

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL  
FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

REGISTRAR OF TITLES, JOHORE JOHORE  
BAHRU

Appellant  
(Respondent)

- and -

TEMENGGONG SECURITIES LIMITED and  
TUMBUK ESTATE SDN. BHD.

Respondents  
(Applicants)

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C A S E FOR THE RESPONDENTS

1. This is an Appeal by special leave, granted pursuant to a Report from the Judicial Committee dated 19th March 1975 by an Order dated 21st May 1975, from a Judgment of the Federal Court of Malaysia dated 24th May 1974. By its Order dated 24th May 1974, the Federal Court allowed an appeal by the Respondents from a Judgment of the High Court at Muar (the Honourable Mr Justice Pawan Ahmad), and ordered (a) the cancellation of a Registrar's caveat entered by the Appellant in the Register of Titles relating to certain land; (b) the discharge of certain incumbrances affecting the land; and (c) the registration of the Second Respondents as proprietors of the land.

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2. The proceedings were instituted by an Originating Motion dated 12th June 1973 in which the Respondents in this present Appeal ("the Respondents") were the applicants and the Appellant in this present Appeal ("the Appellant") was the Respondent. The object of the proceedings was to obtain an Order for the cancellation of what is known (see section 319(1) of the National Land Code 1965) as a "Registrar's Caveat" and the registration of the Second Respondents (the nominees of the first Respondents) as proprietors of the land free from incumbrances. Under section

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320(1)(b)(i) of the National Land Code, "a Registrar's caveat may be entered in respect of any land wherever such appears to the Registrar to be necessary or desirable.... for protecting the interests of .... the Federation....". In the present case a Registrar's caveat dated 11th October 1972 was entered in respect of 9 pieces of land, of a total area of approximately 5,222 acres, situate in the Mukim of Pogoh, in the District of Segamat, in the State of Johore ("the relevant land"). The Registrar's caveat was expressed to be entered pursuant to the provisions of section 320(1)(b)(i) of the National Land Code, cited above. 10

3. The material facts are as follows.

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4. On 30th August 1972, the registered proprietor of the relevant land, Li-Ta Company (Private) Limited a company incorporated in the Republic of Singapore ("the Vendor"), by an Agreement of that date agreed to sell and the First Respondents ("the Purchaser") agreed to purchase the relevant land free from incumbrances for Dollars Six Million (\$6,000,000) upon the terms therein mentioned, including a term (clause 2) that the transfer or transfers of the relevant land should be executed in favour of the Purchaser's wholly owned subsidiary, the Second Respondents. 20

5. On 22nd September 1972, the Agreement of 30th August 1972 was duly completed. The Second Respondents paid the Vendor the purchase money; the Vendor delivered to the Second Respondents duly executed transfers of the relevant land (with supporting documents evidencing the title and the discharge of all incumbrances); and the Vendor duly gave possession of the relevant land to the Second Respondents. 30

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6. On 11th October 1972 the Registrar's caveat of that date was registered; it was so registered in relation to a claim by the Government of Malaysia to be a creditor of the Vendor for unpaid income tax. (The Government of Malaysia made no further or other claim to be interested in the relevant land). 40

7. On 14th December 1972, the Second Respondents presented the documents referred to at 5 above for registration.

8. On 19th December 1972, the Government of Malaysia obtained judgments against the Vendor for the said unpaid income tax.

9. On 15th March 1973, the applications for registration of the Second Respondents as proprietors free from incumbrances of the relevant land were rejected by the Appellant and were so rejected in reliance upon the Registrar's caveat dated 11th October 1972.

10. The issues upon these facts between the Appellant and the Respondents, as the Respondents see them, are as follows.

10 11. First, was the claim of the Government of Malaysia against the Vendor for unpaid income tax an "interest" of a nature capable of protection by a Registrar's caveat entered in the Register of Titles against the relevant land pursuant to section 320(1)(b)(i) of the National Land Code? (The Respondents submit that it was not, and that this issue ought to be decided in their favour).

20 12. Secondly (this issue arises only if the first issue is decided in favour of the Appellant), may a Registrar's caveat be properly entered and maintained in the Register of Titles pursuant to section 320(1)(b)(i) of the National Land Code adversely to the interests of a purchaser who, before the date of the Registrar's caveat, has become the beneficial owner, and entitled to be registered as proprietor, of the land in question under a duly completed contract for the sale and purchase of that land, when, whatever claim the Government of Malaysia may have had against the  
30 vendor, it never at any time had any interest, of any nature, requiring protection as against the purchaser? (The Respondents submit that it may not, and that this issue also ought to be decided in their favour).

AND the Respondents humbly submit that this appeal should be dismissed with costs for the following among other

R E A S O N S

40 (1) BECAUSE the claim of the Government of Malaysia for unpaid income tax was not an "interest" of a nature capable of protection by a Registrar's caveat entered in the Register of Titles against the relevant land pursuant to section 320(1)(b)(i) of the National Land Code;

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- (2) BECAUSE a Registrar's caveat cannot be properly entered and maintained in the Register of Titles pursuant to section 320(1)(b)(i) of the National Land Code adversely to the interests of a purchaser who, before the date of the Registrar's caveat, has become the beneficial owner, and entitled to be registered as proprietor of the land in question under a duly completed contract for the sale and purchase of that land;
- (3) BECAUSE the judgment appealed from was right. 10

GERALD GODFREY

J.M. CHADWICK

No. 38 of 1975

IN THE JUDICIAL COMMITTEE OF THE PRIVY  
COUNCIL

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O N A P P E A L  
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JOHORE BAHRU Appellant  
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- and -

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(Applicants)

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C A S E FOR THE RESPONDENTS

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