

13

IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

No. 38 of 1975

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

RECORD OF PROCEEDINGS

STEPHENSON HARWOOD & TATHAM,
Saddlers Hall,
Gutter Lane,
Cheapside,
London EC2V 6BS.
Solicitors for the Appellant

COWARD CHANCE,
Royex House,
Aldermanbury Square,
London EC2V 7LD.

Solicitors for the Respondents

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

REGISTRAR OF TITLES, JOHORE,
JOHORE BAHRU

Appellant
(Respondent)

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RECORD OF PROCEEDINGS

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IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL,

No.38 of 1975

O N A P P E A L
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

RECORD OF PROCEEDINGS

No. 1

In the High
Court in
Malaya

Notice of Motion

IN THE HIGH COURT IN MALAYA AT MUAR

No. 1

ORIGINATING MOTION NO. 4 of 1973

Notice of
Motion

12th June 1973

10

IN THE MATTER of Labis Bahru Estate in
respect of Grant 11539 for Lot 2012,
Grant 11540 for Lot 2013, Grant 11541
for Lot 2014, Grant 11542 for Lot 2015,
Grant 8676 for lot 89, Grant 11799 for
Lot 1681, Grant 11798 for Lot 1672,
Grant 12900 for Lot 1699, and Grant
14370 for Lot 1265, Mukim of Pogoh,
District of Segamat, State of Johore

And

IN THE MATTER of the Registrar's Caveat
entered on the 11th day of October 1972
in serial No.156/72, Registrar's Caveat
Vol. 38 Fol. 149

And

20

IN THE MATTER of the discharge of charge in
Presentation No.8399/72 (in file of
discharge Vol. 95, Fol.66), discharge of
charge in Presentation No.8400/72 (in

In the High Court in Malaya

file of discharge Vol.95, Fol.67) and transfer in Presentation No.8401/72 (file of transfer Vol. 534, Fol. 53)

No. 1

And

Notice of Motion

IN THE MATTER of Sections 320, 321, 417 and 418 of the National Land Code, 1965

12th June 1973

And

(continued)

IN THE MATTER of Order 52, Rule 1 of the Rules of Supreme Court, 1957

Between

10

- 1. Tememggong Securities Limited
- 2. Tumbuk Estate Sdn. Bhd. ... Applicant

And

Registrar of Titles, Johore, Johore Bahru ... Respondent

TAKE NOTICE that the Court will be moved on the 26th day of July 1973 at 9.30 o'clock in the forenoon or so soon thereafter as Counsel can be heard by Mr. R.C. Hoffman of Counsel for the abovenamed Applicants for an Order directing the Respondent to cancel forthwith the Registrar's Caveat entered on the 11th day of October 1972 in serial No.156/72, Registrar's Caveat Vol.38, Fol. 149 and forthwith register the discharge of charge in Presentation No.8399/72 in file of Discharge Vol.95, Fol.66, discharge of charge in Presentation No.8400/72 in file of discharge Vol. 95, Fol.67, and transfer in Presentation No.8401/72 file of transfer Vol.534, Fol.53 and that the costs of this application be paid by the Respondent.

20

30

Dated this 12th day of June 1973

Sgd. SOLICITORS FOR APPLICANTS

Sgd. ASSISTANT REGISTRAR, HIGH COURT, MALAYA, MUAR

To the Registrar of Titles, Johore, Johore Bahru.

This Notice of Motion is intended to be

served on the Registrar of Titles, Johore, Johore Bahru.

This Application is supported by the Affidavit of Richard E.B. Mews affirmed on the 12th day of June, 1973 and filed on the 12th day of June, 1973.

This Notice of Motion is filed on behalf of the Applicants by their Solicitors Messrs. Allen & Gledhill whose address for service is Nos.302-303, O.C.B.C. Building, Johore Bahru.

In the High Court in Malaya

No. 1

Notice of Motion

12th June 1973

(continued)

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No. 2

No. 2

Affidavit of Richard E.B. Mews

Affidavit of R.E.B. Mews

12th June 1973

I, RICHARD E. B. MEWS, of full age, of Temenggong Securities Limited, Suites 307 & 308, Cathay Building, Singapore 9, do hereby solemnly affirm and say as follows:

20

1. I am a director of Temenggong Securities Limited, a Company incorporated in the Republic of Singapore and having its registered office at No.301, Chinese Chambers of Commerce Building, Hill Street, Singapore 1 (hereinafter called "Temenggong").

2. I have personal knowledge of the matters herein and am duly authorised to make this Affidavit on behalf of the Applicants herein.

30

3. By an Agreement of Sale dated the 30th day of August 1972 entered into between Temenggong of the one part and Li-Ta Company (Pte.) Limited, a Company incorporated in the Republic of Singapore and having its registered office at No.2K, Clifford House, Collyer Quay, Singapore, Li-Ta Company (Pte.) Limited (hereafter referred to as "Li-Ta") as registered proprietor agreed and undertook to sell free from all encumbrances to Temenggong Labis Bahru Estate comprising a total of 5,222 acres 3 roods 32 poles more or less situate in the Mukim of Pogoh, District of Segamat, State of Johore (hereinafter referred to as "the said land") together with the building, plant, machinery and vehicles mentioned in the Agreement. A copy of the said Agreement dated the 30th day of August 1972 is annexed herewith and marked "RM1".

40

4. Under the provisions of Clause 2 of the Agreement, Li-Ta on completion agreed to execute

In the High
Court in
Malaya

No. 2

Affidavit of
R.E.B. Mews

12th June
1973

(continued)

valid and registrable transfer or transfers of the said land in favour of Tumbuk Estate Sdn.Bhd., a Company incorporated in Malaysia and having its registered office at No.50, Jalan Ampang, Kuala Lumpur, Selangor (hereinafter referred to as "Tumbuk") free from all encumbrances. Tumbuk was and is at all material times a wholly-owned subsidiary Company of Temenggong.

5. Completion of the sale and purchase of the said land took place on the 22nd day of September 1972 when the purchase price was satisfied in full and Li-Ta as Vendors duly executed transfers of the said land in favour of Tumbuk and delivered the same and the issue documents of title and the relevant two discharges of charge to their Solicitors. Li-Ta also delivered possession of the said land to Tumbuk on that day.

10

6. The said land is held under twenty (20) titles. The transfer in favour of Tumbuk in respect of the following eleven (11) titles has been duly registered:

20

E.M.R. No.	Lot No.	Area		
		A.	R.	P.
1. 384	612	9	1	06
2. 359	622	3	0	10
3. 402	611	4	3	25
4. 396	605	3	2	22
5. 399	608	7	0	00
6. 360	623	6	0	36
7. 403	613	4	1	09
8. 400	609	6	1	33
9. 1111	606	2	0	15
10. 1112	610	2	0	07
11. 1009	449	7	3	15

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7. After adjudication for the purpose of stamp duty, the duly executed and stamped transfer in favour of Tumbuk in respect of the following nine (9) titles:

Grant	Lot No.	Area		
		A.	R.	P.
1. 11539	2012	248	2	00
2. 11540	2013	272	1	20
3. 11541	2014	274	3	00
4. 11542	2015	291	2	00
5. 8676	89	6	0	19
6. 11794	1687	74	0	10
7. 11798	1672	66	1	05
8. 12900	1699	878	2	00
9. 14370	1265	3058	0	00

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was presented to the Registrar of Titles, Johore, Johore Bahru, (hereinafter referred to as "the Registrar") for registration on the 14th day of December 1972, bearing Presentation No. 8401/72 in file of transfer Volume 534, Folio 53.

In the High
Court in
Malaya

—
No. 2

Affidavit of
R.E.B. Mews

12th June
1973

(continued)

10 8. The duly executed and stamped Discharge of Charge and the Duplicate Charge in respect of the aforesaid Grants No. 8676, 11794, 11798, 12900, and 14370 were presented together with the transfer for registration on the 14th day of December 1972 bearing Presentation No. 8399/72 in file of Discharge Volume 95, Folio 66.

9. The duly executed and stamped Discharge of Charge and the Duplicate Charge in respect of the aforesaid Grants No. 11539, 11540, 11541, and 11542 were also presented together with the transfer for registration with the Registrar of Titles on the 14th day of December 1972 bearing Presentation No. 8400/72 in file of Discharge Volume 95, Folio 67.

20 10. On the 15th day of March 1973 the Registrar communicated to my company solicitors in Johore Bahru, Messrs. Allen & Gledhill, that the aforesaid Discharge of Charge in Presentation No. 8399/72, and Discharge of Charge in Presentation No. 8400/72 and the transfer in Presentation No. 8401/72 were rejected for registration on the ground that a Registrar's caveat had been entered against the said nine (9) titles on 11th day of October 1972 in Volume 38, Folio 149. A copy of the aforesaid Registrar's caveat is annexed hereto and marked 30 "RM2", and copies of letters of rejection in connection with the Discharge of Charge in Presentation No. 8399/72, Discharge of Charge in Presentation No. 8400/72 and transfer in Presentation No. 8401/72 are annexed hereto and marked "RM3", "RM4" and "RM5", respectively.

40 11. As a result of the entry of the Registrar's caveat and the rejection of the aforesaid three instruments of dealing, Temenggong and Tumbuk are thereby aggrieved in that Tumbuk could not and has not been able to be registered as proprietors of the land held under the aforesaid nine (9) titles.

12. I am advised and verily believe that Temenggong is the beneficial and equitable owner of the said land and therefore Tumbuk as the nominee of Temenggong is entitled to be registered as proprietor of the aforesaid nine (9) titles

In the High Court in Malaya

No. 2

Affidavit of R.E.B. Mews

12th June 1973

(continued)

(mentioned under paragraph 7) free from all encumbrances.

13. I am advised and verily believe that there were no grounds or basis to justify the decisions of the Registrar to enter the aforesaid registrar's caveat on the 11th day of October 1972 and to reject the aforesaid two discharges of charge and the transfer thereafter, as the Government of the Federation had no right in respect of the said land, no charge over or other equitable interest relating to the said land. As from the 22nd day of September, the beneficial interest in the land had passed to Temenggong or Tumbuk as the nominee of Temenggong. Subsequent investigations by my solicitors reveal that the Comptroller-General of Inland Revenue and the Government of Malaysia had on the 24th day of September 1972 filed Civil Suits Nos.116 of 1972 and 117 of 1972 in the High Court at Muar respectively against Li-Ta claiming payment of income tax. Judgments were obtained against Li-Ta in those two suits on the 19th day of December 1972 and prohibitory orders were entered against the land on the 27th day of December 1972. It would appear that the Registrar's caveat entered on the 11th day of October 1972 was for the purpose of enabling the prohibitory orders to be entered subsequently. In the circumstances I am advised and verily believe that this did not and does not constitute a ground for entering the Registrar's caveat.

14. In the premises Temenggong and Tumbuk hereby appeal pursuant to the provisions of Section 418 of the National Land Code 1965 against the aforesaid decision of the Registrar and I accordingly pray for an order in terms of the application herein.

AFFIRMED by the abovenamed)
 RICHARD E.B. MEWS at)
 Singapore on the 12th day) SD: RICHARD MEWS
 of June 1973 at the hour)
 10.30 a.m.)

Before me,

SD:

J.F. McWILLIAM

A Commissioner for Oaths,
Singapore.

Exhibit "RMI" to Affidavit of Richard E.B.Mews

In the High
Court in
Malaya

Exhibit "RMI"
to Affidavit
of Richard
E.B. Mews

10 AN AGREEMENT made the 30th day of August One thousand nine hundred and seventy-two (1972) Between LI-TA COMPANY (PRIVATE) LIMITED, a Company incorporated in the Republic of Singapore and having its registered office at No.2-K, Clifford House, Collyer Quay, Singapore, (hereinafter called "the Vendor") of the one part And TEMENGGONG SECURITIES LIMITED, a company incorporated in the Republic of Singapore and having its registered office at Room 301, Chinese Chamber of Commerce Building, Hill Street, Singapore, (hereinafter called "the Purchaser") of the other part.

WHEREAS the Vendor is the registered proprietor of the land held under the titles particulars whereof are set out in the Schedule hereto (hereinafter called "the said land").

20 AND WHEREAS the Vendor has agreed to sell and the Purchaser has agreed to purchase free from all encumbrances the said land comprising an area of 5,222 acres 3 roods 32 poles more or less together with the buildings, plant, machinery and vehicles as specified in the provisional inventory hereto attached at the total price of Dollars Six Million (\$6,000,000/-) subject to the terms and conditions hereinafter set out.

NOW IT IS HEREBY AGREED AND DECLARED as follows:-

30 1. (a) The Vendor shall sell and the Purchaser shall purchase the said land together with the buildings, plant, machinery and vehicles specified in the provisional inventory hereto attached free from all encumbrances with vacant possession at the total price of Dollars Six Million (\$6,000,000/-) only (hereinafter called "the purchase price"), subject to the terms and conditions hereinafter set out.

40 (b) It is hereby agreed between the parties hereto that for the purpose of apportionment of the purchase price the prices of the buildings plant machinery and other assets included in this sale and purchase (particulars of which are set out in the provisional inventory annexed hereto) shall be their respective tax written down values in the books of the Vendor at the date of the sale and

In the High
Court in
Malaya

Exhibit "RM1"
to Affidavit
of Richard
E.B. Mews
(continued)

purchase and the apportioned value of the lands hereby sold shall be the balance of the purchase price.

(c) The purchase price shall be satisfied by the allotment and issue of 1,200,000 ordinary shares of \$1/- each in the Purchaser to the Vendor and its nominee or either of them as the Vendor may direct.

2. The purchase shall be completed and the purchase price shall be satisfied in the manner set out in paragraph (c) of Clause 1 hereof on or before the 30th day of September, 1972, at the office of Messrs. Rodyk & Davidson, Chartered Bank Chambers, Singapore. On completion, the Vendor shall execute valid and registrable transfer or transfers of the said land in favour of the Purchaser's wholly-owned subsidiary Tumbuk Estate Sendirian Berhad, a company incorporated in the Federation of Malaysia and having its registered office at No.50, Jalan Ampang, Kuala Lumpur, Selangor, West Malaysia, free from all encumbrances and shall deliver or cause to be delivered to the Purchaser such transfer or transfers together with all the relevant documents of title to the said land and all other relevant documents, if any, necessary to effectuate the registration of the titles of the said land free from all encumbrances.

3. (a) The property is sold with vacant possession to be given on completion hereinbefore referred to;

(b) All outgoings in respect of the said land sold pursuant to this Agreement shall be discharged by the Vendor up to the date of completion as from which date all outgoings shall be discharged by and all income and profits and possession shall belong to the Purchaser but the Purchaser shall nevertheless not be let into actual possession or receipt of the income and profits until completion of the purchase;

(c) Without prejudice to the generality of paragraph (b) of this clause, all quit rents, education cesses or rates, water rate and drainage assessment and all other outgoings (if any), in respect of the said land shall be discharged by the Vendor up to the date of

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completion as from which date all such rents, rates and all other outgoings shall be discharged by the Purchaser.

In the High
Court in
Malaya

4. (a) The Vendor shall give statutory notice of termination of service to all workers on the said land, such notice to expire on or before the date of completion BUT SUBJECT to having given such notices the Vendor undertakes to grant the vacant possession of the said land on the completion of the purchase.

Exhibit "RMI"
to Affidavit
or Richard
E.B. Mews
(continued)

(b) All claims if any, for compensation or otherwise from the workers and employees of the Vendor arising out of or incidental to the giving of such notice shall be the sole responsibility of the Vendor.

5. The said land is held under various Grants for Lands issued by the Johore Government under the Land Enactment and is sold subject to the provisions and conditions contained in and implied by the said Enactment and any Statutory Enactment or Amendment thereof or thereto and to the annual rent payable thereunder.

6. The Vendor shall manage the said land in a normal and proper manner according to the usual practice of good husbandry, until possession of the same is handed to the Purchaser.

7. The Vendor and its servant or servants and its agent or agents shall have full leave and licence to use the Estate Office free-of-charge on the said land for a period of up to one calendar month from the date of completion for the purpose of writing up the estate accounts and other books relating to the running of the said land as a rubber and palm oil plantation by the Vendor but the Vendor shall endeavour to ensure that its servants and agents shall cause as little inconvenience to the Purchaser or its servants or agent as is possible during such period.

8. All monetary credits arisen or that shall arise in respect of the Replanting Cess or any other refundable cess levied or to be levied from the rubber produced from the said land up to and inclusive of the date of completion shall belong to the Vendor and thereafter and if payment of any such sum or sums or the allowance of any such

In the High
Court in
Malaya

—
Exhibit "RMI"
to Affidavit
of Richard
E.B. Mews
(continued)

credit or credits is made to or in favour of the Purchaser then the Purchaser shall immediately pay or cause to be paid to the Vendor any such sum or sums or an equivalent of any such credit or credits.

9. Notwithstanding the sale of the said land to the Purchaser the Vendor shall be and remain entitled to any monies payable under the provisions of the Rubber Industry (Replanting) Scheme for estate or any amendment thereof or any scheme made pursuant to the provisions of the Rubber Industry (Replanting) (Amendment) Ordinance 1955 in respect of all replanting or now replanting works undertaken by the Vendor on the said land prior to the date of completion and if paid or payable to the Purchaser shall on the receipt be refundable by the Purchaser to the Vendor. 10

10. All rubber and latex and oil palm fruits harvested on hand as at midnight on the date of completion including rubber and oil palm unfinished (if any) on the said land and all rubber and oil palm (if any) in the presence of preparation or treatment shall belong to and remain the property of the Vendor and the Vendor shall be at liberty to remove the same from the said land within a reasonable time after completion but such rubber and oil palm shall remain on the said land at the risk of the Vendor. 20

11. (a) The said land is believed and shall be taken correctly as described. No error or omission or misdescription of the said land shall invalidate this Agreement nor the subject of compensation by either party; 30

(b) The said land hereby agreed to be sold shall be deemed to have been inspected by the Purchaser, its servants or agents and the Purchaser shall be deemed to have purchased and accepted the same in the condition and state in which the same are at the time of obtaining possession thereof and the Purchaser shall not be entitled to rescind this Agreement or to make any claim for compensation or reduction of the purchase price or claim for any damages in respect of the condition or state of the said land. 40

12. Any notice required by the provisions of this

Agreement to be given by either party to the other may be delivered or sent by registered post to such party at the address hereinbefore given and any notice so sent by registered post shall be deemed to have been served at the time when in the ordinary course of post it would have been so delivered.

In the High Court in Malaya

Exhibit "RM1"
to Affidavit
of Richard
E.B. Mews

(continued)

10 13. This Agreement shall be binding upon the successors-in-title and the assigns of the parties hereto.

14. The costs of and incidental to this Agreement and the subsequent transfer stamp and registration fee shall be paid by the Purchaser, excepting only the Vendor's solicitor's costs.

20 15. The General Conditions of Sale known as "the Johore Conditions of Sale" shall be deemed to be incorporated herein and shall apply to this Agreement so far as the same are applicable to a sale by private treaty and are not varied by or inconsistent with the express terms hereinbefore agreed to.

30 16. This Agreement is expressly subject to the respective approvals of the Vendor's and the Purchaser's shareholders in general meeting, which meetings the Vendor and the Purchaser shall forthwith requisition and the Vendor and the Purchaser shall forthwith upon such approval being received notify each other. In the event that the Vendor's or the Purchaser's shareholders shall not give such approval, this Agreement shall be null and void and such party who shall not obtain the approval of its shareholders or who shall be in default in completing the sale and purchase shall pay to the other the sum of Dollars Three hundred thousand (\$300,000/-) by way of compensation and neither party shall then have any further claim against the other.

40 17. The Vendor shall forthwith cause a detailed inventory to be prepared of the buildings, plant, machinery and vehicles on the said land or used in connection therewith as at the date hereof and shall render the same to the Purchaser on or before the 15th day of September, 1972.

18. It is also an express condition of this Agreement that the completion of this Agreement is conditional upon the completion under a further Agreement to be entered into forthwith between the

In the High Court in Malaya

Exhibit "RMI" to Affidavit of Richard E.B. Mews (continued)

Vendor and Ralli (Singapore) Private Limited, a company incorporated in the Republic of Singapore and having its registered office at Maritime Building, Collyer Quay, Singapore, for the purchase by the said Ralli (Singapore) Private Limited of the whole but not a part of 1,200,000 ordinary shares of \$1/- each in the Purchaser to be allotted to the Vendor in accordance with the provisions of this Agreement and if such further agreement is not completed then this Agreement shall be deemed to determine forthwith and be of no further effect save and except that the Purchaser shall be deemed to have defaulted under this Agreement and the Purchaser shall pay to the Vendor the sum of Dollars Three Hundred Thousand (\$300,000/-) as provided for in Clause 16 hereof and neither party shall then have any further claim against the other.

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AS WITNESS the hands of TAN PAN TECK for and on behalf of the said LI-TA COMPANY (PRIVATE) LIMITED and R.G. BENNETT for and on behalf of the said TEMENGGONG SECURITIES LIMITED respectively, the day and year first above written.

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THE SCHEDULE ABOVE REFERRED TO

<u>Grant No.</u>	<u>Lot No.</u>	<u>Mukim</u>	<u>District</u>	<u>Acres</u>	<u>sic Roods</u>	<u>Poles</u>
1.11539	2012	Pogoh	Segamat	248	2	00
2.11540	2013	"	"	272	1	20
3.11541	2014	"	"	274	3	00
4.11542	2015	"	"	291	2	00
5. 8676	89	"	"	6	0	19
6.11794	1687	"	"	74	0	10
7.11798	1672	"	"	66	1	05
8.12900	1699	"	"	878	2	00
9.14370	1265	"	"	3058	0	00

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E.M.R.

10. 384	612	"	"	}
11. 359	622	"	"	
12. 402	611	"	"	
13. 396	605	"	"	
14. 399	608	"	"	
15. 360	623	"	"	
16. 403	613	"	"	
17. 400	609	"	"	
18.1111	606	"	"	
19.1112	610	"	"	
20.1009	449	"	"	

Details to be supplied to the Purchaser on or before completion.

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(continuation of E.M.R.134)

TOTAL

5222 3 32

SIGNED by TAN PAN TECK
for and on behalf of LI-TA
COMPANY (PRIVATE) LIMITED
in the presence of :-

) SD:

In the High
Court in
Malaya

SD:

Exhibit "RMI"
to Affidavit
of Richard
E.B. Mews

SIGNED by R.G. BENNETT
for and on behalf of
TEMENGGONG SECURITIES
LIMITED in the presence of:)

) SD:

(continued)

10 SD:
Solicitor,
Singapore.

THE PROVISIONAL INVENTORY REFERRED TO IN
THE SECOND RECITAL CLAUSE OF THE AGREEMENT
BETWEEN LI-TA COMPANY (PRIVATE) LIMITED
AND TEMENGGONG SECURITIES LIMITED

- 1. Equipment in the S.M.R. factory including:
 - 4 creeping batteries
 - 3 stage dryer
 - 20 - 1 diesel generator plant (150 KVA)
- 2. Equipment in the R.S.S. factory including:
 - sheeting battery
 - 30 coagulating tanks: 18 aluminium
12 wood/aluminium
- 3. Material in the nursery including approx.
30,000 oil palm seedlings on hand for the
replanting of approx. 400 acres.
- 4. Vehicles including:
 - 30 - 2 landrovers
 - 4 motor cycles
 - 3 tractors with trailers
 - 2 lorries
 - 1 D6 Caterpillar tractor (1968)
 - 1 small excavator

This is the paper writing Sd:
marked "RMI" referred to in SD:
the affidavit of Richard
E.B.Mews affirmed on the 12th
day of June 1973, before me

40 Sgd:
A Commissioner for Oaths.

In the High
Court in
Malaya

Translation of Exhibit "RM2" to
Affidavit of Richard E.B. Mews

BIL. PTG. JOHOR. (SULIT) BIL. 28

Translation
of Exhibit
"RM2" to
Affidavit of
Richard E.B.
Mews

NATIONAL LAND CODE
(SEC. 321)
REGISTRAR'S CAVEAT

TAKE NOTICE THAT, I MANSORAH BINTE ARIS,
REGISTRAR OF TITLE, JOHOR, by virtue of Sec. 320
of The National Land Code and for purpose of
preventing the interest of the Government of the
Federation do hereby forbid the registration on
the following titles of any instruments of
dealing; any claim to the benefit of a tenancy
exempt from registration; and any lien-holder's
caveat, until the caveat be withdrawn by me or
by Order of Court.

10

DATED - 11th Oktober, 1972.

SEAL OF
HAKMILEK

sgd.
(MANSORAH BINTE ARIS)
PENDAFTAR HAKMILEK,
JOHOR.

20

MUKIM	LOT	JENIS HAKMILEK	BAHAGIAN TANAH	NO. BER DAFTAR PAJAKAN	NO. BER DAFTAR GADAIAN
PAGOH (SEGAMAT)	1265	G.14370	Semua	tiada	Vol.158 Fol.200
"	89	8676	"	"	"
"	1687	11794	"	"	"
"	1672	11798	"	"	"
"	1699	12900	"	"	"
"	2012	11539	"	"	Vol.145 Fol. 44
"	2013	11540	"	"	"
"	2014	11541	"	"	"
"	2015	11542	"	"	"

30

Serial
PRESENTATION NO.156/72
R/Cvt

Vol.38 Fol.149
REGISTERED AT JOHORE BAHRU THIS 11th DAY
OF October, 1972 AT 9.30 O'CLOCK IN THE
fore NOON

40

SEAL OF
HAKMILEK

Sgd.
17 Oct. 1972

In the High
Court in
Malaya

This is the paper writing
marked "RM2" referred to in
the affidavit of Richard E.B.
Mews affirmed on the 12th
day of June 1973, before me

Translation
of Exhibit
"RM2" to
Affidavit of
Richard E.B.
Mews

Sgd.

(continued)

10

A Commissioner for Oaths.

Translation of Exhibit "RM3" to Affidavit
of Richard E.B. Mews

Translation
of Exhibit
"RM3" to
Affidavit of
Richard E.B.
Mews

(8) in PTG (5) No.28

INSTRUMENT REJECTED

PRESENTATION NO. 8399/72

FILE IN RESPECT OF: Charge on Lt.8676, 11794,
11798, 12900 & 14370.

VOL: 95

FACTS:-

20

Rejected as the Title Deeds in the Register
in respect of the abovementioned lands contain
Registrar's Caveat entered as Vol.38 Fol.149
on 11.10.72.

Dated on 15th March, 1973

Signed and Sealed
REGISTRAR OF TITLES
JOHOR.

30

This is the paper writing marked
"RM3" referred to in the affidavit
of Richard E.B. Mews affirmed on
the 12th day of June, 1973, before
me.

Sgd.

A Commissioner of Oaths.

In the High Court in Malaya

This is the True Translation of the Original document produced in Serial No. 199 of 1975

Translation of Exhibit "RM3" to Affidavit of Richard E.B. Mews

Sgd: (ARSHAD B. ABDULLAH) Interpreter, High Court, Kuala Lumpur. 22/7/75

(continued)

Translation of Exhibit "RM4" to Affidavit of Richard E.B. Mews

Translation of Exhibit "RM4" to Affidavit of Richard E.B. Mews

Ref. (9)d/m.PTG(S)No.28

10

INSTRUMENT REJECTED

PRESENTATION NO. 8400/72
FILE IN RESPECT OF: M/charge on Gt.11539, 11540, 11541 & 11542.

VOL. 95 FOL: 67

FACTS:

Rejected as the Title Deeds in the Register in respect of the abovementioned lands contain Registrar's Caveat entered as Vol.38 Fol.149 on 11.10.72.

Dated this 15th day of March, 1973.

20

Signed and Sealed
REGISTRAR OF TITLES
JOHOR.

This is the paper writing marked "RM4" referred to in the affidavit of Richard E.B. Mews affirmed on the 12th day of June, 1973, before me.

Sgd.
A Commissioner of Oaths.

This is the True Translation of the Original document produced in Serial No.200 of 1975.

30

Sgd: (ARSHAD B. ABDULLAH) Interpreter, High Court, Kuala Lumpur. 22/7/75.

Translation of Exhibit "RM5" to Affidavit of Richard E.B. Mews

In the High Court in Malaya

INSTRUMENT REJECTED

PRESENTATION NO: 8401/72
FILE IN RESPECT OF: Transfer of Gt.11539-11542, 8676, 11794, 11798, 12900 and 14370.
VOL. 534 FOL: 53

Translation of Exhibit "RM5" to Affidavit of Richard E.B. Mews

FACTS:

10 Rejected as the Title Deeds in the Register in respect of the abovementioned lands contain Registrar's Caveat entered as Vol.38 Fol.149 on 11.10.72.

Dated this 15th day of March, 1973.

Signed and Sealed
REGISTRAR OF TITLES
JOHOR.

20 This is the paper writing marked "RM5" referred to in the affidavit of RICHARD E.B. MEWS affirmed on the 12th day of June, 1973, before me,

Sgd.
A Commissioner of Oaths.

This is the True Translation of the Original document produced in Serial No.201 of 1975.

Sgd: (ARSHAD B. ABDULLAH)
Interpreter,
High Court, Kuala Lumpur.
22/7/75.

In the High
Court in
Malaya

No. 3

Affidavit in Reply

No. 3
Affidavit
in Reply
22nd July
1973

I, Norani binte Othman do hereby solemnly affirm and say as follows:

1. I am a Timbalan Pendaftar Hak Milek, Johore stationed at the Office of the Commissioner of Lands and Mines, Johore Bahru.

2. I have personal knowledge of the matters herein, and am duly authorised to make this Affidavit on behalf of the Respondent.

3. By letters dated the 2nd day of October, 1972, the Penolong Pengarah Hasil Dalam Negeri, Johore Bahru, had requested the Pendaftar Hak Milek, Johore to enter a Registrar's Caveat in respect of the lands stated in that letter. A copy of this letter is exhibited herewith and marked "A". 10

4. Under Section 320 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 and desirable to protect the interest of the Federation.

5. The Pendaftar Hak Milek having examined the application and having been satisfied that it is desirable in order to protect the interest of the Federation that a Registrar's Caveat be entered, duly entered a Registrar's Caveat in respect of those lands. A copy of this Registrar's Caveat is exhibited herewith and marked "B". 20

6. Form 19A of the National Land Code, was served under Section 321(2) on the owner of the affected lands. A copy of Form 19A is exhibited herewith and marked "C". 30

7. Under Section 321(3) of the National Land Code, a Registrar's Caveat shall continue in force until it is cancelled by the Registrar:-

- (a) of his own motion; or
- (b) on an application in that behalf by the proprietor of the land affected; or
- (c) pursuant to any order of the Court made on

an appeal under section 418 against his decision to enter the caveat, or his refusal of any application for its cancellation under paragraph (b).

In the High Court in Malaya

No. 3

10 8. Up to this day, there has been no application by the registered proprietor under Section 321(3)(b) of the National Land Code for the Registrar's Caveat to be removed, nor is there any valid reason upon which the Registrar should act under Section 321(3)(a) of the National Land Code as the purpose for which the Registrar's Caveat was entered has not been removed.

Affidavit in Reply

22nd July 1973

(continued)

9. I verily believe that the applicant has no ground to obtain the order of this Honourable Court for the removal of the Registrar's Caveat, and I pray that this Originating Motion be dismissed with costs.

20 Affirmed by the abovenamed)
Norani binte Othman at) Sgd.
Johore Bahru this 22nd day) N.R.I.C. No. 3740747
of July, 1973.)

Before me,

(Sgd.) (Teo Cheng Tong)
Commissioner for Oaths

22 July 1973

30 This Affidavit is filed by the State Legal Adviser, Johore, on behalf of the Respondent, Registrar of Titles, Johore, Johore Bahru, whose address for service is care of the State Legal Adviser's Chambers, Supreme Court, Johore Bahru.

In the High
Court in
Malaya

Translation
of Exhibit
"A" to
affidavit
in reply

Translation of Exhibit "A" to affidavit
in reply.

Our Ref: 856979

Department of Inland Revenue,
Town Council Building
(Third Floor),
P.O. Box No. 719,
Johore Bahru.

Dated 2nd October, 1972.

Registrar of Land Titles,
Lands and Mines Department,
Johore Bahru,
Johore.

10

(Attention: Cik Mansurah bt. Aris)

Tuan,

Ref: Restrain of Transfer

We have the honour to inform that the above Company has been informed that the income tax for the previous years has been increased. To evade the payment of the said assessment the Company has sold a large piece of land in the Mersing District on 30th July, 1972, i.e. Lot No.672 (1270-2-00) Grant No.16917 District of Mersing, Johore.

20

2. Recently we have been informed that the said Company has proposed to sell more lands as mentioned hereunder to another Company. The lands are as follows:

<u>No.</u>	<u>Grant No.</u>	<u>Lot No.</u>	<u>Mukim</u>	<u>District</u>
1.	G.14370	1265 (3058-0-00)	Pagoh	Segamat
2.	G.8676	89 (6-0-19)	Pagoh	Segamat
3.	G.11794	1687 (74-0-10)	Pagoh	Segamat
4.	G.11798	1672 (66-1-05)	Pagoh	Segamat
5.	G.12900	1699 (878-2-00)	Pagoh	Segamat
6.	G.11539	2012	Pagoh	Segamat
7.	G.11540	2013	Pagoh	Segamat
8.	G.11541	2014	Pagoh	Segamat
9.	G.11542	2015	Pagoh	Segamat

30

3. Thus, it would be appreciated if you could restrain the above land from being transferred by registration of "Registrar's Caveat" without delay.

Yours truly,

40

Sgd: (M.P. VASUDEVAN)
for Assistant Director of Inland Revenue,
Investigation Center,
Johor Bahru.

In the High
Court in
Malaya

This is the paper writing marked
"A" referred to in the affidavit
of Norani bte Othman affirmed on
the 22nd day of July, 1973, before
me,

Translation
of Exhibit
"A" to
affidavit
in reply
(continued)

10

Sgd:
A Commissioner for Oaths.

This is the True Translation of
the Original document produced
in Serial No. 202 of 1975.

Sgd: (ARSHAD B. ABDULLAH)
Interpreter,
High Court, Kuala Lumpur.
22/7/75.

20

Translation of Exhibit "B" to
affidavit in reply

Translation
of Exhibit
"B" to
affidavit
in reply

BIL.PTG.JOHOR.(CONFIDENTIAL) No.28

NATIONAL LAND CODE

(SEC. 321)

REGISTRAR'S CAVEAT

30

TAKE NOTICE THAT, I MANSORAH BINTE ARIS,
REGISTRAR OF TITLES, JOHOR, by virtue of Sec.320
of the National Land Code and for purpose of
preventing the interest of the Government of the
Federation do hereby forbid the registration on
the following titles of any instruments of
dealing; any claim to the benefit of a tenancy
exempt from registration; and any lien-holder's
caveat, until the caveat be withdrawn by me or
by Order of Court.

DATED - 11th October, 1972.

In the High
Court in
Malaya

(L.S.)

Sgd.
(MANSORAH BINTE ARIS)
REGISTRAR OF TITLES,
JOHOR.

Translation
of Exhibit
"B" to
affidavit
in reply
(continued)

Mukim	Lot	Descrip- tion of Title	Share of Land	Registered No. of Lease	Registered No. of charge
Pagoh (Segamat)	1265	G.14370	Whole	Nil	Vol.158 Fol.200
"	89	8676	"	"	"
"	1687	11794	"	"	"
"	1672	11798	"	"	"
"	1699	12900	"	"	"
"	2012	11539	"	"	Vol.145 Fol.44
"	2013	11540	"	"	"
"	2014	11541	"	"	"
"	2015	11542	"	"	"

Serial No. 156/72
R/Cvt. Vol.38 Fol.149
Registered at Johore Bahru this
11th day of October, 1972 at
9.30 o'clock in the Forenoon.

Sgd: Mansorah bte. Aris

(L.S.) 17 Oct. 1972

This is the paper writing marked "B"
referred to in the Affidavit of
Norani binte Othman affirmed on the
22nd day of July, 1973 before me,

Sgd:
A Commissioner of Oaths.

This is the True Translation of the
Original document produced in Serial
No.203 of 1975.

Sgd: (ARSHAD B. ABDULLAH)
Interpreter,
High Court, Kuala Lumpur.
22/7/75

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Translation of Exhibit "C" to
affidavit in reply.

In the High
Court of
Malaya

PTG. JOHOR (CONF.) No. 28

NATIONAL LAND CODE

FORM 19A

Translation
of Exhibit
"C" to
affidavit
in reply

NOTICE OF THE ENTRY OF CAVEAT

To LI-TA COMPANY (PRIVATE) LIMITED

of THE CHASE MANHATTAN BANK, NATIONAL ASSOCIATION
7-11, JALAN GEREJA, KUALA LUMPUR,

10 proprietor of the land described in the schedule
below:

This is to inform you that, in the exercise
of the powers conferred by section 321, I have
this day entered, upon the register document of
title to the said land:

(a) a registrar's Caveat VOL.38 FOL.149

REGISTRAR OF LAND TITLES, JOHOR - Director of
Lands and
Mines Office,
Johor.

20

This caveat is expressed to bind -
the land itself and the effect is -

In accordance with the provision under
section 321 National Land Code.

Dated this 25th October, 1972.

copy to

Assistant Director of Inland
Revenue,
Investigation Center,
Johor Bahru.

30

Sgd.
Registrar,
State of Johor.

In the High
Court in
Malaya

Translation
of Exhibit
"C" to
affidavit
in reply
(continued)

SCHEDULE OF LAND AND INTEREST

Town/ Village Mukim	Lot/ Parcel/ L.O.No.	Descrip- tion and No. of Title	Share of land (if any)	Regis- tered No. of lease/ sub- lease (if any)	Regis- tered No. of charge (if any)	
Pagoh (Segamat)	Lot.1265	G.14370	Whole	nil	Vol.158 Fol.200	10
"	Lot.89	8676	"	"	"	
"	1687	11794	"	"	"	
"	1672	11798	"	"	"	
"	1699	12900	"	"	"	
"	2012	11539	"	"	Vol.145 Fol.44	
"	2013	11540	"	"	"	
"	2014	11541	"	"	"	
"	2015	11542	"	"	"	20

This is the paper writing marked
"C" referred to in the affidavit
of Norami bte. Othman affirmed
on the 22nd day of July, 1973,
before me,

Sgd:
A Commissioner for Oaths.

This is the True Translation of
the Original document produced
in Serial No.204 of 1975.

Sgd: (ARSHAD B. ABDULLAH)
Interpreter,
High Court, Kuala Lumpur.
22/7/75

No. 4

Written Submission

In the High
Court in
Malaya

No. 4

Written
Submission
(undated)

Li-Ta Company (Pte) Ltd., (hereinafter referred to as "Li-Ta") a company incorporated in the Republic of Singapore and having its registered office at 2-K, Clifford House, Collyer Quay, Singapore, has a branch office in Segamat through which it operated its business in Malaysia, mainly in Rubber. The assets of this Company in Segamat, are made up of rubber estates known as Labis Bahru Estate, comprising of nine (9) lots of land in the Mukim of Pagoh, Segamat, as shown in the schedule below:-

10

SCHEDULE OF LAND AT MUKIM OF PAGOH

20

<u>Lot No.</u>	<u>Grant No.</u>
1265	14370
89	8676
1687	11794
1672	11798
1699	12960
2012	11539
2013	11540
2014	11541
2015	11542

30

(2) Various notices of assessment and additional assessments, as shown in the Statements of Claim (Civil Suits No.116 & 117 of 1972) amounting to (RM6,831.90 + RM1,591,499.47) RM1,688,331.37, were served on Li-Ta. Under Section 103(1) of the Income Tax Act 1967, tax becomes due and payable on the service of the notice of assessments or additional assessments irrespective of whether or not the taxpayer appeals against the said assessment. Under Section 106(1) of the Income Tax Act 1967, tax due and payable may be recovered as a debt due to the Government. In the circumstances Li-Ta became a debtor and the Government a Creditor right from the time when the Notice of Assessment was served on Li-Ta. As a creditor, the Government has acquired interest in whatever property belonging to Li-Ta in order to satisfy the debt.

40

(3) Sometime during September 1972, the Revenue was informed that Li-Ta was negotiating sale of its landed properties with a view to avoiding

In the High
Court in
Malaya

No. 4

Written
Submission
(undated)

(continued)

payment of its debt. The Government was concerned with the collection of income tax, that is debt due and payable by Li-Ta and if its landed properties are disposed of, the Government would be denied of its debt as Li-Ta, a foreign company, has no more assets in this country. To collect the debt and to protect the interests of the Government, it was found necessary to prevent any dealing in the above landed properties until all the debts due and payable by Li-Ta are settled. Consequently the Registrar of Titles, Johore, was approached and a Registrar's caveat under Section 320(1)(b)(i) of the National Land Code No. 56 of 1965 was then registered on 11th October, 1972 forbidding the registration on all the nine (9) lots of land referred to at paragraph 1 above, of any instruments on dealing.

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(4) Circumstances in which a Registrar's caveat may be entered are set out in Section 320(1) of the National Land Code, which are as follows:-

20

"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 -

(a) for the prevention of fraud or improper dealing; or

(b) for protecting the interests of -

(i) the Federation or the State Authority, or

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(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

(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."

40

Section 320(1)(b)(i) clearly states that a Registrar's caveat may be entered in respect of any land wherever such appears to be necessary or desirable for protecting the interests of the

Federation. The words underlined i.e. "the interests of" are to be interpreted according to the context of the National Land Code. The "interest" here does not mean that it is a "registered interest". If the Legislature intended it to mean "registrable interest", it would add other words to it such as "interest therein", "interests in land", "beneficial interests" or "any right to such title or interests in land." The same word "interest" appears in two different sections, that is in section 320 and section 323 which clearly differentiates between a private and a Registrar's caveat. In a private caveat, it may only be entered by persons or bodies claiming title to, or any registrable interest, or any right to such title or interest in land. (Section 323(1). The word "interests" in section 320(1) (b)(i), that is, for protecting the "interests" of the Federation, should not be interpreted as "registrable interest". It should be given its ordinary meaning and therefore the Registrar of Titles, Johor has rightly exercised her discretion in entering the Registrar's caveat for the purpose of protecting the interests of the Federation Government who has acquired interests in whatever property belonging to Li-Ta as soon as the notice of assessment was served on it.

In the High Court in Malaya

No. 4

Written Submission (undated)

(continued)

No. 5

Judgment

No. 5

Judgment

23rd August 1973

This is an appeal by the Applicants under section 418 of the National Land Code from the decision of the Registrar of Land Titles, Johore, and the Applicants seek to set aside the Registrar's caveat dated 11th October, 1972 relating to 9 pieces of land in the Mukim of Pogoh (Segamat). Such caveat was lodged by the Registrar under the provisions of Section 320 of the National Land Code upon request being made to him by the Inland Revenue Department, Johore Bahru, vide their letter dated 2nd October, 1972, a copy of which is annexed to the affidavit of Norani binte Othman, Deputy Registrar of Land Titles, Johore Bahru, and marked Exhibit "A". Section 320 of the National Land Code reads as follows:-

"320. (1) Subject to sub-section (2), a Registrar's caveat may be entered in respect

In the High
Court in
Malaya

—
Judgment

23rd August
1973

(continued)

of any land wherever such appear to the Registrar to be necessary or desirable -

(a) for the prevention of fraud or improper dealing; 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

10

(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".

In the present case the Registrar has acted under Section 320(1)(b), namely "for the protection of the interest of the Federation."

20

Section 321(3) of the National Land Code reads as follows:-

"321. (3) A Registrar's caveat shall continue in force until it is cancelled by the Registrar -

(a) of his own motion; or

(b) on an application in that behalf by the proprietor of the land affected; or

(c) pursuant to any order of the Court made on an appeal under Section 418 against his decision to enter the caveat, or his refusal of any application for its cancellation under paragraph (b).

30

In the present application the applicants invoke relief under the first limb of Section 321(3)(c) of the National Land Code. The circumstances leading to the lodging of the Registrar's caveat are briefly as follows. Various notices of assessment and additional

assessments, as set out in the Statement of Claim in Muar Civil Suits 116/72 and 117/72 amounting to more than \$1,688,000/- were served on Li-Ta Company (Private) Ltd., under Section 103(1) of the Income Tax Act, 1967. Under Section 103(1) of the Income Tax Act, 1967, tax becomes due and payable on the service of the notice of assessment irrespective of whether or not the tax payer has appealed against the said assessment. Section 106(1) of the Income Tax Act provides that the tax due and payable may be recovered as a debt due to the Government. The Respondent contends that Li-Ta Company (Private) Ltd. became debtors and the Government the creditor right from the time when the notice of assessment was served.

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Sometime in September, 1972 the Inland Revenue Department became aware that Li-Ta Company (Private) Ltd. was negotiating for the sale of its landed properties with a view to avoiding payment of its debt. This is a foreign Company and has no assets in Malaysia and the Government, apprehending that, should the sale be allowed to go through, the chances of recovering the debt would be jeopardized, deemed it necessary to prevent dealing in the 9 pieces of land until such time as the debts due and payable by Li-Ta Company (Private) Ltd. were settled. A request was thus made to the Registrar of Land Titles, Johore for the lodging of a Registrar's caveat under Section 320(1)(b) of the National Land Code. The Registrar's caveat was registered on 11th October, 1972 forbidding the registration of any instrument of dealing in the 9 pieces of land.

40

At the hearing before me, Counsel for the Applicants cited the case of Municipal District of Concord (Caveators) v. Coles (Applicant) (1906) 3 C.L.R. 96. In that case it was held that only a person who has or claims a legal or equitable interest in land, partaking of the character of an estate or equitable claim, can lodge a caveat under Section 24 of the Real Property Act, 1900. It was further held that a municipal council has not such an estate or interest in land dedicated to the public as a road as will entitle it to lodge a caveat under that section. Griffith C.J. at p.106 and 107 had this to say:-

" After a very anxious consideration of the words of the section and of the whole Act,

In the High Court in Malaya

No. 5

Judgment

23rd August 1973

(continued)

In the High
Court in
Malaya

—
No. 5

Judgment

23rd August
1973

(continued)

we have come to the conclusion that the intention of the legislature in using the word 'interest' was that only a person having, or claiming to have, some legal or equitable interest in the land partaking of the character of an estate, or of an equitable claim upon the land, can be a caveator. This inference is to be drawn not only from the way in which the word 'interest' is used in the latter part of the section in connection with the words 'estate, lien, or charge', which points to the conclusion that the interest is to be one ejusdem generis and, therefore, one which gives the caveator a legal or equitable claim to or upon the land itself, but also from the concluding words of the section under which the caveator may be required to deliver a full and complete abstract of his title." 10

Section 24 of the Real Property Act (N.S.W.) (No.25 of 1900) reads as follows: 20

"24. Any person having or claiming an interest in any land so advertised as aforesaid, or the attorney of any such person, may within the time limited by the Registrar General for the purpose, lodge a caveat with the Registrar General in the form of the Third Schedule hereto, forbidding the bringing of such land under the provisions of this Act, and every such caveat shall particularise the estate, interest, lien, or charge claimed by the caveator, and the caveator shall if required deliver a full and complete abstract of title. " 30

Here, however, we are dealing with Section 320(1)(b) of the National Land Code, which provides that a "Registrar's caveat may be entered in respect of any land wherever it appears to the Registrar to be necessary or desirable for the protection of the interests of the Federation or the State authority." It will be seen that this section is not in para materia with section 24 of the Real Property Act, N.S.W. quoted above and for this reason the case cited is of no assistance to the present matter. 40

Counsel for the Applicants submitted that the Registrar's caveat was bad as there was no interest which the Federation Government had in the lands. His main contention is that before a Registrar's caveat can be entered, it must be shown to the satisfaction of the Registrar that the Federation Government had some sort of registrable interest in the land. In support of this contention, he relied on the case of Municipal District of Concord v. Coles (supra)

In the High
Court in
Malaya

No. 5

Judgment

23rd August
1973

(continued)

In my view, a distinction has to be drawn between 'interests' and 'registrable interest'. For purposes of Section 323 of the National Land Code, a private caveat may be entered at the instance of "any person or body claiming title to or any registrable interest in any alienated land or any right to such title or interest" whereas for purposes of Section 320 a Registrar's caveat may be entered "for the protection of the interests of the Federation or the State authority." (The underlining is mine.) Can it be said that the 'interests' referred to in Section 320 of the National Land Code should be interpreted as being a 'registrable interest'? I hold the view that if it was the intention of the legislature that the 'interests' referred to in Section 320 should be a 'registrable interest', then the word 'registrable' should have been prefixed to the word 'interests' in Section 320 as has been done in the case of Section 323.

Counsel for the Respondents submitted that because of the absence of the word 'registrable' before the word 'interests' in Section 320, the word 'interests' should be given its ordinary meaning and, since the Federation Government had acquired an interest in whatever property belonging to Li-Ta Company (Private) Ltd. upon the service of the notices of assessment on them, the Registrar's caveat was rightly and properly entered under Section 320(1)(b) of the National Land Code.

Whereas in Section 24 of the Real Property Act, N.S.W. the following words appear "and every such caveat shall particularise the estate, interest, lien or charge claimed by the caveator", in Section 320(1)(b) of the National Land Code the operative word is 'interests'. I will quote below a passage from Words & Phrases Legally Defined, 2nd Edition, Volume 3, at page 79:

In the High
Court in
Malaya

No. 5

Judgment

23rd August
1973

(continued)

" The word 'interest' is not a technical term: the law does not give the word the same specific application in all contexts in which it is used In its ordinary or popular sense, the word 'interest' as applied to property may include a contingent interest The word 'interest' which has a popular rather than a technical meaning is a word of wide import and includes contingent as well as vested interests."

10

I am of the view that the legislature clearly had in view the protection of the interests of the Federation or the State authority and, because of this, gave the Registrar specific powers under Section 320 to enter a caveat in respect of any land when he deemed it necessary or desirable to do so in the protection of such interests. It might also be mentioned here that the word 'interests' is plural in number and in my view it can be interpreted to include interests other than registrable interests, whereas in Section 323 the word 'interests' is singular in number and includes only a registrable interest. For this reason I am of the opinion that interests such as vested or contingent are also within the purview of Section 320 of the National Land Code, as far as it pertains to the Federation or the State authority.

20

I must, therefore, rule that the Registrar's caveat was rightly and properly entered and for this reason the application by the Applicants is dismissed with costs.

30

Sd.
(PAWAN AHMAD BIN IBRAHIM
RASHID)
Judge,
High Court.

Muar,
23rd August, 1973

Mr. Ralph Hoffman (with Mr. Wong Kim Fatt) for the
Applicants.

Tuan Haji Eusoff Chin, Legal Adviser (with Cik
Zulkifli Mahmood, Sr. Federal Counsel) for
Respondent.

No. 6

Notice of Appeal

In the Federal Court of Malaysia

No. 6

Notice of Appeal

6th September 1973

IN THE FEDERAL COURT OF MALAYSIA (Appellate Jurisdiction)

CIVIL APPEAL NO. 104 OF 1973

BETWEEN

- 1. Temenggong Securities Limited
- 2. Tumbuk Estate Sdn. Bhd. ... Appellants

AND

- 10 Registrar of Titles, Johore, Johore Bahru ... Respondent

(In the matter of Originating Motion No.4 of 1973 in the High Court in Malaya at Muar

BETWEEN

- 1. Temenggong Securities Limited
- 2. Tumbuk Estate Sdn. Bhd. ... Applicants

AND

- Registrar of Titles, Johore, Johore Bahru ... Respondent)

20

NOTICE OF APPEAL

Take notice that the Appellants being dissatisfied with the decision of the Honourable Mr. Justice Pawan Ahmad given at Muar on the 23rd day of August 1973 appeal to the Federal Court against the whole of the said decision.

Dated this 6th day of September, 1973

Sd:
Allen & Gledhill
Solicitors for the Appellants

In the Federal
Court of
Malaysia

No. 6

Notice of
Appeal

6th September
1973

(continued)

To

The Registrar
The Federal Court
Kuala Lumpur

and to

The Assistant Registrar,
The High Court in Malaya at Muar

and to

The State Legal Adviser,
Johore.

10

The address for service for the appellants
is M/s. Allen & Gledhill, Nos. 302-303, O.C.B.C.
Building, Johore Bahru.

Filed this 8th day of September, 1973.

SD:
Penolong Pendaftar,
Mahkamah Tinggi,
Muar.

The sum of \$500/- has been deposited as security
for costs.

20

SD:
Penolong Pendaftar,
Mahkamah Tinggi,
Muar.

8 SEP 1973

No. 7

Memorandum of Appeal

IN THE FEDERAL COURT OF MALAYSIA
(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO.104 OF 1973

BETWEEN

- 1. Temenggong Securities Limited ... Appellants
- 2. Tumbuk Estate Sdn. Bhd.

AND

- 10 Registrar of Titles, Johore ... Respondent
- Johore Bahru

(In the matter of Originating Motion No.4
of 1973 in the High Court in Malaya at Muar

BETWEEN

- 1. Temenggong Securities Limited
- 2. Tumbuk Estate Sdn. Bhd. ... Applicants

AND

Registrar of Titles, Johore, ... Respondent)
Johore Bahru

20

MEMORANDUM OF APPEAL

Temenggong Securities Limited and Tumbuk Estate Sdn. Bhd., the Appellants abovenamed, appeal to the Federal Court against the whole of the decision of the Honourable Mr. Justice Pawan Ahmad bin Ibrahim Rashid given at Muar on the 23rd day of August, 1973, on the following grounds:

- 1. The said decision was wrong in law.
- 2. The learned Judge ought to have made an order directing the Respondent to remove forthwith the Registrar's Caveat entered on the 11th day of October 1972 in serial No. 156/72, Registrar's Caveat Vol. 38, Fol. 149 and forthwith register the discharge of charge in Presentation No. 8399/72 in file of discharge Vol. 95 Fol. 66, discharge of charge in Presentation No. 8400/72 in file of discharge

30

In the
Federal Court
of Malaysia

No. 7

Memorandum
of Appeal

13th October
1973

In the
Federal Court
of Malaysia

No. 7

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of Appeal

13th October
1973

(continued)

Vol. 95 Fol. 67 and transfer in Presentation
No.8401/72 file of transfer Vol.534, Fol.53.

3. The learned Judge ought to have made such order because the Appellants were and are so entitled in law.
4. Alternatively, the learned Judge ought to have made such order in the proper exercise of his discretion.
5. The learned Judge erred in law in holding that the Registrar's Caveat relating to the 9 pieces of land forming the greater part of the Labis Bahru Estate in the Mukim of Pogoh, Segamat ("the said land") was rightly and properly entered. 10
6. The learned Judge ought to have held that the said Registrar's Caveat was not rightly or properly entered.
7. Alternatively, the learned Judge ought to have held that, whether or not the Registrar may have acted justifiably at the time in entering the said Registrar's Caveat, on the evidence before him and before this Honourable Court - 20
 - (a) there was on 11th October 1972 in fact no lawful basis or justification for the entry of the said Registrar's caveat;
 - (b) alternatively, there was at the date of the said decision and there is now no lawful basis or justification for the maintenance or continuance on the Register of the said Registrar's caveat. 30
8. The learned Judge erred in law in holding that a Registrar's caveat may be entered in respect of any land pursuant to paragraph (b) of Section 320(1) of the National Land Code in circumstances in which the Federation, the State authority or such person as is referred to in sub-paragraph (ii) of the said paragraph (b) (as the case may be) has no interest, legal or equitable, in that land. 40
9. The learned Judge ought to have held that it is open to the Registrar to enter a Registrar's

caveat in respect of any land pursuant to paragraph (b) of Section 320(1) of the National Land Code only where the Federation, the State authority or such person as is referred to to sub-paragraph (ii) of the said paragraph (b) (as the case may be) has an interest in that land.

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(continued)

10. The learned Judge misdirected himself in accepting as facts:-

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(a) that in September 1972 Li-Ta Company (Pte.) Limited was negotiating for the sale of the said land;

(b) that it was doing so with a view to avoid payment of its debt; and

(c) that the Inland Revenue Department became aware of (a) and (b) in September 1972.

20

To the contrary, the said Li-Ta Company (Pte.) Limited had by Agreement of Sale dated 30th August, 1972, sold the said land to the Appellant Temenggong Securities Ltd. prior to September 1972 and there was no evidence or no admissible evidence as to what the intentions of the said Li-Ta Company (Pte.) Limited were in making the said sale.

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11. The learned Judge erred in law in holding that the Federation (or the Inland Revenue Department) had at 11th October, 1972, an interest in the said land. To the contrary neither the Federation nor the Inland Revenue Department had at 11th October, 1972, any interest in the said land either within the meaning of that definition or at all.

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sic

12. The learned Judge erred in law in holding that the fact that a debtor-creditor relationship subsisted between the said Li-Ta Company (Pte.) Limited and the Federation (or the Inland Revenue Department) at 11th October 1972 gave the Federation or the Inland Revenue Department an interest in the said land at that date. To the contrary the fact of that relationship gave the Federation and/or the Inland Revenue Department to interest in the said land at 11th October, 1972.

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1973

(continued)

13. The learned Judge erred in law in holding that at 11th October 1972 the sale of the said land by the said Li-Ta Company (Pte.) Limited to the Appellant Temenggong Securities Limited had not gone through.
14. To the contrary, the said sale had gone through and from 22nd September, 1972 (at the latest) -
- (a) the said Li-Ta Company (Pte.) Limited had no beneficial interest in the said land; and 10
- (b) the full beneficial interest in the said land was vested in and owned by the Appellants or one or other of them;
15. If (contrary to the submission of the Appellants) -
- (a) the Federation (or the Inland Revenue Department) had an interest in the said land at 11th October 1972;
- (b) the Registrar's caveat was rightly entered on 11th October 1972; or 20
- (c) there is a technical basis for the continued subsistence on the Register of the Registrar's caveat
- (or if any two or more of those things be the case) nevertheless at 11th October 1972 the only interest which the said Li-Ta Company (Pte.) Limited had in the said land was as registered proprietor and it held the registered title (or titles) as bare trustee for the Appellants or one or other of them. 30
16. The only interest in the said land which the Federation (or the Inland Revenue Department) at 11th October 1972 may have had or may now have (actually or prospectively) any right to sell or otherwise to levy execution upon is the bare legal title, which is an asset of no value.
17. The effect of the continued subsistence of the Registrar's caveat is not to give the Federation (or the Inland Revenue Department) 40

security of any value for any debt which the said Li-Ta Company (Pte.) Limited may owe them or either of them but merely to prevent the Appellants or one or other of them from becoming registered as proprietor of the said land.

In the Federal Court of Malaysia

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(continued)

10 18. Accordingly, the learned Judge ought, in the proper exercise of his discretion, to have concluded that the continued subsistence on the Register of the Registrar's Caveat was of no benefit to the Federation (or the Inland Revenue Department) and was a burden and hardship unjustly imposed on the Appellants and each of them and that the Registrar's Caveat should be cancelled or discharged.

Dated this 13th day of October 1973.

SD:
.....
Solicitors for the Appellants

To

20 The Registrar,
The Federal Court
Kuala Lumpur

and to

The Assistant Registrar
The High Court in Malaya at Muar

and to

The State Legal Adviser,
Johore.

30 The address for service of the Appellants is M/s. Allen & Gledhill, Nos. 302-303, O.C.B.C. Building, Johore Bahru.

In the
Federal Court
of Malaysia

No. 8

No. 8

Written Submission of Temenggong
Securities Ltd. and Tumbuk Estates
Sdn. Bhd.

Written
Submission of
Temenggong
Securities
Ltd. and
Tumbuk
Estates
Sdn. Bhd.
27th April
1974

IN THE FEDERAL COURT OF MALAYSIA
(Appellate Jurisdiction)

CIVIL APPEAL NO. 104 OF 1973

BETWEEN

- 1. TEMENGGONG SECURITIES LIMITED
- 2. TUMBUK ESTATE SDN.BHD. ... APPELLANTS

AND

10

REGISTRAR OF TITLES, JOHORE,
JOHORE BAHRU ... RESPONDENT

(In the matter of Originating Motion No.4
of 1973 in the High Court in Muar

BETWEEN

- 1. TEMENGGONG SECURITIES LIMITED
- 2. TUMBUK ESTATE SDN. BHD. ... Applicants

And

REGISTRAR OF TITLES, JOHORE,
JOHORE BAHRU ... Respondent)

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WRITTEN SUBMISSION

1. This is an appeal against the judgment of the Hon'ble Mr. Justice Pawan Ahmad delivered at Muar on the 23rd August 1973 dismissing an application by the Appellants under Sections 417 and 418 of the National Land Code for an order directing the Registrar of Titles, Johore, to cancel a caveat entered by the Registrar under Section 320 of the National Land Code in respect of 9 pieces of land in area 5170 acres, more or less, situated in the Mukim of Pagoh in the District of Segamat, Johore, and to register a transfer of the said 9 pieces of land in favour of the 2nd Appellant and two Discharges of Charge.

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2. There are two other related appeals against decisions of Mr. Justice Pawan Ahmad dismissing two applications by the 2nd Appellant for orders to set aside two prohibitory orders issued and entered against the said 9 pieces of land. The related appeals are the subject-matter of a separate written Submission.

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(continued)

3. The material facts and critical dates are disclosed in the Affidavit of Mr. Richard Mews affirmed on the 12th day of June 1973 which appears on pages 9 to 15 of the Record of Appeal. These material facts and dates may be summarised as follows:-

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(a) On the 30th August 1972 the 1st Appellant, Temenggong Securities Ltd. (hereinafter referred to as "Temenggong") entered into an Agreement with Li-Ta Company (Pte.) Ltd. (hereinafter referred to as "Li-Ta") for the purchase free from all encumbrances of Labis Bahru Estate in Johore comprising a total of 5220 acres 3 roods 32 poles, completion of the sale and purchase to take place on or before the 30th day of September 1972.

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(b) On the 22nd day of September 1972 the purchase price stipulated in the said Agreement was satisfied in full and Li-Ta as Vendors duly executed transfers of the said Labis Bahru Estate lands in favour of the 2nd Appellant, Tumbuk Estate Sdn. Bhd. (hereinafter referred to as "Tumbuk") the nominee of Temenggong, and the executed transfers together with the issue documents of title and two Discharges of Charge were delivered to their solicitors. On the same day possession of the lands was given to Tumbuk.

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(c) On the 14th day of December 1972 after adjudication for the purpose of stamp duty had been completed, the stamped transfer in respect of 9 pieces of land all held under State Grants, was presented to the Registrar of Titles, Johore, Johore Bahru (hereinafter referred to as "the Registrar") for registration, bearing registration No. 8401/72 in File of Transfer Vol. 534 Folio 52. At the same time duly executed and stamped Discharges of Charge in respect of the same 9 pieces of land were presented for registration, with their related duplicate Charges.

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- (d) Three months later, namely, on the 15th March 1973 the Registrar informed Tumbuk's solicitors that the transfer and the Discharges of Charge presented on the 14th December 1972 had been rejected for registration on the ground that the Registrar's caveat had been entered against the 9 pieces of land on the 11th day of October 1972 in Vol. 38 Folio 149.
- (e) On the 19th day of December 1972 the Government of Malaysia obtained two judgments against Li-Ta in Civil Suit No. 116 of 1972 and Civil Suit No. 117 of 1972 in the High Court at Muar for income tax due from Li-Ta to the Comptroller-General of Inland Revenue, Malaysia. 10
- (f) On the 27th day of December 1972 the Government of Malaysia having obtained two prohibitory orders, one prohibitory order was entered on the register documents of title to 7 of the 9 pieces of land and the other prohibitory order was entered on the register documents of title to the remaining 2 pieces of land. 20
- (g) On the 4th day of June 1973 Temenggong entered a private caveat against the 9 titles and on the 16th day of July 1973 Tumbuk entered another private caveat against the 9 titles.
- (h) By Originating Motion No. 4 of 1973 in the High Court at Muar dated the 12th June 1973 the Appellants applied for an order directing the Respondent to cancel the Registrar's caveat and to register the two Discharges of Charge and the transfer in favour of the 2nd Appellant. 30
- (i) On the 23rd day of August 1973 the Appellants' application was dismissed by Mr. Justice Pawan Ahmad from whose decision the Appellants are now appealing. 40

4. The Registrar's caveat was entered following the receipt of a letter dated 2nd October 1972 from the Assistant Director of Inland Revenue to the Registrar (page 34 of the Appeal Record) to the effect that the Inland Revenue authorities had

informed Li-Ta that its income tax liability for future years would be increased and that in order to avoid payment of such tax, Li-Ta had recently sold a large piece of land. The letter goes on to say that the Inland Revenue authorities had been informed that Li-Ta was proposing to sell further pieces of land, (i.e. the said 9 pieces of land), and in order to stop the lands from being transferred, the Registrar was requested to enter a Registrar's caveat without delay.

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5. The substantive grounds of appeal against the judgment of the learned Judge are:-

(1) The learned Judge erred in law in holding that the Registrar's caveat relating to the 9 pieces of land ("the said land") was rightly and properly entered when it was originally entered, whereas the learned Judge ought to have held that the Registrar's caveat was not rightly or properly entered. (See grounds 1 to 6).

(2) Alternatively, the learned Judge ought to have held that, whether or not the Registrar may have acted justifiably at the time in entering the said Registrar's caveat, on the evidence before him and before this Honourable Court -

(a) there was on 11th October 1972 in fact no lawful basis or justification for the entry of the said Registrar's caveat;

(b) alternatively, there was at the date of the said decision and there is now no lawful basis or justification for the maintenance or continuance on the Register of the said Registrar's caveat. (See grounds 7 to 14).

(3) If (contrary to the submission of the Appellants)-

(a) the Federation (or the Inland Revenue Department) had an interest in the said land at 11th October 1972;

(b) the Registrar's caveat was rightly entered on 11th October, 1972; or

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(c) there is a technical basis for the continued subsistence on the Register of the Registrar's caveat

(or if any two or more of those things be the case) nevertheless at 11th October 1972 the only interest which the said Li-Ta Company (Pte.) Ltd. had in the said land was as registered proprietor and it held the registered title (or titles) as bare trustee for the Appellants or one or other of them. Furthermore, the only interest in the said land which the Federation (or the Inland Revenue Department) at 11th October 1972 may have had or may now have (actually or prospectively) any right to sell or otherwise to levy execution upon is the bare legal title, which is an asset of no value. (See grounds 15 to 18).

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6. Turning first to the first substantive ground of appeal, namely that the learned Judge erred in law in holding that the Registrar's caveat was properly entered on the 11th October 1972, it is important in construing Section 320(1) of the National Land Code under which the Registrar purported to act, to bear in mind the true nature and purpose of a caveat. A clear expression of the fundamental nature and purpose of a caveat is found in ABIGAIL v. LAPIN (1934) 51 C.L.R. 58; [1934] All. E.R. Rep. a decision of the Judicial Committee delivered by Lord Wright His Lordship said at page 51 C.L.R. pp.64 to 65; (1934) All. E.R. pp. 724-725:-

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"The Real Property Act 1900 of New South Wales embodies what has been called, after the name of its originator, the Torrens System of the registration of title to land. It is a system which is in force throughout Australasia and in other parts as well. It is a system for the registration of title, not of deeds, the statutory form of transfer gives a title in equity until registration, but when registered it has the effect of a deed and is effective to pass the legal title, upon the registration of a transfer, the estate or interest of the transferor as set forth in such instrument with all rights, powers and privileges thereto belonging or appertaining is to pass to

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the transferees. No notice of trusts may be entered in the register book, but it has long been held that equitable claims and interests in land are recognised under the Real Property Acts. This was held in Barry v. Heider and in Great West Permanent Loan Co. v. Friesen; for the protection of such equitable interests or estates, the Act provides that a caveat may be lodged with the Registrar by any person claiming as cestui que trust, or under any unregistered instrument or any other estate of interest; the effect of the caveat is that no instrument will be registered while the caveat is in force affecting the land, estate or interest until after a certain notice to the person lodging the caveat. Thus, though the legal interest is in general determined by the registered transfer, and is in law subject only to registered mortgages or other charges, the register may bear on its face a notice of equitable claims, so as to warn persons dealing in respect of the land and to enable the equitable claimant to protect his claim by enabling him to bring an action if his claim be disputed."

The Judicial Committee also quoted with approval (at 51 C.L.R. page 66; (1934) All. E.R. at pp.725-726, the following passage from the judgment of Griffith C.J. in Butler v. Fairclough (1917) 23 C.L.R. 78 at pp.91 to 92:-

"It must now be taken to be well settled that under the Australian system of registration of titles to land the Courts will recognise equitable estates and rights except so far as they are precluded from doing so by the statutes. This recognition is, indeed, the foundation of the scheme of caveats which enable such rights to be temporarily. In dealing with such equitable rights the Courts in general act upon the principles which are applicable to equitable interests in land which is not subject to the Acts. In the case of a contest between two equitable claimants the first in time, all other things being equal, is entitled to priority. But all other things must be equal, and the claimant who is first in time may lose his priority by any act or omission which had or might have had the effect of inducing a

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claimant later in time to act to his prejudice. Thus, if an equitable mortgagee of lands allows the mortgagor to retain possession of the title deeds, a person dealing with the mortgagor on the faith of that possession is entitled to priority in the absence of special circumstances to account for it. Under the Australian system a clear title on the register is, for some purpose at any rate, equivalent to possession of the title deeds. A person who has an equitable charge upon the land may protect it by lodging a caveat, which in my opinion operates as notice to all the world that the registered proprietor's title is subject to the equitable interest alleged in the caveat."

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What Lord Wright said above in ABIGAIL v. LAPIN fully confirms the statement by Griffith C.J. in the earlier case of MUNICIPAL DISTRICT OF CONCORD v. COLES (1906) 3 C.L.R. 96 at page 107:-

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"After a very anxious consideration of the words of the section and of the whole Act, we have come to the conclusion that only a person having or claiming to have, some legal or equitable interest in the land partaking of the character of an estate, or of an equitable claim upon the land can be a caveator."

7. From the abovementioned cases the proper conclusion to be drawn as regards the purpose and nature of a caveat is that:-

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(a) it gives notice that the caveator claims to have "some legal or equitable interest in the land, partaking of the character of an estate, or of an equitable claim upon the land"

(b) that the caveat neither creates any interest nor determines any rights: it is notice of a claim.

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8. Applying this criteria to the circumstances of the Inland Revenue Department's request to the Registrar to enter a Registrar's caveat against the said land, it is clear:-

- (a) that the Registrar's caveat gave no notice of the kind of "interest" referred to in CONCORD v. COLES and ABIGAIL v. LAPIN at the time of entry of the caveat;
- (b) that since neither the Comptroller-General nor the Government of the Federation had such an interest the Registrar's caveat was improperly entered;
- 10 (c) that accordingly the Registrar's caveat should be removed.

9. That is how the matter was submitted to the learned Judge below and it is submitted that the learned Judge was wrong in law in holding that the Registrar's caveat rightly and properly entered.

10. Turning now to the second substantive ground of appeal, it is submitted that the learned Judge, ought to have held that, whether or not the Registrar may have acted justifiably at the time in entering the Registrar's caveat, on the evidence before him, and which is now before this Honourable Court -

- (a) there was in fact on 11th October 1972, the date of entry of the Registrar's caveat, no lawful basis or justification for the entry of the Registrar's caveat;
- (b) alternatively there was at the date of the learned Judge's decision, and there is now no lawful basis or justification for the continuance on the Register of the Registrar's caveat.
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11. The material facts before the learned Judge and before this Court were and are as follows:-

- (a) that Li-Ta had by Agreement of Sale dated 30th August 1972 sold the said land to Temenggong;
- (b) that on 22nd September 1972, the purchase price for the said land was satisfied in full, and a transfer of the said land was executed in favour of Tumbuk;
- 40 (c) that on 14th December 1972, the executed and stamped transfer was presented to the Registrar for registration.

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12. Here it would be appropriate to refer to the learned Judge's misdirection of himself in accepting as facts:-

- (a) that in September 1972 Li-Ta was negotiating for the sale of the said land;
- (b) that it was doing so with a view to avoid payment of its debt; and
- (c) that the Inland Revenue Department became aware of (a) and (b) in September 1972.

To the contrary, the Agreement dated 30th August 1972 is undisputed evidence that the said land had been sold to Temenggong before September 1972 and there is no evidence as to what the intention of Li-Ta were in making the said sale.

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13. To revert to the material facts mentioned in paragraph 11 above, two important points must be made.

(1) The first point is that on 30th August 1972, Temenggong acquired an interest in the whole of the said land. Specifically, the full equitable interest in the said land passed to Temenggong and Li-Ta became trustee for Temenggong. Three leading cases make this point very strongly. In SHAW v. FOSTER (1872) L.R. 5 H.L. 321 at page 338, Lord Cairns said:-

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"The purchase was to have been completed in twelve months from the date which was the 30th September 1864. The contract was a valid contract, and the title that the vendor had to make good was a good title and was accepted. And in point of fact the contract in process of title was duly completed.

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Under these circumstances I apprehend there cannot be the slightest doubt of the relation subsisting in the eye of the Court of Equity between the vendor and the purchaser. The vendor was the real beneficial owner in the eye of a Court of Equity of the property, subject only to this observation, that the vendor, whom I have called the trustee, was not a mere dormant trustee

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Again in LYSAGHT v. EDWARDS (1876) 2 Ch. D. 499 at p.506, Jessel, Master of the Rolls said:-

" It appears to me that the effect of a contract for sale has been settled for two centuries; certainly it was completely settled before the time of Lord Hardwicke, who speaks of the settled doctrine of the Court as to it. What is that doctrine? It is that the moment you have a valid contract for sale, the vendor becomes in equity a trustee for the purchaser of the estate sold, and the beneficial ownership passes to the purchaser, the vendor having a right to the purchase money, and a right to retain possession of the estate until the purchase money is paid in the absence of express contract as to the time of delivering possession.

And in DAVIES v. LITTLEJOHN (1923) 34 C.L.R. 174 at p. 185, Isaacs J. quoted with approval the following passage from the judgment of Chitty J. in IN re THACKWRAY & YOUNG'S CONTRACT:-

" As is well known, where there is a contract for sale which is valid and can be specifically performed, the equitable interest in the lands at once passes to the purchaser subject to his payment of the money, and on the other hand, the vendor has a lien on the land, for the unpaid purchase money."

(2) The other point to be made on the material facts as set out in paragraph 11 above is that on 22nd September 1972, Temenggong became full beneficial owner of the said land and Li-Ta, a bare trustee. (This was in fact conceded by the Respondent in the Court below during the proceedings in Civil Suits Nos. 116 and 117.) Accordingly, on and after 22nd September 1972, Li-Ta's interest in the said land was that of a bare legal titleholder: the capacities which it had as registered proprietor it held absolutely on trust for Temenggong. On and after 22nd September 1972, the duties of Li-Ta and the rights of Temenggong were exactly the same as if under an express deed of trust Li-Ta had been constituted trustee and Temenggong had

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been constituted beneficiary with an absolute right to the land and the income derived therefrom and necessarily, a right to call for the legal title.

14. In the light of the authorities cited and the respective dates on which the Registrar's caveat was entered and the Sale Agreement between Li-Ta and Temenggong was signed and subsequently, completed, the issues before the Court below were:-

- (a) whether the Federation or the Comptroller-General has an interest in the said land; and 10
- (b) if either the Federation or the Comptroller-General has such an interest, what is the priority as between that interest and the interest of Tumbuk, the party concerned to register its instrument of dealing.

As to issue (a), looking at the Registrar's caveat on 11th October 1972, it was entered "in respect of" (this is the wording of the opening part of Section 320(1)) lands:- 20

- (i) in which Li-Ta then had no beneficial interest;
- (ii) in which Temenggong then had the full beneficial interest;
- (iii) of which Temenggong was then absolutely and indefeasibly entitled to be registered as proprietor.

As to issue (b), this does not arise, since under issue (a) it is manifestly clear that neither the Federation, nor the Comptroller-General had an interest in the lands in question. However, even if it had such an interest (which is denied) that interest (if any) cannot and does not have priority over the interest of Temenggong acquired on 22nd September 1972. 30

15. It is submitted therefore that on the law and the facts before him, the learned Judge ought to have held that the Registrar's caveat was improperly entered on 11th October 1972 and should be removed.

16. Would Temenggong's position be different if "interests" in Section 320(1) is given a wider 40

10 meaning than that given to it by CONFORD v. COLES and ABIGAIL v. LAPIN. It may be argued for instance that looking at Section 320(1) one sees that the contemplation of the legislature was that the Registrar might be acting in circumstances in which (at least so far as a person under a disability or a person overseas was concerned) he could not be sure whether there was an interest in the land to be protected, thus, it would be argued, the intention was that the Registrar be empowered to enter a caveat, having the effect of holding up any dealing, so that those not in a position to enter their own caveats should be afforded protection. A like advantage would be afforded to the Federation or State authority. Thus, whereas ordinarily a caveator would have to have an interest on land and would have to know (that is, would have to have formulated) what his interest was, in these special cases dealings would be held up pending ascertainment of whether an interest in the land for the protection of which the caveat would operate did in fact subsist.

20 17. It is submitted that Temenggong's position is unaffected by giving such a wider meaning to "interests". For -

30 (a) if "interests" means "interest(s) in land" as per Concord v. Coles and Abigail v. Lapin, then since neither the Comptroller-General nor the Federation did have such an interest the Registrar's caveat was improperly entered and should be removed,

(b) if "interests" means "interests in the widest sense", so that the Registrar was justified in entering the caveat, it is now clear that the caveat ought to be removed for the reasons immediately following.

40 18. If "interests" means interests in "the widest sense", then the Registrar's caveat has properly operated to prevent any dealing until it could be determined -

(a) whether the person for whose benefit the caveat had been entered had any interest in land;

(b) if that person did have such an interest, whether that interest had priority over the interest of Temenggong.

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19. It is clear beyond doubt that the mere existence of the debt for taxes due by Li-Ta to the Government did not give either the Government or the Comptroller-General any "interest in the land". Any question as to which of two persons is entitled to have his interest accorded priority over the interest of another is a question as to priority as between interest in land. In this case the Comptroller-General (and the Federation) had no rights in respect of the subject lands until the prohibitory orders were made - i.e. on 27th December 1972 at earliest. That date is not only long after 22nd September 1972, it is also after 14th December 1972 on which date Temenggong lodged the transfers with the Registrar for registration. The fact that such lodging of instruments of transfer affords priority by itself (i.e. without, for example, the lodging of any caveat) over such prohibitory order is specifically adverted to by Dixon C.J. in I.A.C. (Finance) Pty. Ltd. v. Courtenay (1963) 110 C.L.R. 550 at p.567, where his Honour said:-

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"Had the transfer not been withdrawn it could hardly have been disputed that a subsequent dealing lodged subsequently could not take priority when the question was which should be registered first."

20. But it is clear in any event by the express provision of Section 336(3) that the making of the prohibitory order on 27th December 1972 cannot stand in the way of registration of Temenggong's instruments of transfer. Section 336(3) provides that -

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"a prohibitory order shall not prohibit the registration ... of any instrument ... when the instrument was presented ... prior to the time from which the order takes effect."

21. On that footing the prohibitory order is ineffectual for the reasons given in Karuppiah Chettiar v. Subramaniam (1971) 2 M.L.J. 116, and should be set aside, as was done in that case. Cf. Bruce v. Woods (1951) V.L.R. 49 esp. at p.53 per Harring C.J.

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22. As to the Registrar's caveat, it follows from the argument set out above that although it may have been properly entered in the sense that the

Registrar, acting bona fide, was entitled to enter it notwithstanding that the person on whose behalf it was entered had no interest in the lands, once it is clear (as it now is) that at 11th October 1972, neither the Comptroller-General nor the Federation had in fact any interest in the said land, the continuance or maintenance upon the Register of that caveat cannot be supported. It is clear that neither the caveat nor the prohibitory orders, nor both in combination, prevail over the rights of Temenggong: accordingly both should be set aside.

23. As regards the third substantive ground, it is submitted that:-

(a) if the Registrar's caveat did operate in such a way as to give the Comptroller-General some right to execute upon the land, subject to the subsequent issue of prohibitory orders, (and it is submitted that the Registrar's caveat is not capable of so operating), all that the Comptroller-General could have executed upon at 11th October 1972 was the bare legal title, which is of no value and the sale of which would be illusory. In BRUCE v. WOODS (supra) the writ of fieri facias (corresponding to our prohibitory order) was served before completion of the contract of sale and was held ineffectual: in this case there was actual completion (on 22nd September 1972) before even the caveat was entered (on 11th October 1972).

(b) If, in some way which is impossible to comprehend, it were suggested that the institution of the suits which resulted in the issue of the prohibitory orders operated so as to give the Comptroller-General some right to execute upon the land subject to the subsequent issue of prohibitory orders, the suits were not instituted till 24th September 1972, that is two days after the completion, so that all that the Comptroller-General could have executed upon at 24th September 1972 was the bare legal title, which is of no value and the sale of which would be illusory.

Dated this 27th day of April 1974.

Sgd: (ALLEN & GLEDHILL)
ALLEN & GLEDHILL
SOLICITORS FOR THE APPELLANTS.

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FEDERAL COURT CIVIL APPEAL NO. 104 OF 1973

WRITTEN SUBMISSION

of State Legal Adviser Johor
for the Respondent

My Lords,

The issues before this Honourable Court are:

- (i) whether the Registrar's caveat dated 11th October 1972 was properly entered in respect of the 9 lots of land registered in the name of Li Ta Company (Private) Limited; 10 sic
- (ii) whether the said Registrar's Caveat should now be cancelled by the Registrar.

2. The Registrar of Titles, Johor, Johor Bahru received a letter dated 2nd October, 1972 (Please refer to page 34 of Record of Appeal) from the Assistant Director of Inland Revenue, Investigations Division, Johor Bahru. This letter requested the Registrar to enter without delay a Registrar's caveat in respect of those 9 lots of land described in that letter. The letter stated that the income tax for the preceding years payable by the proprietor of those 9 lots of land had been increased, and that in order to avoid or evade paying the income tax to the Federation Government the company (proprietor of the lands) had already sold on 30.10.1972 one land lot No.672 (1270-2-00), Grant No.16917 in the District of Mersing. This letter further states that the Department of Inland Revenue had "just received information" that the said company was making arrangements to sell 9 other lots of lands belonging to the company to another company. 20 30

3. Section 320(1)(b)(i) of the National Land Code states:

"320.(1) Subject to sub-section (2), a Registrar's caveat may be entered in respect of any land wherever such appears to the 40

Registrar to be necessary or desirable -

(a)

(b) for protecting the interests of:-

(i) the Federation or the State Authority, or

(ii) "

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4. The Registrar, upon receipt of this letter and having been satisfied that it was desirable in order to protect the interests of the Federation Government that a Registrar's caveat be entered, duly entered a Registrar's caveat in respect of the 9 lots of lands described in the letter. This is stated in the Affidavit in Reply of the Deputy Registrar of Titles (at page 32 para 5 of the Appeal Record).

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5. Should the Registrar make further investigation into the allegations contained in the letter? I submit that he need not do so because the writer of the letter was a senior Government officer and would certainly not make any false allegation. The Registrar accepted the contents of the letter as true. The Registrar had informed Li Ta Company Ltd., the proprietor of the lands affected by the Registrar's caveat, under Section 321(2) of the National Land Code, of the entry of the Registrar's caveat (please refer to page 36 of the Appeal Record); but up to now the company had not lodged any application to the Registrar to cancel the Registrar's caveat under Section 321(3)(b) of the National Land Code.

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6. I submit that the Registrar had acted rightly and properly when upon receipt of the letter from the Department of Inland Revenue he entered the Registrar's caveat in respect of the 9 lots of land. The Registrar had been officially informed that the company (a check of the land registered by the Registrar revealed the proprietor of the 9 lots of land was Li Ta Company (Private) Limited) was owing income tax under the Income Tax Act 1967 to the Federation Government, and that this company had already sold one land in Mersing, and was in the process of selling 9 other lots of land belonging to it. It was obvious that if Li Ta Company managed to sell all its lands and

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property in Malaysia, then it would be most difficult for the Federation Government to recover the tax due to it from that company, even though the Government succeeds in getting judgment against the company under Section 106 of the Income Tax Act 1967, especially when Li Ta Company was a company incorporated in Singapore, and having its registered office at No.2-K Clifford House, Collyer Quay, Singapore.

7. It has been submitted by the learned counsel for Appellants that "clearly this matter was regulated by the provisions of the Land Code dealing with prohibitory orders and this was a misuse of the Registrar's caveat" (para (2) page 37 of Record of Appeal) and he stated further that "prohibitory order of the Registrar (Court?) may be made only under Section 334 of the National Land Code" (page 38, 2nd proposition, Record of Appeal). As far as the Registrar is concerned, it is immaterial, and he is not interested whether the Federation Government took action under Section 334 and 335 of the National Land Code relating to prohibitory orders, or whether the Government wanted action to be taken under Section 320 of the National Land Code. His duty is to examine the prohibitory order presented to him, or the application for entry of a Registrar's caveat. If he is satisfied that a prohibitory order is genuine or if there is merit for a Registrar's caveat to be entered under Section 320 of the National Land Code, he would register the prohibitory order or enter the Registrar's caveat in respect of the lands. The Registrar is under no duty or obligation to ask the Federation Government for an explanation as to why the Government should require him to enter a Registrar's caveat or why it should not obtain a prohibitory order first before applying for entry of Registrar's caveat. The choice is left entirely to the Federation Government, and there is nowhere in the National Land Code which provides that a Registrar's caveat should not be entered unless preceded by the registration of a prohibitory order.

8. Section 320 of the National Land Code states that "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 interest of the Federation

This section does not provide that the Registrar must be satisfied. It only requires that the Registrar having been informed, or having had knowledge that certain matters are happening which may affect adversely the interests of the Federation ought under the circumstances to make a decision whether or not it was necessary or desirable for him to take immediate action to protect the interest of the Federation by entering a Registrar's caveat in respect of any land.

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9. The Affidavit in Reply of the Deputy Registrar of Titles (para 5, page 32 of the Appeal Record) stated that the Registrar "having examined the letter and having been satisfied that it was desirable in order to protect the interest of the Federation that a Registrar's caveat be entered, duly entered a Registrar's caveat." Was there interest of the Federation to be protected? The letter to the Registrar (at page 34 of Appeal Record) clearly discloses that the company had sold one of its lands in Mersing, and was in the process of selling nine other lots of land in order to evade payment of the additional income tax. To the Registrar on reading this letter, it appears to him that there were interests of the Federation which required protection by the entering of the Registrar's caveat, or else the Federation Government's interests might be jeopardised.

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10. The word "interests" of the Federation found in Section 320(1)(b)(i) of the National Land Code should be given its ordinary meaning, and should not be interpreted as meaning "registered interest", "beneficial interest", "interest in land", or "registrable interest", because if that has been the intention of the Legislature then the National Land Code would have expressed its intention in those words. I support the view expressed by the learned Judge (at page 49 and 50 of the Appeal Record) as to the meaning which should be given to the word "interests" in Section 320 of the National Land Code.

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11. The Federation Government's interest in this case is simply the collection of a debt due to it by the proprietor of the 9 lots of land which are now affected by the Registrar's caveat. Once this debt is settled, then there no longer exists any interests of the Federation which the Registrar's caveat seeks to protect, and the Registrar's caveat

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may then be removed under one of the methods described by Section 321(3) of the National Land Code which states:-

"321.(3) A Registrar's caveat shall continue in force until it is cancelled by the Registrar -

- (a) of his own motion; or
- (b) on an application in that behalf by the proprietor of the land affected; or
- (c) pursuant to any order of the Court made on an appeal under section 418 against his decision to enter the caveat, or his refusal of any application for its cancellation under paragraph (b)."

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12. The words appearing in Section 320 of the National Land Code, i.e. "wherever such appears to the Registrar to be necessary or desirable for protecting the interests of the Federation or State Authority" are a special provision found only in the National Land Code of West Malaysia. They are not found in the Land laws of Australia.

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13. The word "interests" is not a scientific, technical or commercial language. The National Land Code itself has not defined this word "interests". It is an ordinary word which should be construed in its popular sense. I quote a passage from Craies on Statute Law, Fifth Edition at page 153 and 154:

" There are two rules as to the way in which terms and expressions are to be construed when used in an Act of Parliament. The first rule is that general statutes will prima facie be presumed to use words in their popular sense (z). This rule was stated by Lord Tenterden in *Att.-Gen. v. Winstanley* (a), "the words of an Act of Parliament which are not applied to any particular science or art" are to be construed" as they are understood in common language"(b). Critical refinements and subtle distinctions are to be avoided, and the obvious and popular meaning of the language should, as a general rule, be followed (c). Meticulous criticism must not be allowed to wreck an enactment (d).

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"It is incumbent," said Willes, J., in *Mansell v. R.(e)*, "on those who say that any word is a 'term of art', for which no equivalent can be substituted, to show that it has been so held." In other words, as was said by Pollock, B., in *Grenfell v. Inland Revenue Commissioners (f)*, if a statute contains language which is capable of being construed in a popular sense, such "a statute is not to be construed according to the strict or technical meaning of the language contained in it, but is to be construed in its popular sense, meaning, of course, by the words 'popular sense' that sense which people conversant with the subject matter with which the statute is dealing would attribute to it."

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14. The learned Judge at page 50 of the Appeal Record had already stated what the popular rather than the technical meaning of the word "interests" is, i.e.:-

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"I will quote below a passage from Words & Phrases Legally Defined, 2nd Edition, Volume 3, at page 79:

" The word 'interest' is not a technical term: the law does not give the word the same specific application in all contexts in which it is used In its ordinary or popular sense, the word 'interest' as applied to property may include a contingent interest The word 'interest' which has a popular rather than a technical meaning is a word of wide import and includes contingent as well as vested interests."

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15. According to Buhargia(J) in Chin Cheng Hong v. Hameed and ors. 1954 MLJ page 169. CA "The whole system of caveat is founded on the principle that they exist for the protection of alleged as well as proved interests and of interests that have not become actual interests in land." (This passage appear at page 170, right hand column of the quoted MLJ.) Therefore, on the grounds and upon the circumstances stated above, the Registrar was right and it was proper for him to have entered the Registrar's caveat in respect of the 9 lots of land registered in the name of Li Ta Company (Private) Ltd.

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16. It has been suggested by the learned counsel for Appellants that now that the Inland Revenue Department (Federation Government) had obtained prohibitory order under Section 334 of the National Land Code, on 27th December, 1972 in Muar High Court Civil Suits No.116 of 1972 and 117 of 1972, the Registrar's caveat has exhausted its purpose - (Please refer to para (3) lines F-G at page 37 of Appeal Record). I submit that when the Registrar entered the Registrar's caveat against the 9 lots of lands, it was not with the intention of enabling the Federation Government to obtain any prohibitory order under Section 334 of the National Land Code. On the contrary, the intention of the Registrar was purely to protect the interest of the Federation Government, and the Registrar was not then aware of any civil suits pending in the Muar High Court against Li Ta Company.

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17. The Registrar's caveat should not now be removed as its purpose is not exhausted. When this Muar High Court Originating Motion was filed in the Court on 12th June, 1973, and served on the Respondent (Registrar of Titles), the Registrar at once became aware and had knowledge that in fact Li Ta Company (Private) Ltd. the registered proprietor of the 9 lots of land affected by the Registrar's caveat had become judgment debtor in suits brought by the Government of Malaysia in Muar High Court Civil Suits 116 of 1972 and 117 of 1972. (Please refer to Appeal Record, page 14, lines D to E, Affidavit of Richard E.B. Mews). Until and unless this debt is settled by Li Ta Company (Private) Ltd., the Federation Government's interests have not extinguished and the Registrar's caveat should remain in force in the register document of title of the 9 lots of land affected.

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18. If the Registrar's caveat is now cancelled, leaving only the prohibitory order to remain in the register document of title, the result would be disastrous and detrimental to the interest of the Federation. I say so because:-

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(1) A prohibitory order unless removed lapses at the expiry of 6 months. Section 338 of the National Land Code states:-

"338.(1) Every prohibitory order shall,

unless its duration is extended by an order made pursuant to rules of court, lapse at the expiry of six months from the date on which it was made or at the end of such other period as may be specified by rules of court.

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(2) An order extending a prohibitory order shall not have effect unless a copy of the order is presented for registration before the time at which the prohibitory order to which it relates would, but for the extension, have lapsed."

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(2) The prohibitory order obtained by the Government against Li Ta Company on 27th December, 1972 (please see lines E to F page 14 of Appeal Record) shall have no effect and cannot prevent the registration of any transfer document of land executed prior to the date of registration of the prohibitory order. In this case the transfer documents were executed on 22nd September, 1972 by Li Ta Company to the Appellants (please refer to lines C to D at page 11 of Appeal Record). Section 336(3) of the National Land Code reads:-

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"336(3) A prohibitory order shall not prohibit the registration, endorsement or entry of any instrument, claim or lienholder's caveat where the instrument was presented, or the application for endorsement or entry received, prior to the time from which the order takes effect."

19. On the other hand, a Registrar's caveat would afford protection of the interests of the Government because Section 319(1) and (2) of the National Land Code states:-

"319.(1) A caveat under this section shall be known as a "Registrar's caveat", and -

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(a) may be entered by the Register on the register document of title to any land in any of the circumstances specified in section 320;

(b) subject to sub-section (3), shall, so long as it continues in force, have the effect of prohibiting the registration, endorsement or entry on that document of -

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- (i) any instrument of dealing;
- (ii) any claim to the benefit of a tenancy exempt from registration; and
- (iii) any lien-holder's caveat.

(2) The prohibition imposed by a Registrar's caveat shall apply to any such instrument notwithstanding that it was presented for registration before the caveat was entered, and to any such claim or lien-holder's caveat notwithstanding that the application for its endorsement or entry was received before that time." 10

20. As a result of the Appellant's bringing this action against the Registrar of Title, the Registrar has now become aware, and now has knowledge of the true facts existing between the Federation Government and Li Ta Company, the registered proprietor of the 9 lots of lands now affected by the Registrar's caveat. These facts are:- 20

(i) The Affidavit of Richard E.B. Mews (at page 14 of Appeal Record, lines 10 to 20) discloses that "the Comptroller General of Inland Revenue and the Government of Malaysia had on the 24th day of September 1972 filed Civil Suits Nos. 116 of 1972 and 117 of 1972 in the High Court at Muar respectively against Li Ta Company claiming payment of income tax. Judgments were obtained against Li Ta in those two suits on the 19th day of December, 1972, and prohibitory orders were entered against the land on the 27th December, 1972". This serves to confirm the allegation contained in the letter of the Assistant Director of Inland Revenue to the Registrar of Title - (letter at page 34 of Appeal Record). 30

(ii) The learned Judge had revealed in his Grounds of Judgment (at page 46 of the Appeal Record) when enumerating the circumstances leading to the lodging of the Registrar's caveat, that "various notices of assessment and additional assessments as set out in the Statement of Claim in Muar High Court Civil Suits Nos. 116 of 1972 and 117 of 1972 amounting to more than \$1,688,000/- were served on Li Ta Company (Private) Ltd., under 40

Section 103(1) of the Income Tax Act, 1967. Under Section 103(1) of the Income Tax Act, 1967, tax becomes due and payable on the service of the notices of assessment irrespective of whether or not the tax payer has appealed against the said assessment. Section 106(1) of the Income Tax Act provides that the tax due and payable may be recovered as debt due to the Government". The learned Judge is certainly entitled to write this in his judgment since he himself was dealing with those two civil suits Nos.116/72 and 117/72. Furthermore, these civil suits have close connection with this present Appeal and the facts giving rise to the obtaining of the prohibitory orders are the same as those giving rise to the entry of the Registrar's caveat. The learned Judge had examined the Statements of Claim of those Civil Suits upon his attention being drawn to them by Encik Zulkifli in his submission (please refer to page 41 para (2) of Appeal Record), and Richard E.B. Mew's Affidavit (at page 14 lines C to F of Appeal Record).

(iii) When Li Ta Company was served with the assessment notices, the tax becoming due and payable under Section 103 of the Income Tax Act 1967, automatically becomes a debt to and recoverable by the Government. Li Ta in order to evade payment of the income tax had managed to sell to the Appellants 11 (eleven) lots of land under EMR (entry Mukim Register) in Segamat. (Please refer to sale Agreement at page 24 of the Appeal Record, i.e. from item 10 to item 20, The first 10 lots are now subject of this Appeal).

The Affidavit of Richard E.B. Mews revealed that the sales of the 9 lots of land now affected by the Registrar's caveat by Li Ta to the Appellants were completed on 22nd September, 1972 (page 11 of Appeal Record at para 5), but that it was presented to the Registrar for registration on 14th December, 1972 (page 12 of Appeal Record, lines C to D). It was fortunate for the Government that although the instruments of sale were executed on 22nd September, 1972, they were not presented until 14th December, 1972, so that meanwhile upon the Inland Revenue Department's becoming aware what Li Ta Company was planning to do, the Inland Revenue Department managed to get the Registrar to enter a Registrar's caveat in respect of those 9 lots of land on 11th October, 1972.

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(iv) The Agreement of Sale attached to the Affidavit of Richard E.B. Mews (at page 16 of Appeal Record, lines E to G) reads:-

"AND WHEREAS the Vendor has agreed to sell and the Purchaser has agreed to purchase free from all encumbrances the said land comprising an area of 5,222 acres 3 roods 32 poles more or less together with the buildings, plants, machinery and vehicles as specified in the provisional inventory hereto attached at the total price of Dollars Six Million (\$6,000,000/-) subject to the terms and conditions hereinafter set out",

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but although the total price was to be six million dollars yet the settlement sum was only for \$1,200,000/- (please see page 17 of Appeal Record para (C) which states:-

"(c) The purchase price shall be satisfied by the allotment and issue of 1,200,000 ordinary shares of \$1/- each in the Purchaser to the Vendor and its nominee or either of them as the Vendor may direct."

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21. The circumstances under which Li Ta disposed of its lands to Appellants appear to be improper and give rise to the reasonable suspicion that Li Ta sold the land for the main purpose of evading³ payment of income tax and it did so with intent to defraud the Federation Government. This knowledge now having come to the Registrar, he is entitled to act under Section 320(1)(a) of the National Land Code which reads:-

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"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 -

(a) for the prevention of fraud or improper dealing;"

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22. This section imposes no duty on the Registrar to require or obtain proof to negative fraud or improper dealing where it has appeared to him that it was desirable for him to act under this section to prevent fraud or improper dealing.

23. The Registrar when acting under Section 320 of the National Land Code may do so on his own initiative so long as it appears to him to be necessary or desirable to act under the circumstances enumerated in that section.

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24. Section 321(3) of the National Land Code states:-

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"321(3) A Registrar's caveat shall continue in force until it is cancelled by the Registrar -

- (a) of his own motion; or
- (b) on an application in that behalf by the proprietor of the land affected; or
- (c) pursuant to any order of the Court made on an appeal under section 418 against his decision to enter the caveat, or his refusal of any application for its cancellation under paragraph (b).

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Section 321(3)(c) of the National Land Code contains two propositions:-

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(i) The Registrar's caveat may be cancelled "pursuant to any order of Court made on an appeal under Section 418 against his decision to enter the caveat." From this it is clear that the Court should only confine the issue to whether or not there existed good and sufficient grounds for the Registrar to enter the Registrar's caveat. If the Registrar's caveat had been properly and lawfully entered, then I submit the Court should not make an order for its cancellation. But if the Court finds that there were no grounds for entry of the Registrar's caveat, then the Court should order the cancellation of the Registrar's caveat; and

40

(ii) If there had been an application by the proprietor of the land to the Registrar to cancel the Registrar's caveat, and the Registrar had refused to cancel the Registrar's caveat, then on an appeal against such refusal, the Court will then determine whether it was right for the Registrar to refuse to cancel the Registrar's

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caveat and if the Court found that the Registrar was wrong in refusing to cancel the caveat, then the Court will make an order for its cancellation. Here however, the proprietor of those 9 lots of land had not made any application to the Registrar for the Registrar's caveat to be cancelled.

25. Upon the grounds stated above, I therefore, submit that this Honourable Court dismiss this Appeal with costs, because:-

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- (1) the registrar's caveat had been properly entered;
- (2) this is not an appeal against the refusal of the Registrar of an application of the proprietor of the 9 lands affected under Section 321(3)(c) of the National Land Code for the cancellation of the Registrar's caveat;
- (3) there still exist sufficient and reasonable grounds for maintaining the Registrar's caveat under Section 320(1)(b)(i) or 320(1)(a) of the National Land Code.

20

Sgd: (HAJI MOHD. EUSOFF BIN CHIN)
Counsel for the Respondent.

IN THE FEDERAL COURT OF MALAYSIA
(Appellate Jurisdiction)

CIVIL APPEALS NO. 109 & 110 OF 1973

Between

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- 1. Temenggong Securities Ltd.
- 2. Tumbuk Estate Sdn. Bhd. ... Appellants

And

Comptroller-General of Inland
Revenue/Government of Malaysia Respondent

(In the matter of Muar Civil Suit
No.116 & 117 of 1972)

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CIVIL APPEAL NO.104 of 1973

No. 9

Between

1. Temenggong Securities Ltd.
2. Tumbuk Estates Sdn. Bhd. ... Appellants

And

Registrar of Titles, Johore,
Johore Bahru ... Respondent

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(In the matter of Originating Motion No.4
of 1973 in the High Court in Muar)

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SOME WRITTEN REPLIES/SUBMISSIONS

A. INTRODUCTION:

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1. Notices of Assessments or Additional Assessments were served on Li Ta Company (Pte.) Ltd., a company incorporated in the Republic of Singapore (hereinafter referred to as "Li Ta"). Under section 82 of the Income Tax Ordinance 1947 and section 103(1) of the Income Tax Act, 1967, income tax becomes due and payable on the service of such notice or notices and any sum which remains unpaid may be sued for and recovered as a debt due to the Government pursuant to the provisions of section 86(1) and 106(1) of the Income Tax Ordinance, 1947 and the Income Tax Act, 1967 respectively.

2. In an attempt to recover the tax due and payable by Li Ta, two Specially Indorsed Writs i.e. Civil Suit No.116 of 1972 and 117 of 1972 in the High Court at Muar, were filed on 24.9.1972 and judgments in default of appearance were entered against Li Ta on 19.12.1972.

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3. Sometime in September 1972, the Respondent became aware that Li Ta was negotiating for the sale of its landed properties in Johore with a view to avoiding payment of its income tax. To safeguard the revenue and to protect the interests of the Government, a Registrar's Caveat was registered on 11.10.1972 against Li Ta's landed properties, followed by a Prohibitory Order on 27.12.1972 prohibiting any dealings in the said land.

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8. APPLICATION FOR REMOVAL OF CAVEAT

4. On 12.6.1973, the Appellants filed an application by way of Motion i.e. Originating Motion No.4 of 1973 in the High Court at Muar, to remove the said caveat and the Learned Judge ruled that the Registrar's caveat was rightly and properly entered. Consequently the application made by the Appellants was dismissed with costs.

C. JOINT HEARING OF APPEALS

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5. As the three appeals i.e. Federal Court Civil Appeals No.104, 109 and 110 of 1973 refer to the same subject matter, the Appellants requested the Chief Registrar to have all the appeals heard at the same time and the Respondent had no objection to this request.

D. REPLIES/SUBMISSIONS TO THE GROUNDS OF APPEAL IN THE MEMORANDUM OF APPEAL IN RESPECT OF FEDERAL COURT CIVIL APPEAL NO.109 & 110 OF 1973

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6. The Learned Judge heard these two cases jointly as the application in each case is of a similar nature and for a similar relief, namely for an order that the prohibitory order issued on 27.12.1972 in respect of certain landed properties belonging to Li Ta as shown at page 26 of the Record of Appeal be withdrawn or set aside. With the exception of Ground No.5, which I will deal with it separately, I would submit that the Learned Judge had rightly held that the prohibitory order could be entered in respect of land on which a Registrar's caveat has been lodged. 30

7. It appears from the Affidavit of Encik Richard E.B. Mews at page 9 of the Record of Appeal that Li Ta had contracted to sell its landed properties as shown at page 23 of the Records of Appeal No.109 & 110 of 1973 to the Appellants and the purchase price was supposed to be satisfied in full on 22.9.1972. The Appellants apparently claimed that as from 22.9.1972, the beneficial interest in land had passed to them. 40

8. I would submit that by virtue of section 82 of the Income Tax Ordinance 1947 and section 103(1) of the Income Tax Act 1967, the Respondent, i.e. the Comptroller-General of Inland Revenue and or

the Government of Malaysia has acquired interests in whatever property belonging to Li Ta right from the date on which notice of assessment was served on Li Ta, one of the earliest dates of service of such notices being as early as 17.6.1967 for the year of assessment 1967 as shown at page 31 of the Record of Appeal No.109/73 (that is for the basis year 1966), whereas the agreement to sell was entered only on 30.8.1972.

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10 9. As far as the entry in the Mukim Register is concerned, Li Ta was the legal owner at the date when the caveat was registered i.e. 11.10.1972 (see page 26 of the Record of Appeal). Section 89 of the National Land Code states:

" Every register document of title duly registered under this Chapter shall, subject to the provisions of this Act, be conclusive evidence -

20 (a) that title to the land described therein is vested in the person for the time being named therein as proprietor;"

Li Ta was the last name registered therein as proprietor and I therefore submit that Li Ta was the legal owner.

30 10. The words "conclusive evidence" in section 89 mean no proof of ownership is required. They are to be a bar to any evidence being tendered to show that Li Ta was not the legal owner. (Kerr v. John Mottram Ltd. (1940) 1 Ch.657 at page 660). The word "conclusive" seems to be a clear word. (In re Hadleigh Castle Gold Mines Ltd. (1900) 2 Ch. 419 at page 421-423) and I submit that Li Ta is still the legal owner of the said landed properties.

40 11. The title of Li Ta shall not pass to anybody unless and until a valid instrument of transfer or an order of court is registered in the Mukim Register. The title of the transferor i.e. Li Ta shall pass to and vest in the transferee i.e. Temenggong Securities Ltd. upon the registration of any such transfer under section 215 of the National Land Code. Section 215(2) of the National Land Code states:-

" The title of the transferor shall pass to and vest in the transferee upon the registration of any such transfer, together also with

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the benefit of any registered interests then enjoyed with the land."

12. No instrument of transfer has been presented for registration at the time when the Registrar's caveat was registered and therefore Li Ta is still the legal owner.

13. The question of law for the determination of the court is whether or not a prohibitory order can be registered in respect of land on which a Registrar's caveat has been lodged. The Learned Judge has rightly ruled at page 37 and 38 of the Records of Appeal No.109 and 110 of 1973 respectively that a prohibitory order does not fall within the ambit of section 319(1)(b)(i) of the National Land Code as it is not an instrument of dealing and it could therefore be registered on a piece of land over which there exists a Registrar's caveat.

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14. Pursuant to the provision of section 417 of the National Land Code, the Registrar of Land Title, Johore, was lawfully obliged to give effect to the Court's order and consequently the prohibitory order was registered on 27.12.1972.

20

15. The case of Karuppiah Chettiar v. Subrameniam (1971) 2 M.L.J. 116 cited by the Appellant could not apply to the present case as here we are dealing with a Registrar's caveat and in that case the subject matter related to a private caveat.

16. The replies/submissions from paragraphs 6 to 15 are also intended to cover grounds of appeal in respect of Civil Appeal No.104 of 1973.

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REPLIES/SUBMISSIONS TO THE GROUNDS OF APPEAL
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FEDERAL CIVIL COURT APPEAL NO.104 OF 1973
(MUAR ORIGINATING MOTION NO.4 OF 1973)

17. Li Ta, a company incorporated in the Republic of Singapore had a branch office in Segamat, Johore, through which it operated its business in Malaysia, mainly in rubber. The assets of Li Ta are made up of 9 (nine) rubber estates as shown at page 40 of the Record of Appeal No.104 of 1973.

40

18. May I again refer to paragraphs 1 and 8 above. Various notices of assessment and

additional assessment as set out in the Statement of Claim in respect of Muar Civil Suits No.116 of 1972 and 117 of 1972 amounting to \$1,688,331.37 were served on Li Ta. Under section 82 of the Income Tax Ordinance, 1947 and section 103(1) of the Income Tax Act, 1967, income tax becomes due and payable on the service of such notice irrespective of whether or not the taxpayer i.e. Li Ta has appealed against the said assessments or additional assessments.

10

19. Pursuant to the provisions of sections 86(1) and section 106(1) of the Income Tax Ordinance, 1947 and the Income Tax Act, 1967 respectively, any tax due may be sued for and recovered as a debt due to the Government i.e. the Respondent. In the circumstances, I submit that Li Ta became a debtor and the Comptroller-General of Inland Revenue/Government of Malaysia a creditor right from the time when the notice of assessment was served on Li Ta. As a creditor the Comptroller-General/Government has therefore acquired interests in whatever property belonging to Li Ta in order to satisfy the debt i.e. income tax due and payable by Li Ta.

20

20. Sometime in September 1972, the Inland Revenue Department became aware that Li Ta was seriously negotiating for the sale of its landed properties with a view to avoiding payment of its income tax. The Respondent was concerned with the collection of debts, that is, tax due and payable by Li Ta and if its landed properties are disposed of, the chances of recovering the debts could be jeopardized, as Li Ta, a foreign company, has no more asset in this country.

30

21. To collect the debts and to protect the interests of the Government, it was found necessary, to prevent any dealing in the 9 (nine) pieces of land belonging to Li Ta until such time as the debts due and payable were settled. Consequently a request was made to the Registrar of Land Title, Johore, for the lodging of a Registrar's caveat under section 320(1)(b)(i) of the National Land Code. The Registrar's caveat was registered on 11.10.1972 forbidding the registration of any instrument of dealing in respect of the said 9 (nine) pieces of land.

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22. Circumstances in which a Registrar's caveat may be entered are set out in section 320(1) of the

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National Land Code, which are as follows:-

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

(a) for the prevention of fraud or improper dealing; or

(b) for protecting the interests of

(i) the Federation or the State Authority, or

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(ii) any person who is in his opinion under disability of minority, mental disorder or unsoundness of mind, or is shown to his satisfaction to be absent from the Federation; or

(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." 20
(The word underlined is mine).

23. Section 320(1)(b)(i) clearly states that a Registrar's caveat may be entered in respect of any land wherever such appears to be necessary or desirable for protecting the interests of the Federation. The word "interests" is to be interpreted according to the context of the National Land Code. It does not mean that it is a "registrable interest." If the Legislature intended it to mean "registrable interest" then it would add other words to it such as "interests therein", "interests in land", "beneficial interests", or "any right to such title or interests in land".

30

24. The same word "interest" appears in section 323 of the National Land Code and is singular in number. In this section the word "interest" is related only to a private caveat which may be entered by persons or bodies claiming title to or any registrable interests or any right to such title or interest in land. I therefore submit that in the case of a private caveat under section 323 of the National Land Code, the word "interest" is confined only to registrable interest.

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25. The operative word in section 320(1)(b)(i) is "interests" and is plural in number. I submit that the Learned Judge has rightly ruled that it can be interpreted to include interests other than registrable interests. (To refer to Words & Phrases, Legally Defined, 2nd Edit: Vol: 3 at page 79). The word "interest" is not a technical term: the law does not give the word the same specific application in all contexts in which it is used. In its ordinary or popular sense, the word "interest" as applied to property may include a contingent interest. (See page 50 of the Record of Appeal No.104 of 1973).

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26. In section 320(1)(b), the operative word "interests" should not be interpreted as registrable interest. It should be given its ordinary meaning and therefore the Registrar of Land Title, Johore, has rightly exercised his discretion in entering the Registrar's caveat not for the purpose of enabling the prohibitory order to be entered subsequently but for the purpose of protecting the interests of the Government of Malaysia.

27. At the material time when the Registrar's caveat was entered, Li Ta was the registered owner and proprietor of the said landed properties. Li Ta was fully aware that it was indebted to the Government of Malaysia long before the Agreement of sale was executed between the Appellants and Li Ta.

28. The case of Municipal District of Concord (Caveators) v. Coles (1906) 3 C.L.R. 96 is not applicable to this case as the section applicable to that case i.e. section 24 of the Real Property Act, 1900 (N.S.W.) is not in para materia with section 320(1)(b) of the National Land Code. (See Sing Hoe Motor Ltd. v. P.P. (1968) 2 M.L.J. 54 at 55). The Act must be interpreted as a whole and there is a clear distinction between a Registrar's caveat and a private caveat as shown in sections 320 and 323 of the National Land Code. I submit that the word "interests" (plural in number) in section 320(1)(b) does not mean registrable interest and that the Registrar's caveat was rightly and properly entered.

29. Generally words are to be given their ordinary meaning and if a statute intends a special meaning, this will be so defined in the statute itself. The word "interests" in section 320(1)(b)(i) is

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plural in number whereas in section 323 i.e. "interest" is singular in number. Reading the National Land Code as a whole, one would find that there is a clear distinction between a Registrar's caveat and a private caveat as shown in section 320 and section 323 of the Code. It is a rule of construction that a statute must be read as a whole and not by reference to any provision in isolation. As Lord Goddard said in Colquhoun v. Brooks 2 T.C.490 at page 500:

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" It is beyond dispute, too, that we are entitled and indeed, bound, when construing the terms of any provision found in a statute, to consider any other part of the Act which throw light upon the intention of the Legislature, and which may serve to show that the particular provision ought not to be construed as it would be if considered alone."

30. Words in a statute must be read in their context and a statute must be read as a whole for one section may be explained or modified by another. The various portion of the English Income Tax Act, for example, have to be construed in the light of the particular methods of assessment in the United Kingdom and therefore as pointed out by Spenser-Wilkinson J. in Re a Taxpayer (1956) M.L.J. 94:

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"... even where sections of our Ordinance are couched in wording similar to that of certain parts of the English Income Tax Law, it is by no means certain that these words will have the same meaning in the context of the Income Tax Law."

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31. At paragraph 7 above and page 110 of the Record of Appeal 104/73, the Appellants claim that they have satisfied the purchase price in full on 22.9.1972. Therefore they have only acquired a right in personam but not a right in rem until the instrument of transfer is registered with the Land Registry. Thomson J in Bachan Singh v. Mahinder Kaur (1956) M.L.J. 97 said:

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" To my mind, many of the difficulties which appear to arise in these cases would not arise if we were to bear in mind throughout the distinction between rights

ad rem or personal rights or right in rem or real rights. Where there is a valid binding contract for the sale of land, the purchaser, when he has performed his side of the contract, acquires a right ad rem which is also a right in personam. In other words he acquires a right to the land as against the vendor personally but not good against the world as a whole and, in due course, that right can become a real right good against the world as a whole on registration in accordance with the Land Code."

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32. The above decision was confirmed by the Court of Appeal in Margaret Chua v. Hoe Swee Kiew (1961) M.L.J. 173 where Thomson C.J. said at page 176F:

" That was a case when it was said that a registrable transfer in the statutory form must be treated as prima facie evidence of an antecedent and contract to sell the land."

sic

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S.K. Das in The Torrens System in Malaya said at page 164:

" The execution of an instrument purporting to affect the land does not effect a transfer charge, or lease but is an inchoate act which can be completed only by registration of a memorial; until registration no instrument is effectual to pass any land or any interest therein but it operates merely as a contract so as to create equitable estates or rights so long as the interests of persons acting and dealing on the faith of the entries in the register with the registered proprietor are not unduly prejudiced."

30

40

I submit that the agreement of sale is a non-registrable and a non-statutory instrument and therefore it cannot pass the title of Li Ta to the Appellants. It is only on the registration of the instrument of transfer, the title of Li Ta can pass to the Appellants vide section 215(2) of the National Land Code. (See paragraph 11 above).

33. The fact that the Appellants had paid the price of land in full does not give them a right in rem against the world as a whole but only against the vendor i.e. Li Ta. Therefore the caveat was rightly registered on 11.10.1972 as Li Ta was the

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last name registered in the Mukim Register as the legal owner. (See paragraph 9 above).

34. The facts of the following cases referred to by the Appellants i.e.

i) Municipal District of Concord (Caveator) v. Coles (1906) 3 C.L.R. 96;

ii) Abigail v. Lapin (1934) 51 C.L.R. 58;

are different from the present case. In those cases, the interest was confined to registrable interest in land and the type of caveat effected was private caveat. In the present case, the "interests" is not confined to registrable interest and the caveat which was registered was not a private caveat but a Registrar's caveat. Moreover, those cases are not applicable to the present case, as the section applicable to those cases i.e. section 24 of the Real Property Act 1900 (N.S.W.) is not in para materia with section 320(1)(b) of the National Land Code.

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35. Foreign Land Laws are not applicable to our country. They are different from our National Land Code and as pointed out by Thomson J. as he then was in Bachan Singh v. Mahinder Kaur (1956) M.L.J.97:

" I feel compelled, however, to observe that in my experience a great deal of the difficulty and confusion which sometimes attends actions relating to land in this country arise from the no-doubt well-intentioned efforts of counsel to force our local law into conformity with conceptions of the English Law which really have very little relevance."

30

36. I, therefore, submit that Li Ta is still the legal owner as no new name is registered in its place in the Land Registry and that the Registrar of Title Johore Bahru, has rightly entered the Registrar's caveat to protect the interests of the Comptroller-General/Government. As foreign land law is not applicable to our Country, I submit that the word "interests" in section 320(1)(b)(i) of the National Land Code does not mean "registrable interest" in land and that this Appeal be dismissed with costs.

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37. The replies/submissions from paragraphs 17 to 36 are also intended to cover grounds of appeal in respect of Civil Appeals No. 109 and 110 of 1973.

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Sgd: (ZULKIFLI BIN MAHMOOD)
Senior Federal Counsel
Inland Revenue Department,
Kuala Lumpur.

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10 Coram: Suffian, C.J. Malaya
Lee Hun Hoe, C.J., Borneo
Ong Hock Sim, F.J.

JUDGMENT OF THE COURT

20 We propose to deal with these three appeals together. As agreed by Encik Zulkifli bin Mahmood on behalf of the Inland Revenue in his Written Submission to the Court in F.C. Civil Appeals Nos. 109 and 110 of 1973, they "refer to the same subject matter" and "the Respondent had no objection" to all the appeals being heard at the same time.

The Court is of opinion that if the decision is in favour of the Appellants in Civil Suit No.104 of 1973, then it must follow that the prohibitory orders registered on December 27, 1973 would be ineffective by reason of the presentation of the Memorandum of Transfer and associated documents on December 14, 1973 and ought therefore to be set aside.

30 Civil Appeal No.104 of 1973 is concerned with the validity of the Registrar's Caveat entered on October 11, 1972 in Serial No. 156/72, Registrar's Caveat Vol. 38, Fol. 149. This Caveat was lodged pursuant to a letter from Inland Revenue dated October 2, 1972 (page 34) to the effect that the Penolong Pengarah Hasil Dalam Negeri, Johore Bahru, had requested the Pendaftar Hak Milek, Johore to enter a Registrar's Caveat in respect of

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the lands stated in that letter under section 320(1)(b) of the National Land Code for protecting the interests of the Federation.

The facts need but be briefly stated. On August 30, 1972, the first Appellant entered into an Agreement with Li-Ta Company (Private) Limited, a company incorporated in the Republic of Singapore (hereinafter called the Vendors) for the purchase of certain lands set out in the Schedule thereto in area 5,222 acres 3 roods 32 poles more or less, together with the buildings, plant, machinery and vehicles as specified in the provisional inventory at a total price of Dollars Six Million (\$6,000,000/-). Completion date was on or before September 30, 1972. On September 22, 1972 the 1st Appellants and their nominees, the 2nd Appellants, paid the full purchase price to the Vendors which executed due transfers of the lands in favour of the 2nd Appellants, the nominees of the 1st Appellants, and gave delivery of the issue documents of title and two Discharges of Charge to their solicitors. On the same date, possession of the said lands was given to the 2nd Appellants. On December 14, 1972 the Memorandum of Transfer and the titles and Discharges were presented for registration, after adjudication for stamp duty purposes, (being registration No.8401/72 in File of Transfer Vol. 534, Fol.52). On December 19, 1972 the Government of Malaysia obtained two judgments against the Vendors in Civil Suits Nos. 116 and 117 of 1972 in the High Court at Muar for income tax due from the Vendors to the Comptroller of Inland Revenue, Malaysia. Pursuant thereto, the Government obtained two prohibitory orders, one entered on the register documents of title to 7 of the 9 pieces and the other on the remaining 2 pieces. On March 15, 1973, the Appellants were informed that the Instruments had been rejected on the ground that the Registrar's Caveat had been entered against the 9 pieces of land on October 11, 1972 in Vol.38 Folio 149. By Originating Motion No.4 of 1973 dated June 12, 1973 the Appellants applied for an order directing the Respondent (the Registrar) to cancel the Caveat and to register the transfer and Discharges. This was dismissed on August 23, 1973, hence this appeal.

The main, and we consider, the most cogent ground of appeal, is whether the Caveat was rightly and properly entered. It had been entered

10 pursuant to a letter received dated October 2, 1972 from the Inland Revenue to the effect that the income tax liability of the Vendors for future years would be increased and that, in order to avoid payment of such tax, the Vendors had sold and were intending to sell other lands, and it was necessary, to stop the lands being transferred, to enter a caveat without delay. As the Legal Adviser appearing on behalf of the Registrar of Titles said: "The Federation Government's interest in this case is simply the collection of a debt due to it by the proprietor of the 9 lots of land which are now affected by the Registrar's caveat". This is reiterated by Cik Zulkifli bin Mahmood on behalf of the Revenue that:

20 " Sometime in September 1972 the Inland Revenue Department became aware that Li-Ta was seriously negotiating for the sale of its landed properties with a view to avoiding payment of its income tax. The Respondent was concerned with the collection of debts, that is, tax due and payable by Li-Ta and if its landed properties are disposed of, the chances of recovering the debts could be jeopardized, as Li-Ta, a foreign company, has no more asset in this country.

30 To collect the debts and to protect the interests of the Government, it was found necessary to prevent any dealing in the 9 (nine) pieces of land belonging to Li-Ta until such time as the debts due and payable were settled. Consequently a request was made to the Registrar of Land Title, Johore, for the lodging of a Registrar's caveat under Section 320(1)(b)(i) of the National Land Code. The Registrar's caveat was registered on 11.10.1972 forbidding the registration of any instrument of dealing in respect of the said 9 (nine) pieces of land."

40 This caveat was lodged pursuant to section 320(1)(b) /see p.357 and the Court made it clear to Respondent's Counsel that it was not prepared to entertain any allegations at this appeal that the Registrar's caveat might have been entered "for the prevention of fraud or improper dealing" under section 320(1)(a) as no such allegations were made and there was not a jot of evidence of impropriety or suspicion in connection with the purchase by the Appellants. We will consider

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section 320(1)(b). Much wind was expelled on the significance of the plural "interests" in that section as distinct from the singular in section 323, when speaking of a registrable interest. We fail to see when speaking of "interests" of the bodies or persons specified in section 321(1)(b)(i) and (ii) that word could ever have been drafted in the singular. Section 4(3) of the Interpretation Act 1967 expressly stipulates "words and expressions in the singular include the plural, and words and expressions in the plural include the singular". 10
We do not think therefore there is any merit in this argument that the Court should therefore construe the word in its widest possible sense to embrace any benefit or advantage that could be given to the Revenue. Fiscal legislation has always been subject to the strictest construction. What "interests of the Federation" that need protection must and can only be concerned with interests the Federation had, as against the person 20
or body against whom such protection is sought. Have the Vendors any further rights in the lands in respect of which the caveat has been lodged which can prevail over the rights of the purchasers who have paid the full consideration therefor and obtained possession thereof prior to the lodgment of the caveat? In our view there can be no doubt as to the position in law. As was said by Jessel M.R. in Lysaght v. Edwards (1876) 2 Ch.D. 499 at 506: 30

"... the effect of a contract for sale has been settled for more than two centuries; certainly it was completely settled before the time of Lord Hardwicke, who speaks of the settled doctrine of the court as to it. What is that doctrine? It is that the moment you have a valid contract for sale the vendor becomes in equity a trustee for the purchaser of the estate sold, and the beneficial ownership passes to the purchaser, the vendor having a right to the purchase-money, a charge or lien on the estate for the security of that purchase-money, and a right to retain possession of the estate until the purchase-money is paid, in the absence of express contract as to the time of delivering possession." 40

I would quote first the headnote to Williams v. Greatrex (1957) 1 W.L.R. 31 at 36:

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(continued)

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"Held, (3) That the purchaser, having paid the deposits on and having entered into possession of the land, became the equitable owner of the land under a contract binding on the vendor such that the vendor could not now object to specific performance on the ground of laches unless he could show that he had not acquiesced in the purchaser's acts of possession or that the purchaser had abandoned the contract; and that the evidence showed sufficient acquiescence by him and no abandonment by the purchaser. Accordingly, despite the lapse of time, the purchaser was entitled to specific performance on payment of the balance of the price and interest thereon for the intervening years."

Denning L.J. said in that case:

20

"If he wished to exclude the purchaser, he ought to have taken possession himself. He never did so. I am quite clearly of opinion that, as long as the purchaser remained in possession under a contract which entitled him to be there, he had an equity which the courts will protect. There was no need for him to claim specific performance in order to give him a right to be there. Laches or delay is not a bar to this action."

30

In a concurring judgment Hodson L.J. (as he then was) cited with approval Cotton L.J. in Mills v. Haywood (1877) 6 Ch. D. 196, 202-3:-

"In such a case, as, e.g., where the purchaser in possession has no right or title to such possession except as purchaser, his possession is an assertion on his part of his right under the contract of purchase, and acquiescence in his possession is a recognition by the vendor of this right."

40

The law is clear that the Vendors, after receipt of the full purchase price and surrender of possession of the lands to the Appellants are bare trustees for the Appellants of the said land and it must consequently follow, as night must day, that the Vendors have no interest in the lands which can be the subject matter of a caveat. Section 320 speaks of entry of a caveat in respect of any land wherever desirable for protecting the interests of

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No.10

Judgment

24th May 1974

(continued)

the Federation. It does not, in our view, extend to a contingent claim, or a right to execution thereafter, solely by reason of the fact that the Federation is interested in the collection of a debt, however it may be deemed to be such upon service of a notice of assessment and thereafter deemed due and payable. What is being claimed is not some right or interest in respect of the lands to be caveated but a mere assertion of contingent claim to a debt. Priority, as may be noted in many laws, is granted to the Government for its claims against the debtor over other claimants or creditors, making the property of the debtor a first charge for satisfaction of those claims. But can it be maintained with any legal justification that these lands, after September 22, 1972 were still property of the debtor available for satisfaction of those claims? Have the Vendors, now bare trustees for the purchasers, any interest in the lands which can be caveated? As Thomson J. (as he then was) said in Bachan Singh v. Mahinder Kaur (1956) M.L.J. 97 at 98:

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"To my mind, many of the difficulties which appear to arise in these cases would not arise if we were to bear in mind throughout the distinction between rights ad rem or personal right and rights in rem or real rights. Where there is a valid binding contract for the sale of land, the purchaser, when he has performed his side of the contract, acquires a right ad rem which is also a right in personam. In other words, he acquires a right to the land as against the vendor personally but not good against the world as a whole and, in due course, that right can become a real right good against the world as a whole on registration in accordance with the Land Code".

30

The validity of the contract between the Appellants and the Vendors has not been seriously challenged nor, in our view, can it be. What the Inland Revenue is saying is that the Government's contingent claim should be treated as a preferred claim and the purchasers should seek recovery of money paid in all good faith from the Vendors, who might now perhaps be insolvent.

40

At the hearing of Civil Suits Nos.116 and 117 of 1972 (F.C. Civil Appeals Nos. 109 and 110 respectively), Cik Zulkifli conceded:

" The Applicants became the beneficial owners on 22.9.72. The Government of Malaysia acquired interest in Li-Ta Company right from date of notice of assessment served on the Co. or date of service of notice by virtue of Section 103(1) of the Income Tax Ordinance, 1967. By virtue of Section 106(1) debt may be recovered.

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Judgment
24th May 1974
(continued)

10 Refers to Section 89 of the National Land Code. Submits that beneficial owner will take the land subject to liabilities. Submits that Subramaniam's can be distinguished from the present case."

20 I question the correctness of his contention that the Government of Malaysia acquired an interest in Li-Ta Company by virtue of section 103(1) of the Income Tax Act, 1967. As he admitted section 106(1) merely said such debt may be recovered and until judgment or execution cannot, and section 89 of the National Land Code does not, have the result that the beneficial owner take the land subject to liabilities.

We are in agreement with the majority view in Karupiah Chettiar v. Subramaniam (1971) 2 M.L.J. 116 at 117 where it was

30 " Held (1) in this case Mohamed Sharjudin having sold his entire interest in the land and received payment in full held the legal estate only as a bare trustee for the respondent, who was the equitable owner;

(2) the appellant, as judgment creditor, could only take whatever interest the debtor had and in this case the debtor had parted with his whole interest in the land;

(3) the learned judge in this case was right in setting aside the prohibitory order as there was nothing which could be put up for sale."

40 Reading the judgment, we think, with respect, the learned judge misdirected himself that a private caveat and a Registrar's caveat should be differently treated. We also consider that the judge erred in deferring determination of the "question of whether or not the judgment debtors

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No.10

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24th May 1974

(continued)

had any saleable interest in the property attached by the prohibitory orders". On the facts and or law, we are satisfied that though Li-Ta were judgment debtors of the Government after December 19, 1972, Li-Ta had no interest in the lands attached by the prohibitory orders, which cannot under section 336(3) of the Land Code have effect on any instrument presented prior to the time from which the order takes effect.

We are of the view that the Vendors, having parted with their interest in the lands to the appellants, are bare trustees and have no interest in the land over which a valid caveat can be lodged. Respondent's counsel tried to make much of clause 1 of the Agreement of August 30, 1972 that "the Vendor shall sell and the Purchaser shall purchase" and that therefore no rights passed as the agreement was non-registrable and a non-statutory instrument capable of passing title to the Appellants. He glossed over the fact that the Vendors had done everything that was required of them to transfer the title and had thereby constituted themselves bare trustees for the Appellants and had no other or further interest in the lands.

As we are of the view that the caveat was wrongly entered, we are also of opinion that the Registrar ought to have registered the documents when presented on December 14, 1972 and the prohibitory orders lodged on December 27, are therefore inconsequential and ineffective, and must be set aside.

We would allow the appeals with costs and set aside the orders of the learned Judge. The prayers of the Appellants in the Originating Motion No. 4 of 1973 and Civil Actions Nos. 116 and 117 are granted and pursuant to section 417(1) of the National Land Code we order that the registering authority do accept the transfer and associated documents presented on December 14, 1972 and cause all necessary entries and memorials to be made in the issue and register documents of title for the second Appellants to be registered as proprietors of the lands freed from encumbrances. The deposits will be refunded to the Appellants.

Kuala Lumpur, TAN SRI DATO JUSTICE H.S. ONG
24th May, 1974 (ONG HOCK SIM)
JUDGE, FEDERAL COURT, MALAYSIA.

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- (1) Mr. R.C. Hoffman with Mr. Wong Kim Fatt for Appellants in F.C.C.A. NoL 104/73
Tuan Haji Mohd. Eusoff bin Chin, Legal Adviser, Johore with Encik Zulkifli bin Mahmood, Sr. Federal Counsel for Respondent.
- (2) Mr. R.C. Hoffman for Appellants in F.C.C.A. 109/73,
Encik Zulkifli bin Mahmood, Sr. Federal Counsel for Respondent.
- 10 (3) Mr. R.C. Hoffman with Mr. Wong Kim Fatt for Appellants in F.C.C.A. 110/73
Encik Zulkifli bin Mahmood, Sr. Federal Counsel for Respondent.

In the Federal Court of Malaysia

No.10

Judgment
24th May 1974
(continued)

TRUE COPY
Signed: G.E.TAN
Secretary to Chief Justice

No.11

Order
24th May 1974

No. 11 - Order

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR (Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO.104 OF 1973

20

BETWEEN

- 1. TEMENGGONG SECURITIES LIMITED
- 2. TUMBUK ESTATE SDN. BHD. ... APPELLANTS

AND

REGISTRAR OF TITLES, JOHORE,
JOHORE BAHRU ... RESPONDENT

(In the matter of Originating Motion No.4 of 1973
in the High Court in Muar

Between

30

- 1. TEMENGGONG SECURITIES LIMITED
- 2. TUMBUK ESTATE SDN. BHD. ... Applicants

And

REGISTRAR OF TITLES, JOHORE,
JOHORE BAHRU ... Respondent)

FEDERAL COURT CIVIL APPEAL NO.109 OF 1973

BETWEEN

In the
Federal Court
of Malaysia

No.11

Order

24th May 1974

(continued)

1. TEMENGGONG SECURITIES LIMITED
2. TUMBUK ESTATE SDN. BHD. ... APPELLANTS

And

COMPTROLLER-GENERAL OF INLAND ... RESPONDENT
REVENUE, MALAYSIA

(In the matter of Summons-in-Chambers in Civil Suit
No.116 of 1972 in the High Court in Malaya at Muar

Between

1. TEMENGGONG SECURITIES LIMITED
2. TUMBUK ESTATE SDN. BHD. ... Applicants 10

AND

COMPTROLLER-GENERAL OF INLAND ... Respondent)
REVENUE, MALAYSIA

FEDERAL COURT CIVIL APPEAL NO.110 OF 1973

BETWEEN

1. TEMENGGONG SECURITIES LIMITED
2. TUMBUK ESTATE SDN. BHD. ... APPELLANTS

AND

GOVERNMENT OF MALAYSIA ... RESPONDENT

(In the matter of Summons-in-Chambers in Civil Suit 20
No.117 of 1972 in the High Court in Malaya at Muar

Between

1. TEMENGGONG SECURITIES LIMITED
2. TUMBUK ESTATE SDN. BHD. ... Applicants

And

GOVERNMENT OF MALAYSIA ... Respondent)

CORAM: SUFFIAN, LORD PRESIDENT, FEDERAL COURT,
MALAYSIA;
LEE HUN HOE, CHIEF JUSTICE, HIGH COURT IN
BORNEO;
ONG HOCK SIM, JUDGE, FEDERAL COURT,
MALAYSIA.

IN OPEN COURT
THIS 24TH DAY OF MAY 1974

In the
Federal Court
of Malaysia

O R D E R

No.11

Order
24th May 1974
(continued)

10 THESE APPEALS coming up for hearing on the 2nd day of May 1974 in the presence of Mr. R.C.Hoffman (Mr. Wong Kim Fatt with him) of Counsel for the Appellants abovenamed and Tuan Haji Mohd. Eusoff bin Chin and Encik Zulkifli bin Mahmood of Counsel for the Respondents abovenamed AND UPON READING the Records of appeals and the Written Submissions herein AND UPON HEARING the submissions of Counsel as aforesaid IT WAS ORDERED that these appeals do stand adjourned for judgment AND the same coming on for judgment this day in the presence of Counsel as aforesaid IT IS ORDERED that these appeals be and are hereby allowed and that the judgments of the Honourable Court below be and are hereby set aside:

20 AND IT IS ORDERED that the Registrar of Titles the Respondent in the above Originating Motion No.4 of 1973 do forthwith cancel the Registrar's Caveat entered on the 11th day of October 1972 in serial No.156/72, Registrar's Caveat Vol. 38, Fol. 149, and forthwith register the discharge of charge in presentation No. 8399/72 in file of discharge Vol. 95, Fol. 66, discharge of charge in presentation No. 8400/72 in file of discharge Vol. 95, Fol. 67, and transfer in presentation No. 8401/72 file of transfer Vol. 534, Fol. 53, in favour of Tumbuk Estate Sendirian Berhad the Second Appellant
30 herein free from encumbrances and cause all entries and memorials to be made on the issue and register documents of title under the provisions of Section 417 of the National Land Code, 1965, in respect of the following nine (9) titles:-

	<u>Grant No.</u>	<u>Lot No.</u>
	14370	1265
	8676	89
	11794	1687
40	11798	1672
	12900	1699
	11539	2012
	11540	2013
	11541	2014
	11542	2015

all situate in the Mukim of Pogoh, District of Segamat, State of Johore:

In the
Federal Court
of Malaysia

No.11

Order

24th May 1975

(continued)

AND IT IS FURTHER ORDERED that the registering authority do forthwith cancel the prohibitory orders entered on the 27th day of December 1972 in the above-named Civil Suits No.116 of 1972 and No.117 of 1972 against the aforesaid nine (9) titles under the provisions of Section 417 of the National Land Code, 1965:

AND IT IS FURTHER ORDERED that the Respondents abovenamed do pay the costs of the Appellants in these Appeals and the costs of the actions in the High Court in Muar:

10

AND IT IS FURTHER ORDERED that the three deposits of \$500.00 each paid into Court by the Appellants in these appeals as security for costs be refunded to the Appellants.

AND IT IS LASTLY ORDERED that there be a Certificate for two (2) Counsel for the Appellants.

GIVEN under my hand and the seal of the Court this 24th day of May, 1974.

Sgd: E.E. SIM
CHIEF REGISTRAR.

20

(L.S.)

No.12

Judgment

11th October
1974

No. 12

Judgment

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR (APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 104 OF 1973

Between

- 1. Temenggong Securities Limited
- 2. Tumbuk Estate Sdn. Bhd.

Appellants

30

and

Registrar of Titles, Johore,
Johore Bahru

Respondent

(In the matter of Originating Motion No. 4
of 1973 in the High Court in Muar

In the
Federal Court
of Malaysia

Between

1. Temenggong Securities Limited
2. Tumbuk Estate Sdn. Bhd. Applicants

And

Registrar of Titles, Johore,
Johore Bahru. Respondent)

No. 12

Judgment
11th October
1974

(continued)

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Coram: Gill, Chief Justice, Malaya
Ali, Judge, Federal Court,
Ong Hock Sim, Judge, Federal Court.

JUDGMENT OF THE COURT

This was a motion by the respondent to this appeal for conditional leave to appeal to the Yang di-Pertuan Agong against the decision of this court given on May 24, 1974, and for stay of execution pending appeal.

20

The appeal concerned the validity of the Registrar's caveat entered on October 11, 1972 against 9 pieces of land under section 320(1)(b) of the National Land Code pursuant to a letter dated October 2, 1972 from Inland Revenue allegedly to protect the interest of the Federation.

30

The lands then stood registered in the name of Li-Ta Company (Private) Limited, a company incorporated in the Republic of Singapore, but they had been sold under an agreement dated August 30, 1972 to the first appellants. The completion date under the agreement was to be on or before September 30, 1972.

The first appellants and their nominees, the second appellants, paid the full purchase price on September 22, 1972. The vendors executed transfers of the lands in favour of the second appellants, delivered the issue documents of title and two discharges of charges to their solicitors and gave possession of the lands to the second appellants on the same day.

40

The documents of transfer and the discharges of charges were duly stamped and presented for

In the
Federal Court
of Malaysia

No.12

Judgment

11th October
1974

(continued)

registration on December 14, 1972. On March 15, 1973 the appellants were informed that their documents presented for registration had been rejected on the ground that the Registrar's caveat had been entered against the said 9 pieces of land on October 11, 1972.

By originating motion No. 4 of 1973 dated June 12, 1973 the appellants applied to the High Court at Muar for an order directing the respondent (Registrar) to cancel the caveat and to register the transfer and discharges of charges. The motion was dismissed on August 23, 1973. From an order of such dismissal an appeal was brought to this Court. 10

The appeal was allowed for reasons which are set out in the judgment of this Court which has been referred to. The quintessence of that judgment is that the registered owners of the lands had no beneficial interest in the lands on the date on which the Registrar's caveat had been entered against them. 20

The motion was opposed on the ground that the beneficial interest in the lands had passed to the second appellants on the date on which they had paid the full purchase price and had obtained from the vendors a duly executed transfer and possession of the lands. It was further submitted that the right to caveat, if there was one at all, was over Li-Ta's interest over the said lands, which either did not exist or had no monetary value. 30

In the circumstances of the case we accepted counsel's submissions as correct and formed the view that this was not a fit case for appeal. We accordingly dismissed the motion for conditional leave to appeal.

Kuala Lumpur,
11th October, 1974.

S.S. GILL
CHIEF JUSTICE
MALAYA

Encik Mohd. Nizar bin Idris Senior Federal Counsel
for Respondent. 40

Encik R.C. Hoffman for Appellants.

TRUE COPY
G.E. Tan
Secretary to Chief Justice
High Court, Malaya.
14/10/74.

No. 13

Order granting Special Leave to Appeal
to His Majesty the Yang di-Pertuan Agong

No.13

Order
granting
Special Leave
to Appeal to
His Majesty
the Yang di-
Pertuan Agong
21st May 1975

S E A L

COURTS OF JUDICATURE ACT, 1964

ORDER UNDER SECTION 76(1)

AT THE ISTANA NEGARA AT KUALA LUMPUR

THE 21 DAY OF MAY 1975

10

WHEREAS there was this day submitted to His Majesty the Yang di-Pertuan Agong a Report from the Judicial Committee of Her Britannic Majesty's Privy Council dated the 19th day of March, 1975 in the words following, viz:

20

30

sic

WHEREAS by virtue of the Malaysia (Appeals to Privy Council) Orders 1958 to 1969 there was referred unto this Committee a humble Petition of the Registrar of Titles, Johore, Johore Bahru, in the matter of an Appeal from the Federal Court of Malaysia between the Petitioner and (1) Temenggong Securities Limited and (2) Tumbuk Estate Sdn. Bhd. Respondents setting forth that the Petitioner prays for special leave to appeal from a Judgment of the Federal Court of Malaysia dated the 24th May 1974 allowing an Appeal by the Respondents from a Judgment of the High Court at Muar and ordering (1) the cancellation of a Registrar's Caveat entered in respect of land purchased by the Respondents (b) the discharge of certain charges on the land and (c) the registration of the 2nd Respondents as proprietors of the land: And praying The Yang Dipertuan Agung to grant him special leave to appeal against the Judgment of the Federal Court of Malaysia dated the 24th May 1974 or for further or other relief:

40

THE LORDS OF THE COMMITTEE in obedience to the said Orders have taken the humble Petition into consideration and having heard Counsel in support thereof no one appearing at the Bar in opposition thereto Their Lordships do this day agree to report to the Yang Dipertuan Agung as their opinion that special leave ought to be granted to the

No.13

Order
granting
Special Leave
to Appeal to
His Majesty
the Yang di-
Pertuan Agong
21st May 1975
(continued)

Petitioner to enter and prosecute his Appeal against the Judgment of the Federal Court of Malaysia dated the 24th May 1974 on condition (1) of the Petitioner lodging in the Registry of the Privy Council an undertaking to pay the Respondents' costs of the Appeal in any event and (2) of the Appeal being received in the Registry of the Privy Council by the 1st October 1975:

And Their Lordships do further report that the proper officer of the said Federal Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy of the Record proper to be laid before the Judicial Committee on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same. 10

HIS MAJESTY having taken the said Report into consideration was pleased to approve thereof and to order as it is hereby ordered that the same be punctually obeyed and carried into execution. 20

WHEREOF the Federal Court and all other persons whom it may concern are to take notice and govern themselves accordingly.

BY COMMAND

Sgd. ?

PRIME MINISTER

(F.C.Civil Appeal No.104/73)

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

RECORD OF PROCEEDINGS

STEPHENSON HARWOOD & TATHAM,
Saddlers Hall,
Gutter Lane,
Cheapside,
London EC2V 6BS.
Solicitors for the Appellant

COWARD CHANCE,
Royex House,
Aldermanbury Square,
London EC2V 7LD.

Solicitors for the Respondents