

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No.44 of 1975

O N A P P E A L

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

B E T W E E N :-

SYED OMAR BIN ABDUL RAHMAN TAHA
ALSAGOFF and CHEE KUTTY s/o ABU
BAKAR

Appellants

- AND -

10 THE GOVERNMENT OF THE STATE OF JOHORE

Respondent

CASE FOR THE RESPONDENT

1. This is an appeal from a decision of the Federal Court of Malaysia holden at Kuala Lumpur, Appellate Jurisdiction (Suffian L.P., Ali and Wan Sulliman F.JJ) dated the 16th January 1975, dismissing an appeal from the judgment and order of the High Court in Malaya and Johore Bahru (Syed Othman J.) dated the 3rd June 1974 in favour of the Respondent. Final leave to appeal to His Majesty the Yang Di-pertuan Agong was granted to the Appellants by an Order of the Federal Court of Malaysia (Gill C.J., Ali and Raja Azlan Shah F.JJ) dated the 18th August 1975. pp. 92-3
pp.63-4
- 20
2. This appeal concerns the validity of the compulsory acquisition under the Land Acquisition Act No.34 of 1960 by the Respondent of certain lands in the Mukim of Plentong in the District of Johore Bahru owned by the Appellants. The Respondent accepts that it is only entitled to acquire land compulsorily if it duly complies with the relevant provisions of the said Act ("the 1960 Act"). pp.94-95
- 30
3. The relevant sections of the 1960 Act on which this appeal turns read as follows:-

"3. The State Authority may acquire any land which is needed:-

- (a) for any public purpose; or
- (b) by any person or corporation undertaking a work which in the opinion of the State Authority is of public utility;
- (c) for the purpose of mining or for residential or industrial purposes".

"7. Whenever any lands are needed for any of the purposes referred to in section 3 the Collector shall prepare and submit to the State Authority - 10

(a) a plan of the whole area of such lands, showing the particular lands, or parts thereof, which it will be necessary to acquire; and

(b) a list of such lands in Form C.

8. (1) When the State Authority decides that any of the lands referred to in section 7 are needed for any of the purposes referred to in section 3, a declaration in Form D shall be published in the Gazette. 20

(2) A copy of the list of the lands referred to in paragraph (b) of section 7, amended, if necessary in accordance with the decision of the State Authority, shall be included as a schedule to the declaration in Form D.

(3) A declaration Form D shall be conclusive evidence that all the scheduled land referred to therein is needed for the purposes therein specified". 30

4. In 1970, the Respondent proposed to acquire land in order to construct a port to serve the southern region of West Malaysia, and for residential and industrial purposes. By a letter dated the 2nd April 1970, the State Development Officer requested the State Planning Officer (Eddie Chi Swee Guan, who gave Affidavit evidence) to prepare a draft layout plan. The State Planning Officer duly completed a draft layout plan which, together with a Report, he duly submitted to the State Development Officer with an accompanying letter dated the 6th June 1970. The draft layout plan showed various areas zoned for different purposes. An area of approximately 385 acres,

pp.137-8

pp.139-144

Exhibit D.8
in pocket at
end

which included the Appellants' lands, was shown hatched red and marked "Kegunaan Khas" (i.e. special area). In his Report, the State Planning Officer explained that this area had been "zoned for special purposes which includes recreation such as beaches for swimming, boating, picnic areas, camping sites, hotels, chalets and shops". The Respondent will contend, so far as may be necessary, accepts that these purposes were ~~not~~ within section 3 of the 1960 Act.

pp.142 ll.
25-30

10 5. The Respondent was not obliged to accept the State Planning Officer's proposed zoning, and did not in fact do so. Nevertheless, the State Planning Officer's draft layout plan was used as the plan referred to in paragraph 2 of the Declaration dated the 18th January 1971 in Form D published in the Gazette (G.N. 55 of 1971), the English translation of which reads as follows:-

"LAND ACQUISITION ACT 1960

pp.96-113

FORM D

20 DECLARATION OF INTENDED ACQUISITION

(SECTION 8)

1. It is hereby declared that particular lands and areas specified in the Schedule hereto are needed for the following purpose:

Construction of Port, Residential and Industrial

30 2. A plan of the particular lands and areas so specified may be inspected during the normal hours of business in the Land Office of the District in which such lands are situated".

The Schedule to the Declaration specified numerous properties, including those belonging to the Appellants.

40 6. On the 20th April 1972, the Commissioner gave a Certificate of Urgency in Form I under Section 19 of the 1960 Act, and on the 22nd April 1972 the Collector of Land Revenue (an officer of the Respondent) notified the Appellants in Form K pursuant to Section 22 of the 1960 Act that he had taken formal possession of their lands.

pp.118-136

pp.117

7. The Appellants proceedings were commenced by an Originating Notice of Motion dated the 4th June 1972

pp.10-11	claiming a declaration that the proceedings against them for the acquisition of their lands by the Respondent were illegal and as such null and void. By a Summons-in-Chambers dated the 5th June 1972, the Appellants applied for an interim injunction restraining the Respondent from proceeding with the acquisition and in particular from entering into possession of their lands until trial or further order. Syed Othman Ali J. heard the application for an interim injunction on the 22nd June 1972, when he adjourned it, and the 8th August 1972, when he refused it. The substantive Motion first came before Syed Othman Ali J. on the 26th June 1973, when he adjourned it to enable the State Planning Officer to put in Affidavit evidence, and on the 20th September 1973, when he reserved judgment.	10
pp.15 1.30-		
pp.52-55		
pp.56 11.1-8	8. Before Syed Othman Ali J., the Appellants attacked the validity of the compulsory acquisition on three grounds. The first ground was that the plan referred to in the Declaration in the Gazette showed that the purpose of the acquisition was outside the purposes set out in section 3 of the 1960 Act. Syed Othman Ali J. rejected this, saying: "Paragraph 1 of G.N. 55 of 1971, in my view, is the crucial part. It contains the substance in that it declares that all the lands are required for the construction of a port and for residential and industrial purposes. Paragraph 2, I should say, is elucidatory to paragraph 1". Syed Othman Ali J. also relied on the principle of <i>falsa demonstratio non nocet</i> .	20
pp.59 11.1-7		
pp.59 1.45-		30
pp.56 11.9-12	9. The second ground on which the Appellants attacked the validity of the compulsory acquisition was that the Respondent was acting in bad faith. This allegation was mainly based on the fact that the letter dated the 2nd April 1970 from the State Development Officer referred only to requirements for sites of an aggregate of 2,000 acres, whereas the Declaration G.N. 55 of 1971 related to 5,173 acres. Syed Othman Ali J. held that on the evidence there was no bad faith on the part of the Respondent.	40
pp.137-8		
pp.56 1113-17	10. The third ground on which the Appellants attacked the validity of the compulsory acquisition was that the Declaration in the Gazette did not bear the name of the person who held the office of Commissioner of Lands and Mines. Syed Othman Ali J., after saying that this was a fresh point not raised in the evidence, held that there was no statutory requirement for the Declaration in the Gazette to be so signed. This part of his judgment was not challenged on appeal.	50
pp.60 1.34-		
pp.68-84 pp.91 1.43	11. The appeal to the Federal Court of Malaysia was made on written submissions, and on arguments in Johore	

Bahru on Sunday the 17th November 1974. The grounds of the appeal are set out in the Appellants' Memorandum of Appeal dated the 4th August 1974, and are basically the first and second grounds advanced before Syed Othman Ali J. below. The unanimous reserved judgment of the Federal Court, dismissing the appeal, was read by Suffian L.P. on the 16th January 1975.

pp.65-68

pp.85-91

10 12. As to the first ground argued in the Court below, the Federal Court pointed out that the plan envisaged by section 7 of the 1960 Act was for the convenience of the State Authority, which had a discretion to decide what lands were needed. The Federal Court said:-

pp.88 11.
28-33

20 "Only after the State Authority has decided which of the lands referred to in the plan and to what extent, are needed for any of the purposes set out in section 3, is it necessary for a declaration in Form D to be gazetted under section 8. With respect, we agree with the learned judge that the meat of this declaration is contained in its first paragraph, for while it is true that its second paragraph refers to a plan, that is only to enable owners and other interested persons to check whether or not their lands are to be acquired and if so to what extent. Section 8 does not require that the purposes for which the lands or parts are to be acquired, should be stated on the plan, and it would appear that it was quite unnecessary for - and in the event foolish of -

30 the State Authority to invite the applicants and other owners to inspect the rather elaborate plans prepared in the instant case. All that section 8 requires (by its subsection (2)) is that a list of the lands or parts thereof that are needed by the State Authority be included in a schedule to Form D. That was done here, and so in our view the declaration in that Form in the words of subsection (3) of section 8 is "conclusive evidence that all the scheduled lands referred to therein are needed for the purpose specified therein".

pp.88 1.38-

In view of our construction of section 8, we do not think that the fact that the applicants' lands were marked "kegunaan khas" affects the issue, for the matter is governed by the first paragraph of Form D which clearly states the purposes for which all the lands shown on the plan were to be acquired."

50 The Respondent respectfully submits that this reasoning is correct.

13. As to the second ground argued in the Court below, the Federal Court rejected the argument that the letter dated the 2nd April 1970 from the State Development Officer to the State Planning Officer constituted evidence of lack of good faith on the part of the Respondent, pointing out that the views of the Respondent's officers "while valuable do not invalidate the final decision of the Ruler as to the lands and the total acreage needed". The Federal Court also distinguished the decision of the English Court of Appeal in Donaldson v. South Shields Corporation (1899) 68 L.J. Ch. 162. In that case it was clear that the Corporation, which had power to acquire land only for the purposes of street works, intended to acquire part of the plaintiff's land in order to re-sell it and recoup part of the expense of the street works. The acquisition was held invalid. The Federal Court held that Donaldson's case was distinguishable because (1) there was no question of the Respondent re-selling and (2) there was no equivalent in the English Statute to section 8(3) of the 1960 Act.

10

20

14. Before their Lordships Board, the Respondent will seek to uphold the decisions of Syed Othman Ali J. and the Federal Court for the reasons given by them and referred to in paragraphs 8 to 13 above. On the first ground, the Respondent respectfully submits that the matter is effectively concluded against the Appellants by the express wording of section 8(3) of the 1960 Act which renders the Declaration in Form D "conclusive evidence" of the purposes for which the land is needed. It is also clear from the wording of the Declaration that the plan was referred to merely to show where the lands were situated, and not for any other reason. Even if the Declaration and the plan have to be read together as a single document, there can be no doubt that the purposes of the compulsory acquisition were those stated in paragraph 1 of the Declaration.

30

15. The Respondent humbly submits that this appeal should be dismissed and that the Appellants should be ordered to pay the costs thereof for the following among other

40

R E A S O N S

(1) BECAUSE the wording of section 8(3) of the 1960 Act renders the purposes expressly stated in paragraph 1 of the Declaration (G.N. 55 of 1971) viz "Construction of Port, Residential and Industrial", conclusive evidence that they were the purposes of the compulsory acquisition.

(2) BECAUSE it was clear from the wording of the Declaration that the plan was intended only to show where the lands to be acquired were situated.

50

- 10
- (3) BECAUSE on the first ground put forward by the Appellants in both Courts, the judgments of Syed Othman Ali J. and the Federal Court were correct for the reasons therein given.
 - (4) BECAUSE the findings of Syed Othman Ali J. and the Federal Court that the Respondent had not acted in bad faith were concurrent findings of fact.
 - (5) BECAUSE the special purposes for the area shown hatched red and marked "Kegunaan Khas" on the plan and explained in the State Planning Officer's Report were within the purposes specified in section 3 of the Land Acquisition Act 1960 and paragraph 1 of the Declaration.
 - (6) BECAUSE on the second ground put forward by the Appellants in both Courts, the judgments of Syed Othman Ali J. and the Federal Court were correct for the reasons therein given.

NIGEL HAGUE

IN THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL No.44 of 1975

O N A P P E A L

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

B E T W E E N :-

SYED OMAR BIN ABDUL RAHMAN TAHA
ALSAGOFF and CHEE KUTTY s/o ABU
BAKAR

Appellants

- AND -

THE GOVERNMENT OF THE STATE OF JOHORE
Respondent

CASE FOR THE RESPONDENT

STEPHENSON HARWOOD & TATHAM
Saddlers' Hall,
Gutter Lane, Cheapside,
London, EC2V 6BS.

Solicitors for the Respondent