

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

(APPELLATE JURISDICTION)

B E T W E E N :-

COLLECTOR OF LAND REVENUE Appellant

- and -

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A.K.A.C.T.V. ALAGAPPA
CHETTIAR Respondent

AND B E T W E E N :-

COLLECTOR OF LAND REVENUE Appellant

- and -

ONG THYE ENG (As Trustee) Respondent

CASES FOR THE RESPONDENTS
AND CROSS-APPEALS

The Federal
Court of
Malaysia

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1. These are Appeals and Cross-Appeals from a Judgment and Order of the Federal Court of Malaysia holden at Kuala Lumpur (Appellate Jurisdiction), (Ong Hock Thye, F.J., and Raja Azlan Shah and Pawan Ahmad J.J.) dated the 20th day of February 1968, allowing, without costs but with an award of interest, Appeals by the Respondents and others from a Judgment and Orders of the High Court in Malaya (Gill J.) dated the 28th day of February 1967 whereby the said Court dismissed the applications of the Respondents and others against the award of compensation made by the Collector of

Record.

pp.285-320

pp.87-103

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In the Federal
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Malaysia

Record,
(Contd.)

Land Revenue (the Appellant in these Appeals) in respect of the compulsory acquisition by the Government of the State of Selangor of land of which the Respondents were co-owners (themselves and with others) in undivided shares.

2. The questions raised by these Appeals are:-

(i) whether the Federal Court acted correctly in law in rejecting the amount of compensation awarded to the Respondents which had been upheld by a Judgment of the High Court;

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(ii) whether the Federal Court acted correctly in law and made findings of fact which were open to them upon a review of the evidence before the High Court and whether any such findings ought further to be reviewed.

3. The question raised by the Cross-Appeals is whether the Federal Court having arrived at its own findings as to the amount of compensation properly payable to the Respondents, were correct in law and in fact in reducing such amount by 10% for what the Court described as a "precautionary measure" in case some factor which the Court ought to have considered had been inadvertently overlooked.

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pp.1-2

4. By an insertion in the Gazette dated the 4th day of June 1964 the Selangor Government gave Notice pursuant to S.4 of the Land Acquisition Act 1960 that certain land in which the Respondents held shares was likely to be acquired for the erection of houses and flats. By a further Notice dated the 8th day of October 1964, the said Government declared its intention to acquire this land. Accordingly, pursuant to Section 10 of the said Act, a Notice of Enquiry was issued dated the 15th day of October 1964 inviting claims to compensation and upon the same day, Notices were sent to the Respondents requesting information within 21 days of particulars relating to the land including such matters as valuations, interests including tenancies, rents and profits.

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pp.3-4

pp.5-6

pp.7-8

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pp.9-10

5. An enquiry was held by the Appellant upon the 12th day of November 1964 at his District Office

in Kuala Lumpur in which all the proprietors of the land in question (including the Respondents) were represented by one learned Counsel who claimed compensation at the rate of \$30/- per square foot. This rate was stated to be based on sales of land in the vicinity and making due allowances for features concerning the present land such as parking facilities and the presence of squatters. Learned Counsel who appeared for the Municipality stated that he appeared only for the purpose of taking note of the proprietors' claim and had no instructions to submit any valuation to be put on the land. Learned Counsel who appeared on behalf of the Chief Valuation Officer, Federation of Malaya, stated that the department had not completed its valuation and therefore could not put forward any views.

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Malaysia

Record,
(Contd.)

6. On the 16th day of December 1964, the Appellant made his award which valued the land at \$3/- per square foot and his grounds for determining the amount of compensation were set out as follows:-

pp.10-11

"The lands to be acquired are not situated within the commercial centre of the Town but in a comparatively poor residential section. As a whole they are irregular in shape and development would therefore entail considerable loss of land for a comprehensive road system which will be necessary. There are numerous squatters on the lots at the rear and north-west corner. A private developer would therefore have to spend considerable sums in any effort to evict these squatters. This tends to reduce the value of the lands.

An undivided share of the lands to be acquired was sold by Devarayan Chettiar to the present nine co-owners at \$2.20 cts per sq. ft. on 5th November, 1963.

The lands to be acquired totalled 22.763 acres. Any prospective buyer of land of this size would inevitably expect a lower price than would be the case if he were to buy a smaller area.

Under the circumstances, I value the land at \$3/- per sq. ft. and award a total compensation

In the Federal
Court of Malaysia
Record, (Contd.)

of \$2,975,190/- to be divided amongst the owners according to their respective shares in the lands."

pp.12-15

7. By Notices dated the 17th day of December 1964 the Respondents were both informed of the Award and were made offers of Compensation appropriate to the shares that they hold in the land. There were 10 co-owners of the land who held in undivided shares. The Respondent Alagappa Chettiar held one half share and the Respondent Ong Thye Eng held 20/240ths. All co-owners held as trustees and the total area of the land was 22.7 acres.

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pp.16-17

8. By a document which appears to be undated but which is addressed to the Appellant, the Respondent Alagappa Chettiar made an Application pursuant to Section 38(1) of the Land Acquisition Act 1960 that an objection to the amount of compensation should be referred to Court. The said application stated that the award of compensation was "manifestly insufficient" for which it gave four reasons which may be summarized as follows:-

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- (1) the market value of comparable land;
- (2) the situation and locality of the lands acquired;
- (3) the outline approval given for development by the Town Planning department;
- (4) the enhanced value of the land due to proposals being confirmed for a dual carriageway.

pp.18-19

9. By a document dated the 21st day of January 1965, the Respondent, Ong Thye Eng made a similar application of objection in which were set out five grounds which were similar in substance to the four grounds summarized in paragraph 8 above.

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pp.30-1

10. Following the above objections, references were made to the High Court and after certain preliminary matters had been dealt with, the hearing began on the 25th day of October 1966 of the applications of the Respondents together with seven others of a similar nature who were collectively referred to in the proceedings and the judgment therein as "the Applicants".

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pp.31-4

11. As far as the application of Alagappa Chettiar was concerned, he gave evidence on his own behalf

in which he stated (inter alia) that he was the registered owner of an undivided half-share in the lands acquired. He had been arranging to develop the land for a long time and had a development plan prepared in 1957 which he produced to the Court. The other half-share was acquired by Devarayan Chettiar who was a man of some 22 to 24 years old in 1962. He was an Indian resident who had been coming to Malaya for 4 years and returned to India in the middle of 1964. He wanted to continue his stay but was unable to get permission from the immigration authorities. He could not take part in the development of the land and in order to escape Indian capital gains tax, he had to sell the land before he left Malaya. The witness was asked to join in the sale as there was difficulty in selling an undivided share but he was not interested in selling but wished to develop it.

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Court of
Malaysia

Record,
(Contd.)

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Alagappa Chettiar also stated that the land was zoned in 1957 for open development and that the objection to denser development had been withdrawn. He also produced documents and newspaper cuttings relating to development and indicated that as a result of a report made to him by Mr. Williams, a valuer and estate agent, he now reduced his claim to \$12/- per square foot.

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In cross-examination he stated that 10½ acres of the land which had been occupied by the military had been vacated after the sale by Devarayan Chettiar and before the compulsory acquisition but there were still 46 sub-tenants on the land. Devarayan Chettiar had sold the land at an extremely low price of \$2.20/- per square foot and the proper price at that time was \$20 to \$21 per square foot. The witness did not know of and was not consulted about this sale.

pp.34-6

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12. Another applicant, Pong Kien Ngor, gave evidence that in November 1963 he had bought from Devarayan Chettiar an undivided 1/40th share of the land. He paid \$2.20 per square foot. He did not consider this to be the market price which he put at more than \$10/- per square foot in November 1963 and he knew that the seller was in a hurry to go back to India.

pp.37-39

13. Palaniappa Chettiar gave evidence in corroboration with that of Alagappa Chettiar regarding

pp.39-41

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Record,
(Contd.)

the position and interest of Devarayan Chettiar. He also stated that Devarayan Chettiar asked him to assist in selling his (Devarayan Chettiar's) share in the land. No one came forward in 1962 to buy an undivided share and in 1963 Devarayan Chettiar got an extension on his visit pass until June 1964. This was the final extension. The witness also explained about Indian capital gains tax and stated that to avoid it, the land had to be sold by April 1964.

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p.40,11.26-9

As far as value was concerned, the witness had been approached in 1964 by brokers for the sale of two lots of land opposite that acquired. An offer of \$10/- per square foot was made which was refused as the owner wanted \$12/- per square foot. The lands were of the same type as those acquired but there were no buildings on them.

p.41,1.28

pp.346-358

p.42,1.10

14. The valuer and estate agent, Mr. Williams, produced a report and plan which were exhibited and said he had visited the lands which were two miles from the town centre. He had valued them as at June 1964. He considered the site to be suitable for high density development and access from all parts of the town was excellent. There had been a very substantial rise in prices from 1962 to 1964 since when they had been static. He considered the sale in November 1963 at \$2.20 per square foot to be a low price. A strip of the land had been sold for road widening and the price had been \$15 per square foot. Mr. Williams also produced a schedule of 20 sales of land in the District of Kuala Lumpur, some of which were divided into lots. He gave evidence relating to them and stated that his conclusion after considering them and taking into account the rise in prices, was that the value of the land acquired was \$12/- per square foot. He had made a deduction of \$4000 for clearing the squatter houses but about "two-thirds of the land was already clear and development could proceed immediately". There would be no delay in the starting of the development.

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pp.359-364

p.43,1.8-

p.45,1.22

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p.45,11.30-3

Mr. Williams then described how he had "made a cross check of the valuation by considering what could be obtained for the number of sites available

for development". He wanted to find out what a developer would pay for a flat site. Having taken into account the density for flats, the percentage of the gross area and the known flat values, he arrived at a figure of \$11.15 per square foot. But there would have to be shops, office blocks and other commercial uses which would fetch higher prices so that he stood by his original figure of \$12 per square foot.

In the Federal
Court of
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Record,
(Contd.)

p.45,11.45-7

10 15. Mr. Williams also stated that he took the size of the area into consideration but thought that no reduction of price was necessary because of the high demand for this type of land at that time. He calculated that 28% of the total area would be lost for roads whereas the government valuer had estimated 18%. In his practice as an estate agent, Mr. Williams found undivided shares extremely difficult to sell and a purchaser would invariably pay less than the proportionate value
20 of the land. He had obtained a copy of the Government Valuer's report but saw no reason to modify his opinion. He did not agree either "that the previous sale of the land itself would be a better guide than sales of other lands however similar" or "that the sale of half undivided share of the land in question seemed slightly high" or "that sales other than those in the immediate vicinity can offer no evidence of value for determining market value" or "that a prospective
30 purchaser buying a piece of land of this size would invariably expect a reduction in value".

p.46,1.10-
p.48,1.10

16. When he was cross-examined, Mr. Williams agreed that demand for housing units had declined since the Budget of 1964 and that in doing his calculations he assumed that all the units when completed would be sold. He did not believe that the proposed development would flood the market. As regards the 19 sales he had quoted, he admitted that only three could be said to be in the same
40 locality as the land acquired. He preferred values of lands in the same vicinity if they were available but, if not available, then sales of other lands could be relied upon and he denied the suggestion that his valuation of \$12/- per square foot could not be supported by the sales he had chosen for his report.

p.48,1.11-
p.54,1.30

17. The Respondent Ong Thye Eng was represented by learned Counsel who also appeared for two other applicants, which were both limited companies with
50 the same chairman, Ng Chong Geng who gave evidence.

p.57,1.28-
p.59,1.44

In the Federal
Court of
Malaysia

Record,
(Contd.)

He stated (inter alia) that each Company held an undivided interest in the land acquired of 20/240ths. The purchasers were from Devarayan Chettiar. The witness knew that an undivided half share was for sale. He was not keen to buy as he did not know who was the owner of the other half. There was an Army Camp on a portion of the land, but he took a gamble and made an offer of \$2/- per square foot which was rejected. A further offer of \$2.20/- per square foot was accepted. His object was to develop the land but he knew that this could not be done immediately because of the Camp. The price was very cheap and he put the normal market price at between \$7/- to \$8/- per square foot.

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p.60

18. A further witness, Mr. A. Varadachari, was called for these three Respondents. He was a Chartered Accountant both of India and Malaya who explained the working of capital gains tax in India. He was not cross-examined.

pp.60-1

19. On behalf of the present Appellant, the Administrative Officer, Housing, Koh Eng Lim gave evidence of a census taken in July 1965. He described the properties on the land acquired and gave particulars of the number of occupants. However, he did not know the date when the land was acquired which was the material time for assessing compensation and the evidence does not seem to be directly relevant.

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p.61, l.28

20. The present Appellant also called Mr. Frank Watkinson who was in charge of the Federal Department of Town & Country Planning and from 1st January 1965 had been Chief Planning Officer for the Federal Capital. He stated that the land under acquisition had been zoned for "Open Development" since June 1964. This did not permit terrace houses but allowed blocks of flats. The scheme of development proposed by the Government involved a final figure of 3,023 flats and 56 shops. He thought that 54 units per acre, which was the basis upon which Mr. Williams worked, was satisfactory if there was provision for a ten acre school.

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p.63, ll.19-21

21. The principal witness for the present Appellant was Lim Mow Chin, the Valuation Officer in the Treasury, who produced the report he had

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p.66, l.18

made in December 1964. He maintained that the claim of \$12/- per square foot was very high. He had checked 4 other sales in the immediate vicinity where the area of land had exceeded one acre. There were also 4 sales of areas less than 1 acre but two of them could be disregarded. He considered that the best evidence of value was the previous sale of the land itself some 7 months before acquisition. He did not think that the price of \$2.20/- per square foot was out of line with other sales in the vicinity and smaller areas fetched higher prices than larger ones. He also stated:-

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Record,
(Contd.)

p.69,11.11-17

"In the course of my duties I am familiar with values of lands with similar potentialities in other parts of the town, but I have given no serious consideration to them because they are either in better areas or more densely populated areas or areas commanding better commercial values."

p.69,1.34-
p.70,1.2

22. The Government Valuer thought that the proper market value on 4th June 1964 was \$3/- per square foot which represented a 40% increase on the previous sale. He stated that the fall in the demand for flats began just before the 4th June 1964 and also thought that the confrontation of Malaysia by Indonesia which started in September 1963 had the effect of slightly lowering the normal increase in land values. The latter proposition, the Government Valuer sought to sustain by reference to a number of the sales cited by Mr. Williams. This witness disagreed with the conclusions of Mr. Williams and gave as his reason the previous sale of the land. He also doubted the degree of demand and thought that the market would be "flooded with flats" so that prices would slump.

p.72,1.17

23. In cross-examination, the Government Valuer stated that he had no experience of buying or selling undivided shares but he had valued them for estate and stamp duty purposes. Generally, he felt that reliance should not be placed on such sales but this was not necessarily true in all cases particularly where the land area was very big. He also disagreed with Mr. Williams' value of \$9000/- per unit as the basis of valuation because "if land is sub-divided into terrace house lots and the lots are sold to various developers,

p.72,1.30

p.78,11.14-20

In the Federal Court of Malaysia

Record, (Contd.)

it would take time for the houses to be built. The basis of Mr. Williams' calculation is valuation of each terrace lot". With respect to the Government Valuer the basis of Mr. Williams' calculation was specifically stated to be of "known flat values" and he also referred to the necessity for shops and some sites being put to more valuable use (see paragraph 14 above).

pp.80-6

24. The hearing of the evidence was concluded upon the 28th day of October 1966 and after addresses by learned Counsel upon the 1st day of November 1966, the Judgment of Gill J. was delivered in the High Court upon the 28th day of February 1967.

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pp.87-100

p.87,1.19- p.89,1.1

25. At the beginning of his Judgment, Gill J. referred to a number of matters which were not in dispute, including the particulars of the land, the purchase of the undivided half share in November 1963 and the history of the compulsory acquisition. He set out in full the grounds for the award made by the Appellant. He then stated that the burden lay upon the owners of the land acquired to prove that the award was inadequate and also mentioned that, "It is common ground that the Applicants in these proceedings are entitled by way of compensation to the market value of the land acquired as on 4th June 1964". He then considered the term "market value" and referred to Superintendent of Lands and Surveys, Sarawak v. Aik Hoe & Co. Ltd. (1966) 1 M.L.J. 243, 247, and the authorities and definitions cited therein. He then continued:-

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p.89,11.2-30

p.90,11.1-4

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pp.91, 11.17-25 and 11.29-34

"It is clear from the authorities that where the land acquired was purchased by the owner within reasonable time of its compulsory acquisition, the price paid affords infinitely the best material for calculating its market value, the reason being that the elements of dissimilarity will be least present when the transaction sought to be applied is a previous purchase of the same property.

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Where there has been no recent sale of the same land, only sales within a reasonable period of lands more or less similarly situated in the same neighbourhood and possessing

similar advantages are helpful in determining the market value of any land."

In the Federal
Court of
Malaysia

Record,
(Contd.)

26. The Respondents respectfully submit that the passage quoted in the previous paragraph is not an accurate deduction from the authorities in that it appears to take no account of the circumstances of a previous purchase, including, which is particularly relevant to the transaction under review, the effect upon price of a sale of a proportion of the property in undivided shares. Secondly, it is submitted that the tests suggested for comparable sales are too narrowly stated and that in order to be relied upon, such sales do not, in particular, have to be "more or less similarly situated in the same neighbourhood".

27. The learned Judge then reviewed the evidence and mentioned that three of the Applicants had given evidence that they had bought the land cheap. He referred to the purchasers from Devarayan Chettiar and observed that neither Alagappa Chettiar nor Palaniappa Chettiar had testified "that Devarayan Chettiar said at any time that he was going to sell the land at any price he could get and go back to India at the earliest possible moment". It is respectfully submitted that this observation does not do justice to the evidence of these two witnesses, which was not contradicted, regarding the personal details of Devarayan Chettiar and the necessity of his leaving Malaya upon the expiration of a final extension of his visitor's permit. The finding of the learned Judge upon this aspect of the case was expressed in the following terms:-

p.92,1.30-33

"I have no hesitation whatsoever in saying that I place no reliance whatsoever on all this evidence which, to my mind, was produced in order to boost the applicant's claim to higher compensation."

p.92,1.48-
p.93,1.4

40 The Respondents submit that this conclusion was quite unwarranted, in particular, since it was never suggested on behalf of the present Appellant, that the Applicants' witnesses were acting other than in good faith.

28. The learned Judge also found that:-

(i) "There is no evidence that Devarayan Chettiar was in danger of being deported.

p.93,11.5-6

In the Federal Court of Malaysia Record, (Contd.) This appears to overlook completely the evidence referred to above which set out the circumstances in which this person was in Malaya.

p.93,
11.16-19

(ii) "I cannot believe that Devarayan Chettiar, young though he was, had not the wit to make enquiries as to what the fair market value of the land was before selling it"

It is submitted that this observation fails to appreciate the case for the Applicants of why the market price could not have been obtained even if all relevant enquiries had been made.

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p.93,11.20-7

The learned Judge also criticized the Applicants for not calling Devarayan as a witness or else having evidence taken from him on commission in India. It is submitted that the Applicants were not at fault in this respect as the evidence from a number of witnesses concerning the purchase from Devarayan Chettiar was unchallenged and uncontradicted.

p.94,1.45-
p.95,1.1

29. The learned Judge then considered the evidence of Mr. Williams, the estate agent and valuer called by the Applicants. He referred to the 19 sales mentioned in Mr. Williams' report and took the view that as most of the sales were of lands not in the neighbourhood or vicinity of the land acquired, they were "wholly irrelevant to the issue in this case, except in so far as they indicate an all-round increase in the value of land generally from year to year." He then considered two sales of land in the neighbourhood. The first he disregarded as it was a sale by a director to his company which would not be a reliable comparison. The second he disregarded because it was an agreement to sell and not an executed sale. He expressed his conclusion of this evidence as follows:-

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p.95,11.26-30

"Taking the evidence of Mr. Williams as a whole, I am of the opinion that there is no justification whatsoever for his valuing the land at \$12/- per square foot."

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The Respondents respectfully submit that this conclusion was erroneous, in particular in that:-

(i) The sales referred to in Mr. Williams' report constituted a guide to market value and should not have been wholly disregarded.

In the Federal
Court of
Malaysia

(ii) A sale by a director to his company is not per se an unreliable guide as to the true price and there was no evidence to show that either the director or the Company had acted in bad faith or were not carrying out the sale at arm's length.

Record,
(Contd.)

(iii) An agreement to sell, although not performed as a contract, was a type of transaction that if entered into in a proper manner (and there was no evidence to the contrary) was relevant evidence of the true price of the land agreed to be sold.

20 30. The learned Judge next considered the argument of the Applicants concerning the potentialities of the land acquired and observed that a development plan had been prepared in 1957 which Devarayan Chettiar knew about as well, presumably, as did the purchasers. He rejected the view that he ought to take into account a notional sub-division of the land into lots and consider the price that each lot of land would fetch. It is respectfully submitted that such a proposition ought to be considered and applied to the facts to ascertain
30 whether any sub-division was likely and, if so, to take it into account when deciding upon the market value of the whole.

p.95,1.31-
p.96,1.19

40 31. When the evidence for the present Appellant (the then Respondent) was considered, the learned Judge referred to what the Government Valuer had said regarding the previous sale in November 1963 and took the view that where there had been a sale of undivided shares, a proper allowance could be made depending on whether the purchasers were co-sharers or outsiders. Therefore, in this case, as the sale was genuine and bona fide between parties at arm's length, the sale of the land in November 1963 was "the best evidence of its market value". It is respectfully submitted that this finding is erroneous in two respects, namely, that

p.96,1.41

p.97,11.37-9

In the Federal Court of <u>Malaysia</u>	it fails to take into account at all the evidence relating to the sale in November 1963, particularly regarding the circumstances giving rise to the sale, and also it fails to consider the nature of an undivided share and the difficulties arising from it, including those of partition.	
Record (Contd.)		
p.99,11.20-7	32. In supporting the figure of \$3/- per square foot of the Government Valuer, the learned Judge stated that the increase above \$2.20/- per square foot was in respect of the general rise in prices and the fact that the previous sale was of an undivided share. The learned Judge also observed that in arriving at the figure of \$3/- per square foot, he differed from both the two assessors. Mr. K.S. Dening thought the correct figure was \$4.80 per square foot having regard to the prevailing prices for other areas of land suitable for flat development while the figure put forward by Mr. P.M. Varghere was \$6/- per square foot and he took into account the prices generally for similar land in Kuala Lumpur.	10
p.100,11.2-8		
p.100,11.8-14		
pp.101-3	33. Following the Court Order dismissing the applications, the Respondents in this Appeal gave Notices of Appeal to the Federal Court of Malaysia dated the 6th and 28th days of March 1967 respectively. In his Memorandum of Appeal, the Respondent Alagappa Chettiar set out 20 grounds, which have been summarized in the preceding paragraphs hereof. Likewise, the Respondent Ong Thye Eng set out 17 grounds in his Memorandum of Appeal.	20
pp.104-6		
pp.107-111		
pp.112-116		
pp.119-120	34. On the 15th day of May 1967, the Federal Court of Malaysia ordered that the Appeal of Alagappa Chettiar be heard as a test appeal (nine further Notices of Appeal having been lodged) and that the Grounds of Appeal filed by Ong Thye Eng be made a part of the Grounds filed by Alagappa Chettiar. Accordingly, the parties to this present Appeal filed written submissions and replies.	30
pp.123-271		
p.285	35. The Appeal to the Federal Court of Malaysia was heard on the 18th day of October 1967 and the Judgment of the Court was delivered by Ong Hock Thye F.J. on the 20th day of February 1968. After reciting certain undisputed facts concerning the land and the history of the litigation, the learned Federal Judge referred to the award of the present Appellant which he set out in full as in paragraph 6 above. He then commented that it was "not at all unfair to say that the whole tenor of the award was rather depreciatory" and that it created	40
p.286, 11.19-45		
p.287, 11.1-24		

the impression that "there was nothing worthy of mention on the credit side that might have attracted the prospective investor or speculator as purchaser". He therefore thought it "not a little surprising" that the land should nevertheless have been considered as appreciating by no less than 80 cents, from \$2.20 per square foot to \$3/- per square foot, in "the short space of 6 months" and he could detect "no apparent reason" for it. He thought it right in fairness to the Appellant to add that the award was based entirely on the report made by the Valuation Officer in the Treasury which he then proceeded to analyse, noting that it was made after the notice of intended acquisition had been gazetted.

In the Federal
Court of
Malaysia

Record,
(Contd.)

p.287,11.45-8

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36. The learned Federal Judge then turned to the Judgment of the High Court and referred to the earlier sale price being the "keystone" upon which it was based. He dissented from the proposition of Gill J. that

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"it is only in the absence of evidence of recent sales of the same land or lands in the same vicinity that other methods of ascertaining the market value on property be resorted to"

p.292,11.1-5

as he did not think that such an inflexible rule could be deduced from the authorities. He preferred the approach of applying the special facts of each particular case "according to sound practical commonsense, rather than by some artificial rule of thumb" and relied upon observations of Denning M.R. in Duke of Buccleuch v I.R.C. (1965) 3 W.L.R. 977. It is respectfully submitted that this approach of the learned Federal Judge is correct. He then considered four matters which Gill J. had dismissed concerning the case put forward by the Appellants before him (the present Respondents): first, the rejection in toto of the evidence of Alagappa Chettiar and Palaniappa Chettiar "that Devarayan sold at a disadvantage for personal reasons"; secondly, the rejection in toto of the evidence of Mr. Williams; thirdly, the short discussion about the potentialities of the land and fourthly, the dismissal of the contention that a sale of an undivided partial interest afforded no true criterion of market value in land.

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p.293,1.27-
p.294,1.8

37. The first and last of these four matters were considered together because they were closely

p.294,11.9-16

In the Federal Court of Malaysia related, and the learned Judge said that the question boiled down to:-

Record,
(Contd.)

"Did Devarayan manage in fact to obtain for his undivided half-interest the same price which the same acreage of land would have fetched had he been the sole proprietor thereof selling in open market?"

After considering the evidence which he found to be "clearly all one way", the above question was answered in the negative. Further, there were practical difficulties, generally about undivided interests in land particularly concerning subdivision and the learned Judge put the further question of the situation which would arise were Alagappa Chettiar to die "leaving problems of succession in the Hindu joint family to be sorted out". As regards the purchasers from Devarayan he observed:-

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p.295,11.35-9

"They would have been faced with an effective moratorium on every attempt to develop or even lease a portion of the land, unless and until the question of succession to Alagappa's estate had been sorted out."

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p.296,11.1-19

As the Government Valuer's report did not take account of the problems of co-ownership, the "keystone" of the Judgment of the High Court had been demolished. He held further, that the criticism of not calling Devarayan Chettiar as a witness was unwarranted having regard to the other evidence and that observations about Devarayan's business acumen were "nothing but pure surmise".

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p.296,1.20-
p.298,1.47

p.299,11.15-16

38. The Government Valuer's report was then further considered and stated to be "replete with serious errors". One was particularly emphasized, namely, that between the sale in November 1963 and the acquisitions in June 1964, an Army camp occupying some 10½ acres (slightly less than one half of the land) was vacated. This must have had a considerable effect upon value but was not taken into account in the report. Secondly, the Government Valuer had suggested that a purchaser of an

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p.299,1.21-
p.301,1.40

p.301,1.41-
p.302,1.14

area of over 22 acres "would invariably expect a reduction in value as an inducement to take over the bulk of the property as a whole". The learned Judge observed that this proposition was only plausible if the land had been held under a single title but in this case there were seven separate units varying from $6\frac{1}{2}$ acres to just under $\frac{1}{2}$ acre. Thirdly, the Government Valuer had referred to the land being irregular in shape but according to Alagappa Chettiar, this had been overcome in 1958 and he produced a plan showing the adjustment made.

In the Federal
Court of
Malaysia

Record,
(Contd.)

p.302,11.15-28

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39. The Federal Court had therefore come to the view which it is submitted was correct, that the High Court Judgment should be set aside and then proceeded to make its own assessment of the value of the land. It is further submitted that the Federal Court was correct in so doing having regard to the principles laid down in Benmax v. Austin Motor Co. Ltd. (1955) A.C.370 concerning the approach that an Appellate Court should make to findings of fact of a Court of first instance. The Federal Court, adopting the method approved in the Duke of Buccleuch's case (cited in paragraph 36 supra) therefore paid particular attention to the expert evidence on either side. The reports of the Government Valuer were examined and compared in detail, including comparisons of sales of other lands and the Court preferred the conclusions of Mr. Williams. It was critical of the report of the Government Valuer and doubted its objectivity particularly in its treatment of the potentialities of the land. The Court also considered that the learned trial Judge was wrong to reject the transactions put forward by Mr. Williams one of which concerned a sale by a director to his Company and the other concerned an agreement to sell. The Federal Court held that there was no evidence that these were anything but honest transactions and therefore it was open to the Court to consider the price that was paid for these lands. Further, the Federal Court found that the cross-check of Mr. Williams based on a calculation of 54 units per acre was a reasonable basis having regard to the evidence concerning other permitted developments.

p.304,1.30-
p.305,1.14

p.311,1.16-
p.312,1.36
p.312,1.37-
p.313,1.28

p.313,1.38
p.315,1.24

In the Federal Court of Malaysia

Record,
(Contd.)

p.316,11.1-25

40. The Federal Court then proceeded to take into account certain factors in favour of the present Appellant to which it stated it had given "the most anxious consideration" namely,

- (a) "the possibility that prices were about to become static at the crest of the boom."
- (b) the presence of squatters; and
- (c) land wastage in the provision of roads.

p.316,1.6

The result was that the Court thought that the market value of the land acquired was \$8/- per square foot. Against that finding, although less than the value contended for, the Respondents do not appeal.

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p.318,11.4-14

41. Having made the above valuation, the Judgment of the Federal Court proceeded as follows:-

"There still remains the bare possibility that I may have overlooked some other factor in the Respondent's favour, although I do not think so. Consequently and purely as a precautionary measure, I think it is in the best interests of all parties that no inadvertence on my part should provide grounds for litigation to be needlessly prolonged. For this reason, then, I would reduce my award by 10 per cent again."

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42. The Respondents respectfully contend that the reduction of 10% was wholly unjustified. There was no suggestion during the hearing of the Appeal that any factors on either side were not before the Court either in oral argument or in the written submissions made by the parties which were of considerable length. It is further submitted that to reduce an award as a deterrent to further litigation is contrary to principle and that it was the duty of the Court (including, in the circumstances of this case, an Appellate Court) to arrive at what it considers to be a correct evaluation.

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p.318,11.29-41

43. Finally, the Court awarded interest to the

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Respondents upon the difference between the award of Gill J. and the award of the Federal Court and made no order as to costs.

In the Federal Court of Malaysia

Record, (Contd.)

pp. 319-20

pp. 321-6

10 44. On the 13th day of May 1968 the Federal Court granted conditional leave to the Appellant to appeal to H.M. the Yang di Pertuan Agong and final leave was granted upon the 19th day of August 1968. Upon the same dates, similar orders made in favour of the Respondents granting leave to Appeal against that part of the Judgment and Order of the Federal Court which reduced the award made to them by 10%.

45. The Respondents respectfully submit that the Appeals should be dismissed and the Cross-Appeals allowed, with costs, for the following (amongst other)

REASONS

20 1. BECAUSE the learned trial Judge disregarded evidence and particularly uncontradicted evidence regarding the circumstances in which the land acquired was previously sold and wrongly used such sale as the basis for assessing the market value of the land.

30 2. BECAUSE having regard to the nature of the evidence and particularly the expert evidence called on each side, the Federal Court of Malaysia (Appellate Jurisdiction) was entitled to consider the evidence and make its own assessment of the market value of the land at the material time.

3. BECAUSE having arrived at its own assessment of market value, the said Federal Court erred in making a deduction of 10% from such value as a precautionary measure in case some factor had been overlooked.

(Sgd) Dingle Foot.

DINGLE FOOT, Q.C.

(Sgd) John A. Baker.

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JOHN A. BAKER.

No. 33 of 1968

IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

ON APPEAL

FROM THE FEDERAL COURT OF MALAYSIA
HOLDEN AT KUALA LUMPUR

(APPELLATE JURISDICTION)

BETWEEN: -

COLLECTOR OF LAND REVENUE
Appellant

- and -

A.K.A.C.T.V. ALAGAPPA CHETTIAR
Respondent

AND BETWEEN: -

COLLECTOR OF LAND REVENUE
Appellant

- and -

ONG THYE ENG (As Trustee)
Respondent

CASE FOR THE RESPONDENTS AND
CROSS-APPEALS

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