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ON APPEAL  
FROM THE FEDERAL COURT OF MALAYSIA

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B E T W E E N

REGISTRAR OF TITLES, JOHORE BAHRU

Appellant

- and -

TEMENGGONG SECURITIES LIMITED and  
TUMBUK ESTATES SDN BHD

Respondents

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CASE FOR THE APPELLANT

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| 10 | <p>1. This is an appeal, by leave of the Privy Council, from a decision of the Federal Court of Malaysia (Suffian C.J. Malaya; Lee Hun Hoe C.J. Borneo; and Ong Hock Sim F.J.) given on 24th May, 1974, reversing the decision of Pawan Ahmed Bin Ibrahim Rashid J. dated 23rd August, 1973, and ordering that the Appellant do cancel a Registrar's caveat entered by him on 11th October, 1972, in Serial No.156/72 in respect of nine pieces of land (hereinafter referred to as "the land") in the Mukim of Pogoh (Segemar) and granting to the Respondents other ancillary relief.</p> | <p><u>Record</u><br/><br/>p.77<br/>p.27<br/>p.14</p> |
| 20 | <p>2. This appeal concerns the true construction of certain sections of the National Land Code of Malaysia (Act 56 of 1965) which are concerned with caveats and are found in Part Nineteen of Division N of the Code which part is concerned with restraints on dealing in land under the system of land registration that prevails in Malaysia.</p>   |  |
| 30 | <p>3. At all material times a company, incorporated in the Republic of Singapore and known as Li-Ta Company (Private) Limited (hereinafter referred to as "Li Ta") was registered as the proprietor of the land. At some time prior to 24th September, 1972, notice of assessment to income tax amounting to \$1,688,331.37 were served on Li-Ta and on the service of such notices tax became due and payable. On 24th September, 1972, two specially endorsed writs were filed claiming this tax and on 19th</p>  |  |

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December, 1972, judgment in default of appearance was entered against Li-Ta for this tax.

4. In September, 1972, the Inland Revenue Department formed the view that Li-Ta was seriously negotiating for the sale of its landed properties with a view to avoiding payment of income tax. The Inland Revenue Department was concerned with the collection of income tax due and feared that, if Li-Ta disposed of the land, the chances of recovering the tax due would be jeopardised, as Li-Ta had no other assets in Malaysia. Accordingly, a request was made to the Appellant by letter dated 2nd October, 1972, for a Registrar's Caveat to be entered in respect of the land. 10

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5. Section ~~210~~<sup>310</sup> (1) of the National Land Code gives the Appellant power to enter a Registrar's Caveat and is in the following terms :-

320(1) Subject to sub-section (2), a Registrar's Caveat may be entered in respect of any land wherever such appears to the Registrar to be necessary or desirable - 20

- (a) for the prevention of fraud or improper dealings; or
- (b) for protecting the interests of -
  - (i) the Federation or the State Authority, or
  - (ii) any person who is in his opinion under the disability of minority, mental disorder or unsoundness of mind, or is shown to his satisfaction to be absent from the Federation; or 30
- (c) by reason of some error appearing to him to have been made in the register or issue document of title to the land or any other instrument relating thereto.

6. Upon receipt of the letter from the Inland Revenue Department referred to in paragraph 4 hereof it appeared to the Appellant that it was desirable for protecting the interests of the Federation, namely the collection of the tax above referred to, that a Registrar's caveat should be entered in respect of the land, and accordingly a Registrar's Caveat was 40

registered on 11th October, 1972. On 25th October, 1972, the Appellant served upon Li-Ta, as the proprietor of the land affected thereby, a notification in Form 19A of the entry of the said caveat in accordance with the provisions of Section 321(2) of the National Land Code.

10 7. The Respondents, being bodies aggrieved, appealed against the entry of the Registrar's caveat under the provisions of Section 418 (1) of the National Land Code which provides (so far as material) that -

418 (1) Any person or body aggrieved by any decision under this Act of..... the Registrar .....may.....appeal therefrom to the Court.

The said Appeal was by Originating Motion in the High Court in Muar and in the said proceedings the Respondents filed evidence an affidavit to the effect that -

- 20 (i) On 30th August, 1972, Li-Ta entered into an agreement with the First Respondents for the sale of certain lands, including the land.
- (ii) On 22nd September, 1972, the First Respondents and their nominees, the Second Respondents, paid the full purchase price and Li-Ta executed transfers and gave possession of the land to the Second Respondents.
- 30 (iii) On 14th December, 1972, the memorandum of transfer and the titles and discharges were presented for registration and on 15th March 1973, the Respondents were informed that the instruments had been rejected on the ground that the Registrar's Caveat had been entered.

8. The principal issue in this case is one of interpretation, namely what on its true construction is the meaning of the following words in Section 320(1)(b) of the National Land Code.

- 40 320(1)..... a Registrar's Certificate may be entered in respect of any land wherever such appears to the Registrar to be necessary or desirable
- (a).....
- (b) for protecting the interests of -

(i) the Federation .....

The issue that has arisen on these words is whether as the Respondents have hitherto contended the word "interests" is limited to legal or equitable interests in the land in question, or whether, as the Appellant has throughout contended, the word ought not to be so narrowly construed and is wide enough in its ambit to include the interest that the Federation has in the collection of tax.

9. In the High Court the learned judge held that 10

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(a) the words "the interests of the Federation" in Section 320 (1)(b) of the National Land Code did not mean, or mean only, registrable interests in the particular lands in question.

(b) such "interests of the Federation" included its interest to be paid the sums due from Li-Ta for tax and in the land as property of Li-Ta available for the payment of such sums.

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10. The Respondents appealed to the Federal Court of Malaysia. In the Federal Court the Respondents firstly maintained their contention that a Registrar's Caveat could only be entered where the Federation claimed to have some legal or equitable interest in the land in question. They also argued, as they had not done in the High Court, in Muar, that, even if the Appellant acted justifiably at the time of entering the Registrar's caveat, in the evidence now before the court 20

(a) there was, in fact, on 10th October, 1972, no lawful basis or justification for the entry of that caveat; or 30

(b) there was no legal basis or justification for the continuance of that caveat

since Li-Ta's sole interest in the land was as registered proprietor with a bare legal title

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11. In the Federal Court the judgment of the Court, allowing the appeal, was delivered by Ong Hock Sim F.J.

The Court held that the caveat had been wrongly entered on the grounds that -

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(a) there was no relevant difference between a Registrar's Caveat under Section 320 and a private Caveat which could, by virtue of 40

Section 323, be entered only at the instance of a person "claiming title to, or any registrable interest in, ... "the land in question or "any right to such title or interest"

(b) The Federation was not claiming any right or interest in respect of the land and, therefore, a Registrar's caveat could not be entered to protect that interest.

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10 (c) Li-Ta had, by reason of the sale to the Respondents, no interest in the land which could be the subject matter of the caveat, and the land was not by 10th October, 1972, still the property of Li-Ta available for the satisfaction of its debts.

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20 12. It will be the submission of the Appellant that the scheme of the National Land Code is to provide a system of land registration and that it is a necessary part of that system that it should be possible in certain circumstances to restrain the dealing in land. Such necessary restraints on the dealing in land are effected, in certain circumstances, and inter alia, by different types of caveat each of which may be used in circumstances defined in the code. A Registrar's caveat is different from a private caveat, and the circumstances in which a Registrar's caveat may be entered are different from the circumstances in which a private caveat may be entered

30 13. In this situation there is no need to give as the Federal Court has given, the words "interests of the Federation" a meaning other than their natural meaning which is wide and apt to include the interest which the Federation has in the collection of tax due to it.

40 14. The Federal Court has held, wrongly in the Appellant's submission, that a Registrar's caveat may only be entered where the Federation claims a registrable interest in, or a right to a registrable interest in, the land in question. By so doing the Federal Court has equated the circumstances in which a Registrar's caveat may be entered with the circumstances in which a private caveat may be entered.

The Appellant will submit that it is clear from the provisions of the code that it was not the intention of the legislature that this should be the case.

Thus, whereas a private individual cannot prohibit the registration of dealings in land unless either

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(i) he is such a person as is mentioned in Section 323, for example, a person claiming a registrable interest in that land; or

(ii) he has obtained from the Court a prohibitory order in respect of that land;

the Appellant can, in the circumstances set out in Section 320, so prohibit even though the Federation claims no registrable interest in the land and has not obtained a prohibitory order.

15. The Appellant will submit that the Federal Court was wrong in using as one reason for interpreting the words of Section 320 (1) (b) (i) as it did the argument that fiscal legislation has always been subject to the strictest construction, because the National Land Code is not fiscal legislation. 10

16. It is the Appellant's contention that on 10th October, 1972, the Appellant was entitled to conclude, and, so far as may be relevant, right to conclude, that it appeared desirable for the protection of the interests of the Federation, namely the collection of tax due, to enter a Registrar's caveat in respect of the land of which Li-Ta was the absolute registered owner, and that accordingly the decision of the Appellant against which the Respondent appealed was right. 20

17. Section 321 lays down the procedure for the cancellation of a Registrar's caveat after it has been entered; the Appellant had not been asked to make, and had not made, any decision under section 321 and accordingly the Federal Court had no jurisdiction to decide, alternatively should not have decided, whether or not the caveat should be cancelled. 30

18. By, in effect, treating the appeal as if it were an appeal against a refusal by the Appellant to cancel the caveat the Federal Court has fallen into error in that it has considered matters that might be relevant to such an appeal but are not matters that should be considered on an appeal against the Appellant's decision to enter the caveat. In particular the Federal Court erred in regarding as relevant the position as between Li-Ta as Vendors and the Respondents as purchasers of the land, and in considering that the extent of Li-Ta's actual equitable interest in the land was a factor affecting the validity, as opposed to the practical efficacy, of the caveat. 40

19. The Appellant, therefore, submits that this appeal should be allowed for the following among other

R E A S O N S

(1) BECAUSE the Federation had an interest in the collection of the tax due from Li-Ta. Li-Ta was registered as the absolute owner of the land which was, or which appeared to be, Li-Ta's sole asset in Malaysia.

10 (2) BECAUSE such an interest is, or is capable of being, an interest of the Federation within the meaning of Section 320(1) of the National Land Code.

(3) BECAUSE it could properly appear, and did appear, to the Appellant to be desirable for protecting an interest of the Federation to enter a caveat in respect of the land.

20 (4) BECAUSE the caveat was, therefore, properly entered; no question as to whether or not it should be cancelled had been raised or investigated and the Federal Court should not have had regard to matters relating to, or decided, the question of cancellation.

PATRICK MEDD

CHRISTOPHER BATHURST

38 OF 1975

IN THE JUDICIAL COMMITTEE OF  
PRIVY COUNCIL

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Appellant

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