, with both the Article 153 and the Rent Control argument, triable issues had been raised, and therefore the case ought not to have been disposed of summarily. In His Lordship's view the case raised simple issues of law only, and it was rightly disposed of under Order XIV on the basis of Order XXV. His Lordship would dismiss the appeal, with costs.

pp.44-47 16. Ali, F.J. said the two questions for consideration were: whether or not the premises were rent controlled; and whether or not refusal to renew the lease was a breach of Article 153, Clause 7, of the Constitution. It had been argued that it was inappropriate to dispose of the case under Order XXV, although nothing in the Memorandum of Appeal turned on this. But as the two questions had been fully argued before the Learned Trial Judge he must
p.44 l.20 have assumed there was consent to use Order XXV.

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17. On the rent control question, his Lordship said it had been the Respondents' argument that the land was either Government property or, if it was not, that it was taken outside the Control of Rent Act by Section 4 (1A) of the Railway Ordinance. As to the latter contention, his Lordship agreed with Chang, J. that Section 4 (1A) was irrelevant to the issue. The Section was a deeming provision, intended to subject persons in the employment of the Railway to the same written laws as applied to Government servants. If its object had been to extend to railway property the written laws applicable to Government property it would have been worded differently. As to the former contention, the Learned Trial Judge had apparently taken p.45 l.42 the view that Section 15 of the Railway Ordinance had, by vesting property in the Commissioner, made immoveable property, acquired or purchased under Section 14, the property of the Government. But this land could not have been so acquired or purchased. Paragraph 1 of the Statement of Claim alleged that it was Railway Reserve Lot No. 13. This must mean that it was a reserve within Section 18 (8) of the Ordinance. Such land was not alienated land which could be acquired or purchased. It was not vested in any person or authority. p.46 l.8 Railway Reserves were lands reserved for railway purposes. Under the Constitution, this was a Federal purpose. By Article 85, Clause 3 of the Constitution, land, in a State, which is reserved for a Federal purpose does not cease to be reserved: land such as the hotel so reserved is controlled and managed by or on behalf of the Federal Government. In his Lordship's opinion such p.46 l.19 land for all practicel purposes, could be regarded as the property of the Federal Government. "Property" within Section 4 (2)(b) of the Control of Rent Act was not defined as meaning land registered in the name of the Federal Government.

18. On the constitutional question, Clause 7 of p.46 l.33 Article 153 merely declares that nothing done under the Article was to operate to deprive a person of rights to permits, licences etc., in other words, any reservation of quota's was not to deprive others of their rights to the same thing. There was no evidence that the agreement of lease was being reserved for Malays under the Article. The Appellants had argued that, as the lease had been renewed twenty times, failure to renew again was a breach of Clause 7. But any right to renew

could arise only from a contract. The General Manager of the Railway could grant leases of railway reserves for a period of thirty years subject to "such terms and conditions". (The Appellants assume that his Lordship was impliedly saying that the lease and renewals contained no provision, express or implied, for further renewals; the fact that therehad been twenty renewals did not suffice to create an implied term that there would be yet further renewals). Having found against the Appellants on both questions argued, the Lordship would dismiss the appeal.

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19. Ong, F.J. disagreed with the Learned Trial Judge. He would have allowed the appeal, and granted unconditional leave to defend. He found it necessary only to deal with the rent control question. His Lordship's concern, without indulging in arguments as to vesting and other questions as to entitlement was: "Who is the owner in law?". The suit was not instituted by Government. Although the Railway might have had some status conferred on it, it was not the Federal Government. The Federal Government was in no way invested with proprietory rights over the hotel. Railway property vested in the Commissioner "for the purposes of the Malayan Railway". He held the land as Trustee for the Railway, and such vesting did not direct the Railway of its rights and effect a transfer of property to the Federal Government. Further the Respondents had pleaded that they were the registered owners, and it was not open to the Learned Trial Judge to depart from the pleadings and hold the hotel to be the property of the Government of the Federation. His Lordship did not think the case was a fit one for disposal under either Order XIV or Order XXV. Chang, J. erred in deciding, of his own volition, so to dispose of the case.

20. The Appellants respectfully make the following submissions with regard to the findings in the Courts below.

(a) Chang, J.

(i) Erred in deciding (whether or not he did so of his own volition) that the case was appropriate for summary disposal.

(ii) Was correct in concluding that Section 4 (1A) of the Railway Ordinance had no bearing.

(iii) Erred in finding that the Appellants' "argument" missed the mark.

(iv) Erred in stating the question to be: "In whom was the land vested?". The question, it is submitted, is "For whom is the land vested?".

(v) Erred in ignoring the Respondents' pleaded case that they were the registered owners of the hotel.

(vi) May well have erred in holding that the land vested in the Federal Lands Commissioner.

(vii) Erred in holding that the land was the property of the Government of the Federation.

(b) Gill, C.J.

(i) Erred in saying it was not in dispute that the land vested in the Commissioner.

(ii) Erred in holding that, because the land vested in the Commissioner it belonged to the Government.

(iii) Erred in the manner in which he dealt with the Respondents pleading that they were the registered owners of the land. It is not disputed that: the Respondents had powers to enter into agreements and sue and be sued on them or that they were the proper persons to sue in this action. But these facts do not touch or concern the allegation made as to onwership.

(iv) Erred in holding that, if the land belonged to the Respondents, then Section 4 (1A) of the Railway Ordinance provided the complete answer to the rent control defence. It is respectfully submitted that, on this point, Ali, F.J. (and so it would appear, Chang, J.) were correct.

(v) Erred in taking the view that the action raised simple issues of law only and was rightly disposed of in the way the Learned Trial Judge disposed of it.

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(c) Ali, F.J.

(i) Erred in saying that nothing in the Memorandum of Appeal turned on the manner of disposal of the case.

(ii) Erred in his justification for the procedure adopted by the Learned Trial Judge. The latter, it is respectfully submitted, had no justification for assuming consent. Further, it is submitted, even if there was such implied consent, it was for the Learned Judge to exercise a discretion according to law.

(iii) Was correct, for the reasons he gave, in holding that Section 4 (1A) had no bearing on the case.

(iv) Erred in accepting one part of paragraph 1 of the Statement of Claim (the allegation, which was omitted, that the land was Railway Reserve No. 13) but rejecting another (the allegation, which was admitted, that the Respondents were the registered owners).

(v) Erred in concluding that theland was not vested in any person or authority.

(vi) Erred in concluding that because railways are a Federal purpose and railway lands controlled or managed by or on behalf of the Federal Government (both of which facts the Appellants admit), then it followed that such lands could be regarded as the property of the Federal Government. If, which the Appellants dispute, any inference could be drawn from the two facts, it must be that the land was the property of the Federation, not of any Government.

(d) Ong, F.J.

(i) Was correct in formulating the question as: "Who is the owner in law?"

(ii) Was correct in holding that the Federal Government was in no way invested with proprietory rights over the hotel.

(iii) If it be the case that the land was vested in the Commissioner, was correct in holding that the Commissioner held as

a mere Trustee, and that such vesting did not transfer property in the land to the Federal Government.

(iv) Was correct in holding that it was not open to the Learned Trial Judge to depart from the pleadings.

(v) Was correct in taking the view that the issue: was not "crystal clear": was not a fit case for summary disposal: and was one where unconditional leave to defend should be granted.

(vi) Erred in not finding that the action ought to be dismissed, as one bound to fail.

21. It is respectfully submitted that summary disposal is inappropriate where, by reason of obscurity either of the facts or of the law, the matter ought to be dealt with at trial. In the present case there was, and still is, obscurity as to both. The Respondents advanced two arguments based on mutually exclusive foundations of fact. One such argument (property of the Government of the Federation) was not open to them on their pleading. The other (outside rent control by reason of Section 4 (1A) was not expressly pleaded, and was open to the Respondents only because it was not inconsistent with their pleading. They have never sought leave to amend (and, it is respectfully submitted, ought not to be allowed to do so at this stage). If they have pleaded the facts, of "property" in the alternative (and this was their case) then, it is respectfully submitted, no Court ought to have countenanced summary proceedings in lieu of demurrer. If they had been confined to arguing their pleaded case, then there was an immediate conflict between the facts as pleaded and the facts as (so it would appear) created by law. In this, alternative, situation then again, as Court ought to have countenanced summary proceedings. As to obscurity of law, suffice it to say that four Judges have considered the rent control point, and all have reached differing conclusions.

22. It is further submitted, respectfully, that given: (a) the Respondents' pleading and (b) the conclusion (correct, it is

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submitted) that Section 4 (1A) of the Railway Ordinance was of no assistance to the Respondents, the Learned Trial Judge ought either to have given unconditional leave to defend, or struck out the action as one that was bound to fail. Further, that on any appeal by the Respondents from either decision, the Appeal Court, properly directing itself, would have upheld such decision.

23. If the foregoing submissions are incorrect, then it is respectfully submitted that Ong, F.J. was correct in holding that the question was "Who is the owner in law?". This, it is submitted, is the same question, in the circumstances of this action as: "For whom is the land vested". Three possibilities exist: each, it is submitted, is fatal to the Respondents:

(a) The owners, registered as such, are the Respondents. This was the Respondents' pleaded case. As Ong, F.J. pointed out (correctly, it is submitted) the Respondents are not the Government of the Federation. It follows, it is submitted, that the property of the Respondents is not the property of the Government, and therefore, that the land is not exempted from the Control of Rent Act. The Appellants refer in support to Section 21 (2) of the Railway Ordinance.

(b) The land is vested in the Federal Lands Commissioner. He holds land either "for the purposes of the Federal Government" of "for the purposes of the Malayan Railway". It is submitted therefore that it is vested in the Commissioner for the Railway, which is a body corporate separate and distinct from the Government. This is a quite different body and not incorporated. The Appellants repeat the submission that although railways are a Federal purpose this is separate and distinct from owning the railways.

(c) The land, by operation of law is not vested in the Respondents or the Commissioner, but in the Federation itself. This, it is submitted is a body corporate, able to own land, and quite distinct from its Government for the time being.

24. It is respectfully submitted that this appeal ought to be allowed, with costs, the judgment and

order of the Appeal Court set aside, and the action dismissed as one bound to fail, alternatively remitted to the High Court with the Appellants having unconditional leave to defend, for the following among other

R E A S O N S

(1) BECAUSE the hotel is neither the property of the Government of the Federation nor of any other person or body the property of which is exempted from the provisions of the Control of Rent Act.

(2) BECAUSE the Appeal Court and the High Court erred in holding that the hotel was properly exempted from the provisions of the Act.

(3) BECAUSE the Learned Trial Judge ought to have struck out the action, alternatively granted unconditional leave to defend.

GERALD DAVIES

No.

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B E T W E E N :-

STATION HOTELS BERHAD Appellants

- and -

MALAYAN RAILWAYS ADMINISTRATION
Respondent

CASE FOR THE APPELLANTS

TURNER PEACOCK
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