

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA (APPELLATE JURISDICTION)

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

B E T W E E N:

STATION HOTELS BHD. Appellants
(Defendants)

10 - and -

MALAYAN RAILWAY ADMINISTRATION Respondents
(Plaintiffs)

CASE FOR THE RESPONDENTS

Record

1. This is an appeal from a majority decision of the Federal Court of Malaysia (Gill C.J., Ali F.J., and Ong Hock Sim F.J. Dissenting) dated 13th November 1976 disallowing the Appellants' appeal from a decision of Chang Min Tat J. given in High Court in Kuala Lumpur and dated 3rd May 1976. By his decision Chang Min Tat J. allowed the Respondents' application for Summary Judgment and made the following Orders:

20 (a) that the Appellants and all persons holding through them or under them to forthwith quit and deliver up, vacate and hand over possession of the premises known as Station Hotel, Kuala Lumpur, held under Railway Reserve Lot No. 13 (hereinafter referred to as "the said premises") p.33

30 (b) that the Appellants and any persons holding through them or under them also be restrained from remaining on p.33

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or continuing to remain on the said premises.

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(c) that the Appellants do pay to the Respondents double rent calculated at the rate of \$4,000/- per month from 1st March 1975 to handing over of vacant possession to the Respondents.

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(d) that the Appellants do pay the taxed costs to the Respondents.

The Federal Court by a majority decision confirmed the said decision. 10

2. The principal issues in this appeal are:-

(a) whether the Learned Judge was correct in dealing with the application as a proceeding in "lieu of demurrer" under Order 25 of the Rules of Supreme Court 1956.

(b) whether the said premises are exempted premises within the provisions of Section 4(2) (b) of the Control of Rent Act 1966. 20

3. The primary facts are as follows :-

(a) The said premises are situated in land held under Railway Reserve for Lot No. 13 which land was proclaimed to be a reserve for a public purpose to wit a railway and goods yard to be maintained by the general manager of the Federated Malay States Railways by the Acting Secretary to Resident, State of Selangor on the 6th July 1935 pursuant to powers vested in him by Section 24 (1) of the Land Code 1926 and was so gazetted in the Federated Malay States Government Gazette dated 12th July 1935 No. 15 Volume XXVII. 30

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(b) The Appellants have been in occupation of and operating a hotel in the said premises from 1935 by virtue of various Lease Agreements entered into with the Respondents culminating in the Lease Agreement dated 28th December 1968 by which Agreement the Respondents leased the said premises to the Appellants for a period of five years (hereinafter referred to as "the principal agreement"). 40

- (c) On 5th December 1973, the Appellants and the Respondents entered into a Supplementary Agreement (hereinafter referred to as "the 1st Supplementary Agreement") extending the Lease granted to the Appellants for a further period of one year from 1st January 1973. p.73
- 10 (d) On 16th March 1974, the Appellants and the Respondents agreed to extend the said lease for a further period expiring on 30th June 1974 on the same terms and conditions as contained in the principal agreement but subject to payment of rental of \$2,000/- per month. p.74
- (e) On 10th May 1974, the Respondents wrote to the Appellants indicating that the lease will not be further extended when it expired on 30th June 1974. p.76
- 20 (f) On 10th July 1974, the Respondents' Solicitors wrote to the Appellants requesting the Appellants to quit and deliver up vacant possession of the said premises. p.77
- (g) The Appellants remained on the said premises even after the determination of the said lease. From July 1974 to September 1975, the Appellants forwarded rentals which were received by the Respondents "without prejudice to the rights of the Respondents to commence proceedings to evict the Appellants".
- 30 (h) The Respondents on 20th July 1974 commenced eviction proceedings vide Kuala Lumpur High Court Civil Suit No. 870 of 1974 and the Appellants in their defence alleged that acceptance of rental, after determination of the lease had created a monthly tenancy. The Respondents withdrew Civil Suit No. 870 of 1974. p.1
p.8
- 40 (i) On 27th February 1975 the Respondents through their Solicitors wrote to the Appellants calling on the Appellants to quit and deliver up vacant possession of the said premises on or before 31st March 1975.

The Appellants failed to vacate the premises and are still in continued occupation of the said premises.

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- p.1 (j) The Respondents commenced Kuala Lumpur High Court Civil Suit No. 586 of 1975 on 18th April 1975 to obtain vacant possession of the said premises and to recover double rental.
- p.11 (k) The Respondents filed a Summons in Chambers under Order 14 Rule 1 of the Rules of Supreme Court for Summary Judgment on 22nd September 1975.

4. At the hearing of the Respondents' application for Summary Judgment, the Appellants relied on the following grounds to contend that there were triable issues :- 10

- (a) that the premises were rent controlled premises and as such the Appellants are in rightful occupation of the said premises.
- (b) that the continued occupation of the said premises by the Appellants from 1935 had created in the Appellants' favour a right, privilege permit or licence deprivation of which is against Clauses 7 and 8 of Article 153 of the Constitution of the Federation of Malaysia. 20
- (c) that the Appellants' right to occupy the said premises cannot be deprived without payment of compensation in accordance with Article 13 of the Constitution of the Federation of Malaysia. 30

5. Chang Min Tat J. held that :-

- p.20 (a) although the application was under Order 14 to sign final Judgment as the pleadings showed only defences in law, it could be regarded as proceedings "in lieu of demurrer" under Order 25 of the Rules of Supreme Court and disposed of as such.
- p.24 (b) the said premises are not rent controlled for the reason that the said premises are property of the Government of the Federation of Malaysia vested in the Federal Lands Commissioner for the purpose of Malayan Railway Administration (the Respondents) and are therefore exempted from the operation of the Control 40

of Rent Act 1966.

- (c) the Appellants are not in possession of or entitled to claim any right capable of being protected under Article 13 or Article 153 of the Constitution of the Federation of Malaysia.

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6. In the Federal Court the Appellants

- (a) abandoned their grounds based on Article 13 and Clauses 7 and 8 of Article 153 of the Constitution of the Federation of Malaysia, but however,

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- (b) maintained their submission on the ground that the said premises are rent controlled, on the premises, that even though the land in question over which the said premises are situated is vested in the Federal Lands Commissioner he holds the land for the purpose of use by Malayan Railway Administration (the Respondents),

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- (c) maintained that Chang Min Tat J. ought not to have dealt with this matter under Order 25 of the Rules of Supreme Court.

7. The Respondents' substantive arguments and their statutory basis were as follows :

- (a) Section 4(2) (b) of the Control of Rent Act 1966 provides inter alia:

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"premises which are the property of the Government of the Federation or of the Government of any State".

- (b) Section 4(2) (b) of the Control of Rent Act applies to the said premises for the following reasons:

- (i) Section 4 (1A) of the Railway Ordinance 1948 provides inter alia:

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"The written laws for the time being in force in the Federation or in any part thereof shall, except where otherwise expressly provided, apply to the Railway Administration in the same manner as they apply to the Government of the Federation and any

person in the service of the Railway Administration shall, except where otherwise expressly provided by any other written law, be deemed to be also in the service of the Government of the Federation."

(ii) Alternatively, the said premises are property of the Government of the Federation of Malaysia in that the said premises vest in the Federal Lands Commissioner and as such are exempted from the operation of the Control of Rent Act 1966. 10

(c) The tenancy (monthly) had been terminated in accordance with law applicable to leases in Malaysia by service of a month's notice on the Appellants.

(d) The Appellants are mere tenants and are not in possession of any right or licence which is capable of being protected under Article 13 or Article 153(7) and (8). 20

(e) No facts are in dispute and this matter is a matter suitable for disposal in a summary manner.

8. The Federal Court by a majority decision rejected the Appellants contention that the said premises are rent controlled for the following reasons:

p.39 (a) Gill C.J. Held that the said premises are vested in the Federal Lands Commissioner for the purpose of Malayan Railway Administration (the Respondents) and are therefore the property of the Government of the Federation of Malaysia and as such is exempted from the operation of the control of Rent Act 1966. He went on to hold that even assuming that the said premises are the property of the Respondents as alleged by the Appellants, the said premises are still exempt from the operation of Control of Rent Act 1966 for the reason that the Control of Rent Act applies to the Respondents in the same manner as it applies to the Government of the Federation of Malaysia by virtue of Section 4 (1A) of the Railway Ordinance 1948. 30 40

(b) Ali F.J. was of the view that the land on which the said premises are situated are "reserved lands" as distinguished from "alienated" lands. He held that in the case of "reserved lands" the land does not vest in any person or authority. He went on to hold that in the case of "railway reserves" they are lands reserved for railway purpose which is federal purpose under Section 10B of the Federal List in the 9th Schedule to the Constitution of the Federation of Malaysia. He held that for all practical purposes the said premises are the property of the Federal Government and as such is exempted by Section 4 (2B) of the Control of Rent Act 1966. Ali F.J. thus confirmed the decision of Chang Min Tat J. Although he disagreed with his reasoning for arriving at such a decision based on the reasoning that the said premises vest in the Federal Lands Commissioner under Section 15 (1) of the Railway Ordinance.

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H.S. Ong F.J. Who gave the dissenting Judgment based his view on the ground that although the land over which the said premises are situated is vested in the Federal Lands Commissioner by way of Section 15 (1) of the Railway Ordinance the Federal Lands Commissioner held it for the purposes of Malayan Railway and as such is a trustee of the land for the Railway Administration.

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9. (a) It has not been disputed that the said premises are situated over land held under Railway Reserve Lot No. 13 in the District of K.L., State of Selangor (a former Federated Malay State).

40 (b) Section 24(1) of the Land Code (Cap 138) Volume III of The Laws of the Federated Malay States 1935 (now repealed) provided inter alia:

"The Resident may from time to time reserve by notification in the Gazette any state land which is needed for any public purpose."

(c) The Federated Malay State Government Gazette No. 15 dated Friday, 12th July 1935 provided inter alia:

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"No. 3111 In exercise of the powers vested in him by Section 24(1) of the Land Code 1926 the Resident of Selangor proclaims those parcels of land situated in the town of Kuala Lumpur described in the schedule I and II hereto and delineated upon revenue survey plans Nos. 14,674 and 14,675 (Railway Reserve Lot No. 13) deposited in the office of the Superintendent of Revenue Surveys Selangor, to be a reserve for a public purpose to wit, a railway and goods yard to be maintained by the General Manager of the Federated Malay States Railways."

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(d) In 1946, the States of Straits Settlement, Malaya States and Federated Malay States combined to form the Malayan Union.

(e) Section 92(1) of the Malayan Union Order in Council 1946 provided that

(i) all property vested in or was in possession of or under the control of the Government of the Federated Malay States shall vest in HIS BRITANIC MAJESTY or any person appointed under sub-section 7 of Section 92(1).

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(f) In exercise of powers conferred on him by Section 92(7) of the Malayan Union Order in Council 1946, the Governor of the Malayan Union made Railway Property (vesting) Regulations 1947 on the 31st of December 1947. These regulations provided inter alia:

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(i) "the Railway" meant and included the former "Federated Malay State Railways".

(ii) "Railway Property" means property, wherever situated, which, immediately before the appointed day, was vested in, or was in the possession, or under the control, or held on account of His Majesty, or the Ruler of any of the Malay States, or the Government of the Federated Malay States, or the Government of any of the Malay

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States, or any officer of any such Government for the purposes of the Railway, and includes all property in the Colony of Singapore which, immediately before the appointed day, was vested in the High Commissioner for the Malay States by virtue of the Supreme Railway Transfer Ordinance and the Federated Malay States (Title to property) Ordinance 1936 of the Straits Settlements or had been acquired under the last mentioned Ordinance."

(iii) that all railway property shall be deemed to have been vested in the Governor of the Malayan Union.

(g) In 1948, the Railway Ordinance was enacted, Section 15 (1) of which provided:

"Subject to the provisions of section 17 of this Ordinance, all property, movable and immovable, which -

(a) immediately before the commencement of this Ordinance, was, by virtue of Section 92 of the Malayan Union Order in Council, 1946 and the Railway Property (Vesting) Regulations 1947, made thereunder, vested in the Governor of the Malayan Union for the purposes of the Malayan Railway; or

(b) has been acquired since the coming into operation of the Malayan Union Order on Council 1946, by His Majesty or by the Governor of the Malayan Union or by any officer of the Government, including officers of the railway, for the purposes of the Malayan Railway and was, immediately before the commencement of this Ordinance, held by His Majesty or by the Governor or such officer for such purposes, shall on the commencement of this Ordinance, and without any conveyance, assignment or transfer whatever, vest in the Chief Secretary for the purposes of the Malayan Railway for the like title, estate or interest and on the like tenure as the same was vested or held immediately before the commencement of this Ordinance.

Section 22 of the Railway Ordinance 1948 provides:

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- (1) Notwithstanding the provisions of any written law -
- (a) the General Manager may grant leases, subject to such terms and conditions as he may think fit, in respect of the whole or any portion of a railway reserve for any term not exceeding thirty years; and
 - (b) the Chief Secretary may grant such Leases for any term not exceeding ninety-nine years. 10
- (2) Leases of railway reserves shall be in the form set out in the First Schedule to this Ordinance or as near thereto as circumstances permit.
- (3) Leases of railway reserves granted under this section shall be registered in accordance with the law relating to the registration of leases of State Land in all respects as if the same were leases of State Land. 20
- (4) All rent payable in respect of any lease granted under the provisions of this section shall be paid to the Railway Administration
- (h) By virtue of Section 7(1) of the Federal Lands Commissioner Ordinance 1957,
- "All immovable property which, immediately before the commencement of this Ordinance was vested in the Chief Secretary for the purposes of the Federal Government or for the purposes of the Government of any State or Settlement or for the purposes of the Malayan Railway including property vested in the Chief Secretary, Federation of Malaya, under the provision of Section 7 of the Chief Secretary (Incorporation) Ordinance, 1949, shall, on the coming into force of this Ordinance and without any conveyance, assignment or transfer whatever, vest in the Corporation for the like title, estate or interest and on the like tenure and for the like purposes as the same was vested or held immediately before the coming into force of this Ordinance." 30 40

All immovable property vested in the Chief Secretary under Section 15 (1) of the Railway Ordinance 1948 for the purpose of the Malayan Railway vested in the Federal Lands Commissioner.

10 It is clear from the above that the land over which the said premises are situated was never "alienated" to the Respondents. If it had been, there would have been a conveyance executed and the land would vest in the Respondents and not in the Federal Lands Commissioner. Thus the said premises are the property of the Government of Federation of Malaysia.

- (i) Section 4(2)(b) of the Control of Rent Act, 1966 exempts "premises which are the property of the Federation or of the Government of any State" from its application.

20 10. The Respondents submit that the decision of the Federal Court and the arguments of the Respondents before that Court are right and that this appeal should be dismissed for the following amongst other:

R E A S O N S

- (a) BECAUSE Chang Min Tat J. was correct and had the necessary authority to deal and dispose of the Respondents' application under Order 25.
- (b) BECAUSE the said premises are the property of the Government of the State of Selangor.
- 30 (c) BECAUSE Section 4(2)(b) of the Control of Rent Act 1966 is applicable to the Respondents in the like manner it applies to the Government of the Federation of Malaysia by virtue of Section 4(1A) of the Railway Ordinance 1948.
- (d) BECAUSE the said premises are therefore not rent controlled premises.
- (e) BECAUSE the right of the Appellants to occupy the said premises have been validly terminated by the Respondents.
- (f) BECAUSE the decision of the Federal Court was right and ought to be upheld.

Appeal No. 34 of 1977

IN THE JUDICIAL COMMITTEE OF THE PRIVY
COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA
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COURT AT KUALA LUMPUR

B E T W E E N:

STATION HOTELS BHD.

Appellants
(Defendants)

- and -

MALAYAN RAILWAY
ADMINISTRATION

Respondents
(Plaintiffs)

CASE FOR THE RESPONDENTS

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