

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

No. 33 of 1968

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

B E T W E E N :

COLLECTOR OF LAND REVENUE

Appellant

- and -

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

Respondent

AND B E T W E E N :

COLLECTOR OF LAND REVENUE

Appellant

- and -

ONG THYE ENG (As Trustee)

Respondent

(and Cross-Appeals)

R E C O R D O F P R O C E E D I N G S

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
6 -DEC 1971
25 RUSSELL SQUARE
LONDON W.C.1

STEPHENSON, HARWOOD & TATHAM,
Saddlers' Hall,
Gutter Lane, Cheapside,
London, E.C.2

Solicitors for the Collector
of Land Revenue

GRAHAM PAGE & CO.,
49/55, Victoria Street,
Westminster, London, S.W.1

Solicitors for A.K.A.C.T.V.
Alagappa Chettiar and
Ong Thye Eng.

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(APPELLATE JURISDICTION)

B E T W E E N :

COLLECTOR OF LAND REVENUE Appellant
- and -
A.K.A.C.T.V. ALAGAPPA CHETTIAR Respondent

AND B E T W E E N :

COLLECTOR OF LAND REVENUE Appellant
- and -
ONG THYE ENG (As Trustee) Respondent
(and Cross-Appeals)

R E C O R D O F P R O C E E D I N G S

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1.

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

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COLLECTOR OF LAND REVENUE Appellant

- and -

ONG THYE ENG (As Trustee) Respondent
(and Cross-Appellants)

10

R E C O R D O F P R O C E E D I N G S

NO. 1

NOTIFICATION UNDER SECTION 4 OF THE LAND ACQUISITION ACT 1960 THAT THE LAND WAS LIKELY TO BE ACQUIRED

In the High Court

No. 1

SELANGOR GOVERNMENT GAZETTE

188

4th June, 1964

Notification under Section 4 of Land Acquisition Act 1960

20

LAND ACQUISITION ACT, 1960
(Section 4)

4th June 1964

No. 335.

NOTICE THAT LAND IS LIKELY TO BE ACQUIRED

It is hereby notified that land in the locality described in the Schedule hereto, including those lands, if any, specified by lot number or by the lot numbers of neighbouring lands, are likely to be needed for the following purpose:

In the High
Court

Erection of Houses and Flats.

No. 1

Notification
under Section
4 of Land
Acquisition
Act 1960

4th June 1964

(Contd.)

2. It is further notified that any person authorised by the Commissioner in that behalf may enter upon any land in such locality in order to examine it and undertake survey operations. If any damage is done in the course of such work compensation therefor will be paid. Any dispute as to the amount of such compensation will be referred to the Collector at Kuala Lumpur.

Dated this 22nd day of May, 1964
(P.T.G. Sel. O. 50.)

10

HARUN BIN ARIFFIN,
Commissioner, Selangor

SCHEDULE

District - Kuala Lumpur.
Township - Kuala Lumpur.

Survey Lot No.	Title or Occupation	Registered Proprietor or Recorded Occupant	Area of Lot A. R. P.	
1,924	C.T. 9,785	A.K.A.C.T.V. Alagappa Chettiar s/o Sithambaram Chettier as trustee, Ng. Chong Geng & Sons Limited, Synn Lee & Co. Limited, Ong Thye Eng as trustee, Kheoh Aik Law as trustee, Chuah Say Hai as trustee, Chai Wai Leong as trustee, Pong Kien Ngor as trustee, Han Leck Juan as trustee and Ooi Teng Kang as trustee	3. 3.04	20
1,930	9,787	" " "	6 1 27	
1,922	9,784	" " "	1 1 27	
1,928	9,786	" " "	1 1 38.9	
17	10,800	" " "	4 3 09.5	
18	10,801	" " "	2 0 28.8	40
19	14,401	" " "	3 2 27.6	

TRUE COPY

(Init'd)

Chief Registrar
Federal Court, Malaysia
Kuala Lumpur 4.9.69

NO. 2
DECLARATION OF INTENDED ACQUISITION UNDER SECTION
8 OF THE LAND ACQUISITION ACT 1960

In the High
Court

No. 2

Declaration of
 Intended
 Acquisition

8th October,
 1964

SELANGOR GOVERNMENT GAZETTE

8th Oct., 1964

323

No. 678.

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

10

Site for Erection of Houses and Flats.

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 and areas are situated.

Dated this 28th day of September, 1964.
 (PHT.K.L.9/15/64; P.T.G.Sel. O. 50)

OSMAN BIN ALI,
 Commissioner, Selangor

SCHEDULE

20

District - Kuala Lumpur.
 Town - Kuala Lumpur.

Survey Lot No.	Title or Occupation	Registered Proprietor or Recorded Occupant	Area of Lot	Approx. Area to be acquired
			A. R. P	A. R. P
Sec.85A 1,922	C.T. 9,784	A.K.A.C.T.V.Alagappa Chettiar s/o Sithambaram Chettiar as trustee, Ng Chong Geng & Sons Limited, Synn Lee & Co. Ltd., Ong Thye Eng as trustee, Kheoh Aik Law as trustee, Chuah Say Hai as trustee, Chai Wai Leong as trustee, Pong Kien Ngor as trustee, Han Leck Juan as trustee and Ooi Teng Kang as trustee	1 27	The whole

30

4.

In the High Court	1,928	9,786	"	"	1	1	38.9	"
<u>No. 2</u>	Sec. 79							
Declaration of Intended Acquisition	1,924	9,785	"	"	3	3	04	"
	1,930	9,787	"	"	6	1	27	"
8th October, 1964 (Contd.)	Sec. 47							
	17	10,800	"	"	4	3	09.5	"
	18	10,801	"	"	2	0	28.8	"
	19	14,401	"	"	3	2	27.6	"

TRUE COPY

(Int'd.)

10

Chief Registrar
Federal Court, Malaysia
Kuala Lumpur
4.9.69

NO. 3
NOTICE OF ENQUIRY

In the High
Court

No. 3

Notice of
Enquiry

15th October
1964

No.(7A) in PHT.KL.9/15/64

(Land 255)

FORM E

LAND ACQUISITION ACT, 1960

(Section 10)

INTENDED ACQUISITION: NOTICE OF ENQUIRY

10 In accordance with the declaration of intended acquisition of the lands described in the Schedule hereunder, notice is hereby given that an enquiry to hear all claims to compensation for all interests in such land will be held on 12th day of November, 1964 at 10.30 am hours at the Land Office, Kuala Lumpur

2. All persons having interests in the said land, whether as proprietor, occupier, lessee, chargee, tenant or otherwise, are hereby required to appear before the undersigned at the above time either personally or by agent and there to state:

20 (a) the nature of their respective interests in the land:

(b) the amount and particulars of their claims to compensation for such interests:

(c) their objections, if any, to the measurements of approximate area given in the Schedule below:

30 (d) the names of any other person known to the party or his agent to possess any interests in the land or any part thereof, and to produce all documents and deeds relating to their claims.

3. Notice is further given that the undersigned may require -

(a) that in any particular case any such statement or statements should be

In the High
Court

No. 3

Notice of
Enquiry

15th October
1964

(Contd.)

reduced to writing and signed by the
party or his agent:

- (b) that any person in possession of the
issue document of title or of any deed
or deeds evidencing title in respect of
any land Scheduled below deliver up
such document, deed or deeds at the
time of the enquiry.

Dated this 15th day of October, 1964

(Sd.) Raja Shah Kobat b. Raja Hamzah
Collector

10

District: Kuala Lumpur
Town: Kuala Lumpur

S-J.C.K., Pk.

SCHEDULE

Survey Lot No.	Title or Occupation	Registered Proprietor or Recorded Occupant	Area of Lot	Approx. Area to be acquired	
<u>Sec.85A</u>			A. R. P.		
1922	C.T. 9784	A.K.A.C.T.V. Alagappa Chettiar s/o Sithambaram Chettiar as Trustee, Ng Chong Geng & Sons Limited, Synn Lee & Co. Ltd., Ong Thye Eng as Trustee, Kheoh Aik Law as Trustee, Chuah Say Hai as Trustee, Chai Wai Leong as Trustee, Pong Kien Ngor as Trustee, Han Leck Juan as Trustee and Ooi Teng Kang as Trustee	0. 1.27	The whole	20
1928	C.T. 9786	- do -	1. 1.39	-do-	
<u>Sec.79</u>					
1924	C.T. 9785	- do -	3. 3.04	-do-	
1930	C.T. 9787	- do -	6. 1.27	-do-	
<u>Sec.47</u>					
17	C.T.10800	- do -	4. 3.09.5	-do-	40
18	C.T.10801	- do -	2. 0.28.8	-do-	
19	C.T.14401	- do -	3. 2.27.6	-do-	

NO. 4

NOTICE (to Alagappa Chettiar) TO REQUIRE
EVIDENCE IN WRITING

No.(7) in PHT.KL.9/15/64

ANNEXURE "E"
(Land 259)

FORM F

LAND ACQUISITION ACT, 1960
(Section 11)

NOTICE TO REQUIRE EVIDENCE IN WRITING

To:

10 To: Inche A.K.A.C.T.V. Alagappa Chettiar s/o
Sithambaram Chettiar as Trustee.

Whereas the undersigned has reason to believe that you have particular knowledge of the land referred to in the attached notice (Copy of Form E to be attached):

Take notice that you are hereby required to furnish, within 21 days of this date, a statement in writing declaring the following -

- 20 (a) separate valuations of the land and of the improvements, if any, thereon, showing the basis upon which such valuations are made:
- (b) the name of every person possessing any interest in the land or any part thereof, either as co-owner, chargee, lessee, sub-lessee, tenant or otherwise:
- 30 (c) the nature of any such interests and the amount of the rents and profits, if any, received or receivable on account thereof for the three years immediately preceding the date of this notice.

Dated this 15th day of October, 1964

(Sd.) Raja Shah Kobat b. Raja Hamzah
Collector

I, the undersigned V.C.T. Venkatachalam hereby acknowledge receipt of the above notice.

Dated this 24th day of October, 1964.

(Sd.) V.C.T. Vankatachalam
24.10.1964

L-G.P., K.L.

In the High
Court

No. 4

Notice (to
Alagappa
Chettiar) to
require evid-
ence in writing

15th October
1964

In the High Court

No. 5

Notice (to Ong Thye Eng) to require evidence in writing

15th October 1964

NO. 5

NOTICE (to Ong Thye Eng) TO REQUIRE EVIDENCE IN WRITING

ANNEXURE "D"

(No.(7) in PHT.KL.9/15/64

FORM F

LAND ACQUISITION ACT, 1960 (Section 11)

NOTICE TO REQUIRE EVIDENCE IN WRITING

To: Ong Thye Eng as Trustee

Whereas the undersigned has reason to believe that you have particular knowledge of the land referred to in the attached notice (Copy of Form E to be attached): 10

Take notice that you are hereby required to furnish, within 21 days of this date, a statement in writing declaring the following -

- (a) separate valuations of the land and of the improvements, if any, thereon, showing the basis upon which such valuations are made; 20
- (b) the name of every person possessing any interest in the land or any part thereof, either as co-owner, chargee, lessee, sub-lessee, tenant or otherwise; and
- (c) the nature of any such interests and the amount of the rents and profits, if any, received or receivable on account thereof for the three years immediately preceding the date of this notice. 30

Dated this 15th day of October, 1964.

(Sd.) Raja Shah Kobat b. Raja Hamzah Collector

I, the undersigned.....hereby acknowledge receipt of the above notice.

Dated this 29th day of October, 1964

(Sd.) ?

29.10.64

NO. 6
NOTES OF ENQUIRY BY COLLECTOR

"ANNEXURE "I"

NOTES OF ENQUIRY BY COLLECTOR

Before me Raja Shah Kobat bin Raja Hamzah, Collector of Land Revenue, Kuala Lumpur, this 12th day of November, 1964 at the District Office, Kuala Lumpur.

In the High
Court

No. 6

Notes of Enquiry
by Collector

12th November
1964

10 In the matter of the acquisition of Lot 1922 (CT.9784) Lot 1928 (CT.9786) Section 85A Town of Kuala Lumpur, Lot 1924 (CT.9785) Lot 1930 (CT.9787) Section 79 Town of Kuala Lumpur, Lots 17, 18 & 19 Section 47 Town of Kuala Lumpur.

Present:

Mr.W.D.Bewsher for all the proprietors.

Mr.L.P.Thean for the Municipality.

20 Mr.K.Parampathy representing Chief Valuer.

Mr.Andrew Tan representing Chief Valuer.

30 W.D. Bewsher states: I am representing all the proprietors of the lands to be acquired. I claim \$30/- per sq. ft. for all the lots to be acquired. This is based on sale of land in the vicinity i.e. Lots 74 to 80 Section 48 sold on 8.1.64 at \$21/- per sq. ft. These lots have, I understand, been approved for flats of 5 storeys. These lots provide no parking facility whereas the lands under acquisition can provide for all facilities. I also understand that recently Government had alienated an area of State Land (the former Army Camp site) in Section 48 of the Town to the Malayan Indian Congress at \$15/- per sq. ft. I would also like to point out that there appears to be quite large areas of State Land (ex Mining Land) available at the back of the lots to be acquired which can be used for the purpose of the proposed
40 Municipal flats. Finally I would like to point

In the High Court

No. 6

Notice of Enquiry by Collector

12th November 1964

(Contd.)

out that there are about 46 temporary house owners on the lands to be acquired who are paying ground rent to the land-owners.

(Sd.) Raja Shah Kobat b. Raja Hamzah.

Mr. L.P. Thean states: I represent the Municipality, the acquiring authority. I appear merely to take note of the claim to be made by the proprietors and I have no instruction to submit any valuation for the land to be acquired on behalf of the Municipality.

10

(Sd.) Raja Shah Kobat b. Raja Hamzah.

Mr. Parampathy states: I appear on behalf of the Chief Valuation Officer, Federation of Malaya. My department has not yet completed its detailed valuation of the land to be acquired and I am, therefore, not yet in a position to offer my views on the valuation of the lands.

(Sd.) Raja Shah Kobat b. Raja Hamzah.

20

No. 7

Grounds on which amount of compensation was determined.

16th December 1964

NO. 7

GROUNDS ON WHICH THE AMOUNT OF COMPENSATION WAS DETERMINED

ANNEXURE "B"

GROUNDS ON WHICH THE AMOUNT OF COMPENSATION WAS DETERMINED.

Collector's notes and award.

The lands to be acquired are not situated within the commercial centre of the Town but in a comparatively poor residential section. As a whole they are irregular in shape and development would therefore entail considerable loss of land for a comprehensive road system which will be necessary. There are numerous squatters on the

30

lots at the rear and north-west corner. A private developer would therefore have to spend considerable sum in any effort to evict these squatters. This tends to reduce the value of the lands.

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

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

Under the circumstances, I value the land at \$3/- per sq.ft. and award a total compensation of \$2,975,190/- to be divided amongst the owners according to their respective shares in the lands.

(Sd.) Raja Shah Kobat b. Raja Hamzah

20

16.12.64.

In the High
Court

No. 7

Grounds on
which amount
of compensa-
tion was
determined

16th December
1964

(Contd.)

In the High
Court

NO.8
WRITTEN AWARD OF COMPENSATION

No. 8

No.(11) in PHT.KL.9/15/64
FORM G

ANNEXURE "D"
(Land 260)

Written Award
of Compensation

LAND ACQUISITION ACT, 1960
(Section 14)

17th December
1964

WRITTEN AWARD OF COMPENSATION

Acquisition Hearing No. 15/64 in respect of
Lands scheduled in Gazette Notification 678 dated
8.10.1964.

The awards set out in the Schedule hereto are
hereby made in respect of the areas of land
specified therein, to the persons interested
therein, as specified below.

District: Kuala Lumpur

Town: Kuala Lumpur

SCHEDULE

L-G.P., K.L.

Lot No.	Area required	Persons interested	Nature of Interest	Apportionment of award	For official use
<u>Sec.85A</u> 1922	A.R. P. 0.1.27	A.K.A.C.T.V.Alagappa Chettiar s/o Sithambaram Chettiar as Trustee	<u>Shares</u> 1/2	 \$1,487,595.00	
1928	1.1.38.9	Ng Chong Geng & Sons Ltd.	20/240	247,932.50	
<u>Sec. 79</u> 1924	3.3.04	Synn Lee & Co.Ltd. Ong Thye Eng as Trustee	20/240 20/240	247,932.50 247,932.50	
1930	6.1.27	Kheoh Aik Law as Trustee Chuah Say Hai as Trustee	12/240 12/240	148,759.50 148,759.50	
<u>Sec.47</u> 17	4.3.09.5	Chai Wai Leong as Trustee	18/240	223,139.25	
18	2.0.28.8	Pong Kien Ngor as Trustee	6/240	74,379.75	
19	3.2.27.6	Han Leck Juan as Trustee Ooi Teng Kang as Trustee	3/240 9/240	37,189.88 111,569.62	
				<u>\$2,975,190.00</u>	

Dated this 17th day of December, 1964
(Sd.) Raja Shah Kobat b.Raja Hamzah
Collector

10

30

40

NO. 9

NOTICE OF AWARD AND OFFER OF COMPENSATION
TO ONG THYE ENG AS TRUSTEE

In the High
Court

No. 9

Notice of Award
and offer of
Compensation
to Ong Thye
Eng as Trustee

17th December
1964

No.(15) in PHT.KL.9/15/64

FORM H

LAND ACQUISITION ACT, 1960
(Section 16)

NOTICE OF AWARD AND OFFER OF COMPENSATION

10 Acquisition Proceedings No.15/64 Gazette Notifi-
cation No. 678 dated 8.10.64

To Ong Thye Eng as Trustee

You are hereby informed that at the hearing
before the undersigned on the 12th day of
November, 1964 an award as in the Schedule hereto
was made in respect of the lands specified there-
in in which you have an interest.

20 2. In accordance with this award I hereby offer
you the sum of \$247,932.50 being the amount
specified below as full compensation for your
interest in this land.

Dated this 17th day of December, 1964.

District: Kuala Lumpur
Town: Kuala Lumpur.

(Sd.) Raja Shah Kobat b. Raja Hamzah
Collector

SCHEDULE

(Relevant extract from Form G including all
awards, if any, to other persons interested in
the land)

Lot No.	Area Required	Persons interested	Nature of interest	Apportion- ment of Award
<u>Sec.85A</u> A R P				
1922	0 1 27	}		
1928	1 1 38.9			
<u>Sec.79</u>				
1924	3 3 04	}	Ong Thye Eng as	20/240
1930	6 1 27			
<u>Sec.47</u>				
17	4 3 09.5	}	Trustee	<u>\$247,932.50</u>
18	2 0 28.8			
19	3 2 27.6			

40

In the High
Court

FORM H

No. 9

Notice of Award
and offer of
Compensation

to Ong Thye
Eng as Trustee

17th December
1964

(Contd.)

I, the undersigned
hereby acknowledge receipt of the above
appended offer.

2. I am prepared to attend the Land Office on
any appointed day to receive payment in cash.

I request that the amount due be sent to me
by cheque/money order at the above address.

I do not accept the above
appended offer

Dated this 29th day of December, 1964

(Sd.)

10

No.10

NO.10

Notice of Award
and offer of
Compensation

to Alagappa
Chettiar

28th December
1964

NOTICE OF AWARD AND OFFER OF COMPENSATION
TO ALAGAPPA CHETTIAR

No.(12) in PHT.KL.9/15/64

(Land 256)

FORM H

LAND ACQUISITION ACT, 1960

(Section 16)

NOTICE OF AWARD AND OFFER OF COMPENSATION

Acquisition Proceedings No.15/64 Gazette
Notification No. 678 dated 8.10.1964

20

To Inche A.K.A.C.T.V. Alagappa Chettiar
s/o Sithambaram Chettiar as Trustee

You are hereby informed that at the hearing
before the undersigned on the 12th day of
November, 1964 an award as in the Schedule hereto
was made in respect of the lands specified therein
in which you have an interest.

2. In accordance with this award I hereby
offer you the sum of \$1,487,595/- being the
amount specified below as full compensation for
your interest in this land.

30

Dated this 17th day of December 1964

District: Kuala Lumpur

Town: Kuala Lumpur

(Sd.) Raja Shah Kobat b.Raja Hamzah
Collector

SCHEDULE

(Relevant extract from Form G including all awards, if any, to other persons interested in the land)

In the High Court

No.10

Notice of Award and offer of compensation to Alagappa Chettiar

28th December 1964

(Contd.)

Lot No.	Area Required	Persons interested	Nature of interest	Apportionment of Award	
	Sec.85A A.R. P.				
10	1922 0.1.27	} A.K.A.C.T.V.			
	1928 1.1.38.9				
	Sec.79	} Alagappa Chettiar			
	1924 3.3.04		} s/o Sithambaram Chettiar	1/2 share	<u>\$1,487,595.00</u>
	1930 6.1.27				
	Sec.47	} as Trustee			
	17 4.3.09.5				
	18 2.023.8				
20	19 3.2.27.6				

I, the undersigned.....
 hereby acknowledge receipt of the above offer ~~appended~~

2. ~~*I am prepared to attend the Land Office on any appointed day to receive payment in cash.~~

~~*I request that the amount due be sent to me by cheque/money order at the above address.~~

*I do not accept the above offer ~~appended~~

Dated this 28th day of December, 1964.

(Sd.) A.K.A.C.T.V.CT. Venkatachalam Chettiar.

* Delete as appropriate.

In the High Court

NO.11

APPLICATION BY ALAGAPPA CHETTIAR THAT AN OBJECTION BE REFERRED TO COURT.

No.11

Application by Alagappa Chettiar that an objection be referred to Court

FORM N

Land Acquisition Act, 1960
(Section 38(1))

1965

Application that an Objection be referred to Court

To The Collector of Land Revenue,
Kuala Lumpur.

Acquisition Proceedings

10

No. 15/64

I, A.K.A.C.T.V. Alagappa Chettiar son of Sithambaram Chettiar as Trustee of No. 86 Ampang Street, Kuala Lumpur hereby make an objection to the award of the Collector of Land Revenue, Kuala Lumpur dated the 12th day of November 1964 in respect of land Lots Nos: 1922 and 1928 sec. 85A 1924 and 1930 Section 79 and 17, 18 and 19 Section 47 Certificate of Title Nos: 9784, 9786, 9785, 9787, 10800, 10801 and 14401 respectively in the Town and District of Kuala Lumpur.

20

2. My interest in the said lands is as follows namely that I am registered as proprietor as trustee of an undivided one half (1/2) share of all the said lands.

3. My objection is to the amount of the compensation.

4. The grounds of my objection are as follows:

(a) The award of \$1,487,595.00 made in respect of my undivided one half (1/2) share in the said lands gives a sum of approximately \$3.00 per square foot by way of compensation for the lands acquired.

30

(b) The said award of approximately \$3.00 per square foot is manifestly insufficient

having regard:-

In the High
Court

No.11

Application by
Alagappa
Chettiar that
an objection
be referred
to Court

1965

(Contd.)

1. To the present market value of comparable land in the Town of Kuala Lumpur and having regard to the present market value of land in the vicinity of the lands acquired.
- 10 2. To the situation and locality of the lands acquired which comprise an area of about 22 acres on Circular Road, Kuala Lumpur which is one of the principal residential area of Kuala Lumpur.
- 20 3. To the approval given in principle by the Town Planning Department prior to the date of acquisition for the use of the said land for the construction and erection of flats, detached dwelling houses, terrace and shop houses and to the suitability of the said lands for the construction of hotels, cinema halls, petrol service stations, market places and similar projects.
4. To the enhanced value of the land having regard to the confirmed proposals for the construction of a new one hundred feet wide dual carriageway upon the said lands giving a double frontage onto a very important road.
- 30 5. In accordance with the provisions of sub-section (1) of Section 38 of the Land Acquisition Act, 1960 I hereby require you to refer the matter to the Court for its determination.

Dated this day of 1965

Signature of the Applicant

A.K.A.C.T.V. Alagappa Chettiar
By his Attorney

Sd:

A.K.A.C.T.V.C.T.Venkatachalam Chettiar

In the High
Court

No.12

NO.12

APPLICATION BY ONG THYE ENG THAT AN
OBJECTION BE REFERRED TO COURT

Application by
Ong Thye Eng
that an objec-
tion be
referred to
Court

FORM N

Land Acquisition Act, 1960
(Section 38(1))

22nd January
1965

Application that an Objection be Referred to Court.

To: The Collector of Land Revenue,
Kuala Lumpur.

Acquisition Proceedings No.15/64

10

I, Ong Thye Eng as Trustee of No.2, Simpang Road, Taiping, hereby make an objection to the award of the Collector of Land Revenue, Kuala Lumpur dated 8th October, 1964 in respect of Lot Nos. 1922, 1928 Sec.85A, Lot Nos.1924, 1930 Sec.79; Lots 17, 18 and 19 Sec.47 in the Town and District of Kuala Lumpur.

2. My interest in the said lands is as follows, namely that I am the registered proprietor of an undivided 20/240 interest in all the said lands.

20

3. My objection is to the amount of the compensation.

4. The grounds of my objection are as follows:-

(a) The award of \$247,932.50 made in respect of my 20/240 interest in all the said lands is equivalent to a value of approximately \$3 per sq.ft.

(b) The said award of approximately \$3.00 per square foot is manifestly inadequate having regard to the market value of comparable land in the Town of Kuala Lumpur and especially the market value of land in the vicinity of the lands acquired.

30

(c) The Collector of Land Revenue, Kuala

Lumpur failed to give due consideration to:-

In the High
Court

No.12

Application by
Ong Thye Eng
that an
objection be
referred to
Court

22nd January
1965

(Contd.)

- 10
- (1) The fact that the lands acquired is situate in Circular Road and in a locality where the development of lands is into business sites such as petrol stations, market places, shop houses and similar projects.
- (2) The fact that the development and growth of the town of Kuala Lumpur in recent years has been very rapid and vigorous in the Ipoh Road/Circular Road sector.
- 20
- (3) The fact that the lands acquired comprise of 22 acres of flat land easily and readily developed without great expenditure and is probably the last site in the town area of Kuala Lumpur which is large enough to be developed as an integrated comprehensive unit with residential flats, shopping areas, petrol stations, cinema theatres and other business amenities.
- 30
- (4) The approval given in principle by the Town Planning Department of the Kuala Lumpur Municipality prior to the date of acquisition for the development of the said lands by the construction of flats, detached dwelling houses, terrace houses and shops and also to the suitability of the said lands for the construction of hotels, cinema halls and petrol stations.
- 40
- (5) The confirmed proposals for the construction of a new one hundred feet wide dual carriageway through the said lands in place of the existing single carriage-way forming that part of Circular Road running along the boundary of the lands acquired.

5. In accordance with the provisions of sub-section (1) of section 38 of the Land Acquisition Act, 1960, I hereby require you to refer the matter to the Court for its determination.

Dated this 21st day of January, 1965
(Sd.) Braddell & Ramani
Solicitors for Ong Thye Eng as Trustee
the Objector abovenamed.

In the High Court
No.13
Reference to Court
Alagappa Chettiar
21st April 1965

NO.13
REFERENCE TO COURT - ALAGAPPA CHETTIAR

FORM O
LAND ACQUISITION ACT, 1960
(Section 38 (5))

Acquisition Proceedings No. 15/64 Gazette
Notification No. 678 dated 8.10.64

REFERENCE TO COURT

To THE REGISTRAR, HIGH COURT,
KUALA LUMPUR

10

WHEREAS I have received an Application under section 38 of the Land Acquisition Act, 1960, requiring me to refer to the Court the following matter for its determination:

*AND WHEREAS a due deposit of One thousand dollars has been deposited with me as security for the costs of the reference and appeal:

NOW THEREFORE pursuant to the provisions of section 38 of the said Act I hereby refer the following objection to the Court:

20

(Here summarise objection/s)

That the amount of compensation awarded is insufficient having regard to the market value of the land.

2. The following is the situation and extent of the land, and particulars of any trees, buildings, or standing crops thereon:

(Here set out details)

Please see Annexure "A"

3. The following are the names and addresses of all the persons whom I have reason to believe are interested in such land:

30

* Delete if inapplicable.

(Name)	(Address)	(Interest)	In the High Court
A.K.A.C.T.V. Alagappa Chettiar s/o Sithambaram Chettiar as Trustee	c/o Messrs.Skrine & Co. Advocates & Solicitors, 44, Jalan Pudu, Kuala Lumpur.	Undivided one-half ($\frac{1}{2}$) share.	<u>No.13</u> Reference to Court Alagappa Chettiar

4. The following notices have been served upon the parties interested:

21st April
1965

10	(Notice)	(Name of Party)	(Contd.)
	Notices under Sections 10 & 11 of the Land Acquisition Act, 1960	A.K.A.C.T.V. Alagappa Chettiar s/o Sithambaram Chettiar as Trustee	

Notice under Section 16 of the Land Acquisition Act, 1960.

- do -

20 5. The following statements in writing have been made or delivered by the following interested parties:

(Name of Party)	(Particulars of Statement)
W.D. Bewsher (representative of all the registered proprietors)	Verbal statements were made and recorded as per Notes of Enquiry - Item (6) of para.9 of "Reference to Court."
L.P. Thean (Municipality's representative).	
30 K. Parampathy (Chief Valuer's representative, Ministry of Finance).	

↓ 6. The amount awarded for damages under section 6 of the said Act was N I L dollars.

7. The amount of compensation awarded under section 14 was One million four hundred & eight-seven thousand five hundred & ninety-five dollars only.....dollars.

↓ 8. The following are the grounds on which the amount of compensation was determined:

↓ To be completed only where the objection is to the amount of compensation.

In the High Court
No.13
Reference to Court
Alagappa Chettiar
21st April 1965
(Contd.)

(Here set out grounds)

Please see Annexure "B"

9. I attach hereto copies of the following documents:

(Here list documents)

Please see Annexure "C"

Dated this 21st day of April, 1965

(Sd.) Illegible

Permungut Kasil Tanah
Kuala Lumpur.
Collector

10

(The above paragraphs may be completed by appropriate references to documents to be annexed thereto).

No.14
Reference to Court by
Ong Thye Eng
21st April 1965

NO.14

REFERENCE TO COURT BY ONG THYE ENG

FORM O

LAND ACQUISITION ACT, 1960

(Section 38(5))

Acquisition Proceedings No. 15/64

20

Gazette Notification No. 678 dated
8.10.64

REFERENCE TO COURT

To, THE REGISTRAR, HIGH COURT,
KUALA LUMPUR.

WHEREAS I have received an application under section 38 of the Land Acquisition Act, 1960, requiring me to refer to the Court the following matter for its determination:

AND WHEREAS a due deposit of One Thousand dollars has been deposited with me as security for the costs of the reference and appeal:

30

NOW THEREFORE pursuant to the provisions of section 38 of the said Act I hereby refer the following objection to the Court:

In the High Court

No.14

(here summarise objection/s)

Reference to Court by Ong Thye Eng
21st April 1965

That the amount of compensation awarded is insufficient having regard to the market value of the land.

(Contd.)

10 2. The following is the situation and extent of the land, and particulars of any trees, buildings, or standing crops thereon:

(here set out details)

Please see Annexure "A"

3. The following are the names and addresses of all the persons whom I have reason to believe are interested in such land:

	(Name)	(Address)	(Interest)
20	Ong Thye Eng as Trustee	c/o Messrs.Braddell & Ramani, Advocates & Solicitors, Hongkong Bank Chambers, Kuala Lumpur.	20/240 shares of $\frac{1}{2}$ undivided share.

4. The following notices have been served upon the parties interested:

	(Notice)	(Name of Party)
	Notices under Sections 10 & 11 of the Land Acquisition Act, 1960	Ong Thye Eng as Trustee
30	Notice under Section 16 of the Land Acquisition Act, 1960	- do -

5. The following statements in writing have been made or delivered by the following interested parties:

In the High Court	(Name of Party)	(Particulars of Statement)	
<p>No.14 Reference to Court by Ong Thye Eng 21st April 1965 (Contd.)</p>	<p>W.D.Bewsher (representative of all the registered proprietors). L.P.Thean (Municipality's representative). K.Parampathy (Chief Valuer's representative, Ministry of Finance).</p>	<p>Verbal statements were made and recorded as per Notes of Enquiry - Item (6) of para. 9 of "Reference to Court"</p>	10
		<p>6. The amount awarded for damages under section 6 of the said Act was N I L dollars.</p>	
		<p>7. The amount of compensation awarded under section 14 was Two hundred & forty-seven thousand nine hundred & thirty-two & Cents fifty only dollars.</p>	
		<p>8. The following are the grounds on which the amount of compensation was determined:</p>	
		<p>(Here set out grounds)</p>	20
		<p>Please see Annexure "B"</p>	
		<p>9. I attach hereto copies of the following documents:</p>	
		<p>Please see Annexure "C"</p>	
		<p>Dated this 21st day of April, 1965.</p>	
		<p>Sd: Illegible Permungut Hasil Tanah Kuala Lumpur.</p>	
		<p>(The above paragraphs may be completed by appropriate references to documents to be annexed thereto)</p>	30

NO.15
SITUATION AND EXTENT OF LAND

In the High
Court

No.15

Situation and
extent of land

ANNEXURE "A"

SITUATION AND EXTENT OF LAND, ETC.

Survey Lot No.	Title	Sec- tion	Area of Lot		Buildings standing on the land, if any
			A.	R. P.	
10	1922	C.T. 9784	85A	0. 1.27	Vacant.
	1928	" 9786	85A	11.138.9	4 temporary dwelling houses.
	1924	" 9785	79	3. 3.04	19 blocks of 34 units temporary dwelling houses.
20	1930	" 9787	79	6. 1.27	19 blocks of 45 units temporary dwelling houses.
	17	" 10800	47	4. 3.09.5	5 blocks of 19 units temporary dwelling houses.
	18	" 10801	47	2. 0.28.8	Vacant
30	19	" 14401	47	3. 2.27.6	Vacant

The lands are situated at the 2nd mile Jalan Pekeliling off Jalan Pahang in the District and Town of Kuala Lumpur.

In the High Court

No.16

NO.16

NOTES OF EVIDENCE TAKEN TO GILL, J.
TITLES TO THE APPLICATION. PRELIMINARIES.

Notes of Evidence taken to Gill, J. Titles to the Application. Preliminaries.

24th October 1966

CIVIL APPLICATION NO. 2 OF 1965

In the matter of the Land Acquisition Act, 1960 (Section 38 (5))

And

In the matter of the Acquisition of Lots 1922 and 1928, Section 85A, Lots 1924 and 1930, Section 79 and Lots 17, 18 and 19, Section 47, Town of Kuala Lumpur.

10

Between

Chuah Say Hai as Trustee Applicant

And

Collector of Land Revenue, Kuala Lumpur Respondent

CIVIL APPLICATION NO. 4 OF 1965

In the matter of the Land Acquisition Act, 1960 (Section 38(5))

And

In the matter of the Acquisition of Lots 1922 and 1928, Section 85A, Lots 1924 and 1930, Section 79, and Lots 17, 18 and 19, Section 47, Town of Kuala Lumpur

20

Between

Pong Kien Ngor as Trustee Applicant

And

Collector of Land Revenue, Kuala Lumpur Respondent

30

CIVIL APPLICATION NO. 5 OF 1965

In the matter of the Land Acquisition Act, 1960
(Section 38 (5))

And

In the matter of the Acquisition of Lots 1922 and
1928, Section 85A, Lots 1924 and 1930, Section 79
and Lots 17, 18 and 19, Section 47, Town of
Kuala Lumpur

Between

10 Han Leck Juan as Trustee Applicant

And

Collector of Land Revenue, Kuala Lumpur Respondent

CIVIL APPLICATION NO. 6 OF 1965

In the matter of the Land Acquisition Act, 1960
(Section 38 (5))

And

20 In the matter of the Acquisition of Lots 1922 and
1928, Section 85A, Lots 1924 and 1930, Section 79
and Lots 17, 18 and 19, Section 47, Town of
Kuala Lumpur

Between

A.K.A.C.T.V. Alagappa Chettiar s/o
Sithambaram Chettiar as Trustee Applicant

And

Collector of Land Revenue, Kuala Lumpur Respondent

CIVIL APPLICATION NO. 7 OF 1965

In the matter of the Land Acquisition Act, 1960
(Section 38 (5))

And

30 In the matter of the Acquisition of Lots 1922 and
1928, Section 85A, Lots 1924 and 1930, Section 79
and Lots 17, 18 and 19, Section 47, Town of
Kuala Lumpur

Between

Ooi Teng Kang as Trustee Applicant

And

Collector of Land Revenue, Kuala Lumpur Respondent

In the High
Court

No.16

Notes of
Evidence taken
to Gill, J.
Titles to the
Application.
Preliminaries.

24th October
1966

(Contd.)

CIVIL APPLICATION NO.11 OF 1965.

In the matter of the Land Acquisition Act, 1960
(Section 38 (5))

And

In the matter of the Acquisition of Lots 1922
and 1928, Section 85A, Lots 1924 and 1930, Sec-
tion 79 and Lots 17, 18 and 19, Section 47, Town
of Kuala Lumpur

Between

10 Ng Chong Geng & Sons, Ltd. Applicants

And

Collector of Land Revenue, Kuala Lumpur Respondent

In the High
Court

No.16

Notes of
Evidence taken
to Gill, J.
Titles to the
Application.
Preliminaries

24th October
1966

(Contd.)

NOTES OF GILL, J.

24th October, 1966.

In open Court.

Inche Peddie for Applicants in Applications
2, 4, 5, 6, 7 and 8.

Inche Ng Ek Teong with Inche Padmansbhan for
Applicants in Applications 9, 10 and 11.

20 Inche Azmi bin Dato Kamaruddin for the
Respondent in each case.

Counsel agree to the applications being taken
together.

Assessors: 1. K.S. Dening.

2. J.A. Samy.

30 Inche Peddie informs the Court that as
Inche J.A. Samy was the Chief Clerk of Messrs.
Bannon & Bailey of which firm he was a partner
it would not be desirable to have him as an
assessor. Inche J.A. Samy is therefore
discharged.

Case adjourned until 9.30 a.m. tomorrow for
another assessor to be found.

Signed (S.S. Gill)

In the High
Court

No.17

NO.17

OPENING SPEECH OF COUNSEL FOR APPLICANTS
2, 4, 5, 6, 7 and 8.

Opening speech
of Counsel for
Applicants 2,4,
5, 6, 7 and 8
25th October
1966

25th October, 1966.

Civil Applications Nos. 2, 4, 5, 6, 7, 8, 9, 10
and 11 of 1965

Counsel as before.

Assessors: K.S.Dening
P.M. Varghese

Inche Peddie opens case:

Total area involved 22 acres 3 roods 2.8 poles, made up of 7 titles. Lands are contiguous, so that the land is in fact in one lot. Agreed that it is not necessary to value land held under each title separately. There are ten owners of land, holding various shares. The applications now being dealt with concern 9 of the owners. Another common factor is that the material date is 4th June, 1964. Selangor Gazette Notification No. 335/64. Proceedings before Collector in October 1964. Claim by owners, \$30/- per square foot. Proprietors no longer claim \$30/- per square foot. Present claim is \$12/- per square foot. State Legal Adviser advised accordingly. 10 20

Refer to Section 12 of Land Acquisition Act, 1960. Market value - price which an owner willing and not obliged to sell can expect to get for the land. The highest value. Law here based on Indian law. Aggarawala on Land Acquisition (3rd edition) page 131. Any potentiality the land has must be taken into account. 30

Land ripe for development. Plans in 1957 and then in 1964. New plan aimed at more dense development. Land acquired for multi-storey flats.

Methods of valuation: (1) opinion of land valuers, (2) prices which were being paid for comparable land at the time of the acquisition.

Collector's valuation based on sale in November 1963. One sale out of line with the general trend must be discarded: Aggarawala, pages 197 and 198. Sale of undivided share unreliable (Aggarawala, page 206). Area sold not material. Land sold not far from the centre of Kuala Lumpur. Refer to Superintendent of Lands and Surveys, Sarawak v. Aik Hoe & Co., Ltd. (1966) M.L.J. 243, 246.

In the High
Court

No.17

Opening speech
of Counsel for
Applicants 2,4,
5, 6, 7 and 8

25th October
1966

10 Land has access to all parts of the town.
Area not a poor area as stated by Collector.
Development would determine class of the area.

(Contd.)

Problems of irregularity of land had already been settled with the State Government. Most of the land vacant at the time of the acquisition. 47 squatter houses on the whole area.

Agreed bundle put in and marked "P.1".

Evidence called.

20

NO.18

EVIDENCE OF A.K.A.C.T.V. ALAGAPPA CHETTIAR.

P.W.1. A.K.A.C.T.V. ALAGAPPA CHETTIAR s/o
SITHAMBARAM CHETTIAR affirmed, states in Tamil:

I am 42 years old. I reside at 3D Ampang Street, Kuala Lumpur. I am the registered owner of an undivided half-share in the lands acquired.

I had been arranging to develop this land for a long time. In 1957 I had a plan prepared for the development of this land. This is the plan (put in and marked "P.2"). Nothing was done to proceed with the development in accordance with this plan because the other half was owned by R.M.P. firm of 30 Ampang Street, Kuala Lumpur. The administrator of the estate of the other half owner was R.M.P.M.P. Sinna Meyappa Chettiar. There was dispute among the partners of R.M.P. firm. Court action ensued to divide the property. The property was eventually divided by consent. One Devarayan Chettiar acquired the

30

No.18

Applicants'
Evidence

A.K.A.C.T.V.
Alagappa
Chettiar

Examined

25th October
1966

In the High
Court

No.18

Applicants'
Evidence

A.K.A.C.T.V.
Alagappa
Chettiar
Examined

25th October
1966

(Contd.)

other half share in the lands in question.

I have knowledge of the affairs of R.M.P. firm. I and the R.M.P. firm had more than one property which I shared in common. We shared the same office at 30 Ampang Street, Kuala Lumpur. Devarayan Chettiar became the owner in 1962 on the petition of the R.M.P. firm.

Devarayan Chettiar was between 22 and 24 years of age in 1962. He did not live permanently in Malaya. He lived in Malaya for 4 years in all. Those four years were not continuous. He had to return to India because of visa problems. He came to this country on short visits. He was an Indian resident. He came here when his share in the R.M.P. firm was transferred to him. This share consisted of this land.

10

I discussed with him the development of the land. He said he could not develop the land because he was here on a short visit. He said he wanted to sell the land.

20

I am aware of the taxation laws in India. There is a capital gains tax in India. I have three brothers in India. They tell me about taxes in India. I am also paying tax in India. Capital gains tax is a tax on the profit on the sale of land. Capital gains tax is 75 per cent of the Income Tax rate. The result is about 65 per cent. Only a resident of India is required to pay capital gains tax. Devarayan Chettiar did not have to pay the Indian capital gains tax if he sold the land when he was in this country. Devarayan Chettiar is not in Malaya now. He went back to India in the middle of 1964. He wanted to stay here, but he could not get permission from the Immigration authorities. He had to leave the country by the middle of 1964, and to escape the capital gains tax he had to sell the land. He did not know much about the values of land in Malaya. I was not here when he sold his half share. I had gone to India. I was in India from September, 1963 to 10th October, 1964. Before I left for India Devarayan Chettiar did not consult me about the value of the land. He asked me to join him in selling the land, because nobody would want to buy an undivided share. I said I was not interested in selling

30

40

the land as I wanted to develop it. He eventually sold the land at \$2.20 per square foot. Initially he received part payment of the land in the nature of a deposit.

The other reason for the delay in my developing the land was that I was in communication with the Planning Officer of the Municipality and the Land Office regarding acquisition of land for a 100-foot road.

10 In 1958 the Land Office sent me this plan No.D.166E (put in and marked P.3). This sets out the arrangement regarding adjustment of land between owners of the land and the Government. Irregularity of the land was overcome in 1958 by reason of the adjustment shown in the plan.

20 My land was zoned in 1957 for open development. Later advertisements were made for denser development. There was an objection to denser development by one of the adjoining owners because there was no path leading to his land. I agreed to give him a path, and he withdrew his objection. There was no other objection.

The Municipality wrote to me letter dated 10th June, 1960 (page 6 of P.1) about the land right opposite the land which has now been acquired. That land has been developed. There are terrace houses there.

30 In November 1963 Devarayan Chettiar sold his share to the other present co-owners. The co-owners prepared some plans which were sent to me by my brother. This is one of the plans sent to me by my brother (marked P.4 for identification). This was a much better plan than I had in mind. I agreed with the plan. I was willing to proceed with the development on those lines.

40 I produce a newspaper cutting of an advertisement relating to town planning by the Municipality (put in and marked P.5). I produce two further newspaper cuttings about the plan to develop this area (put in and marked P.6 and P.7).

I know that Loke Wan Toh land in Batu Road, Kuala Lumpur near the Odeon Cinema was sold at \$20/- a square foot in the early part of 1964.

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Applicants' Evidence

A.K.A.C.T.V.
Alagappa
Chettiar
Examined

25th October
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(Contd.)

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No.18

Applicants'
Evidence

A.K.A.C.T.V.
Alagappa
Chettiar
Examined

25th October
1966

(Contd.)

Cross-examined
by Ng Ek
Teong

Notice requiring evidence (Form F) and Notice of Inquiry (Form E) were dated 15th October, 1964 and served on my brother on 24th October, 1964. Hearing was on 12th November, 1964. I was not ready with the hearing on 12th November, 1964. I wanted an extension of time which was refused by the Collector. On 12th November, 1964 I claimed \$30/- per square foot. I do not claim \$30/- per square foot now. I now claim \$12/- per square foot. I base that claim on Mr. Williams' report.

10

Cross-examined by Ng Ek Teong:

This property was bought during my father's life time, in the first half of the 1930s, during the slump period. I do not know what price my father paid. It must have been bought very cheap.

There were some huts on 5 or 6 acres of the land which has been acquired by the Government. The rest of the land was occupied by the Military. The Military occupied about 10½ acres. The Military vacated the land after Devarayan Chettiar sold his share and before the acquisition. We had 46 tenants living on the land. They had sublet their houses.

20

Cross-examined
by Azmi

Cross-examined by Azmi: I am a Chettiar by birth. I consider myself a wealthy man. I make money on sale of properties, and not by moneylending. I have other businesses. If some property is being sold cheap, I would not take interest.

30

I knew Devarayan Chettiar since 1955. He had one third share in R.M.P. firm. When I submitted my first plan in 1957 the other registered owner was Chinna Meyappa Chettiar. Devarayan Chettiar became the other registered owner in the middle of 1962. In 1962 I was still interested in developing the land. I was not interested in buying Devarayan Chettiar's share because I had no money. Devarayan Chettiar sold the land at an extremely low price. At that time the proper price would be \$20 to \$21 per square foot. I did not buy the property because I had no money.

40

Devarayan Chettiar told me that he wanted

to sell the land because he could not live in this country permanently. He also told me that if he sold the land when he was in India he would have to pay capital gains tax. Another reason was that he wished to sell the land and take the money to India. He did not tell me that he wished to sell the land at \$2.20 per square foot. He did not tell me what price he wanted. He did not consult me regarding the market value of the land.

10

When Devarayan Chettiar sold the land I was in India. My younger brother was then looking after my interests in this country. I had given him a power of attorney. I was in correspondence with my younger brother while I was in India. My brother did not write to me that Devarayan Chettiar wanted to sell his land at \$2.20 per square foot. Had I bought the land at \$2.20 per square foot I would have made a lot of money. By selling the land at \$2.20 per square foot Devarayan Chettiar lost about ten million dollars. He was in a haste to return to India, and he did not know the market value of the land. I do not know whether there were other Chettiars to advise him about the value of the land. I do not know whether his Chettiar friends had any idea of the market value of the land.

20

Devarayan Chettiar could not stay here because the Immigration authorities would not give him permission to stay here. He stayed here for more than a year before he sold his property and returned to India. He has not come back since. He has other small properties in this country in partnership with other persons. He went back to India in May 1964. Before returning to India he gave a general power of attorney to one Manickam Chettiar.

30

He wanted to avoid paying capital gains tax.

I did not know at that time who bought the land from Devarayan Chettiar. I know now. I do not know whether 7 of the co-owners are from Taiping. If people from Taiping bought the land, I do not agree that there was much publicity about the sale of land.

40

I applied for subdivision in 1957. That plan

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Applicants'
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Alagappa
Chettiar

Cross-examined
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Cross-examined
by Azmi

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was approved. The plan for development was approved in 1957. Devarayan Chettiar was aware of the development plans. I abandoned my plan after the other owners had put up their plan (P.4). P.4 was not sent to the Municipality for approval.

P.3 was approved in 1958. Nothing was done to carry out this plan until the sale by Devarayan Chettiar because of the dispute which was not settled until 1962 when Devarayan Chettiar became registered owner of the other half. Nothing was done after 1962 because Devarayan Chettiar did not want to join me. I did have money to develop. I had about \$200,000 and I could get the rest of the money from the bank. I had properties which I could mortgage to the bank.

10

It is not true that the land is situate in a poor section of Circular Road and that there is not much demand for it.

I see plan P.2 showing lots 56 and 29 on the other side of the T.B. Hospital. I saw a big board outside lot 56 that there were going to be multi-storey flats there. This was about 1½ years ago. Up to now, there is no building there.

20

There is a T.B. Hospital next to my land in Pahang Road. I do not think that the T.B.Hospital would affect the value of the land.

There were 46 tenants living on the land. There were 46 houses, each divided into separate compartments and numbered separately. There were about 102 or 112 units. I do not know the actual number of squatter families living there.

30

I do not agree that the sale of November 1963 represented the actual market value of the land.

Re-examined

Re-examined: I did not buy the land from Devarayan Chettiar because apart from buying the land, I would have had to provide the money for development. Devarayan Chettiar never offered to sell the land to me at \$2.20 per square foot.

40

A person must be out of India for a full year before he can claim exemption from capital

gains tax. Devarayan Chettiar had been out of India long enough.

There was no application for subdivision of the land. Boundaries had to be adjusted before this could be done.

I did not at any time abandon my plan for exchange of land with State land. I merely abandoned my plans as to the type of house to be built on the land.

10 P.3 was sent to me to be signed by me and the co-owner. I had no co-owner to sign with me until 1962 when Devarayan Chettiar became owner. I did not approach Devarayan Chettiar to sign the plan in 1962. I wanted to prepare another plan before asking him. Moreover, Devarayan Chettiar told me that he was going to sell his share.

Adjourned until 2.15 p.m.

Signed (S.S. GILL)

20 Resumed at 2.15 p.m.

NO.19

EVIDENCE OF PONG KIEN NGOR

P.W.2 PONG KIEN NGOR, affirmed, states in Cantonese:

30 I live at 11 Jalan Brunei, Kuala Lumpur. On 5th November, 1963 I as trustee bought an undivided 1/40 share in the lands which have been acquired in this case. I paid \$2.20 per square foot. I purchased the land from a Chettiar called Devarayan Chettiar. I did not myself take any part in the negotiations with the Chettiar. One Ng Chong Geng, one of the other purchasers, on behalf of all the purchasers negotiated with the Chettiar. I did not consider \$2.20 per square foot as the market price of the land. The value was too low. I considered the market price in November 1963 to be more than \$10/- per square foot. The seller was in a hurry to go back to India. That is why he sold the land at \$2.20 per

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A.K.A.C.T.V.
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Evidence

Pong Kien Ngor

Examined

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(Contd.)

square foot. My partner living in Taiping first informed me that the land was for sale. That was Ng Chong Geng. Whilst negotiations were going on I discovered that one-half of the lands was owned by one Alagappa Chettiar. I saw Alagappa Chettiar's younger brother while the negotiations were going on. I told him that we wanted to buy the other half of the land for housing development.

I took steps to have plans drawn. This is the plan I had prepared for the development of the land (now marked P.4). This plan was never submitted for approval. Before we could do so the land was acquired by Government.

10

We paid some amount at first and paid the balance on the date of the transfer, on 5th November, 1963. It was not a case where a certain amount of the purchase price was left to be paid later. It was virtually a cash sale.

Cross-examina-
tion by Ng
Ek Teong

Cross-examined by Ng Ek Teong: I had P.4 drawn up by an Architect in accordance with our instructions. The instructions were given immediately after the purchase.

20

Cross-examina-
tion by Azmi

Cross-examined by Azmi: I had no connection whatsoever with Devarayan Chettiar before the purchase. I bought the land as a trustee for my wife and children. I paid \$2.20 per square foot. My partner in Taiping told me that he received information from a Chettiar living in Alor Star that the land was for sale at a very cheap price. Apart from my partner living in Taiping, I knew the other purchasers. I came to know in October 1963 from Chuah Say Hai that the land was for sale. He was sent to me by Ng Chong Geng. I saw Devarayan Chettiar once at his office at No. 30 Ampang Street, Kuala Lumpur in October 1963. I do not know whether there were other Chettiars there. There were Indians there. I met Alagappa Chettiar's brother at a different place later on in Batu Road, Kuala Lumpur after I had purchased the land. I had a conversation with him. I went to seek his co-operation in developing the land. I knew that a plan for building houses on the land had already been approved. Alagappa Chettiar's brother told me so when I saw him several days after I had purchased the land.

30

40

Prior to the purchase there were

consultations between the purchasers. There was no representative from the vendor present. My partner in Taiping did not tell me about the approved plans for the building of houses on the land. Before I bought the land I knew that the other half of the land belonged to Alagappa Chettiar. My partners and the brokers told me so. They did not tell me of the existing plan for building houses on the land.

10 Re-examined: I saw Alagappa Chettiar's brother at his office in Batu Road, which is the office of Alagappa Corporation.

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No.19

Applicants' Evidence

Pong Kien Egor

Cross-examination by Azmi

25th October 1966

(Contd.)

Re-examination

NO.20

EVIDENCE OF M.K.P.R.M.PALANIAPPA CHETTIAR

P.W.3 M.K.P.R.M.PALANIAPPA CHETTIAR, affirmed, states in Tamil:

20 I am 30 years old, living at 32 Ampang Street, Kuala Lumpur. I have lived in Kuala Lumpur since 1927. I know Alagappa Chettiar (P.W.1). I knew Sinna Meyappan Chettiar who owned a half share in the lands in Circular Road, Kuala Lumpur.

Meyappa Chettiar belonged to R.M.P. firm, partnership firm. R.M.P. firm was dissolved. The assets were divided among the partners. Devarayan Chettiar got the half share in the land in Circular Road when the assets were divided.

30 I know Devarayan Chettiar. He came to this country for the first time 5 years ago to obtain his share of the assets. He came on a visit pass. It took three years for the assets of R.M.P. firm to be divided. Devarayan Chettiar got the land in Circular Road in 1962. He was then in Malaya. He had been in Malaya for an unbroken period of three years when he got the lands.

After he got the lands Devarayan Chettiar was trying to sell the lands. He asked me to

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M.K.P.R.M.
Palaniappa
Chettiar

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25th October
1966

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assist him in selling his share and the share of Alagappa Chettiar in the land, because it was difficult to sell half a share in the land. Alagappa Chettiar did not agree to sell his half share. Then Devarayan Chettiar tried to sell his share. No one came forward to buy. It was a big property and he could not sell it on his own.

In 1963 Devarayan Chettiar got an extension of one year on his visit pass, until June, 1964. He was told it was the final extension.

10

I am aware of the taxation position in India. I know of capital gains tax. If Devarayan Chettiar had gone to India without selling the land he would have had to pay capital gains tax. One has to be outside India for one year to avoid capital gains tax. He did not know the value of the property. I did not try to tell him about the value of the land. He did not ask me how much the land was worth. He was new to this country and he was young. He wanted to sell the land and take the money to India to start an industry there. I do not know what he has done with his money in India.

20

I have been looking after lots 95 and 96 which are opposite the land which has been acquired. Brokers approached me for the sale of those lots. They offered \$10/- a square foot in 1964. The sale did not go through because the owner wanted \$12/- per square foot.

No cross-examination by Ng Ek Teong.

30

Cross-
examination
by Azmi

Cross-examined by Azmi: When the firm of R.M.P. was dissolved Devarayan Chettiar got half share in the lands. I cannot remember in what month that was. I was not a partner of R.M.P. firm. I know that the firm of R.M.P. valued the lands at \$45,000 per acre when Devarayan Chettiar got the lands.

I agree that it is difficult to sell an undivided share in a land. I do not know whether \$2.20 per square foot was a fair price of the land in November, 1963.

40

Capital gains tax is payable if property is bought and then sold after a year.

When Devarayan Chettiar sold the land he was not in immediate danger of being deported. He had visit pass until June 1964.

Devarayan Chettiar was an inexperienced Chettiar generally in relation to business in Malaya. There were Chettiars here to help him. Devarayan Chettiar did not consult me when he sold his share in the land.

10 Re-examined: One has to be away from India for a year from 13th April onward to avoid capital gains tax. Devarayan Chettiar had to sell his land before April 1964 to avoid capital gains tax.

R.M.P. was a big firm. It had lots of property all over Malaya. All the property was shown in the books. No valuer was appointed to value the properties before distribution. Properties were valued for the purposes of apportioning the shares.

20 By Court: There were no buildings on lots 95 and 96 for which \$10/- per square foot was offered. They are the same type of lands as the land in this case.

NO.21

EVIDENCE OF COLLIN HAROLD WILLIAMS

P.W.4 COLLIN HAROLD WILLIAMS, affirmed, states in English:

30 I am carrying on business in Room 206, Asia Insurance Building, Kuala Lumpur as valuer and estate agent. I am B.Sc. University of London in Estate Management, fellow of Royal Institution of Chartered Surveyors, Fellow of Chartered Auctioneers and Estate Agents Institute, Fellow of Rating and Valuation Association and Fellow of the Institution of Surveyors (Malaya).

40 From 1948 to 1952 I was a trainee and assistant in a firm of estate agents in the United Kingdom. From 1952 to 1958 I was Assistant Assessor in the Assessment and Estate Department, Singapore City Council. I have been in private

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H.K.P.R.M.
Palaniappa
Chettiar

Cross-examination by Azmi

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Collin Harold
Williams

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practice since 1958.

On 17th May, 1966 I prepared a report on the valuation of the lands which are the subject matter of these proceedings. I have prepared a plan of the lands in question and the other lands mentioned in my report. This is my report (put in and marked P.8) and this the plan (put in and marked P.9).

In my report I have valued the land as at 4th June, 1964. I have visited the lands. They are within two miles from the centre of the town.

10

I considered the land in relation to accessibility. It is an excellent site for access from all parts of the town. The value of the surrounding land would improve with the cutting through of a 100-foot wide road.

I consider the site suitable for high density development. It is an area where one can expect a high concentration of population such as attracts the middle and upper artisan class. Just across the river there are three-storey flats and also across the road. This is the sort of development I would envisage on this land. There are few sites of this area within the town. So, I had to compare it with sites smaller in size. The area is not a handicap in planning. In some ways it is an advantage. Its size was not a handicap from the point of purchasers. There were a number of sales of the order of ten million dollars about that time.

20

Wardiburn Estate in Setapak was one of the sites sold. There was also the Batu Road auction sale. Bungsar Estate was sold in two parts in 1964. There was a market for such sites in 1964.

In making my report I paid regard to the trend of values of land, some before and some after the date of acquisition of the lands.

30

40

There was a very substantial rise in prices of lands over the period 1962 to 1964. The rise stopped about the last quarter of 1964. Since then the market has been static and rather

dull.

I considered the sale which took place in November, 1963. I think it was a low price.

I have marked on P.9 sale at \$15 per square foot of a strip of land for road widening. There was a sale of a separate piece of land at \$16 per square foot. I produce a certified copy of a schedule showing the particulars of sales mentioned in my report (put in and marked P.10).

10

I have taken for comparison the first three sales mentioned in my report, as showing that high values existed in this vicinity.

I have not been able to get full details of sale No. 4 mentioned in my report. This is an alienation of State land for a building for the Malayan Indian Congress. The land is about .6 acre in area. The value therefore is about \$12 per square foot. This is not a registered sale.

20

Lot 391, Jalan Raja Laut was sold at \$7/- per square foot in March, 1963 and Lot 1118 in October, 1964 at \$5.60 per square foot. At the time of sale these two pieces were thickly covered with squatter huts except for a very deep ditch at the frontage used for depositing rubbish. Filling at the front would be required to develop these lands. Development cost would be high.

30

Lot 2285, Pahang Road, 1.437 acres in area was sold at \$6.38 per square foot. This was low land, some ten feet below the road. There were no squatters on the land. This land is less suitable for four-storey flats.

Lot 1, Section 85A, Pahang Road was sold in April, 1964 at \$7.90 per square foot. Vacant possession was given by the vendor. Front portion could be used for four-storey development. This is suitable for tower block development which has proved unpopular in Kuala Lumpur. Four-storey blocks are popular.

40

No. 9 in my report. No main road access. Access only by side lane and back lane. This is a less popular area. It is a poorer area.

Land mentioned in sale No.10 in my report was

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being used as a motor repair workshops, an industrial type of use.

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Sales 10 and 11 in my report show the trend in the rise of prices. I rely on sales 10, 11 and 12 to show the rise in the price levels.

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Collin Harold
Williams

The lands in sale 13 are less attractive and in a less popular area. They are near the Railway quarters. This sale is below the general level of values at that time.

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It has not been possible to find a large number of transactions of the lands in the immediate vicinity of the area acquired. I have considered the Imbi Road as a comparable area. Sales 14, 15, 16, 17 and 18 mentioned in my report are about sales of lands in the Imbi Road area. They show substantial price increases over a short period between mid-1963 to mid-1964. This is a four-storey flat development area. Forty per cent of the area is covered by road, back lanes and open spaces. Number 14 lot is very much better lot than Number 17 lot.

10

No. 19 refers to terrace lots in Treacher Road. I consider this a similar area to the land acquired.

20

Adjourned until 9.30 a.m. tomorrow.

Signed (S.S. Gill)

26th October, 1966

Civil Applications Nos. 2, 4, 5, 6, 7, 8, 9, 10 and 11 of 1965

Hearing continued.

30

Counsel and Assessors as before.

Collin Harold
Williams

P.W.4 COLLIN HAROLD WILLIAMS (re-affirmed):

(Contd.)

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I see page 7 of my report. The 8th sale mentioned in my report is not a registered sale. I took the value from a sale agreement between the vendor and purchaser. This is the sale agreement (put in and marked P.11). This sale is not on the Registrar's Schedule (P.10), nor is sale No. 4 in the same schedule.

10 I have stated in my report that prices rose very steeply between 1963 and mid-1964. In some cases they had doubled. I took for the purpose of my report those sales of land which I considered most comparable. Sale 11 was at \$10.85 a square foot in April, 1964. Sale 16 in July, 1964 was at \$10.77 per square foot. There was no question of this price being inflated because of the acquisition by the Government of the land in Circular Road in June, 1964. The other sale I rely on is sale No. 8 at \$7.90 per square foot. I chose sale 11 because it drew support from evidence of other sales in the vicinity of Ipoh Road. Sale No. 16 is supported by sale No. 15. In choosing sale No. 8 I had regard to sale No. 7.

20 Having considered all the sales I came to the conclusion that the value of the land acquired in Circular Road was \$12/- per square foot. I took the sales as being nearest in point of time. The lands in the other sales were suitable for high density development.

I have made a deduction of \$4,000 per building for clearing the squatter houses. This is for paying compensation or bringing action to eject them. Approximately 2/3 of the land was already clear and development could proceed immediately. There would be no delay in the starting of the development.

30 I made a cross check of the valuation by considering what could be obtained for the number of sites available for development and the type of development. I then proceeded to take sales of flat sites, in some cases before sub-division. What I was trying to find was what a developer would pay per flat, for example, sale 12 (b), sale No.19, sale 15 and sale 16 mentioned in my report.

40 I have adopted a density on Circular Road of 54 flats per acre. The Municipality proposal for low-cost housing schemes is 135 flats and shops per acre. The net site area on the basis of 54 flats per acre would be 62 per cent of the gross area. On the basis of known flat values I took the land price per flat to be \$9,000. That gives a value of \$486,000 per acre or \$11.15 per square foot. There would have to be shops in the

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developed area. Some sites could be put to more valuable use, such as office blocks, hotels, cinema and petrol station. The sites for such development fetch higher values.

Having reached the price of \$11.15 per square foot by this cross-check I took \$12/- per square foot as the reasonable price. I did not consider residual method of cross-check.

I took the size of the area into consideration, but I thought no reduction was necessary on account of size because demand for this type of land at that time was high.

10

The amount of land to be set aside for the road would not be out of the normal range in a development of this sort. My calculation is that 28 per cent of the total area would be lost for roads. The Government valuer has stated that it would be 4 acres, which is 18 per cent of the total area.

In my practice as estate agent I am occasionally asked to deal with sales of undivided shares in land. I find it extremely difficult to sell undivided shares. A purchaser of undivided shares invariably pays less than the proportionate value of the land.

20

I have informed the Government valuer of the value I place on the land acquired. I gave him my report and obtained his report. I have a copy of that report.

The site is 50 yards from the bus service area in Pahang Road and 350 yards from the bus service area in Batu Road.

30

I agree with the Government valuer's statement that the land is sited in a poorer section of Jalan Pekeliling in the sense that poorer people live there. The land values are higher for flat development than bungalow development.

There are 4-storey shop houses and 3-storey flats going up in the land opposite the land acquired. Shop houses face Pahang Road and the flats a side line from Circular Road.

I do not agree that the previous sale of the land itself would be a better guide than sales of other lands however similar. The Government valuer has considered in his report sales of lots 29 and 56 at Pahang Road which were sold on 29th September, 1962 at \$1.12 and 65 cents per square foot respectively. They are immediately adjacent to sale No. 8 mentioned in my report. I have also mentioned the sale of Lot 2285, Pahang Road as sale No. 7. Lots 29 and 56 are the best of these four lots. Both lots are level land. The other lots are below the level of the road.

10

Sales of Lots 29 and 56 were out of the general trend even on 29th September, 1962. I have not been able to find other sales at such low prices. These lots are not far away from the Circular Road land.

20

The sale of Lot 21 mentioned in the Government valuer's report was the sale of 1/6 share in the land. The density of development on Lot 21 is 46 units per acre.

I do not agree with the Government valuer's report that the sale of half undivided share of the land in question seemed slightly high.

As regards the sale of two acres of land fronting on to Jalan Pahang to the Ministry of Health, the land was valued by the Government valuer.

30

I do not agree with the Government valuer that sales other than those in the immediate vicinity can offer no evidence of value for determining market value.

Sales after material date could in certain circumstances be affected but not in this case. Acquisition by Government would not result in appreciation of values of other lands in the neighbourhood.

40

I do not agree with the Government valuer that a prospective purchaser buying a piece of land of this size would invariably expect a reduction in value. There was no risk in developing this land. Every developer takes the same risk.

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Cross-
examination
by Ek Teong

I would not use petrol station site values for the purpose of this case. \$7/- per square foot for a petrol station is not high. Lot 14 mentioned by the Government valuer is not suitable for flat development. It is a single bungalow site.

Having seen the Government valuer's report I do not consider it necessary to modify my opinion that the land was worth \$12/- per square foot.

10

Cross-examined by Ek Teong: The proposal by the Municipality is to have 135 units of flats and shops per acre. Whether a private developer would be allowed similar density would depend upon Municipality approval. In fairness the same rules should apply.

There was a property boom in 1963 and 1964.

One of the parties to the agreement in respect of sale No. 8 in my report is a company from Singapore. The development of properties in Singapore into flats has been very successful. Property developers in Singapore were moving into Kuala Lumpur in 1963 and 1964. It was one of the factors for the boom.

20

I would look for further evidence if price was low.

I see P.4. It shows the new proposed Circular Road. The proposal is to have tower blocks south of this new road. According to this plan the proposal is to have a cinema and offices to the north of the road. To the left there is to be a hotel, flats and shops. The plan makes provision for three types of development. The reserve for transmission lines is not proving a disadvantage. The road deviation makes very little difference. The new road would, however, give road frontage to the property on either side. There is marked in yellow on the plan a site for a petrol station. There is a Shell Station on the other side of Gombak River. It is normal for another company to put up a petrol station near another petrol station. There would be a potential demand for petrol stations on the site.

30

40

There is a cinema called the "Golden City" near the roundabout at Ipoh Road about 350 yards away. Another cinema could be accommodated in the District.

10 There is a junction at Princess Road, Pahang Road, Ipoh Road and Jalan Tuanku Abdul Rahman. From there Pahang Road and Ipoh Road run out in V-shape. This land in Circular Road lies within this V. All along Pahang Road there has been development right up to Setapak. Similarly Ipoh Road has been developed well past the Circular Road. Closer to town there would be a few areas more suitable for development than this land in Circular Road. This is the nearest site from the town you can get for development. There are flats and terrace houses to the south, west and north-east of this land. The natural development of the land would be for flats and terrace houses.

20 Sales and transactions in 1962 would be of no help to value the land in 1964. The Government valuer has mentioned only two sales in 1963, apart from the sale of the land itself. Lot 14 mentioned by him is immediately opposite Lot 18.

30 Cross-examined by Azmi: I have stated in my report that the sale of the land in question at \$2.20 per square foot in November, 1963 did not represent a true market value of the land. I have shown this by quoting sales of lands all over Kuala Lumpur. I have stated at page 5 of my report that this transaction should be ignored, and I have done so in arriving at my conclusions. My second conclusion is that the market value was \$12/- per square foot on the date of acquisition. I have quoted three main sales for this conclusion, namely, sales 8, 11 and 16 as mentioned in my report.

40 I completed my report on 17th May, 1966. When I visited the land some of the squatters had gone. There were squatters on the land at the time of acquisition and there was a tongue of State land protruding into the land. I understood that the owners had made arrangements to overcome this disadvantage, but I knew that no exchange of land in fact took place.

In the High Court

Applicants' Evidence

No.21

Collin Harold Williams

Cross-examination by Ek Teong

26th October 1966

(Contd.)

Cross-examination by Azmi

In the High
Court

Applicants'
Evidence

No.21

Collin Harold
Williams

Cross-
examination
by Azmi

26th October
1966

(Contd.)

According to the plan put up in 1957 (P.2) there were to be a little over 200 units on the land. On that basis density per acre would be 8 to 9 units per acre. A new plan (P.4) was prepared, but never submitted. This plan was prepared in January, 1964. According to this plan, there were to be 40 residential units per acre, calculated over the whole area. 9 units per acre was perhaps reasonable in 1957. In 1964 I was working on the basis of 54 units per acre. I assume that the plan (P.4) would be approved by the planning authority. I assumed that the planning authority would approve 54 units per acre. I also assumed that when the project was completed there would be immediate demand for the units. I expected 886 units of flats and shops according to this plan. I take a terrace house to mean a single unit. What I had in mind was terrace flats.

10

If plan P.4 was submitted and approved in 1964, development would take 2 or 3 years. There was a definitely a fall in the demand for flats in tower blocks in 1964, but there was no fall in the demand for terrace flats. I agree that from 1964 onwards the demand for housing units was on the decline. Indonesian confrontation had no effect in 1964. It began to show effect in the last quarter of 1964. People were still quite happy to invest money in housing development after the Indonesian confrontation started. The Budget in 1964 had a serious effect on the property market.

20

In doing my calculations I assumed that it would be possible to sell all the units completed. People were buying units on the basis of \$9,000 per unit. The proposed development of this land would not have flooded the market.

30

23 acres is not a large area. There was considerable demand in 1964. There is a large number of buyers available for smaller lots. I have had to look at lands of smaller size for purpose of comparison. All the 19 sales I have quoted were sales in respect of land below 3 acres in area. 7 sales were below 1 acre, 7 over 1 acre and up to 2 acres and the rest over 2 acres, the largest area being 2.775 acres (sale No. 16). Out of the 19 sales, only 3

40

sales can be said to be sales in respect of land in the same locality as the land acquired (sales 1, 7 and 8). The rest of the lands were in different localities. Land values in different parts of any town will differ.

If there had not been anything abnormal about the sale of this land itself in November, 1963 that would be the best basis of valuation.

10 Development of flats is profitable in areas of dense population. There are densely populated areas close to this land, but not in the immediate vicinity. This area is less developed than the Ipoh Road, Imbi Road and Bukit Bintang Road areas. Imbi Road land values are a suitable criterion for valuing this area. This area is not as fully developed as the Imbi Road area. I have considered values of lands in Imbi Road, Ipoh Road, Pahang Road and one in Treacher Road as the basis of my conclusions.

20 I prefer values of lands in the same vicinity if they are available. Along this part of Circular Road there are no shops. I do not agree that most of the sales I have relied on are not sales of comparable lands. I agree that this area is inferior to Bukit Bintang Road area but not inferior to Imbi Road or Ipoh Road areas.

30 I agree that sales Nos. 1, 2 and 3 in my report can be ignored. I do not agree that sale No. 4 can also be ignored as a basis for calculation, but I do not rely on it. Jalan Raja Laut is a more thickly populated area. Sales 5 and 6 refer to this area. I place very little emphasis on them. These sales of land in the same section show a drop in price between March, 1963 and October, 1964. This was entirely against the market trend.

Adjourned until 2.30 p.m.

Signed (S.S. Gill)

Resumed at 2.30 p.m.

40 P.W.4 COLLIN HAROLD WILLIAMS (on former oath):

Cross-examined by Azmi: Sale No. 7 was of land in

In the High Court

Applicants' Evidence

No.21

Collin Harold Williams

Cross-examination by Azmi

26th October 1966

(Contd.)

In the High
Court

Applicants'
Evidence

No.21
Collin Harold
Williams
Cross-
examination
by Azmi
26th October
1966
(Contd.)

Pahang Road, close to the land acquired. The land was 1.437 acres and was sold at \$6.38 per square foot. I understand that this land was bought for building 16 storey flats. Up to now the purchasers have not started building. Developers realised that tower blocks of flats did not sell. So they refrained from building. This was bought as vacant land with no squatters, before confrontation. I do not know that this was sale by Director as individual to his company. If the Director was the major shareholder of the company, I would treat the sale with suspicion. If the sale was by the Director to his company, then it would not be a reliable comparison.

10

Sale No. 8 was of a land in Pahang Road, a bit further away from the land acquired. The area was 1.743 acres and it was sold in April, 1964 at \$7.90 per square foot. This is an unregistered sale. If the sale took place, it would be reliable. I understand that completion has not taken place up to now.

20

Taking sales 7 and 8 together, the increase is a little over 20 per cent. The lands are approximately 120 yards apart from each other.

Sale No. 9 was also of a small area. It is a mile away from the land acquired. It is back land without any main road frontage. It is situated behind a row of shophouses on the main road. The land is in a different locality.

30

Sale No. 10 was of land approximately 2½ acres in Ipoh Road. This land is situated in a service industry area. Lots of shops are used for minor industries. I do not consider the price of \$7.85 high for Ipoh Road. It is a small area and in a different locality.

Sale No. 11 is also of land in Ipoh Road, 3rd mile, a different locality.

Sale No.12 was sale of sub-divided land ready for development. There were separate titles for each lot. This applies to land under sale 12 (a), (b) and (c). This area is about a mile further up on the main Ipoh Road.

40

Sale No. 13 was sale of land in Sentul Area

at prices from \$3.90 to \$5.00 per square foot. Sentul area is more developed than the area of the acquired land. This Sentul area has a lot of Government and Railway quarters. The price was only \$2,000 per flat.

In the High Court

Applicants' Evidence

No.21

Collin Harold Williams

Cross-examination by Azmi

26th October 1966

(Contd.)

10 Sales Nos. 14, 15, 16, 17 and 18 are sales of land in Imbi Road area. They are smaller pieces of land, the largest being 2,606 acres. These lands are two miles away from the Circular Road land.

Sale No. 19 was sale of sub-divided terrace lots each about 1,600 square feet in area.

20 The general rise in the price between November 1963 and June 1964 was more than 40 per cent. From mid-1963 to mid-1964 prices had doubled. Most of sales cited by me are sales between March 1963 and December 1964. I do not agree that the appreciation of land values during this period was 20 to 40 per cent. The rise in the case of sales 7 and 8 was about 20 to 25 per cent. The rise in the case of sales 10 and 11 was about 38 per cent. In the case of sales 15 and 16 there was a drop. In the case of sales 17 and 18 there was an increase in price of 26 per cent. In the case of sales 14 and 15 the prices had more than doubled. In the case of sales within sale 12 prices had more than doubled. Sale 12 (a) was for 2-storey flats, whereas sales 12 (b) and 12 (c) were for 3-storey flats.

30 I do not agree that the sales I have mentioned are not reliable for the purpose of valuing the Circular Road land.

40 As regards my conclusions at page 10 onwards, I agree that sale No. 8 is unregistered and that sales Nos. 11 and 16 are sales of land in different localities. My alternative method of valuation is the valuation on the basis of price per flat which can be built on the land acquired. I work on the basis of 4-storey flats with a density of 54 units per acre.

Under the additional note in my report I mention Wardiburn Estate which was sold in the region of ten million dollars. It was 1700 acres in area. That would work out at 13 to 14 cents per square foot. I mentioned Bungsar Estate

In the High
Court

which was sold in 1964 at a price ranging from
\$5,000 to \$7,000 per acre.

Applicants'
Evidence

I agree that Lots 29 and 56 mentioned in the
Government valuer's report are close to the land
under acquisition.

No.21

Collin Harold
Williams

(Shown map). This map shows the position
of Lots 29 and 56 (map put in and marked D.12).
Lots 29 and 56 are marked B and C. The area
under acquisition is marked A. The sales of
Lots 29 and 56 cannot be relied upon as they took
place in 1962. The sales of these lots and the
sale of land under acquisition in November, 1963
are not comparable. Sale of Lot 29 was of the
whole title, whereas sale of Lot A was of half
share and the land was occupied by the Military.
I do not know whether B was occupied by squatters.

10

Cross-examin-
ation by Azmi
26th October
1966

(Contd.)

Lot E marked on D.12 was sold by the
Director of his company. I did not take the
sale of lot marked D on D.12 because it was a
sale in 1962 of an undivided 1/6 share.

20

I find it hard to reconcile the prices of
Lots 29 and 56, which were sold on the same
date. Besides, the sales took place in 1962.

It is not true that my valuation of \$12/-
per square foot cannot be supported by the
sales I chose for my report. It is not true
that I have erred in my valuation by excluding
the sale of the acquired land in November, 1963.

Between 1962 and 1963 in many cases lands
in Kuala Lumpur doubled in price.

30

Re-
examination

Re-examined: I knew about the sale of the
land under acquisition in November, 1963. I
considered it and discarded it for what I
considered good reasons. The reasons were that
it was a sale of an undivided share and the
presence on the land of an Army Camp, so that
developers were not interested in that land in
that condition. Moreover, the price was out
of line with the other prices.

I had seen plan (P.3) when I put up my
report. This plan came from the Government.
The layout in P.4 was so arranged that the
tongue of State Land was not affecting the land.

40

There is nothing to stop developers from asking variations of plans. The approval in 1957 of 9 units per acre did not bar approval of 54 units per acre. I got 54 units per acre partly from the actual development of Lot 424 (Sale No. 15) and Lot 2773 and 428 (Sale No. 16). I also got it from the calculation of the area acquired.

10 4-storey flats are still selling today and sold throughout 1965. These were selling along Ipoh Road. There has been no loss of market for this type of development.

When I made my report I was not concerned with what was happening in 1965. June 1964 was near the top of the boom period. By 1965 the boom had gone. It went with the Budget in November 1964 when the capital gains tax was introduced in the budget. Confrontation was showing some slight effects towards the end of 1964.

20 The land we are dealing with is held under 7 lots. In fact after the new road was built Lots 17, 18 and 19 could have been sold separately.

30 Starting from Ipoh Road to the river along Circular Road there has been a flatting development. Lot 21 has also been developed. It is right opposite. Lots 29 and 56 are for tower block flat developing. Lot 2285 is also for flatting development. High density development is coming up to the land under acquisition. There is no reason why the land under acquisition should not be ready for high density development.

The army camp extended over the road to Lots 97 and 98. This land therefore was not on the market for development.

40 Imbi Road area has become a high density area within the last three years. There were some 2-storey development flats there before. There were orchards and a chicken farm. Density was very much lower then. Density has increased within recent years. I do not see why the same sort of development should not take place here.

I thought it was legitimate to choose Imbi Road as a comparable area.

In the High Court

Applicants' Evidence

No.21

Collin Harold Williams

Re-examination

(Contd.)

26th October 1966...

In the High
Court

Adjourned until 9.30 a.m. tomorrow.

Applicants'
Evidence

27th October, 1966

Signed (S.S. Gill).

No.21

Civil Applications Nos. 2, 4, 5, 6, 7, 8, 9, 10
and 11 of 1965.

Collin Harold
Williams

Hearing continued. Counsel as before.

Re-examination

P.W.4 COLLIN HAROLD WILLIAMS (on former oath):

27th October
1966

Re-examined: One would prefer nearby evidence, but if that is lacking it is proper to look at comparable lands elsewhere, making such allowances as are necessary.

(Contd.)

10

The high value areas of lands mentioned in Sales 1, 2 and 3 are lands near the junction of Ipoh Road, Maxwell Road and Circular Road. They were chosen to show values of areas in that locality,

Land in Sale No. 6 was priced lower than land in Sale No. 5 because of a larger percentage of loss of land for roads. A developer takes the net area on which he can build.

I introduced Sale No. 9 to show that prices of nearly \$5/- were paid for flat development areas in far worse positions than the Circular Road area. This sale was registered in November 1964. It was a mile further from the town than the land under acquisition.

20

Land in Sale No. 11 is also about 1 mile further from the town than the land under acquisition.

Where the land comprised in Sale No.12 is situate there is no dual carriage-way. The road forks and rejoins.

30

Sentul has always been an area of low value and less desirable. There are Railway quarters there for the Sentul Workshops. This area is about 1/4 mile further from the town than the land under acquisition.

I did not take the price of \$2,000 per flat in Sentul area as basis for value as in 3 other areas I found price of \$9,000 per flat for the

same size of land and similar development.

10 There are other factors for assessing the increase in value from 1963 to 1964. In the case of lands forming the subject matter of Sales 7 and 8 the increase was 6 to 7 times, taking the values of Lots 29 and 56 in 1962 as the basis. This area is closest to the area under acquisition. In their present positions lands of Lots 29 and 56 are better than the other lands. They are level, whereas the other lands are below the level of the road.

I said I could not reconcile the sales of Lots 29 and 56 with each other. I cannot reconcile the sales of lots in Sales Nos. 7 and 8 with the sales of lots 29 and 56. Between themselves Sales 7 and 8 reconcile with each other.

20 By Court: The allowance of \$4,000 for clearance of squatters from the land is made either as compensation to be paid or as costs of court action.

Case for Applicants in Applications Nos. 2, 4, 5, 6, 7 and 8.

Inche Ek Teong calls evidence for the applicants in Applications Nos. 9, 10 and 11.

NO.22

EVIDENCE OF NG CHONG GENG

P.W.5 NG CHONG GENG, affirmed, states in Hokkien:

30 I am 69 years old living at 169 Kota Road, Taiping. I am the Chairman of Ng Chong Geng & Sons Ltd. I am also the Chairman of Synn Lee & Co., Ltd. These two companies hold undivided interests of 20/240 each in the land under acquisition. Both companies acquired interest in the land by virtue of a transfer in November, 1963. I bought these lands from Devarayan Chettiar.

A Chettiar from Kedah named Kasi Chettiar informed me that the lands were for sale. He

In the High Court

Applicants' Evidence

No.21

Collin Harold Williams

Re-examination

27th October 1966

(Contd.)

No.22

Ng Chong Geng

Examination

27th October 1966

In the High
Court

Applicants'
Evidence

No.22

Ng Chong Geng
Examination

27th October
1966

(Contd.)

recommended to me that I should buy the lands. I found out that only an undivided half share in the lands was to be sold.

When I received information from Kasi Chettiar I knew that the land was situate near the Army Camp quite some distance from Ipoh Road. I have been there since buying the land. I saw the land before I bought it. Kasi Chettiar took me there. There was an Army Camp on a portion of the land. Having seen the land, I was not keen to buy it, because at that time I did not know the owner of the other share. I bought the land for the purpose of building houses. I wanted to develop the land. I knew that I could not develop the land immediately because of the Army Camp, but I made a gamble.

10

I decided to buy the land because I considered it cheap. I had reason to believe that the Chettiar was prepared to sell the land cheap because he was in a hurry to go back to India. I offered \$2/- per square foot. I considered the land cheap at \$2/- per square foot. I bought the land as a gamble, in the hope that the price would rise.

20

I got other partners to join me in purchasing the land. I first got in touch with Pong Kien Ngor through Chuah Say Hai. I also got in touch with Ong Thye Eng. They in turn got in touch with the other partners.

My offer of \$2/- per square foot was not accepted. Finally I purchased the lands at \$2.20 per square foot. I made the offer of \$2.20 to Kasi Chettiar who informed me that it was acceptable. On my offer being accepted I made a deposit of 10 per cent of the purchase price. Subsequently I completed the purchase in November, 1963 by paying the balance in a lump sum. I completed the purchase within less than one month.

30

No cross-examination by Inche Peddie.

40

Cross-
examination
by Azmi

Cross-examined by Azmi: I am the Chairman of both companies. The two companies deal in the purchase of rubber estates. Ng Chong Geng & Sons Ltd. deals in the purchase of rubber estates and Sunn Lee & Co. Ltd. deals in the

purchase and sale of rubber. Synn Lee & Co.Ltd. are packers and exporters. The issued capital of Ng Chong Geng & Sons is one million dollars. The paid-up capital of Synn Lee & Co. is \$500,000.

I first came to know that the land was for sale in early September, 1963. Kasi Chettiar of Alor Star came to Taiping to see me. Kasi Chettiar is a wealthy Chettiar. He does not deal in land. He does money lending business.

In the course of my negotiations I saw Devarayan Chettiar only once in Kuala Lumpur somewhere in early September in his house. He asked me to offer the highest price I could. I asked him who the owner of the other half was. I was quite happy to buy the land at \$2.20 per square foot as it was quite cheap. I bought the land to develop it and sell it at a high price. In my view it was a gamble. I speculated. I knew that the price would go up and not go down. I did not buy the whole half share because I did not have the money. I did not have the money myself. I had to ask my partners in the two companies. We had to keep some money to do our rubber business.

It is not true that \$2.20 was the normal purchase price. The price was very cheap. The normal market price of the land was \$7/- to \$8/- per square foot. The half share was worth four million dollars. We bought it for just over a million dollars, so that it was possible to make a profit of three million dollars.

Re-examined: My idea in purchasing the land was to develop it. If the Army Camp was not removed from the land I would not be able to develop the land at all and my capital would be tied down.

I did not know the owner of the other half share in the lands then. Pong Kien Ngor knew the other owner. I was buying with the others from a man who was a stranger to me. I do not know whether any of the other persons joining me in the purchase knew the other owner.

In the High Court

Applicants' Evidence

No.22

Ng Chong Geng

Cross-examination by Azmi

27th October 1966

(Contd.)

Re-examination

In the High
Court

NO.23

EVIDENCE OF A. VARADACHARI

Applicants'
Evidence

No.23

A.Varadachari

Examination

27th October
1966

P.W.6 A. VARADACHARI, affirmed, states in English:

I am a practising Chartered Accountant in Kuala Lumpur. I am a Chartered Accountant of India. I acquired this qualification in 1951. I have been practising in Kuala Lumpur since 1942. I was at one time a partner of Chari & Co. which had a branch in Ipoh and I spent various periods in India from 1951 onwards. I have here a book called Law of Income Tax in India by one V.S. Sundram, which is an accepted text book.

10

There is a capital gains tax in India. The financial year for the purposes of Income Tax and capital gains tax for 1963 was 1st April, 1963 to 31st March, 1964, and the relevant statute in India was the Income Tax Act, 1961.

Capital gains tax is treated as part of Income Tax in India. The relevant sections are Sections 45 to 55 of Income Tax Act, 1961. The rate of capital gains tax and income tax is fixed each year by the Finance Act.

20

No cross-examination.

Case for the Applicants in Applications Nos. 9, 10 and 11.

Inche Azmi calls evidence for the Respondent in each case.

Respondents'
Evidence

No.24

NO.24

EVIDENCE OF KOH ENG LIM

Koh Eng Lim

Examination

27th October
1966

D.W.1 KOH ENG LIM, affirmed, states in English:

I am 47 years old and I am the Administrative Officer, Housing attached to the office of the Commissioner of the Federal Capital, Kuala Lumpur.

30

One of my duties is to take census of areas required for development by the Government. The purpose of this census is to ascertain the number of squatter families housed on the site required for development and to rehouse them in other areas.

In the High Court

Respondents' Evidence

No.24

Koh Eng Lim Examination

27th October 1966

(Contd.)

I know the land which is the subject matter of these proceedings. Census of this area was taken from 19th to 28th July, 1965. There were 181 squatters houses on this land, individual houses with numbers. There were 272 squatter families in addition to 60 bachelors and widows.

10

Cross-examined by Peddie: Some of the houses were detached houses. Some of the houses were terraced type of houses with their own entrances. I cannot say how many buildings there were. I do not think the figure of 47 houses given by the Collector is correct.

Cross-examination by Peddie

I do not know when the land was acquired. The Commissioner took possession on 26th June, 1965. I do not know since when the squatters had been living on the land.

20

Cross-examined by Ek Teong: By terrace houses I mean houses in a block.

Cross-examination by Ek Teong

No re-examination.

NO.25

EVIDENCE OF FRANK WATKINSON

No.25

Frank Watkinson Examination

D.W.2 FRANK WATKINSON, affirmed, states in English:

27th October 1966

I am in charge of the Federal Department of Town and Country Planning and as from 1.1.65 Chief Planning Officer for the Federal Capital.

30

I see letter dated 12th November, 1964 addressed by the Commissioner to the Chief Valuer. I have knowledge of the contents of the letter. It referred to the land under acquisition. The land was zoned for "Open Development" in June, 1964. It is still zoned as an "Open Development" area. The density of

In the High
Court

Respondents'
Evidence

No.25
Frank Watkinson
Examination
27th October
1966
(Contd.)

development to be recommended for this area would be 200 persons per acre and this would be subject to the legal requirements to alter the zoning. It is very difficult to attach a density figure for terrace houses, but in this area particularly I would resist terrace development, principally because the density goes too high. Four-storey terrace houses can work out to a density of at least 600 persons per acre.

(Shown P.4). This plan has not been submitted to my Department for approval. I would not recommend this plan because there is no law as yet to ensure the provision of the obviously desirable amenities. This plan could not fit the present zoning and at this particular time it would be inconsistent with policy, because from the Gombak River bridge to the junction of Ipoh Road there are numerous illegal shops. The Department policy is to remove them.

10

20

Development of this land to allow 40 flats per acre would be recommended for approval subject to normal legal requirements, as stated in para. 2 (iii) of the Commissioner's letter to the Chief Valuer.

Cross-
examination
by Peddie

Cross-examined by Peddie: I have not seen the tender documents relating to the Government's proposal for this land, but I know about the scheme and I have seen the land. The proposal is to have 7 17-storey blocks and each block to have 343 2-bedroom flats, 64 3-bedroom flats, which gives 407 flats per block and for the 7 blocks 2849 flats. It is also intended to have 4 4-storey blocks. The first phase involves the construction of 3009 units. It is possible that the final figure will be 3023 flats and 56 shops. This is very much larger than the figure of 40 units per acre.

30

The Ministry of Housing is the authority for changing the zoning. The change of zoning will be subject to objection with final decision from the Minister.

40

Shown plan P.3. This plan is intended for redistribution of land between the State and the owners. It is designed to show sub-division into terrace houses, flats, shops,

community centres, single family units and open spaces.

I have not seen the first four letters in P.1. before. I see P.2. I say that the rezoning procedure was illegal, as "Open Development" does not permit terrace houses. Blocks of flats fall under "Open Development". 135 flats per acre as proposed by Government is still open development.

10 A private owner can have same development if he provides amenities. In P.3 there was provision for open spaces and a school.

Lot 21 has been developed with 46 units to the acre. In Imbi Road there are 60 units per acre. Those are small lots.

I cannot say whether density in this area should be pushed up; that is a matter for the Minister.

20 54 units per acre would be all right if there was provision for a ten-acre school, which would preclude terrace development.

Adjourned until 2.30 p.m.

Signed (S.S. Gill).

Resumed at 2.30 p.m.

D.W.2 FRANK WATKINSON (on former oath):

The existence of illegal shops from Gombak River bridge to Ipoh Road junction indicates a trend towards blatant illegality. It does not indicate the need for more shops.

30 In 1957 and 1964 town planning was governed by the Town Boards Enactment. Section 35 gave the Town Board authority to prepare a general town plan. Section 136 provided what might be set out in the town plan. Sections 137 and 138 provided that the plan should be advertised and the people objecting should have the opportunity to do so. It is in Section 138 that the period of 3 months appears. This relates to the objection to the general town plan.

40

In the High Court

Respondents' Evidence

No.25

Frank Watkinson

Cross-examination by Peddie

27th October 1966

(Contd.)

In the High
Court

Respondents'
Evidence

No.25

Frank Watkinson

Cross-
examination
by Peddie

27th October
1966

(Contd.)

On 25th February, 1964 the Town Board produced a schedule dealing with reference to zoning. It then created eight types of use zones which might be had in the Town Board area. Under Column 3 were specified types of users which were permitted. Column 4 provided that subject to obtaining permission certain other types of users might be permitted.

User No. 1 under Column 3 permits the use of the land for the erection of detached or semi-detached residences. Column 4 provided that you could use it with special permission for blocks of houses or flats, residential hotels and shops. There was a footnote to Schedule 4 which provided that such development had to be advertised to enable adjoining owners to object. Objections had to be made within 21 days of the advertisement. If the objections were ironed out the whole thing went out to the Ruler-in-Council. Terrace houses do not come under Column 4 procedure. 4-storey flats are not divided horizontally. It is only terrace houses in P.3, which in my opinion were illegal.

10

20

Cross-
examination
by Ek Teong

Cross-examined by Ek Teong: I am only an adviser to the Ministry or the Commissioner. The proposal by the Commissioner is to have 135 units per acre. I will support my Minister. I say that this land can be developed to a density of 40 units per acre. I became Town Planning Officer on 1.1.65. Before that I was one of the advisers to the Commissioner.

30

Letter at page 2 of P.1 speaks of draft plan. In my opinion Plan R.113 mentioned in this letter was the roading plan. P.3 provided for terrace houses rightly or wrongly. Any intending purchaser looking at that plan in 1957 could assume that he could build terrace houses on that land.

Between Gombak bridge in Circular Road and Ipoh Road junction there is a Shell Station. Any major road frontage is ideal for a petrol station. There are 5 petrol companies operating in Kuala Lumpur.

40

If a large area is developed bringing a large number of people on it there would be a demand for shops. Shop houses within the

scheme would be more valuable than flats.

According to a plan there is to be deviation of Circular Road in the area of the land under acquisition. That would give the land two road frontages. Commercial buildings on road frontage would be valuable, not residential buildings.

10 Tower blocks would save space. 50 to 60 shops would be required to cater for the people living in the tower blocks.

There is a cinema in Ipoh Road near the junction. I do not think there would be need for a new cinema in this area.

20 There has in the past been development along Ipoh Road up to Batu Village, but not today. In 1963 and 1964 the pressure of development was in the Imbi Road area, Hicks Road, Bukit Bintang Road area. There has been development in Sentul area and Batu Village. Development has taken place where land has been cheapest. I do not regard Imbi Road as a cheap area. Imbi Road is a desirable residential area.

I see P.9. There has been very little development along Pahang Road within the last two or three years. There have been some bungalows built in the Seavoy Road area.

30 This land in Circular Road, depending upon its use, is more valuable than land further up Ipoh Road. It is very close to Princess Road. There is very little industry along Circular Road as along Ipoh Road.

40 Re-examined: There is a distinction between flats and terrace houses. I know the area of Sale 15 marked on P.9. This land has been sub-divided for terrace houses. The only flats I know in that area are the proposed Bintang Tower and a block in Jalan Khoo Taik Ee south of Imbi Road. I see the areas of Sale 12 (b) and Sale 12 (c). These are sub-divided lots for terrace houses. It is the same with regard to land comprised in Sale No.19 in the Treacher Road area. Land comprised in Sale No. 16 is sub-divided into terrace lots.

In the High
Court

Respondents'
Evidence

No.25

Frank Watkinson

Cross-
examination
by Ek Teong

27th October
1966

(Contd.)

Re-examination

In the High
Court

Respondents'
Evidence

No.25

Frank Watkinson

Re-examination

27th October
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(Contd.)

I would not recommend the building of terrace houses on the land under acquisition. I would recommend the building of blocks of flats with enough space for other amenities. In June 1964 the demand for tower block flats was on the decline.

By Court: The difference between 4-storey flats and 4-storey terrace houses is that flats are not intended to be divided vertically, whereas a terrace house is usually built on a 20' x 80' plot of land and is joined to the next by a party wall. It would be possible to build 40 flats per acre and yet provide for a school if there is sufficient land available.

10

No.26

Lim Mow Chin

Examination

27th October
1966

NO.26

EVIDENCE OF LIM MOW CHIN

D.W.3 LIM MOW CHIN, affirmed, states in English:

I am the Valuation Officer in the Treasury. I am an Associate of the Royal Institution of Chartered Surveyors, Associate of Chartered Auctioneers and Estate Agents Institute, Member of the Institution of Surveyors (Malaysia).

20

I have been with the Valuation Department of the Treasury since 1958, except for a period of 1½ years when I was in the United Kingdom. I have given evidence in the High Court before.

I made a report on the land under acquisition. I completed it in December, 1964. I produce my report (put in and marked D.13). D.12 is the plan I made in connection with my report.

30

I inspected the land on 1st October, 1964. The land has a road frontage of 1420 feet on to Circular Road. The rear portion of the land is slightly elevated. The remaining portion is generally flat. The shape is irregular. The northwest corner of the land is covered with numerous squatter houses, 103 units.

The land is sited in a predominantly residential area. This is the poorer section of

40

Circular Road. There are many squatter houses in this area. There is the Tuberculosis Hospital almost adjoining the land. At the back of the land is a very large piece of mining land.

The planning history of the land is attached to my report.

10 I looked for sales of a similar piece of land of similar size in this area, but I did not find any apart from the previous sale of the land under acquisition on 5th November, 1963. In assessing the value of the land under acquisition, I based my valuation mainly on this previous sale which took place only 7 months before acquisition. In my opinion it was the best evidence of value. However, I considered that a certain increase ought to be given to take into account general rise in values between 5th November, 1963 and 4th June, 1964. The sale in November, 1963 was at \$2.20 per square foot or about \$95,000 per acre. I still maintain that the claim of 20 \$12/- per square foot is very high.

30 I checked other sales. Instances of such sales are set out at page 4 of my report, namely, sales of Lot 29 marked B in my plan and Lot 56 marked C, having areas of 2.85 acres and 3.901 acres respectively which were sold on 29.9.62 at \$1.12 and 65 cents per square foot respectively. At the time of inspection I saw some site works being carried on on these two lots, such as clearance of squatters and levelling, but these projects of housing schemes have been abandoned up to now. These two lands were proposed for 5 blocks of 14-storey good class flats and one block of 3-storey buildings. These two lots are close to the land acquired. The T.B.Hospital separates the two lands.

40 I also checked sale of Lot 2285 marked E on my plan. This piece of land has an area of 1.437 acres. It was sold at \$6.39 per square foot on 14th March, 1963. Here again at the time of inspection I saw site preparation for a 16-storey block of flats but this project has been abandoned. This was not a market sale. This was a transfer from a Director to his own company. I discovered this after I had made my report. If I had known that this was a transfer from a Director to his company, I would not have given

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Respondents' Evidence

No.26

Lim Mow Chin

Examination

27th October 1966

(Contd.)

In the High
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No.26

Lim Mow Chin
Examination

27th October
1966

(Contd.)

serious consideration to this sale. The owner here was Mr. Gunn Teck Loon. He transferred the land to Bee Seng Company Limited, of which company he is Director. I produce a certified copy of the transfer (put in and marked D.14) and a certified copy of Statement from the Registrar of Companies (put in and marked D.15)

Lot 21 marked D in my plan, having an area of 1.322 acres was sold to Yap Hong Ann on 17th August, 1962 at \$2.50 per square foot. At the time of inspection some building works were being carried on on the land. The proposed scheme was for 10 3-storey terrace houses and 7 3-storey shop houses with Pahang Road frontage. The shop houses have been increased by one storey.

10

I selected these sales because they were comparable and to give an indication of value in this area.

I would give no serious consideration to the sale of Lot 2285 by the Director to his company.

20

I have given details of reports in Appendix II of my report. All these sales are of areas very much smaller than the acquired area.

In Appendix III of my report I have set out sales of areas less than one acre and I have marked them as F, G, H and J. F refers to sale of a small piece of land for a petrol station and offers no evidence of market value. Lot 19 marked G was sold at 2.49 per square foot on 26.3.63. This is a vacant piece of land. Lot 18 (Lot H) was sold on 25.4.62 for \$3.95 per square foot. This land was sold together with a pre-war house on it, a brick house. It was resold on the same day at \$8.23 per square foot to the Shell Company for a petrol station. State land marked J was sold to the Ministry of Health at \$3.50 per square foot. This was not a market sale.

30

40

Some of the sales I have quoted took place in 1962. Here allowance could be made for an increase in the period 1962 to 1963. Allowing for such increase the price of \$2.20 of the land acquired in November, 1963 was not out of

line with the other sales in the vicinity, but all these sales are not comparable to the land acquired in terms of size. But they are of equivalent potentiality and are in the same locality.

Smaller lands fetch higher values than bigger pieces of land.

10 I have stated at page 4 of my report that the sale price of the land acquired in November, 1963 was slightly high.

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

Adjourned until 11 a.m. tomorrow.

Signed (S.S. Gill)

20 28th October, 1966

Civil Applications Nos. 2, 4, 5, 6, 7, 8, 9, 10 and 11 of 1965.

Hearing continued. Counsel as before .

D.W.3 LIM MOW CHIN (re-affirmed):

30 In my report I have mentioned that a shop, flat or bungalow lot usually has an area of 2,000 square feet, 1,600 square feet and 6,000 square feet respectively. It is the principle of valuation that the value fetched by a small piece of land cannot be applied to a big piece of land, because smaller lots fetch a very much higher price.

The owners have now brought down the claim to \$12/- a square foot. According to my valuation the market value of the land as at 4th June, 1964 should be \$3/- per square foot, which gives a total of \$2,975,190/-.

Between the date of previous sale of 1/2 portion of the land under acquisition and the

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No.26
Lim Mow Chin
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27th October 1966
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Lim Mow Chin
Examination
(continued):
28th October 1966

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Court

Respondents'
Evidence

Lim Mow Chin

Examination

28th October
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(Contd.)

date of acquisition I have allowed an increase of about 40 per cent.

In arriving at my valuation of \$3/- per square foot I have considered various factors as stated at pages 6 and 7 of my report. They are (1) size, (2) squatters on the land, (3) condition of neighbourhood, (4) the slope of the land, (5) previous sale of the land, (6) other sales in the immediate vicinity and (7) demand for flats in the area, that is, potentiality of the land.

10

I have stated in my report that the demand for flats seems to be on the decline. The demand started to be on the decline just before 4th June, 1964. Demand for terrace houses is also not very good. If there was a good demand for tower blocks or 3 or 4 storey terrace houses, many blocks would have been built in 1963 or beginning of 1964. There were proposals to build tower blocks in the neighbourhood, which were abandoned later. This was so in the case of Lot 29, Lot 56 and Lot 2285. Approval was given but the projects were never carried out. That is how I have come to the conclusion that the demand for flats was very limited in 1964.

20

I have expressed an opinion at page 8 of my report that the compensation payable properly should be \$2,975,190.00 as at 4th June, 1964.

The normal rate of appreciation of land values in Kuala Lumpur between 1963 to 1964 averaged from 30 to 40 per cent, although there were isolated cases of higher increase.

30

Confrontation of Malaysia by Indonesia started in September, 1963. There should be some effect of that on land values. With the confrontation the normal increase would be slightly lower. My view about the increase in land values is supported by the report of the Applicants' valuer. This is borne out by Sales 5 and 6 of Mr. Williams' report. These sales show a fall of 21 per cent between March 1963 and October 1964. Sales 7 and 8 show an appreciation of 20 per cent between March 1963 and April 1964. Sales 15 and 16 taken against Sale 18 show an appreciation of about 30 per

40

cent. Sales 10 and 11 show an appreciation of 30 per cent between April 1963 and April 1964. Sales 15 and 16 show a depreciation of about 10 per cent between January, 1964 and July, 1964. Sales 14 and 15 show an appreciation of more than 100 per cent over the period August 1963 and January 1964. In the case of Sale No. 14 the price was low because at that time the Municipality had a proposal to have an inner ring road on this lot leaving aside a very small portion, which would not be very good for development. Before the proposal to build the ring road the area of the lot was 2.569 acres. The road proposal shows a 140-foot street traversing across the whole of the eastern portion of the land, leaving only the western portion for development. During the period when the Municipal Council was drafting the plan application for development would be deferred indefinitely. Therefore a prudent investor buying this piece of land would pay a low price for it.

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 28th October 1966
 (Contd.)

I do not agree with the conclusions at which Mr. Williams has arrived. The previous sale of the land under acquisition offers the best material as evidence of the value. In this particular instance the sale took place only 7 months before the material date. The 19 sales mentioned by Mr. Williams, apart from two instances of sales in the vicinity of the land acquired, are not comparable sales. They are sales of lands either in better commercial or residential areas and most of them are several miles away from the land acquired. The situations in which those lands are sited are not comparable. There is then the difference in size, a very big difference in terms of land areas, between the sales quoted and the land acquired. This also applies to the sales quoted by me.

I do not agree with the opinion of Mr. Williams at page 10 of his report that the estimated value of the land is \$12 per square foot. There might be demand for 3-storey or 4-storey terrace houses at the 3rd mile Ipoh Road and Imbi Road, but it does not necessarily mean that the same degree of demand can be found in the locality under consideration. Over the period of years there was no sign of numerous blocks of terrace houses in this part of Circular

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Road. A piece of land in a certain locality might have the same potentiality as another piece of land in a different locality, but it does not necessarily follow that they should be sold at same price. In this instance the Applicants' valuer has used a price slightly higher than the sales quoted by him, even though this part of Circular Road is inferior to the areas quoted as comparable.

I do not agree with the conclusion of Mr. Williams at page 12 of his report. In the Town Planner's letter the density was stated to be 40 units per acre. The value of \$9,000 per unit is certainly very high. He assumes that all these units will be sold at that price. With 54 units per acre over the whole area the market will be flooded with flats. In the whole of Kuala Lumpur the number of dwelling units completed in 1964 was 1,873. So the market would be flooded and prices would slump. At \$2,000 per unit at the rate of 40 units to an acre, the effective price would be \$2/- per square foot. Sentul area would be more comparable than the Imbi Road and Ipoh Road area. The Sentul flats quoted by Mr. Williams are lying close to Ipoh Road separated only by a Fire Station.

10

20

I produce a certified copy of the transfer of the land under acquisition on 5th November, 1963 (put in and marked D.16).

Cross-
examination
by Peddie

Cross-examined by Peddie: I studied by correspondence for the Examination of the Royal Institution of Chartered Surveyors while I was working in the Treasury. I passed the Intermediate Examination in March, 1961. I went to England in October 1961 to complete my studies. I worked with a firm of Chartered Surveyors, Gerald Eve, and I was also studying for my final examination which I took in March 1964. I returned to Kuala Lumpur in the first or second week of June, 1964. I had just returned to Kuala Lumpur when this acquisition took place. I conducted inquiries earlier but inspected the land on 1st October, 1964. I reported to the Collector some time in December 1964. My report has stood unaltered since I made it.

30

40

I was not here in 1962 and 1963. I have given evidence about the increase in land values.

I have not mentioned it in my report but it is reflected in my valuation. I agree that the important consideration is whether prices were going up, going down or static at the time of valuation. This is not stated in my report. It is not necessary to give a full reasoning for the value arrived at. I do not agree that if I have relied on Mr. Williams' figures for the increases, I have not given figures in my report, but I am aware of the trends. I referred to sales records in my office dating from 1958. As regards conditions and types of land in 1963 to the date of my return I made reference to the records of the Municipal Valuation Department. I did not include this in my report.

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Lim Mow Chin

Cross-examination by Peddie

28th October 1966

(Contd.)

The report of Mr. Williams was handed to me just before the date of the last hearing. I have had it for about four months. In view of the previous sale of the land under acquisition at \$2.20 per square foot as well as sales in the neighbourhood it was not necessary for me to show in my report sales which are not comparable. I could not trace any sale of a big piece of land such as the one acquired. The sale of land near Odeon Cinema was not comparable. That land was sold at \$20/- per square foot in December, 1963.

I have had no experience in buying and selling undivided shares of land, but I have come across such sales. I have valued such sales for estate duty and stamp duty purposes. It is a general statement that reliance should not be placed on sales of undivided shares. This is not necessarily true in all cases.

It depends on circumstances whether I would pay the same price for an undivided share in land. If the land area is very big the Torrens allowance for an undivided share does not apply because any imprudent sacrifice by either party may result in a big loss. The sale of an undivided share at higher or lower value applies only to smaller lots. I was aware that the sale of Lot 21 was of an undivided 1/6 share. I was not aware that the buyer then became owner of 5/12 share. Whether this sale was a suitable criterion depends on who was the other owner. I did not analyse the sale of Lot 21.

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No.26

Lim Mow Chin

Cross-
examination
by Peddie

28th October
1966

(Contd.)

I discarded the sale of Lot 2285 because it was not a market sale. This was a sale by a Director to the company. The Director has an interest in the company. He also has a responsibility to the company. I do not know what shares he holds in the company. I could get no information from the Registrar of Companies.

I made inquiries about Sale No. 8 mentioned by Mr. Williams. I could not trace it in the Land Office. I see the agreement of sale in relation to this sale (P.11). I find nothing wrong with the agreement. The price mentioned in this agreement is consistent with the price of Lot 2285.

10

Lots 29 and 56 were sold on the same day. These were covered with squatters. Lot 2285 was sold with vacant possession. Lot 2285 is below road level. Lot 1 is level in front and drops down at the back. There is a Chinese School next door. There is one motor repair shed at the back.

20

There is nothing wrong with the sale values of Lots 29 and 56. That is the usual range of prices. They differed in value because Lot 56 had more squatters than Lot 29 and there is a row of terrace temporary shops in front of Lot 56, fronting Pahang Road. Lot 29 also had squatters but less. Lot 56 lies very close to a mining hole. All these factors account for the difference in the price. Lot 1 goes right down to the mining pool.

30

I am not happy with the sale of Lot 2285. My inspection of the land under acquisition and Lots 29 and 56 took place in October, 1964. The owners of the lots were clearing the lands for tower blocks. I saw clearing of Lot 2285 in progress at about the same time. They were preparing the lands for tower blocks. I do not think the Budget in 1964 had any effect in putting an end to the proposal for the tower blocks.

40

Adjourned until 2.30 p.m.

Signed (S.S. Gill).

Resumed at 2.30 p.m.

D.W.3 LIM MOW CHIN (on former oath):

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Court

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Lim Mow Chin

Cross-
examination
by Peddie

28th October
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(Contd.)

10 Cross-examined by Peddie Piling has been carried out on Lot 2285, but not Lots 29 and 56. Piling might have been done on Lots 29 and 56 later on. If piling was done it does not necessarily follow whether they would proceed to develop. It would depend upon the booking of houses. If they were doing work on the land until October, 1964 that would show that the developers considered there was demand. Lots 29, 56 and 2285 have the same potential as the land under acquisition and Lot 1. What we are considering is the market in June 1964 but we should make some allowance from conclusions to be drawn from later market. We cannot take the conditions existing later on. We should take the market at the time of the acquisition. In June 1964 there were proposals for several tower blocks. There might have been some developers cashing on the market. Other developers would come on the market, and in that particular locality the demand for flats might drop. On Lot 21 development was completed in 1965. I do not know whether they were completed in June 1966. Lot 21 does not give conclusive evidence of development in that area.

20

30 It is a principle of valuation that smaller lots fetch higher values than bigger lots. A big piece of land would get lower price than a small piece because risk involved in owning or developing a bigger piece is very great. There might be difficulty in selling a bigger piece. The basic factor is not the market. One is not expected to pay the same rate for a bigger piece than a smaller piece. The land under acquisition consisted of several titles. The land could be disposed of title by title but in disposing the best sites there is great difficulty in selling the poorer sites unless the best sites are used as an attraction. The time taken for disposing site by site would be longer. Where the sale of land is postponed in realisation there must be deducted such sum as would take into account the period of possible postponement or deferment. I was required to value the title as a whole as they are contiguous lots.

40

I have not considered any particular cases as regards the effect of Indonesian confrontation in land values. The period of boom and

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Cross-
examination
by Peddie

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confrontation show a net increase of up to 40 per cent. Presence of squatters, etc., are factors to be taken into account for the increase. I did not know the full details of the land mentioned by Mr. Williams in his report.

The proposal for the inner ring road was made in 1963. There is a draft layout plan in the Municipality. It has not been gazetted yet. If a purchaser has intention to develop the land he would consult the planning authority. The proposal was made around July and August, 1963. \$5/- per square foot was a low price in that area.

10

The two sales from the neighbourhood taken by Mr. Williams were of Lot 2285 and Lot 1. They are not comparable sales but they are sales of lands in the neighbourhood.

There is one poultry farm and one rambutan orchard in Imbi Road. A great deal of development has taken place there during the last two or three years. Even before that development the Imbi Road was densely populated.

20

Lands comprised in Sales 14, 15 and 16 mentioned by Mr. Williams have the same potentialities as the land under acquisition, provided it is permitted by the authorities.

I would regard the sale of Lot 21 as reliable, depending upon whether the purchaser has paid too low or too high.

Lot 14 mentioned in Appendix III of my report is a bungalow lot. If it cannot be used for flat, it is not comparable.

30

I did not make any investigations as to the circumstances of the sale of the land under acquisition on 5th November, 1963.

There was ample vacant land on the land acquired for a developer to start work and take time to clear the squatters from the other area. What was not vacant was the area the Army had occupied.

There has been development along Circular Road from Ipoh Road up to the River. There was development going on up to the land on Lot 21.

40

There was a proposal to develop lots 29, 56, 2285 and 1. The flats all round had not come up. I therefore called it a poor area because of squatters on the land and mining land nearby.

I had not seen P.3 before I wrote up my report. Shape of the land had been improved as a result of this plan.

The previous sale is the keystone of my report.

In the High Court
Respondents' Evidence
 No.26

Lim Mow Chin

Cross-examination
 by Peddie

28th October
 1966

(Contd.)

Cross-examination
 by Ek Teong

10 Cross-examined by Ek Teong: I made investigations for the purpose of my report before October, 1964. I submitted my report to the Collector on 7th December, 1964. The Collector made his award on 16th December, 1964. I have made no amendments to my report. As far as possible, I took for the purpose of my report such material as I considered relevant and necessary.

20 The land is generally flat except at the back where it is 6 to 8 feet higher. I have valued the land as a whole at a price which a willing purchaser will pay to a willing seller. In my report I did not question the figure of \$6.39 per square foot for Lot 2285. Lot 2285 was not encumbered with squatters. So it was worth more. Difference in time of purchase of lots is mentioned in my report. I have stated my conclusion at the foot of page 4.

30 I do not consider the sale by the State Government to the Federal Government relevant, but I have mentioned it because there is a Hospital coming up there.

I have mentioned in my report at page 7 other recent sales in the immediate vicinity. I mean sales under Appendix III and IV.

I am relying on sale of Lot 14 (Appendix III, G) for purpose of my valuation. I am not relying on Lot 18. I am not relying on sale of State land for T.B. Hospital.

40 As regards sale of Lot 2285, I know that there are other shareholders of the company. There are two other Directors.

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No.26

Lim Mow Chin

Cross-
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by Ek Teong
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(Contd.)

Lot 1 is also next to a water hole. This lot was agreed to be sold for \$7.39. This is one instance of a sale at a high price. The market price of Lot 2285 may not necessarily be \$6.39. I have no evidence that it is not a genuine sale, but it is not a market sale. Vacant possession cannot be accounted for in terms of so many dollars per square foot.

Lot 56 is 3.901 acres in area. There should not be much difference between sale of 4 acres and 6 acres. There is a difference between sale of 1 acre and 5 acres in point of value. The percentage is variable.

10

I disagree with Mr. Williams' value of \$9,000 per unit as the basis of valuation. If land is sub-divided into terrace house lots and the lots are sold to various developers, it would take time for the houses to be built. The basis of Mr. Williams' calculation is valuation of each terrace lot. I see his values of lots under Sale 12. Those are 86 lots as against nearly 1,000 lots to be thrown open to the public if the Circular Road area is developed.

20

It is not mentioned in my report that I took into account any increase in the market prices of lands generally.

Re-examination

Re-examined: At page 4 of my report I stated that the price of \$2.20 seemed slightly high. I came to the conclusion that \$3.00 was a fair price on the date of acquisition.

30

I mentioned proposals to develop land in the neighbourhood, which did not materialise. They were proposed developments on smaller lots. The position of a developer of a big land is even worse.

At the time of sale in 1963 there was in existence a plan which had been approved in 1957 to develop 212 units. The plan indicated that the owners intended to develop the land as a whole. As far as I know, there never was any intention to develop the land piece by piece.

40

Mr. Williams says in his report that there was a big rise in the price of land between 1963

and 1964 and he has tried to substantiate that by reference to Sales 10 and 11. The rise in fact was 33 per cent. I have similarly analysed increases by reference to other sales. I have allowed an increase of nearly 40 per cent over a period of 7 months to arrive at my valuation.

10 By saying that lands in Sales 14, 15 and 16 have the same potentialities as the land under acquisition, I mean that they can be put to the same potential use.

The Army Camp on Lots 18 and 19, according to records I have seen, were demolished in 1962. There was a small camp opposite the road on lots 95 and 96. The Government took a lease of three years from 1958.

20 In sales of undivided shares in respect of small lots purchasers buying it would pay a higher or lower price for it, depending upon whether the sale was a forced sale or whether a purchaser takes a fancy to the property. Normally the share involved is very small and consideration involved is small, so that neither party would hesitate to make a sacrifice. In the case of this land I do not consider that the owner was prepared to accept a low price for the sale of his share. If he had no knowledge of market price he can always instruct a broker or an estate agent to sell on his own behalf, or he could make inquiries from his Chettiars.

30 This was not a case where a party could make a sacrifice or accept a low price. I see from the conveyance that the parties were not related. They came from different parts of the country. I had no reason to doubt that it was an arms-length transaction.

Case for the Respondent.

Adjourned until 1.11.66 at 10 a.m.

Signed (S.S. Gill)

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(Contd.)

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NO.27

ADDRESS BY COUNSEL FOR RESPONDENTS

No.27

1st November, 1966

Address by
Counsel for
Respondents

Civil Applications Nos. 2, 4, 5, 6, 7, 8, 9 10
and 11 of 1965.

1st November
1966

Hearing continued. Counsel as before.

Inche Azmi addresses Court:

A case of land acquisition by Government on 4th June, 1964, an area of approximately 22 acres on the north side of Circular Road, Kuala Lumpur. Locality of the area well established. Collector awarded \$3/- per square foot. Challenged by owners. Issue in the case, what was the market value of the land on 5th June, 1964. Para. 1 of First Schedule of Land Acquisition Act, 1960. Factors to be considered are set out in paragraph 2 of First Schedule. Only important factor is paragraph 2 (a) of First Schedule. Factors to be excluded are set out in paragraph 3 of the First Schedule. Relevant paras. are paras. 3 (b) and 3 (e). In this case, the low cost housing scheme should not be taken into account. 10 20

In assessing compensation the main principle can be found in Vyricherla Narayana Gajapatiraju v. The Revenue Divisional Officer, Vizagapatam (1939) A.C. 302. quoted with approval in Superintendent of Lands and Surveys, Sarawak v. Aik Hoe & Co., Ltd., (1966) 1 M.L.R. 243, 245. Refer to Aggarawala on Acquisition of Land (third edition) page 184; para. 2 (a) of First Schedule of Land Acquisition Act, 1960. The question is, what was the market value of the land? Definition of "market value" at page 180 of Aggarawala. 30

In ascertaining the market value the first principle to be applied is that where the property to be acquired has been recently purchased the price paid is prima facie the market value. Refer to page 189 of Aggarawala. Refer to Nanyang Manufacturing Co. vs. Collector of Land Revenue, Johore (1954) M.L.J. 69. 40

Price paid on the previous recent sale of the land acquired. Refer to K.P.Frenchman v. Assistant Collector, Haveli A.I.R. (1922) Bombay 399; Government of Bombay v. Ismail Ahmad A.I.R. (1924) Bombay 326; Ghulam Hussain v. Land Acquisition Officer, Bandra A.I.R. (1928) P.C. 305. Most important evidence here is the previous sale of the land itself by Devarayan Chettiar on 5th November, 1963 to nine of the applicants. Transaction was a genuine transaction in the open market between a willing vendor and willing purchasers. Award made by Collector consistent with the principles normally applied. Refer to Ei Boon Yan & others v. Collector of Land Revenue, Port Dickson (1955) M.L.J. 133, 134. Collector here has awarded more than \$2.20 per square foot, which was the price paid only 7 months before the date of acquisition.

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No.27

Address by Counsel for Respondents

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Applicants' valuer has admitted that in arriving at his valuation he has ignored the previous sale altogether (page 5 of his report). Not a case of a sale of mere fraction of land. Sale was of 1/2 interest in the land. He has based his valuation of sales of other lands, which have no connection with the land acquired. Sale of undivided share, refer to Aggarawala (3rd edition) page 206. This is only a general statement of law. No authority that previous sale must be sale of the whole land. See also Aggarawala, page 196. Mr. Williams has come to the wrong conclusion in his valuation.

Question of potentiality of land. Development of land approved in August, 1957 (P.2). Two of the purchasers have said that they knew nothing of the existence of this plan, but their evidence must be disbelieved. They themselves were buying the land for development. Value of \$2.20 took into account the potentiality of land.

40

Prima facie evidence of previous sale. Open to show that it was not market value. Applicants entitled to show the general increase in value. Refer to bottom paragraph at page 197 of Aggarawala. Onus on the applicants to prove that price paid at previous sale was below market price. Applicants have failed to prove this. Nothing to show that previous sale was not

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genuine. Devarayan Chettiar and purchasers strangers to each other. Tests of a bona fide sale, Aggarawala page 196. Previous sale in this case was in open market. No evidence that transaction was a forced sale. Only hearsay evidence adduced as to why Devarayan Chettiar sold his land at \$2.20 per square foot. Vague suggestions must be rejected. Genuine and bona fide sale by a willing seller to 9 willing buyers. Mr. Williams merely says that \$2.20 per square foot was entirely out of line with the general level of prices.

10

No evidence that \$2.20 per square foot was below market price. Onus on applicants to prove. Government valuer's report and evidence consistent. Evidence of P.W.3 as to valuation put by Chettiars on the land when it was awarded to Devarayan Chettiar.

Purchasers may have felt that they got the land cheap in November 1963. Refer to Qamer Ali v. Collector of Land Revenue, Bareilly A.I.R. 1914 Allahabad 66. 19 sales mentioned by Mr. Williams not sales of comparable property. Lands situated in different localities. Localities not comparable. Sales 1, 7 and 8 of lands near the locality. Sale 1, as Mr. Williams has said, can be disregarded. Sale 7 should be disregarded. Not a sale in open market. Refer to Judgment of Dato Aziz, J. in Civil Application No. 23 of 1965. Sale 8 has been admitted to be an unregistered sale. Agreement to sell (P.11). This should be ignored.

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Fallacy of valuing large plots on sale of small plots, Aggarawala pages 193 and 194. Refer to Sarawak case at page 249; Qamer Ali case A.I.R. 1914 Allahabad 66; N.C. John's Trust, Allepey v. State of Kerala and Others A.I.R. 1958 Kerala 166, 167.

General rise in land values. Collector has allowed an increase of nearly 38 per cent over a period of 7 months. Examples quoted by Mr. Williams support Collector's valuation.

40

Applicants have failed to prove that Collector's valuation is wrong. Hypothetical building schemes cannot be relied upon, Aggarawala page 242. P.4 entirely irrelevant.

NO.28ADDRESS BY COUNSEL FOR APPLICANTS 2, 4, 5, 6,
7 and 8In the High
CourtNo.28Inche Peddie addresses Court:

Argument that low cost housing by Government on the land should not be considered. This is not our case. Potential is substantial part of our case. For that reason we have produced evidence to show what can be done with the land.

Address by
Counsel for
Applicants
2, 4, 5, 6,
7 and 81st November
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10 Some form of compulsion to sell is relevant to show that price paid was not market value. Land of similar quality and similar positions relevant, as Mr. Williams has done. Cannot sell portions of land under Torrens System. Can sell only undivided share. Sale Government relies on is the sale of undivided share. Refer to Sarjiva Row on Law of Land Acquisition (4th edition) page 362. Correct approach is that adopted by Mr. Williams.

20 1957 plan not the maximum potential of land. Evidence of Watkinson.

Evidence about capital gains tax in India. Values on partition not relevant.

30 Refer to Secretary of State v. Shrimati Sarla Devi Chaudhrani I.L.R. (1924) Vol. 5 Lahore 227. Biggest land is 6 acres in area. Sales 1, 7 and 8 not irrelevant. What Mr. Williams put forward was not a hypothetical building scheme. He was talking about the potentials of the land. He was ascertaining the land cost of each plot for a flat. Sale in November, 1963 open to two objections. It was a sale under pressure as it was a sale of an undivided share. Factors of valuation by Government valuer, exploded one by one. Only left with the sale of the land itself in November, 1963. Sales of lands in Ipoh Road were sales of lands further away from town centre. Areas around the land under acquisition developed. Potential of land therefore must be very high. Demand for land. Capital surplus available.

40

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Court

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Counsel for
Applicants
2, 4, 5, 6,
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(Contd.)

Adjourned until 2.30 p.m.

Signed (S.S. Gill).

Resumed at 2.30 p.m.

Inche Peddie continuing his address:

Mr. Williams took Imbi Road and Ipoh Road areas and arrived at his valuation of \$12/- per square foot. He then cross-checked. Mr. Watkinson's figure at the rate of 40 units per acre would work out at \$8/- per square foot. Evidence that \$10/- per square foot offered for Lots 95 and 96 just on the other side of the road. This evidence not challenged in any way. Sale agreement at \$7.90 and sale of Lot 2285 at \$6.39. Imbi Road and Ipoh Road areas comparable. Only difference in size and locality. Total area involved in Imbi Road is 11 acres. Distinction between flats and terrace house immaterial.

10

That Circular Road area is poorer locality does not bear examination. Presence of squatters not an embarrassment to land development. Squatters do not make an area a poor area. There can be no high density in an area where 22 acres is lying vacant.

20

Devarayan Chettiar's sale. Evidence not hear say. Immigration laws of this country not hearsay. Devarayan Chettiar's nationality a fact. Came here on a visit pass. Returned to India in May, 1964. P.W.1 and P.W.3 knew his affairs intimately.

30

Mr. Williams has relied on Sales 8, 11 and 16. They do not stand in isolation. No flooding of market by reason of development in Imbi Road and Ipoh Road areas. Demand comes with development.

No evidence that prices fell because of confrontation.

Applicants have made out their case.

Torrens System of land owning. Difficulty about selling undivided shares. Refer to

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Aggarawala at page 206 and Sarjiwa Row at page 362. Sarjiwa Row page 276 - Forced sale not a criterion. Refer to Government of Bombay v. Marwan Moudigar Aga I.L.R. (1924) Bombay 190. Aggarawala page 195, sales must be analysed. Prices out of line must be disregarded, Aggarawala page 188, 197. Price at most advantageous terms, Aggarawala page 181; Sarjiwa Row, page 328, 255.

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Court

No.28

Address by
Counsel for
Applicants
2, 4, 5, 6,
7 and 8

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1966

(Contd.)

10 The figure of ₹3/- awarded by the Collector cannot be maintained. Sales 7 and 8 given by Mr. Williams tally with each other.

NO.29

ADDRESS BY COUNSEL FOR APPLICANTS 9, 10 and 11

No.29

Address by
Counsel for
Applicants
9, 10 and 11

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Inche Ek Teong addresses Court:

20 I adopt the arguments of Mr. Peddie. Only some points I wish to impress. One must assume that Government was acquiring the whole land from one owner. Area acquired held under 7 titles. Sale must be to the best advantage of the vendor. The sale should be treated as if it were a sale of each piece separately by one vendor to one purchaser, all at the same time. Refer to Secretary of State v. Shrimati Sarla Devi Chaudhrani I.L.R. (1924) Vol. 4 Lahore 227, 234.

30 Respondent relies entirely on the sale in November, 1963. One cannot develop land without the consent of his co-owners. In such cases the land becomes sterile. Basis of valuation here should be different from the basis on which they were sold to the nine purchasers.

40 Devarayan Chettiar got his land in 1962. P.W.5 said that Kasi Chettiar came to him and asked him to make an offer. This shows Kasi Chettiar did not know what the price was. Shows developers in Kuala Lumpur were not interested in undivided shares. Refer to Prem Chand Vural & Another v. Collector of Calcutta 1 Indian Decisions, Calcutta 363 (2 Calcutta 104). One previous sale is not an index of the value of the land. Sale in the most lucrative way. Evidence

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in this case of a layout. Evidence that it
would be possible to get 40 units to the acre.

No.29

Density of area. Lay-out plan when the
new purchasers came in. Court must assume that
land acquired will be used in such a way as the
Regulations permit and that Minister in approving
any plan will act judiciously. Density given
by Mr. Williams not excessive.

Address by
Counsel for
Applicants
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Refer to case of Maung Bas Khin v. Special
Collector, Maubin A.I.R. (1935) Rangoon 157.

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Demand. Development all round. In this
particular part of the town there is demand for
housing. Area ripe for development. Boom
in land until November, 1964. Not affected by
confrontation. Land from State Government to
Federal Government for T.B. Hospital at \$3.50.

Refer to Mohamed Ismail & Others v.
Secretary of State A.I.R. 1936 Lahore 599.

C.A.V.

Signed (S.S.Gill)

20

Certified true copy

Sd:

Secretary to Judge,
Kuala Lumpur.

20.3. 1967.

NO. 30
JUDGMENT OF GILL, J.

In the High
Court

No. 30

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IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL APPLICATION NO. 6 OF 1965

In the matter of the Land Acquisition Act, 1960
(Section 38 (5))

And

10 In the matter of the Acquisition of Lots 1922 and
1928, Section 85A, Lots 1924 and 1930, Section 79
and Lots 17, 18 and 19, Section 47, Town of Kuala
Lumpur.

Between

A.K.A.C.T.V. Alagappa Chettiar s/o
Sithambaram Chettiar as Trustee Applicant

And

Collector of Land Revenue, Kuala
Lumpur Respondent

JUDGMENT OF GILL, J.

20 These applications, which were heard together
with the consent of the parties, are objections
referred to this Court under Section 38 of the Land
Acquisition Act, 1960 (hereinafter referred to as
"the Act") against the award of compensation of
the Collector of Land Revenue, Kuala Lumpur in
respect of the compulsory acquisition by the
Government of the State of Selangor of 22.763
acres (991,730 square feet) of land (hereinafter
referred to as "the land acquired") comprised in
30 Certificates of Titles Nos. 9784, 9786, (Section
85A), 9785, 9787 (Section 79), 10800, 10801 and
14401 (Section 47) for Lots 1922, 1928, 1924, 1930,
17, 18 and 19 respectively in the township of
Kuala Lumpur, of which the applicants were co-
owners in undivided shares. The remaining
co-owner was the applicant in Application No. 3
of 1965, which could not be heard together with
these applications because he has since died.

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The following facts are not in dispute. The land acquired consists of seven contiguous lots and is situated approximately two miles from the centre of Kuala Lumpur town on the north side of Jalan Pekeliling about 200 feet from its junction with Jalan Pahang to the east and about 350 yards from its junction with Jalan Ipoh to the west, with a total frontage of approximately 1,420 feet along Jalan Pekeliling. On the west it is bounded by Sungei Gombak. Immediately at its rear on the north side are the Tuberculosis Hospital and Clinic and numerous squatters' huts which constitute Kampong Siam. Next to the Hospital with road frontage on Jalan Pahang are Lots 29, 56 and 1, and almost directly opposite to Lot 29, across Jalan Pahang, is Lot 2285. To the south of the land acquired, across Jalan Pekeliling, are Lots 95, 96, 97, 98, 12 and 21. All this is shown in the plans which have been put in evidence and marked as P.9 and D.12.

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On the material date the applicant in Civil Application No. 6 of 1965, A.K.A.C.T.V. Alagappa Chettiar s/o Sithambaram Chettiar, was the owner of an undivided half-share of the land acquired. The other eight applicants, together with the applicant in Civil Application No. 3 of 1965, were the owners of various undivided shares in the land, making a total of an undivided half-share. Between them they purchased the undivided half-share from one Devarayan Chettiar, the previous co-owner with Alagappa Chettiar, on 5th November, 1963 at \$2.20 per square foot.

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A notification under Section 4 of the Land Acquisition Act, 1960 that the acquired land was likely to be acquired was published in the Selangor Government Gazette on 4th June, 1964. This was followed by a declaration of intended acquisition under Section 8 of the Act which was published in the Gazette on 8th October, 1961. Notices on the parties as required by Sections 10 and 11 of the Act having been duly served, the Collector held an enquiry into claims to compensation for all interests in the land acquired and on 17th December, 1964 made an award of compensation at the rate of \$3.00 per square foot. It is against that award that an objection by each applicant in respect of his undivided interest in the land acquired has been

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referred to this Court.

In his grounds for the award the Collector has stated as follows :-

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

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

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

30 Under the circumstances, I value the land at \$3/- per sq. ft. and award a total compensation of \$2,975,190/- to be divided amongst the owners according to their respective shares in the lands."

40 I must state at the outset that in proceedings of this nature it is for the owners of the land acquired to prove that the award was inadequate. As was stated by Broomfield J. in Assistant Development Officer, Bombay v. Tayaballi Allibhoy Bohori:⁽¹⁾ "The party claiming enhanced compensation is more or less in the position of a plaintiff and must produce evidence to show that the award is inadequate. If he has no evidence the award must stand, and if he succeeds in showing prima facie that the award is inadequate, then Government must support the award by producing evidence."

(1) (1933) A.I.R. Bom. 361, 364.

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It is common ground that the applicants in these proceedings are entitled by way of compensation to the market value of the land acquired as on 4th June, 1964, by virtue of Section 1 (1) (a) and Section 2 (a) of the First Schedule to the Act. The issue before the Court therefore is, what was the market value of the land acquired on that date? As to what "market value" means, Suffian J., in his leading Judgment of the Federal Court in the case of Superintendent of Lands and Surveys, Sarawak v. Aik Hoe & Co. Ltd.(2) cited with approval the following passage from the Judgment of the Privy Council by Lord Romer in Vyricherla Narayana Gajapatiraju v. The Revenue Divisional Officer, Vizagapatam:(3) 10

" The compensation must be determined..... by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser. The disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy must alike be disregarded. Neither must be considered as acting under compulsion. This is implied in the common saying that the value of the land is not to be estimated at its value to the purchaser.....it may also be observed in passing that it is often said that it is the value of the land to the vendor that has to be estimated. This, however, is not in strictness accurate. 20
The land, for instance, may have for the vendor a sentimental value far in excess of its 'market value'. But the compensation must not be increased by reason of any such consideration. The vendor is to be treated as a vendor willing to sell at 'the market price'..... It is perhaps desirable in this connection to say something about this expression 'the market price'. There is not in general any market for land in the sense in which one speaks of a market for shares or a market for sugar or any like commodity. The value of any such article at any particular time can readily be ascertained by the prices being obtained 30 40

(2) (1966) 1 M.L.J. 243, 247.
(3) (1939) A.C. 302.

for similar articles in the market. In the case of land, its value in general can also be measured by a consideration of the prices that have been obtained in the past for land of similar quality and in similar positions, and this is what must be meant in general by the market value'

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In the same case Suffian, J. cited with approval the following passage from the Judgment of
10 Buhagiar, J. Nanyang Manufacturing Co. V. The
Collector of Land Revenue, Johore: (4)

" I consider that the safest guide to determine the fair market value is evidence of sales of the same land or similar land in the neighbourhood, after making due allowance for all the circumstances."

It is clear from the authorities that where the land acquired was purchased by the owner within reasonable time of its compulsory acquisition, the price paid affords infinitely the best material for calculating its market value, the reason being that the elements of dissimilarity will be least present when the transaction sought to be applied is a previous purchase of the same property. The owner, of course, can show that since his purchase there has been an all-round increase in the price of land generally, in which case a proper allowance can be made for such increase. Where there has been no recent sale
20 of the same land, only sales within a reasonable period of lands more or less similarly situated in the same neighbourhood and possessing similar advantages are helpful in determining the market value of any land. As no two lands can be precisely similar in all their circumstances and conditions, a suitable allowance can be made for any differences. No hard and fast rule can be laid down for the allowances to be made in respect of the increase in value of the same land or for the
30 differences between the land acquired and the neighbouring lands, but market value is not required to be calculated with mathematical accuracy and precision. What is required is a fair estimate of market value. It is only in the absence of evidence of recent sales of the
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(4) (1954) 20 M.L.J. 69, 71.

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same land or lands in the same vicinity that other methods of ascertaining the market value can properly be resorted to. Estimates of value by experts are undoubtedly some evidence, but their value is not great, as expert opinion is liable to err, unless it is supported by, or coincides with other evidence (per Suffian J. in the Sarawak case). (2)

As I have already stated, an undivided half share in the land acquired in this case was sold to the applicants by Devarayan Chettiar at \$2.20 per square foot on 5th November, 1963. The applicants have sought to prove that they bought the land cheap because Devarayan Chettiar was in a hurry to sell. Evidence has been produced that Devarayan Chettiar was not a permanent resident of Malaya, that he came to this country to collect his assets, that he did not know much about values of land in Malaya, that he wanted to sell his land while he was here so as to avoid paying the capital gains tax in India which he would have to pay if he sold the land while living there and that he was unable to obtain an extension of his visit pass from the Immigration Authorities. Three of the applicants have given evidence to say that they bought the land cheap.

It is to be observed, however, that neither Alagappa Chettiar (P.W.1) nor Palaniappa Chettiar (P.W.3) has testified that Devarayan Chettiar said at any time that he was going to sell the land at any price he could get and go back to India at the earliest possible moment. All that Alagappa Chettiar has said is that he had prepared a plan in 1957 to develop the land, which he discussed with Devarayan Chettiar who told him that he was not interested in the development of the land and that he wanted to sell it. He was not in the country when Devarayan Chettiar sold the land so that he is in no position to say under what circumstances the land was sold. Palaniappa Chettiar has said that Devarayan Chettiar tried to sell the land, but as his was an undivided share, no one came forward to buy it. He says, however, that he does not know whether \$2.20 per square foot was a fair price of the land in November 1963. I have no hesitation

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whatsoever in saying that I can place no reliance whatsoever on all this evidence which, to my mind, was produced in order to boost the applicants' claim to higher compensation.

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10 There is no evidence that Devarayan Chettiar was in danger of being deported. He was in this country for at least three years. He became owner of the land in 1962, and he did not sell it until September 1963. He obviously sought the assistance of the members of his community, undoubtedly a community of astute businessmen, to sell his land because it is clear from the evidence that one Kasi Chettiar living as far away as Alor Star recommended the land to one of the applicants, who then communicated with the other applicants. I cannot believe that Devarayan Chettiar, young though he was, had not the wit to make enquiries as to what the fair market value of the land was before selling it.

20 If the applicants were going to rely on the fact that the land was sold cheap, it was open to them to call Devarayan Chettiar as a witness or have his evidence taken on commission in India. They thought fit not to do so and are asking the Court to say that he sold his land cheap merely because he had no intention of living in this country.

30 The applicants have next sought to prove that the price paid for the land in November 1963 was substantially below the market value because of the prevailing high prices of land in Kuala Lumpur at that time. Here they rely on the evidence of their expert, Mr. Williams (P.W.4), an estate agent and valuer, who has produced a report (Exhibit P.8) and given evidence relating to 19 sales of land in different parts of Kuala Lumpur. The substance of his evidence is that there was a very

40 substantial rise in the prices of lands over the period 1962 to 1964 and that, having considered all the sales which were nearest in point of time, he came to the conclusion that the market value of the land acquired was \$12.00 per square foot.

Mr. Williams has agreed that sales 1, 2 and

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3 can be ignored and that he places very little emphasis on sales 4, 5 and 6. Sale No. 7 was sale of Lot 2285 in Pahang Road close to the land acquired. The land was 1.437 acres and it was sold at \$6.38 per square foot in March 1963. His information was that the land was bought for building 16-storey flats but that up to now the purchasers had not started building. Sale No. 8 was of Lot 1 in Pahang Road, a bit further away from the land acquired, the area being 1.743 acres. This was an unregistered sale and completion had not taken place up to now. Sale No. 9 was in respect of 1.240 acres of land in the village of Setapak beyond the third mile, Pahang Road in November 1964 at \$4.62 per square foot. Sales 10, 11 and 12 were in respect of lands in Ipoh Road at prices ranging from \$5.90 to \$15.16 per square foot, the higher prices being for small sub-divided lots for terrace houses. Sale No. 13 was in respect of terrace lots off Sentul Road sold in July 1964 at prices varying from \$3.90 to \$5.00 per square foot. Sales 14, 15, 16, 17 and 18 were in respect of lands in Imbi Road approximately three miles away from the land acquired. Sale 19 was in respect of terrace lots behind Treacher Road, sold in October 1964 at \$21.32 per square foot.

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It is to be observed that most of the sales which Mr. Williams took into consideration in arriving at his valuation were sales of lands which could not be said to be lands in the neighbourhood or vicinity of the land acquired. In the nature of things values of lands in any town in the world must vary from one part of the town to another part of the town. What is paid for land in one sector of the town is no index of what lands in another sector of the town away from it will fetch. The sales which he has considered indicate a rise in the value of lands over the period 1963 to 1964, as he has stated, but they are no index of the market value of the land acquired. The prices paid for such lands, therefore, are wholly irrelevant to the issue in this case, except in so far as they indicate an all-round increase in the value of land

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generally from year to year. I am therefore of the opinion that such values must be disregarded.

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10 The only sales of lands in the neighbourhood which Mr. Williams considered were sales in respect of Lot 2285 and Lot 1. The sale of Lot 2285 was a sale by a director to his company. It was not a sale in the open market. As Mr. Williams himself was forced to admit, if the sale was by the director to his company, then it would not be a reliable comparison. The so-called sale of Lot No. 1 was not a sale at all. It was an agreement to sell in April 1964 at \$7.90 per square foot. A small portion of the agreed purchase price was paid on the date of the agreement and the payment of the balance of the purchase price was subject to the fulfilment of various conditions. There is no knowing when the balance of the purchase price will be paid and there had been no completion of purchase up to the date of hearing. The agreement speaks for itself, so that there is no need for me to go into its details. In my judgment, an agreement such as this cannot be a suitable basis for the valuation of another piece of land in the neighbourhood. Taking the evidence of Mr. Williams as a whole, I am of the opinion that there is no justification whatsoever for his valuing the land at \$12.00 per square foot.

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40 The applicants have sought to make much of the potentialities of the land acquired. In this connection, it is to be observed that a plan for its development as a building site was prepared as far back as 1957. Devarayan Chettiar knew about the plan. He was therefore aware of the potentialities of the land, and I must assume that so were the purchasers. Indeed, there is evidence that soon after they purchased their respective shares from Devarayan Chettiar the new purchasers put up a building plan of their own which commended itself to Alagappa Chettiar. This new plan, however, was never submitted for approval to the appropriate authority, and it is impossible to say that it

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would have been approved as such. Everybody knew about the potentialities of the land and the land was sold and purchased in November 1963 on that basis. The land was sold and bought as a potential building site and not as waste land or agricultural land. It is clear from the authorities that the land must not be valued as though it had already been built upon. It is the possibilities of the land and not its realised possibilities that must be taken into consideration. The potentialities or possibilities of any land can be measured by the evidence of the prices paid in the neighbourhood for land immediately required for such purposes. Subdividing the land hypothetically into lots and then valuing the land on the basis of the prices which each lot will fetch is not the basis upon which a large piece of land ought to be valued.

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It was urged on behalf of the applicants that the market value of property should be determined not necessarily according to its present disposition but laid out in the most lucrative and advantageous way in which the owner could dispose of it. The authority cited for this proposition was the case of Muhammad Ismail and Others v. Secretary of State.⁽⁵⁾ That was a case in which it was said that it would not be fair to treat the land in dispute as agricultural land for the purpose of assessment of its market value, as the most lucrative disposition of the property would apparently be to sell or let it for purposes of shops, as there were other shops in the neighbourhood. This is another way of saying that the land must be valued with reference to its potentiality. As I have already stated, this was certainly not a case where the Collector treated the land acquired as agricultural land for the purpose of assessing its market value.

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The main evidence on behalf of the respondent is the evidence of Mr. Lim Mow Chin

(5) (1936) A.I.R. Lahore 599.

(D.W.3), the Government Valuer who, in arriving at his valuation, took the sale of the land acquired itself in November 1963 as the keystone of his valuation. He also took into consideration the sales of Lots 29 and 56 with areas of 2.85 and 3.901 acres respectively on 29th September, 1962 at \$1.12 and 65 cents per square foot respectively. These were lands in the immediate vicinity of the land acquired. They were also capable of flat or other types of residential development and were in fact purchased with a view to such development.

In the High
Court

No.30

Judgment of
Gill, J.

28th February
1967

(Contd.)

It has been contended on behalf of the applicants that the sale of an undivided share is not dependable as a co-sharer may purchase it at a fancy price of special value to him and purchase by an outsider is often of a speculative value. I do not agree, but I would hasten to add that that may well be so where the sale of an undivided share is the only evidence on which the valuation is to be based. A good deal must also depend upon the extent of the undivided share. Where both the share involved and the consideration are small, neither party may hesitate to make a sacrifice, but where the share involved is large and the land itself is a large piece of land, neither party would be prepared to make any sacrifices. In any event, a proper allowance can be made in the case of sales of undivided shares, depending upon whether the purchaser was a co-sharer or a complete outsider. In the present case the purchasers were undoubtedly complete outsiders. There is nothing to suggest that the transaction was not genuine and bona fide. Without doubt it was a sale in the open market and the parties were at arm's length. The sale of the land acquired itself in November 1963 was therefore the best evidence of its market value.

Where there are various interests in the land under acquisition that requires to be valued, the normal method of valuation is that the Court should first ascertain the market value of the land as if all separate interests are combined. It should then apportion that value among the different interests. But

In the High
Court

No. 30

Judgment of
Gill, J.

28th February
1967

(Contd.)

the Act does not lay down any hard and fast rule and in special cases it may be desirable to adopt a different method by valuing separately each interest in the land. In the present case there are nine separate applicants. Their applications have been taken together for purposes of convenience, but each applicant is in fact an objector to the award made in respect of his interest in the land acquired. To all intents and purposes each applicant is to be regarded as a willing vendor of his share in the land. The applicant with the highest share is Alagappa Chettiar and he must be regarded as a willing vendor of no greater share in the land acquired than Devarayan Chettiar who sold his share in November 1963. The undivided shares of the other applicants are comparatively small. I must say, however, that I do not rely on this reasoning as the sole criterion for considering whether the compensation awarded was adequate or otherwise.

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As I have stated, the fundamental rule is that when the property under acquisition has been recently purchased, the price paid is prima facie the market value thereof. A suitable allowance can be made if the previous sale was of an undivided share, bearing in mind the extent of the share and the parties to whom the land was sold. Where a large area of land is acquired, recent sales in the vicinity are the only guides for ascertaining the variation. The recent sale of the land acquired can be checked with prices paid in the past for similar land in the neighbourhood. In the present case the price paid for Lot 29 in September 1962 is the best check on the price paid for the land acquired in November 1963, bearing in mind the all-round increase in the price of land over that period. In Ghulam Hussain v. Land Acquisition Officer, Bandra (6) the Privy Council observed that the sale 14 months previously of land in the neighbourhood with similar advantages was cogent evidence, especially when nothing was shown to have happened which materially affected the value of

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(6) (1928) A.I.R. P.C. 305.

the land between the date of sale and the Government notification.

In the High
Court

No. 30

Judgment of
Gill, J.

28th February
1967

(Contd.)

As far as this case is concerned, Lot No. 29 was sold at \$1.12 per square foot in September 1962 and the land acquired was sold in November 1963, that is, 14 months later, at \$2.20 per square foot. There is evidence that during this period of 14 months there had been a rise in the price of land generally. The land acquired is approximately eight times the size of Lot 29 and the price paid for it was almost double the price paid for Lot 29 fourteen months earlier. A bigger piece of land will certainly fetch a lower price than a smaller piece of land in the vicinity. On the basis of the sale price of Lot 29 in September 1962 the same price of the land acquired in November 1963 was, to my mind, its correct market value notwithstanding the fact that it was a sale of an undivided half share. In valuing the land acquired in June 1964 the Collector has allowed an increase of approximately 38% over a period of seven months. The value of \$3.00 per square foot reflects not only the general increase in the price of land annually but also a reasonable allowance for the fact that its previous sale was of an undivided half-share.

For the reasons I have stated, I have come to the conclusion that the principle upon which the Collector proceeded to value the land acquired was the correct principle and that in arriving at his valuation he has taken into consideration all the circumstances of the case. Paragraphs (b), (c), (d) and (e) of Section 2 of the First Schedule to the Act do not apply to this case. As I have stated earlier, it is for the applicants to prove that the compensation awarded to them is inadequate. In my judgment they have failed to discharge that onus. The award made by the Collector must therefore stand, and I would dismiss the applications with costs.

I regret to say in conclusion that I have had to disagree with the opinion expressed by each

In the High
Court

No.30
Judgment of
Gill, J.
28th February
1967
(Contd.)

of the assessors that the compensation awarded was in fact inadequate. The first assessor, Mr. Keith S. Dening, has expressed the opinion that, in the light of the prices prevailing in Imbi Road and other areas for lands suitable for flat development and making suitable allowances, the market value of the land acquired was \$4.80 per square foot. The second assessor, Mr. P. M. Varghese, has said that, having regard to the agreed price for Lot 1, the price paid for Lot 2285 and the prices generally for similar land in Kuala Lumpur, he is of the opinion that the market value of the land in question was \$6.00 per square foot.

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Under Section 41 (3) of the Act, I direct that each of the assessors be paid a fee of \$500/-.

Kuala Lumpur,
28th February, 1967.

(S.S.Gill)
JUDGE,
HIGH COURT, MALAYA.

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Inche S.D.K. Peddie for Applicants in Applications Nos. 2, 4, 5, 6, 7 and 8 of 1965.

Inche Ng Ek Teong with Inche R. Padmanabhan for Applicants in Applications Nos. 9, 10 and 11 of 1965.

Inche Mohd. Azmi bin Dato Haji Kamaruddin for the Respondent in each case.

Certified true copy

Sd: ?

Secretary to Judge,
Kuala Lumpur.

30

16.3.1967.

NO. 31

ORDER OF COURT DISMISSING
APPLICATION OF ALAGAPPA CHETTIAR

In the High
Court in
Malaya

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

No. 31

Civil Application No.6 of 1965

Order of Court
dismissing
application
of Alagappa
Chettiar

In the matter of the Land Acquisition
Act, 1960 (Section 38 (5))

- and -

28th February
1967

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In the matter of the Acquisition of
Lots 1922 and 1928, Section 85A,
Lots 1924 and 1930, Section 79
and Lots 17, 18 and 19, Section
47, Town of Kuala Lumpur

B E T W E E N :

A.K.A.C.T.V. Alagappa Chettiar
s/o Sithambaram Chettiar as
Trustee

Applicant

And

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Collector of Land Revenue,
Kuala Lumpur

Respondent

BEFORE THE HONOURABLE MR. JUSTICE GILL

IN OPEN COURT

This 28th day of February, 1967

O R D E R

30

This Application coming up for hearing on
the 24th to 28th October 1966 and on the 1st
November 1966 in the presence of Mr. S.D.K.
Peddie of Counsel for the Applicant and Enche
Mohd. Azmi bin Dato' Haji Kamaruddin, Senior
Federal Counsel for the Respondent AND UPON
HEARING the evidence adduced and what was
alleged by Counsel aforesaid IT WAS ORDERED that
this action do stand adjourned for Judgment AND
the said coming on for Judgment this day in the
presence of the aforesaid Counsel IT IS ORDERED

In the High
Court in
Malaya

that this Application be and is hereby
dismissed with costs.

Given under my hand and the Seal of the
Court this 28th day of February, 1967.

No. 31

Order of Court
dismissing
application
of Alagappa
Chettiar

Senior Assistant Registrar,
High Court, Kuala Lumpur.

28th February
1967

(contd)

No. 32

NO. 32

Order of Court
dismissing
application of
Ong Thye Eng

ORDER OF COURT DISMISSING
APPLICATION OF ONG THYE ENG

IN THE HIGH COURT IN MALAYA AT
KUALA LUMPUR

10

28th February
1967

Civil Application No.9 of 1965

In the matter of the Land Acquisition
Act 1960 (Section 38(5))

- and -

In the matter of the Acquisition of
Lots 1922 and 1928, Section 85A,
Lots 1924 and 1930, Section 79
and Lots 17, 18 and 19, Section 47,
Town of Kuala Lumpur

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B E T W E E N :

Ong Thye Eng as Trustee

Applicant

And

Collector of Land Revenue,
Kuala Lumpur

Respondent

BEFORE THE HONOURABLE MR. JUSTICE GILL
JUDGE, MALAYA

In the High
Court in
Malaya

IN OPEN COURT

O R D E R

No. 32

10 This application coming up for hearing
on the 24th to 28th October, 1966 and on the
1st November, 1966 in the presence of Mr.
Ng Ek Teong of Counsel for the Applicant
and Enche Mohd. Azmi bin Dato' Haji
Kamruddin, Senior Federal Counsel for the
Respondents AND UPON HEARING the evidence
adduced and what was alleged by Counsel
aforesaid IT WAS ORDERED that this action do
stand adjourned for Judgment AND the same
coming on for Judgment this day in the
presence of the aforesaid Counsel IT IS
ORDERED that this Application be and is
hereby dismissed with costs.

Order of Court
dismissing
application of
Ong Thye Eng
28th February
1967

(contd)

20 Given under my hand and the seal of the
Court this 28th day of February, 1967.

Sd. Marina binte Yusoff

(L.S.) Senior Assistant Registrar,
High Court,
Kuala Lumpur.

In the Federal
Court of
Malaysia

NO. 33

NOTICE OF APPEAL BY ALAGAPPA CHETTIAR

No. 33

Notice of
Appeal by
Alagappa
Chettiar

6th March 1967

6. NOTICE OF APPEAL

IN THE FEDERAL COURT OF MALAYSIA

(Appellate Jurisdiction)

Civil Appeal No. X.24 of 1967

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B E T W E E N :

A.K.A.C.T.V. Alagappa Chettiar
Appellant

And

Collector of Land Revenue,
Kuala Lumpur Respondent

(In the matter of Civil Application
No.6 of 1965 in the High Court
in Malaya at Kuala Lumpur

Between

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A.K.A.C.T.V. Alagappa Chettiar
Applicant

And

Collector of Land Revenue,
Kuala Lumpur Respondent)

NOTICE OF APPEAL

TAKE NOTICE that A.K.A.C.T.V. Alagappa Chettiar, the Appellant abovenamed, being dissatisfied with the decision of the Honourable Mr. Justice Gill given at Kuala Lumpur on the 28th day of February, 1967 appeals to the Federal Court against the whole of the said decision.

30

Dated this 6th day of March, 1967.

Sd: Skrine & Co.
Solicitors for the Appellant

To:- The Registrar,
The Federal Court,
Kuala Lumpur

In the Federal
Court of
Malaysia

and
to:- The Registrar,
The High Court,
Kuala Lumpur

No. 33

and
to:- The Collector of Land Revenue,
Kuala Lumpur

Notice of
Appeal by
Alagappa
Chettiar
6th March 1967

(contd)

The address of service of the Appellant is
Messrs. Skrine & Co., Advocates & Solicitors,
Straits Trading Building, No.4, Leboh Pasar
Besar, Kuala Lumpur.

NO. 34

No. 34

NOTICE OF APPEAL BY ONG THYE ENG

Notice of
Appeal by
Ong Thye Eng

IN THE FEDERAL COURT OF MALAYSIA

(Appellate Jurisdiction)

28th March 1967

FEDERAL COURT CIVIL APPEAL NO. X.32 of 1967

B E T W E E N :

Ong Thye Eng as Trustee Appellant

AND

Collector of Land Revenue,
Kuala Lumpur Respondent

(In the matter of Civil Application No.9
of 1965 in the High Court in Malaya
at Kuala Lumpur

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In the Federal
Court of
Malaysia

In the matter of Land Acquisition
Act, 1960 (Section 38(5))

AND

No. 34
Notice of
Appeal by
Ong Thye Eng

In the matter of the Acquisition of
Lots 1922 and 1928, Section 85A,
Lots 1924 and 1930, Section 79
and Lots 17, 18 and 19,
Section 47, Town of Kuala Lumpur

28th March 1967
(contd)

B E T W E E N :

Ong Thye Eng as Trustee	<u>Applicant</u>	10
And		
Collector of Land Revenue, Kuala Lumpur	<u>Respondent)</u>	

NOTICE OF APPEAL

TAKE NOTICE that Ong Thye Eng as Trustee
being dissatisfied with the decision of the
Honourable Mr. Justice Gill given at Kuala
Lumpur on the 28th day of February, 1967
appeals to the Federal Court against the whole
of the said decision.

20

Dated this 28th day of March, 1967.

Sd. Braddell & Ramani
Solicitors for the Appellant abovenamed

To: The Registrar,
The Federal Court,
Kuala Lumpur.

and
to The Registrar,
The High Court in Malaya at Kuala Lumpur

and
to The Collector of Land Revenue and/or its
Solicitors Penasihat Undang2,
Negeri Selangor, Kuala Lumpur

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The address for service of the Appellant is c/o
Messrs. Braddell & Ramani, Advocates &
Solicitors, Hongkong Bank Chambers, Kuala Lumpur

NO. 35

MEMORANDUM OF APPEAL BY ALAGAPPA CHETTIAR

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO. X.24 of 1967

B E T W E E N :

A.K.A.C.T.V. Alagappa Chettiar
Appellant

10

And

Collector of Land Revenue,
Kuala Lumpur Respondent

(In the matter of Civil Application No.6
of 1965 in the High Court in
Malaya at Kuala Lumpur

B E T W E E N :

A.K.A.C.T.V. Alagappa Chettiar
Applicant

And

20

Collector of Land Revenue,
Kuala Lumpur Respondent)

MEMORANDUM OF APPEAL

A.K.A.C.T.V. Alagappa Chettiar, the Appellant abovenamed, appeals to the Court of Appeal against the whole of the decision of the Honourable Mr. Justice Gill given at Kuala Lumpur on the 28th day of February, 1967 on the following grounds:-

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1. The learned trial Judge was wrong in law in holding (if he did so hold) that only all round increases in price could be adduced in evidence for the purpose of negating the evidence as to value afforded by prior purchase of the same land and failed to consider that other relevant factors might be adduced in evidence negating the evidence

In the Federal
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Malaysia

No. 35

Memorandum
of Appeal by
Alagappa
Chettiar

26th April
1967

In the Federal
Court of
Malaysia

No. 35

Memorandum
of Appeal by
Alagappa
Chettiar

26th April
1967

(contd)

of value provided by such prior sales.

2. The learned trial Judge was wrong in law in restricting for the purpose of his award evidence of other sales to those in the same neighbourhood as the land acquired and was wrong in law for the purpose of his award in excluding evidence relating to sales of similar lands in similar localities for the purpose of arriving at the market value of the land acquired.

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3. Having regard to the laws of Malaysia relating to immigration of which he was bound to take judicial notice and having regard to the evidence lead at the hearing as to the imposition and rate of capital gain tax applicable to Devarayan the learned trial Judge erred in refusing to hold that the sale by Devarayan was not a free and voluntary sale and erred in finding that the evidence adduced was merely produced to boost the Applicants' claim to higher compensation.

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4. In holding that there was no evidence that Devarayan was in danger of being deported and apparently relying upon the length of his residence in Malaysia to support his finding, the learned trial Judge failed to take into account the immigration laws of Malaysia of which he was bound to take judicial notice.

5. In holding that the Applicants should have called Devarayan as a witness the learned trial Judge misinterpreted the onus of proof. The keystone of the valuation by the Treasury Valuation Officer was the sale by Devarayan and it was for the Respondent to call

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Devarayan to show the sale was made at market value. The evidence lead by the Applicants was directed solely to negating the value of that sale as a guide to market value. The onus of proving it fell upon the party seeking to propound it.

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6. In construing the evidence lead by the Applicants as amounting to asking the Court to say that Devarayan sold his land cheaply because he had no intention of living in Malaysia the learned Trial Judge completely misunderstood the evidence. The case for the

Applicants was that he had to sell cheaply because he was unable to live in Malaysia and was subject to heavy Indian taxation.

In the Federal
Court of
Malaysia

10 7. The learned trial Judge was wrong in holding that evidence of sales in one part of a town offered no evidence of market value of land in another part of the same town and failed to appreciate that if the lands were similar and the localities were similar then such sales did form good evidence of value. The learned trial Judge was wrong in holding the prices paid for such lands wholly irrelevant and holding that they must be disregarded.

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Memorandum
of Appeal by
Alagappa
Chettiar

26th April
1967

(contd)

20 8. In rejecting the sale of Lot 2285 as offering evidence of the market value because it was a sale by a director to his company the learned trial Judge failed to consider that there was no evidence as to the extent of the director's share holding in the company and that there was no evidence that the director was in a position to induce the company to purchase at an inflated price. The learned trial Judge imputed to the director's dishonest motives which were unsubstantiated by any evidence and failed to consider the duty owed by a director to his company.

30 9. The learned trial Judge was wrong in holding that the sale of Lot No.1 was not a sale at all and was wrong in holding that the agreement could not be a suitable basis for the valuation of another piece of land in the neighbourhood.

40 10. In holding that the land should not be subdivided hypothetically into lots for the purpose of finding the market value but must be dealt with as a large piece of land the learned trial Judge overlooked the fact that the land under acquisition was not held under one title but under seven titles and was therefore wrong in holding (if he did so hold) that the land must be valued as a 23 acre unit.

11. The learned trial Judge was wrong in holding that sales of undivided shares were dependable for determining market value and was

In the Federal
Court of
Malaysia

No. 35

Memorandum
of Appeal by
Alagappa
Chettiar

26th April
1967

(contd)

wrong in holding that the extent of the undivided share affected the matter.

12. The learned trial Judge was wrong in holding the sale in November 1963 was the best evidence of market value.

13. The learned trial Judge was wrong in holding that a suitable allowance could be made for sales of undivided interests for the purpose of using such sales to determine market value and further failed to consider that his finding to that effect was unsubstantiated by any evidence.

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14. The learned trial Judge was wrong in holding the price paid for Lot 29 was the best check on the market value of the land acquired particularly having regard to the lapse of time between the date of that sale and the date of acquisition and to the sales of Lots 2285 and 1 which adjoined the land under acquisition.

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15. In referring to a bigger piece of land fetching a lower price than a smaller piece of land the learned trial Judge forgot he was dealing with seven titles and not one.

16. In holding that the value of \$3.00 per square foot reflects not only the general increase in the price of land annually but also a reasonable allowance for the fact that its previous sale was of an undivided share the learned trial Judge overlooked the evidence given for the Respondent which was to the effect that the only allowance made was for the general increase in prices. No allowance was made by the Respondent in respect of the sale being of an undivided share.

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17. In valuing the land the learned trial Judge ignored the evidence that even the transaction between Governments for the State land in the vicinity was at a price in excess of that awarded by the trial Judge.

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18. The learned trial Judge was wrong in rejecting the opinions of the Assessors and the reasons leading to them which were valid and proper reasons leading to valid and

proper valuations. The learned trial Judge's reasons for arriving at his valuation are not valid and cannot be sustained.

In the Federal
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19. The learned trial Judge's award of \$3.00 per square foot was too low and did not reflect the market value of the land on the date of the acquisition.

No. 35

Memorandum
of Appeal by
Alagappa
Chettiar

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20. In referring to the evidence of Palaniappa that he did not know whether \$2.20 per square foot was a fair market price in November 1963 the learned trial Judge overlooked the evidence given by the same witness that the price offered in 1964 for Lots 95 and 96 was \$10/- per square foot and that his evidence on this point was not challenged.

26th April
1967

(contd)

Dated this 26th day of April, 1967.

Sd. (Skrine & Co.)

Solicitors for the Appellant.

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To: The Chief Registrar,
Federal Court of Malaysia,
Kuala Lumpur.

And

to: The Collector of Land Revenue,
Kuala Lumpur.

The address for service of the Appellant is Messrs. Skrine & Co., Advocates & Solicitors, Straits Trading Building, No.4, Leboh Pasar Besar, Kuala Lumpur.

In the Federal
Court of
Malaysia

NO. 36

MEMORANDUM OF APPEAL BY ONG THYE ENG

IN THE FEDERAL COURT OF MALAYSIA

(Appellate Jurisdiction)

No. 36

Memorandum
of Appeal by
Ong Thye Eng
8th May 1967

FEDERAL COURT CIVIL APPEAL NO.X.32 OF 1967

B E T W E E N :

Ong Thye Eng as Trustee Appellant

And

Collector of Land Revenue
Kuala Lumpur Respondent

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(In the matter of Civil Application
No.9 of 1965 in the High
Court in Malaya at Kuala Lumpur

In the matter of Land Acquisition
Act 1960 (Section 38(5))

And

In the matter of the Acquisition of
Lots 1922 and 1928, Section 85A,
Lots 1924 and 1930, Section 79
and Lots 17, 18 and 19,
Section 47, Town of Kuala Lumpur

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B E T W E E N :

Ong Thye Eng as Trustee Applicant

And

Collector of Land Revenue,
Kuala Lumpur Respondent)

MEMORANDUM OF APPEAL

Ong Thye Eng as Trustee the Appellant
abovenamed appeals to the Federal Court against
the whole of the decision of the Honourable Mr.
Justice Gill given at Kuala Lumpur on the 28th
day of February, 1967 on the following grounds:

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1. The learned Judge was wrong:

(i) in rejecting the evidence adduced on behalf of the Applicant as to the reasons for and circumstances in which Devarayan Chettiar sold his undivided shares in the lands acquired in November, 1963;

In the Federal
Court of
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No. 36

10 (ii) in finding that the Applicant should have called Devarayan Chettiar to give evidence and the only evidence that Devarayan Chettiar sold his land cheap was merely because he had no intention of being in this country.

Memorandum
of Appeal by
Ong Thye Eng

8th May 1967

(contd)

20 2. The learned Judge should have taken into account the special circumstances in which Devarayan Chettiar sold his undivided shares in the lands acquired and should have found that although Devarayan Chettiar might have been obliged to accept the price he received, it was not the proper market price available especially when compared to cases of owners who are under no pressing need to sell and who are disposing in the open market the whole interest in the property laid out in the most lucrative and advantageous way possible.

3. The learned Judge was wrong having regard to the circumstances of the case in finding that such sales of the lands acquired were the best evidence of its market value.

30 4. The learned Judge failed to pay due regard to the fact in this case that the sale of the lands in 1963 was of an undivided interest.

5. The learned Judge was wrong in regarding each applicant as a separate owner whose interest must be separately valued as an undivided share.

40 6. The learned Judge failed to appreciate the difference between a purchase made when there is only an undivided share available for sale and a purchase of the entire land when all the co-owners are prepared to sell.

7. The learned Judge failed to appreciate that there was no evidence that Devarayan Chettiar appreciated the full potentialities

In the Federal
Court of
Malaysia

No. 36

Memorandum
of Appeal by
Ong Thye Eng

8th May 1967

(contd)

of the land acquired and that there was a vast difference between the plan prepared in 1957 and the subsequent plan prepared by the Applicant.

8. The learned Judge further erred in concluding that it was impossible to say the new plan for development of the lands would have been approved and failed particularly to take into consideration the fact that:

(a) there was already a plan for development of the lands for flats, shops and terrace houses; and 10

(b) planning permission for much denser development of the area had in fact been approved after acquisition.

9. The learned Judge failed:

(i) to take into consideration the full potentialities of the land laid out in the most lucrative and advantageous way as he was bound to do in law; and 20

(ii) to appreciate that it is not enough for the Collector of Land Revenue not to value the land as Agricultural land but that he must value it in the light of its being laid out in the most lucrative and advantageous way possible.

10. The learned Judge should have accepted the valuation of Mr. Williams and the reasons that he gave in support of such valuation.

11. The learned Judge failed to appreciate the relevance of the evidence of Mr. Williams (P.W.4) as to the extent of the rise in market values of lands over the period 1962-1964 in relation to valuing the lands acquired although he accepted the fact that the cases of sales referred to by Mr. Williams indicate an all round increase in the value of land generally from year to year. 30

12. The learned Judge erred when he stated that the cases of sales cited by Mr. Williams were not in the vicinity of the lands acquired and that prices paid for lands in one sector of the town is no index of what 40

lands in another sector would fetch.

13. (a) The learned Judge was wrong in stating that where a large area of land is acquired recent sales in the vicinity are the only guides for ascertaining the valuation.

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(b) The learned Judge should have relied on and taken into consideration sales of land of similar quality and in similar positions although they may be in other sectors of the town.

14. The learned Judge erred in failing to consider:

(a) the fact that the lands acquired composed of seven (7) separate titles, the largest of which was for less than seven (7) acres; and

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(b) the prices at which State Land in the vicinity were valued for the purpose of transactions between the State and Federal Governments.

15. The learned Judge failed to take into account:

(a) sales of similar property in other parts of Kuala Lumpur; and

(b) the steep rise in the market value of lands suitable for property developments by estate developers during the period 1962-1964; and

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(c) the fact that estate developers preferred to purchase properties of a sufficiently large area for development into housing estates.

16. The learned Judge was wrong in approving of the reliance of Lam Mow Chin (D.W.3) on the sales of Lots 29 and 56 on 29th September, 1962 and in accepting the sale price of Lot 29 as a guide to the market value of the lands acquired.

17. The learned Judge should have given due regard to the opinions of the two (2)

In the Federal
Court of
Malaysia

No. 36

Memorandum
of Appeal by
Ong Thye Eng

8th May 1967

(contd)

In the Federal Court of Malaysia

Assessors sitting with him.

Dated this 8th day of May, 1967.

No. 36

Braddell & Ramani

Solicitors for the Appellant

Memorandum of Appeal by Ong Thye Eng

To: The Registrar, Federal Court, Kuala Lumpur

8th May 1967

and to: The Collector of Land Revenue and/or its Solicitors Penasihat Undang2, Negeri Selangor, Kuala Lumpur.

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(contd)

The address for service of the Appellant is c/o Messrs. Braddell & Ramani, Advocates & Solicitors, Hongkong Bank Chambers, Kuala Lumpur.

No. 37

NO. 37

Order that Appeal of Alagappa Chettiar be heard as Test Appeal

ORDER THAT APPEAL OF ALAGAPPA CHETTIAR BE HEARD AS TEST APPEAL

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR

20

15th May 1967

(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO.X.24 of 1967

B E T W E E N :

A.K.A.C.T.V. Alagappa Chettiar Appellant

And

Collector of Land Revenue, Kuala Lumpur Respondent

(In the matter of Civil Application No.6 of 1965 in the High Court in Malaya at Kuala Lumpur

30

B E T W E E N :

A.K.A.C.T.V. Alagappa Chettiar
Applicant

And

Collector of Land Revenue,
Kuala Lumpur Respondent)

In the Federal
Court of
Malaysia

No. 37

Order that
Appeal of
Alagappa
Chettiar be
heard as
Test Appeal

FEDERAL COURT CIVIL APPEAL NO.X.26 of 1967

B E T W E E N :

Chuah Say Hai as Trustee Appellant

And

Collector of Land Revenue,
Kuala Lumpur Respondent

(In the matter of Civil Application
No.2 of 1965 in the High Court
in Malaya at Kuala Lumpur

15th May 1967

(contd)

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B E T W E E N :

Chuah Say Hai as Trustee
Applicant

And

Collector of Land Revenue,
Kuala Lumpur Respondent)

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FEDERAL COURT CIVIL APPEAL NO.X.27 of 1967

B E T W E E N :

Pong Kien Ngor as Trustee Appellant

And

Collector of Land Revenue,
Kuala Lumpur Respondent

(In the matter of Civil Application
No.4 of 1965 in the High Court
in Malaya at Kuala Lumpur

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In the Federal
Court of
Malaysia

No.37

Order that
Appeal of
Alagappa
Chettiar be
heard as
Test Appeal

15th May 1967
(contd)

B E T W E E N :

Pong Kien Ngor as Trustee
Applicant

And

Collector of Land Revenue,
Kuala Lumpur Respondent)

FEDERAL COURT CIVIL APPEAL NO.X 28 of 1967

B E T W E E N :

Han Leck Juan as Trustee Appellant

And

Collector of Land Revenue,
Kuala Lumpur Respondent

(In the matter of Civil Application
No.5 of 1965 in the High Court
in Malaya at Kuala Lumpur

B E T W E E N :

Han Leck Juan as Trustee
Applicant

And

Collector of Land Revenue,
Kuala Lumpur Respondent)

FEDERAL COURT CIVIL APPEAL NO.X.29 of 1967

B E T W E E N :

Ooi Teng Kang as Trustee Appellant

And

Collector of Land Revenue,
Kuala Lumpur Respondent

(In the matter of Civil Application
No.7 of 1965 in the High Court
in Malaya at Kuala Lumpur

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B E T W E E N :

Ooi Teng Kang as Trustee
Applicant
And
Collector of Land Revenue,
Kuala Lumpur Respondent)

In the Federal
Court of
Malaysia

No.37

Order that
Appeal of
Alagappa
Chettiar be
heard as
Test Appeal

15th May 1967

(contd)

FEDERAL COURT CIVIL APPEAL NO.X.30 of 1967

B E T W E E N :

Kheoh Aik Law as Trustee
Appellant
And
Collector of Land Revenue,
Kuala Lumpur Respondent

(In the matter of Civil Application
No.8 of 1965 in the High Court
in Malaya at Kuala Lumpur

B E T W E E N :

Kheoh Aik Law as Trustee
Applicant
And

Collector of Land Revenue,
Kuala Lumpur Respondent)

CORAM:

SYED SHEH BARAKBAH, LORD PRESIDENT,
MALAYSIA
AZMI, CHIEF JUSTICE, HIGH COURT,
MALAYA
ONG HOCK THYE, JUDGE, FEDERAL COURT,
MALAYSIA

IN OPEN COURT

THIS 15th DAY OF MAY, 1967

O R D E R

UPON MOTION made unto Court this day by

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In the Federal
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No. 37

Order that
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Test Appeal

15th May 1967

(contd)

Mr. S D.K. Peddie of Counsel for the Appellants abovenamed in the presence of Enche Mohd. Azmi bin Dato' Haji Kamaruddin, Senior Federal Counsel for the Respondents abovenamed AND UPON READING the Notice of Motion dated the 29th day of April, 1967 and the Affidavit of Stanley Douglas Kyle Peddie affirmed on the 21st day of April, 1967 both filed herein AND UPON HEARING Counsel for the Appellants and the Senior Federal Counsel as aforesaid BY CONSENT IT IS ORDERED that Civil Appeal No.X.24 of 1967 be heard as a test appeal and that the parties in Civil Appeals Nos.X.26, X27, X28, X29, X30, X32, X33 and X34 of 1967 be bound by and Order to be made therein AND IT IS ORDERED that the Grounds of Appeal filed in Civil Appeal No.X.32 of 1967 be made part of the Grounds filed in Civil Appeal No.X.24 of 1967 for the purposes of the hearing AND IT IS FURTHER ORDERED that the period for filing the Record in Appeal No.X.24 of 1967 be extended for a period of seven (7) days from the date of this Order AND IT IS LASTLY ORDERED that the costs of this application be costs in the cause.

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GIVEN under my hand and the seal of the Court this 15th day of May, 1967.

SGD. HAMZAH BIN DATO ABU SAMAH
Chief Registrar,
Federal Court,
Malaysia

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NO. 38

WRITTEN SUBMISSION ON BEHALF OF
ALAGAPPA CHETTIAR

In the Federal
Court of
Malaysia

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

No. 38

(Appellate Jurisdiction)

CIVIL APPEAL NO.X.24 of 1967

Written
Submission on
behalf of
Alagappa
Chettiar

B E T W E E N :

A.K.A.C.T.V. AlagappaChettiar Appellant

10

And

Collector of Land Revenue,
Kuala Lumpur Respondent

(In the matter of Civil Application
No.6 of 1965 in the High Court
in Malaya at Kuala Lumpur

B E T W E E N :

A.K.A.C.T.V. Alagappa Chettiar
Applicant

And

20

Collector of Land Revenue,
Kuala Lumpur (Respondent)

CIVIL APPEAL NO.X.26 of 1967

B E T W E E N :

Chuah Say Hai as Trustee Appellant

And

Collector of Land Revenue,
Kuala Lumpur Respondent

(In the matter of Civil Application
No.2 of 1965 in the High Court,
in Malaya at Kuala Lumpur

30

In the Federal
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No. 38

Written
Submission on
behalf of
Alagappa
Chettiar

B E T W E E N :

Chuah Say Hai as Trustee
Applicant

And

Collector of Land Revenue,
Kuala Lumpur Respondent

CIVIL APPEAL NO.X.27 of 1967

B E T W E E N :

Pong Kien Ngor as Trustee Appellant

And

Collector of Land Revenue,
Kuala Lumpur Respondent

(In the matter of Civil Application
No.4 of 1965 in the High Court
in Malaya at Kuala Lumpur

B E T W E E N :

Pong Kien Ngor as Trustee
Applicant

And

Collector of Land Revenue,
Kuala Lumpur Respondent

CIVIL APPEAL NO.X.28 of 1967

B E T W E E N :

Han Leck Juan as Trustee Appellant

And

Collector of Land Revenue,
Kuala Lumpur Respondent

(In the matter of Civil Application
No.5 of 1965 in the High Court
in Malaya at Kuala Lumpur

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B E T W E E N :

Han Leck Juan as Trustee
Applicant

And

Collector of Land Revenue,
Kuala Lumpur Respondent)

In the Federal
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Chettiar

CIVIL APPEAL NO. X.29 of 1967

B E T W E E N :

Ooi Ten Kang as Trustee Appellant

And

Collector of Land Revenue,
Kuala Lumpur Respondent

(contd)

10

(In the matter of Civil Application
No.7 of 1965 in the High Court
in Malaya at Kuala Lumpur

B E T W E E N :

Ooi Ten Kang as Trustee
Applicant

And

Collector of Land Revenue,
Kuala Lumpur Respondent)

20

CIVIL APPEAL NO. X.30 of 1967

B E T W E E N :

Kheoh Aik Law as Trustee Appellant

And

Collector of Land Revenue,
Kuala Lumpur Respondent

(In the matter of Civil Application
No.8 of 1965 in the High Court
in Malaya at Kuala Lumpur

30

In the Federal
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B E T W E E N :

Kheoh Aik Law as Trustee
Applicant

And

Collector of Land Revenue,
Kuala Lumpur Respondent)

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Written
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behalf of
Alagappa
Chettiar

Written Submission on behalf of the
Appellant A.K.A.C.T.V. Alagappa Chettiar

(contd)

This appeal is brought against the judgment of the Honourable Mr. Justice Gill delivered on the 28th February 1967 which appears at pages 93 to 109 of the record and against the order made following thereon which appears at page 110 of the record whereby the Appellant's objection to the award of compensation made by the Collector of Land Revenue, Kuala Lumpur as being inadequate was dismissed.

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The broad facts which resulted in the application which came before the learned trial Judge are to be found in his judgment from its beginning to page 95 paragraph B and the grounds for the Collector's award which was objected to appear in the judgment at page 95 paragraph C to page 96 paragraph A.

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The Appellant takes twenty grounds of appeal against the finding of the learned trial Judge and these grounds are to be found at pages 4 to 8 each inclusive of the record. These grounds, together with the relevant portions of the judgment against which they are directed and the relevant evidence, will now be dealt with.

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Ground 1

This is directed to the judgment at page 98 paragraph D where, in the course of stating the proposition that the price paid for the area of land under acquisition on the occasion of an earlier sale is the best material on which to assess the compensation, the learned trial Judge said

"The owner, of course, can show that since his purchase there has been an all-round increase in the price of land generally, in

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which case a proper allowance can be made for such increase".

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The learned trial Judge appeared to indicate that no other grounds for attacking such an earlier sale were open. If he restricted himself in this way (and the judgment indicates that he did) then, in the Appellant's submission, he was wrong since it was open to the Appellant to attack the previous sale as affording any proper basis on which to base the assessment of compensation on any grounds available

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It is, of course, well known that our law relating to land acquisition as contained in

Land Acquisition Act 1960

is almost identical to the Indian law relating to land acquisition and the Indian commentaries and cases must, therefore, be highly persuasive and be binding where judgements of the Judicial Committee interpret identical sections. The principal Indian text books on the subject are

Aggarawala Compulsory Acquisition of Land 3rd Ed.

hereafter in this submission referred to as Aggarawala and

Sanjiva Row's Land Acquisition and Compensation 4th Ed.

hereafter in this submission referred to as Sanjiva Row. The learned trial Judge's judgment dealing with prices fetched on an earlier sale of the land as affording the best guide to value is a mere repetition of what is set out in Aggarawala at page 190 (penultimate paragraph) and page 197 (last paragraph) and in Sanjiva Row page 346 and 358 but omitting the various qualifications imposed on the proposition by those two authors other than the qualification that the owner can show increases generally in land values since he bought. At page 347 Sanjiva Row points out that the previous sale must be a genuine one (which must be an obvious proposition) and that the fact that an

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owner was able to acquire at a cheap price does not justify a low award by the Collector (which is again an obvious proposition). These same propositions are put forward by Sanjiva Row again at page 358 where he also points out that a claimant may prove by evidence of other sales that the land is worth considerably more than that paid by him. Aggarawala at pages 190 and 197 shows the same propositions. No case law is cited in support but the propositions are so fundamental that they must be correct and there was no reason for the learned trial Judge to ignore or discard them.

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The evidence shows that the Appellant attacked the evidence afforded by the previous sale on more grounds than merely on the basis of a general increase in values. The ground of a general increase in values was put forward and is dealt with by the learned trial Judge at page 101 paragraph C, page 102 paragraph E and page 107 paragraph G of his judgment. These passages seem to indicate that the learned trial Judge accepted as a fact that there had been an all round increase in values and such a finding would accord with the evidence which was that there had been such an increase. The evidence to support the increase was led for the Appellant by P.W.4 and his evidence is referred to at page 42 paragraph D, page 43 paragraph F, page 44 paragraphs B and G, page 54 paragraph E, page 56 paragraph C, page 59 paragraph A. For the Respondent the evidence was that of D.W.3 and reference is made to page 70 paragraph B, page 72 paragraph B, page 73 paragraph B, page 74 the whole, page 76 paragraph G and page 77 at top, page 80 paragraph E, page 83 paragraph E, page 84 paragraph B. The Respondents' evidence showed acceptance of the fact that a substantial increase had taken place and also showed that the Respondent was offering no material on which the degree of increase could be ascertained but was content to rely upon the evidence to be obtained from P.W.4 to determine the extent of the increase. It was also clear that the element of increase had not been mentioned or dealt with when the Respondents's

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10 valuation was made as can be seen from the valuation report at pages 151-170 of the record and that the evidence given by the Respondent's valuer at the trial that he had taken the increase into account was an after-thought. The Respondent's value set out at length the grounds he relied on and increases in value were not considered. The fact such an increase had taken place and that the Respondent's valuation had failed to take it into account is in itself grounds for allowing this appeal as it is at once demonstrated that the valuation by the Government was too low.

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(contd)

20 Apart from the attack on the previous sale on the basis of general increase in value the Appellant also attacked the sale on the ground it was not a genuine but a forced sale and on the ground that evidence of other sales showed clearly that the previous sale was out of line with the prevailing market value.

30 Leaving aside for the moment an analysis of the evidence directed to whether or not the previous sale was genuine or forced which will be dealt with in a later ground, it is submitted that, if any degree of compulsion or influence inducing a sale is to be found, then the evidence of that sale must be discarded as affording any reliable basis for assessing market value. This follows from the definition of market value as set out in the judgment of Suffian J. in

Superintendent of Lands and Surveys, Sarawak v Aik Hoe and Co. Ltd. 1966 1MLJ 243

at page 245 right hand column paragraph E following Lord Romer in

40 Vyrichevla Narayana Gajapatiraju v The Revenue Divisional Officer, Vizagapatam 1939 AC 302

For a sale to afford evidence of market value, neither vendor nor purchaser must be considered as acting under compulsion and the evidence of the appellant was directed towards

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(contd)

showing that the vendor in the previous sale was subject to an element of compulsion. If there was an element of compulsion, the sale should have been rejected as affording evidence of market value,

(Government of Bombay v Merwan Noondigan Aga 1924 B161 (82 Indian Cases 796) at page 800 left hand column of the Indian Cases report)

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particularly if its acceptance as evidence of market value would penalise the co-owner, in this instance the appellant, who had been in no way a party to the previous sale.

The other attack based upon evidence that the previous sale was carried out at a price lower than the prevailing market value is also valid in law and is supported by

Qamar Ali v The Collector of Bareilly 23 Indian Cases 542 (not reported elsewhere)

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and

Government of Bombay v Ismail Ahmed Hafiz Moosa 1924 AIR (B) 362 (85 Indian Cases 531)

and by the Government of Bombay case referred to above and reported in 1924 B 161 where the Judge states that you cannot possibly ascertain the market value of a piece of land at a given time if you exclude from consideration the state of the market at that time. The Appellant's contention is that, in accepting the evidence of the previous sale, no regard was paid to the prevailing market values for land at the date of the previous sale. The evidence dealing with those values will be considered in dealing with a later ground of appeal. If the evidence showed the prevailing market value at the date of the previous sale to be in excess of the price paid on the previous sale, the Appellant was entitled to have the previous sale disregarded for the purpose of assessing market value either as at the date of the previous sale or as at the date of acquisition.

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If it is once accepted that Devarayan's stay in Malaysia was limited and that he had something to gain by way of tax avoidance in India provided he sold before April 1964, then it is also relevant to note that he required to sell to a purchaser who would be able to pay cash in full before April 1964 and that he could not accept payment over a period of time which would obviously narrow the potential market and a narrowing of the potential market obviously involves a lowering of market value. In order that a sale should afford evidence of market value, it must be a sale in which both parties are free to negotiate terms involving payment of the agreed purchase price over such period of time as may be mutually acceptable and neither party should be affected by considerations that, by giving time for payment, he will not obtain the best possible advantage to himself from the price he has agreed.

If, therefore, the learned trial Judge restricted himself in the manner the passage in his judgment appealed against indicates, he was wrong in law and his judgment based upon that previous sale being a judgment not correctly founded in law should not stand.

Ground 2 and Ground 7

Grounds 2 and 7 are interrelated and can be conveniently taken together. They are directed to the judgment at pages 98 paragraph E and 102 paragraph B where the learned trial Judge held that evidence of other sales of land produced for the purpose of proving market value must be restricted to evidence of sales of lands in the neighbourhood or vicinity of the land acquired. It is submitted that the learned trial Judge imposed far too narrow a restriction

The basis of the learned trial Judge's finding was the passage from the judgment of Buhagier J. in *Nanyang Manufacturing Co. v The Collector of Land Revenue, Johore* 1954 MLJ 69 cited at the top page of 98 where reference is made to sales of the same land

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or similar lands in the neighbourhood (this passage being approved by Suffian J. in the Superintendent of Lands case earlier referred to) but it is noteworthy that the learned trial Judge did not attempt to distinguish the words used by Lord Romer cited at page 97 of the judgment where Lord Romer spoke of comparison being made with prices obtained in the past for "land of similar quality and in similar positions" (this judgment also being approved by Suffian J. in the Superintendent of Lands case). The learned trial Judge gave no reason for supporting the persuasive judgment of a brother Judge in preference to the binding judgments of the Federal Court and Judicial Committee and it is, of course, clear that the basis used by Lord Romer affords a much wider area of comparison than the basis used by Buhagiar J. and adopted by the learned trial Judge. If land is shown to be of similar quality and in similar positions although situate in another neighbourhood, Lord Romer's judgment allows a comparison to be made to assess market value while the learned trial Judge has refused to permit such a comparison. The Appellant is advised by counsel who appeared for the appellant in the Superintendent of Lands case that the Federal Court had before it valuations of lands not neighbouring the land acquired and that it considered those valuations for the purpose of coming to its finding. The Appellant craves leave to refer to the record in that appeal for the purpose of ascertaining whether the Federal Court in that case imposed upon itself the restrictions imposed upon himself by the learned trial Judge in the present case. The judgment itself shows the Federal Court did not act upon any such restrictions.

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As instances of cases where the Court has gone beyond the immediate neighbourhood for valuation purposes, reference is made to

The Secretary of State for
India in Council v Shrimati
Sarala Devi Chaudhrani 1924
Lah 548 (79 IC 74)

(where comparison was made with lands more than quarter of a mile away)

Raghu Nath Das v Collector
of Dacca 11 CLJ 612
(6 IC 457)

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(where it is said the instances produced must relate to lands which, on the whole, have the same conditions of quality and situation as the land acquired)

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Khushi Ram Devamal v Collector
of Shikarpur 1925 Serial 112
(79 IC 376)

(contd)

(which shows the Court considering evidence of scattered sales on a test of sale of lands precisely parallel in all circumstances to the land under acquisition).

Ismailji Mahomedalli Bohori v
The District Depty Collector
Nasik 34 Bom LR 1457 (141
IC 352)

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(where Broomfield J. talks of sales being evidence if the conditions are the same i.e. if they relate to similar land with similar potentialities in or near the same locality.

New Plymouth Borough Council
v Taranaki Electric Power
Board 1933 AC 680

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(where it is shown that "neighbouring" is less restricted than "adjoining" and in which "adjacent" was extended with the approval of the Judicial Committee to a distance of over 6 miles). For acquisition valuation purposes it is submitted that, where "neighbouring" is used, it is used on the "adjacent" interpretation and not the "adjoining" interpretation and that this is borne out by paragraph 3 on page 682 of this judgment.

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The Secretary of State of
Foreign Affairs v Charlesworth
Pilling & Co. 1901 AC 373

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@ 389 is shown exploration by the Vice-Consul of the values of lands not adjacent to or neighbouring, in the narrow interpretation given by the learned trial Judge, the land under acquisition and at 395 the Judicial Committee finds the approach of the Vice-Consul to be based on sounder principles than that of the Zanzibar Court i.e. the Judicial Committee expressly approved of extending the area of enquiry into land values for the purpose of assessing fair compensation.

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It is submitted that it is shown by the highest authority that the learned trial Judge was wrong in law in the interpretation he gave to the word "neighbouring" and that, in stating at page 102 paragraph E that the prices paid for other lands investigated and examined by the Appellant's valuer for the purpose of ascertaining market value were wholly irrelevant to the issue, he was wholly wrong in law. Having erred in so fundamental a matter, his findings based upon such an error cannot be sustained and his valuation, ignoring evidence relevant and proper to be considered, cannot be upheld.

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Once it is established the learned trial Judge was wrong in law, it is relevant to note that the Respondent's valuer did not take a similar stand that only sales of immediately neighbouring lands could be examined but accepted the proposition other lands could be examined but attention must be paid to the question of whether such lands were similar and their localities were similar. This may be seen from his evidence at page 75 paragraph B-G and at page 81 paragraph C and page 84 paragraph C he conceded that the lands comprised in the Appellant's valuer sales 14, 15 and 16 have the same potentialities as the land under acquisition provided it (presumably planning proposals) is permitted by the authorities. The Appellant's valuer sales 14, 15 and 16 are to be found at the foot of page 133 and top page of 134 of the record and show values of \$5/- per square foot in August 1963, \$11.12 per square foot in January 1964 and \$10.77 per square foot in July 1964 respectively. The date on which the market value of the land acquired fell to be assessed was the 4th June 1964.

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It may also be noted that, resulting upon his error in law, the learned trial Judge was obliged to dissent from both the assessors whose opinions were that the land was worth \$4.80 per square foot and \$6.00 per square foot respectively as may be seen at page 108 paragraph E. While it has to be conceded that the learned trial Judge was entitled in law to reject the opinions of the assessors and to impose his own valuation, when it is found that the Judge erred in law in doing so then his valuation must be of less weight than the opinions of the two assessors who are chosen because of their experience in matters of land values and who have heard the same evidence of values as the learned trial Judge but whose valuations are free from the same error in law, though, as will be later submitted, even the assessors' opinions in this case must be open to doubt.

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Ground 3 and Ground 4 and Ground 6

These grounds are directed to the attack made by the learned trial Judge upon the evidence led by the Appellant to support his contention that the previous sale of the land was, for purposes of market value, not a genuine sale but a forced sale. The judgment on the point is to be found at page 99 paragraph C to page 101 paragraph A and the gist of the Appellant's contentions on the matter is paraphrased at page 99 paragraphs C, D and E.

The learned trial Judge's attack upon the evidence as apparent from his judgment was

- (a) Nobody testified that Devarayan said at any time he was going to sell at any price he could get.
- (b) That PW1, being absent from the country at the time of the sale, could not say under what circumstances it was sold.
- (c) That PW3 said he did not know if \$2.20

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per square foot was fair price in
November 1963.

- (d) That there was no evidence that
Devarayan was in danger of being
deported.
- (e) That Devarayan became owner of the land
in 1962 but did not sell until September
1963.
- (f) That Devarayan sought the assistance of
his community before selling. 10
- (g) That he did not believe Devarayan made
no enquiries as to the value of the land
before selling.
- (h) That the Appellant could have called
Devarayan as a witness.

If these grounds of attack are analysed, it can
be found that there is no substance whatsoever
in any of them. It is proposed to analyse
them in turn.

(a) It was unnecessary for any witness to
lead the testimony suggested by the learned
trial Judge because the compulsion operating
upon Devarayan was one established by the
laws of this country and of India. Once the
facts necessary to bring these laws into
operation were established, then the laws them-
selves did the rest. The relevant laws were
the immigration laws of this country and the
taxation laws of India. 20

The immigration laws of this country at
the material times were contained in 30

Immigration Ordinance No.12
of 1959

and

Immigration (Transitional
Provisions) Order 1963
(L.N. 227/63)

Immigration Regulations 1963
(L.N. 228/63)

Immigration Regulations 1959
(L.N. 132/59)

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By virtue of Section 57(1) of

Evidence Ordinance 1950

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the learned trial Judge was bound to take judicial notice of these laws and Regulations, but, as can be seen from his judgment, he took no notice of them whatsoever.

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(contd)

10 The relevant Sections of the Ordinance
are:-

Section 6 which prohibits the entry of non-citizens except in the instances specified.

Section 10 providing for the issue of entry permits.

Section 15 prevents a person remaining in this country after expiration of any pass issued to him.

20 Section 33 providing for removal from the country.

Section 54 which is the rule making power. Particular attention is drawn to Section 54(1)(c).

The relevant rules of the Transitional Provisions Order are:-

Rule 7(1) saving existing passes etc.

30 Rule 8(1) enabling a person in the country to remain there.

The relevant rules of the 1963 Regulations are:-

Rule 4 dealing with Entry Permits.

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Rule 8(1) dealing with
passes. Particular
attention is drawn to item (c).

Rule 11 dealing with Visit
passes. Particular
attention is drawn to sub-
rule 6 which restricts the
period of such a pass to
twelve months and sub-rule
8 which enables the
Controller to cancel such a
pass at any time.

10

Rule 40 revoking the 1959
Regulations.

The relevant provisions of the 1959
Regulations were:-

Rule 4 dealing with Entry
Permits.

Rule 8(1) dealing with passes.
Particular attention is
drawn to item (c)

20

Rule 11 dealing with Visit
passes. Particular attention
is drawn to sub-rule 6 which
restricted the period of such
a pass to twelve months and
sub-rule 8 which enabled the
Controller in the cases
specified to cancel such a
pass at any time.

30

Evidence as to Devarayan's presence in this
country was led by PW1 at page 30 paragraph B
and paragraph F, page 34 paragraph C and
by PW3 at page 38 paragraph G, page 39
paragraph A and paragraph D and page 40
paragraph D. This evidence, which was not in
any way contested, was that he was not a
resident or citizen of this country but had
come to this country on a visit pass to attend
to the partitioning of the Chettiar firm in
which he was a partner. Being resident on a
visit pass, his length of stay was limited
to periods of not more than one year at a
time and any stay in excess of a period of one

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year was dependent upon his being able to get his pass extended. It was in evidence, again uncontested, that he had now been given a final extension expiring in June 1964. It was therefore clearly established by the evidence that Devarayan would be compelled to leave this country not later than June 1964.

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10 Evidence as to the taxation laws of India with particular reference to the capital gains tax operating in that country was led by PW1 at page 30 paragraph D-G, page 35 paragraph G, by PW3 at page 39 paragraph D, page 40 paragraph C and paragraph E and by PW6 at page 62 paragraphs C-F.

20 This evidence established the existence of a capital gains tax in India payable by residents of that country. It also established that a person outside the country could escape that tax if he was outside the country for a year from the 13th April onwards since the Indian tax year began in April and a person was not regarded as resident for tax purposes if he had been out of the country for a year. The relevant Sections of the Indian Income Tax Act are to be found in the text-book referred to by PW6 namely

30 V.S. Sundram Law of Income Tax in India and are:-

Section 3 which deals with the financial year as commencing on 1st April.

Section 6 which deals with when a person is resident in India.

Section 45 which imposes a tax on capital gains.

40 Section 49 which makes the capital gains tax applicable to inherited property

The effect of this in Devarayan's case was that, to escape the capital gains tax, he

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had to sell before April 1964 or remain out of India for a year after April 1964. The second alternative was not open to him because of the immigration laws of this country and he had to adopt the first alternative or pay the tax.

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The evidence led established the two salient facts to support the Appellant's contention that an element of compulsion acted upon Devarayan these two facts being first that Devarayan was a visitor to Malaysia and second that he stood to pay Indian capital gains tax unless he was outside India during the Indian budget year. Once those two facts were established, the laws referred to had the effect of clearly establishing a compulsive element operating upon Devarayan when he sold and the learned trial Judge's first ground of attack was unreasonable and made without any consideration of the relevant laws.

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(b) Since PW1 did not attempt to give evidence of the actual details of Devarayan's sale but only of indisputable factors operating, the criticism was wholly unwarranted.

(c) The learned trial Judge here extracted a passage from the evidence of PW3 appearing at page 40 paragraph C. He did so without reference to the other evidence given by PW3 at Page 39 paragraph G which was not in any way challenged and upon which the learned trial Judge himself made further enquiry as can be seen from page 40 paragraph G. The learned trial Judge totally omits from his judgment any reference to this other evidence of PW3 which clearly negatived the finding the learned trial Judge sought to come to from the narrow passage in the evidence to which he confined himself.

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(d) In this instance the learned trial Judge overlooked the evidence that Devarayan's pass expired in June 1964 and overlooked the fact that, upon its expiration, deportation would automatically follow under the laws of this country.

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(e) The learned trial Judge appeared here to attempt to suggest that the lapse of time between Devarayan's acquisition of the land

and his sale of it showed he was in no hurry and under no compulsion to sell. If that is the suggestion attempted to be made, then it is a suggestion which can only be made if one totally ignores the evidence relating to the interval and it is noteworthy that the learned trial Judge made no reference to that evidence. The evidence in question may be found at page 31 paragraph B, page 39 paragraph B, page 40 paragraph C and shows the problem involved was that of disposal of an undivided interest in land. This aspect forms the subject matter of subsequent grounds of appeal and will be examined in detail later. At this stage it is sufficient to say that an explanation for the interval relied upon by the learned trial Judge was given, but the learned trial Judge appears to have completely overlooked it.

(f) The fact that Devarayan sought the assistance of his community before selling could not in any way affect the price he was able to get upon a sale which he was found to conclude before April 1964 if he wanted to escape tax. Whatever advice as to market value he may have sought or been given, the element of compulsion was present as he could not wait as long as he pleased to get what might be considered the correct market value unless he was prepared to pay the Indian capital gains tax.

(g) The comments made upon the learned trial Judge's attack listed as (f) are equally applicable to his criticism on this heading.

(h) As this forms the substantive ground of appeal number 5, it is proposed to deal with it there.

It can therefore be seen that the learned trial Judge's grounds for criticising the evidence led as to the previous sale by Devarayan do not bear close examination and are unsound and unwarranted either upon the evidence or upon the law applicable which the learned trial Judge failed to consider or apply.

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Ground 5

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This ground is directed to the learned trial Judge's statement at page 100 paragraph F that "if the Applicants were going to rely on the fact that the land was sold cheap, it was open to them to call Devarayan Chettiar as a witness or have his evidence taken on commission in India". This passage indicates a complete misunderstanding by the learned trial Judge of the onus in this case which is all the more surprising as it is submitted he correctly directed himself at page 96 paragraph B. Taking the statement as to onus at page 96, the position in this case was quite clearly that it was open to the Appellant to show the compensation awarded to be inadequate without having to refer to the previous sale at all by referring to evidence of other sales or by referring to the opinions of experts or in any way open to him. Far from relying upon the previous sale, the Appellant totally rejected it as offering evidence of market value. The Respondent, however, had the previous sale as the keystone upon which the Respondent's valuation rested. This is conceded by DW3 at page 82 paragraph A. It is incredible that the learned trial Judge should seek to impose upon a party placing no reliance upon the sale the onus of producing the witness to substantiate it instead of placing that onus upon the party which, by admission of that party, was before the Court on a case which was wholly dependent upon that sale. The Respondent was before the Court knowing that his case depended on the previous sale, knowing that the value of that sale as evidence of market value must inevitably be attacked by the Appellant and yet took no steps to obtain the evidence vital to maintaining this piece of evidence so essential to his case and yet the learned trial Judge, instead of holding this glaring omission against the Respondent, held it against the Appellant. The Appellant was able to discharge the onus upon him without referring to the previous sale and, as soon as that evidence established the market value to be in excess of the price paid on the previous sale, the onus shifted to the Respondent to propound the previous sale and to prove it to be reliable evidence of market value. To discharge that onus, the

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Respondent had to call Devarayan. Once the previous sale was prima facie established as evidence of market value it was open to the Appellant to rebut that evidence by any means available and it was evidence in rebuttal which the Appellant led and which the learned trial Judge criticised without appreciating its nature and without appreciating that the facts which were in the process of being rebutted had never been fully proved and established by the party on whom fell the onus of calling the necessary evidence to establish them. To suggest that the price paid is sufficient evidence is to suggest that all sales take place at market value which is a suggestion too preposterous to entertain. The facts and circumstances of every sale have to be critically analysed before they can be considered as evidence of market value and here no facts and circumstances were produced by the Respondent who relied upon the previous sale. The learned trial Judge's finding amounts to the proposition that a party seeking to rebut evidence must produce as his witness the person whose evidence he seeks to rebut. This is an incredible proposition and one which no Court could possibly uphold.

Ground 8.

This refers to the judgment at page 102 paragraph F where the learned trial Judge, with very little consideration, discarded the evidence of the price paid for Lot 2285 as evidence of market value on the grounds it was a sale by a director to his company and that PW4 had in consequence conceded it did not form reliable evidence.

Dealing first with the point on PW4's alleged concession, the learned trial Judge once again extracted only a portion of the evidence and not the whole. The evidence in question appears at page 53 paragraph C and it is noticeable that the learned trial Judge has omitted the qualifications made by PW4 upon his concession, namely that PW4 would treat the sale with suspicion if

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the Director was the major shareholder in the company to which he sold. As to this, reference may be made to the evidence of DW3 at page 78 paragraph B where he said he did not know the extent of the holding although he was aware of the nature of the transaction unlike PW4 who was not aware of the nature of the sale - page 53 paragraph C. DW3 elected to discard the sale as evidence merely on the ground it was one by a Director to his company without taking any steps to ascertain whether he was justified in discarding it in this way and without considering the correspondence in price between the sale of this lot and that of Lot 1 Section 85A Pahang Road.

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Details of the prices paid for Lot 2285 and Lot 1 85A are set out at page 132 as sales Nos:7 and 8 respectively and show a sale of Lot 2285 at \$6.38 per square foot in March 1963 and a sale of Lot 1 Section 85A at \$7.90 per square foot in April 1964. Having regard to the rise in price which was admittedly taking place, these two sales were consistent and there were no grounds for discarding the sale of Lot 2285 as reliable evidence unless some authority could be shown for the proposition that sales by directors to their companies were always to be left out of account even in the absence of any evidence to suggest the price was anything but a fair and proper one. The learned trial Judge makes no reference to any such authority in his judgment nor has the Appellant been able to find one.

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The position of contracts between directors and their companies is one on which there is ample authority and that authority should be examined before the arbitrary step is taken of saying no such contracts are genuine. Reference may be made to

Halsbury's Laws of England
3rd Ed. Vol. 6

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page 302 paragraph 608 where it is pointed out that, if there is non-disclosure of interest, the company can recover any loss sustained if there has been negligence or misfeasance on the part of the contracting director. There is no evidence in this case that the purchasing

company attempted to recover any part of the purchase price and the director's interest was apparent on the face of things as he was actually registered proprietor of the land in question. Paragraph 609 points out that directors can contract with their companies if the articles permit them to do so and there was no evidence in this case that they were not permitted to do so, this evidence being readily obtainable from the Companies Registry so that the Respondent, who knew of the nature of the sale, could have produced this evidence which would at once have destroyed its whole value as evidence. At page 300 paragraph 605 Halsbury points out that a director is liable to account to the company for any unauthorised profits made by him in virtue of his office independently of any questions of fraud or absence of bona fides but there is no evidence to suggest this company called upon its director to account.

Accepting that there is no absolute legal bar to contracts between directors and their companies and that there is no evidence to show that the vendee company ever took any steps to rescind its purchase or recover any part of the purchase price and that there is no evidence to show the price paid to be totally out of line with prices being paid for other land at the same time and that there is no evidence to suggest anything other than that this was a genuine sale at the market value at the time and that there is no evidence to suggest that the vendor director was in a position to or did exert any form of influence or pressure upon the vendee company, there was nothing to justify the arbitrary rejection of this sale as evidence. Assuming it might be correct to say that one should view sales by directors to their companies with a degree of suspicion, suspicion unsupported by any form of evidence on which to base it is far removed from certainty and the learned trial Judge rejected this sale as evidence as if he was dealing with the certainty that it was in some way tainted and not merely as being suspect and therefore to be given closer scrutiny. The

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learned trial Judge gave it no scrutiny whatsoever either to confirm or negative any suspicion he might have felt and gave no valid reasons supportable by evidence for suspicion. It may be pointed out that to leave the matter standing as at present is to impute to the Director concerned some form of improper conduct without there being a shred of evidence on which to base the imputation and without any opportunity being given to the Director to refute the imputation. Any person reading the judgment must inevitably take the view that it was established that there was some impropriety in the transaction and this fact is, in itself, sufficient reason for not accepting the finding which offends against all principles of justice, natural or otherwise.

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Ground 9

This ground relates to the rejection by the learned trial Judge of evidence of a sale of Lot 1 Section 85A as affording evidence of market value. The relevant passage in the judgment is to be found at page 103 paragraph A and the agreement he was considering is at pages 146-150. His objection was directed not to the price but to the method by which the price was to be paid and he held that it afforded no evidence of market value because of the method of payment and the fact that no definite date was provided by which final payment was to be made. He referred to the fact no completion had taken place at the date of hearing which was a totally irrelevant consideration in considering whether it afforded evidence of market value as at the date it was entered into

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That agreements to sell are valid evidence of market value cannot be disputed (Aggarawala page 200, Sanjiva Row page 359). The agreement in question was not an offer to purchase but an agreement to purchase capable of being specifically enforced or alternatively given effect to by an appropriate award of damages. There is nothing in the agreement to indicate it was anything but a bona fide transaction between a willing vendor and a willing purchaser and this was admitted by DW3 at

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page 78 paragraph D. The purchaser was a construction company and therefore clearly in a position to assess what could fairly be paid by a purchaser so as to leave himself a margin of profit after his development and clearly unlikely to agree to pay any sum exceeding the prevailing market value for land. The agreement expresses the use to which the purchaser proposed to put the land which was the type of user popular at the time. Only in relation to payment of the final balance of \$255,000 is there any room for uncertainty as to the time of payment and it would clearly be open to the vendor, in the event of no building operations taking place, to sue for the balance provided that a reasonable period of time was given within which the proposed buildings could reasonably have been begun and completed. The purchaser would not be permitted to delay completion indefinitely merely by refraining from building when the building operations were matters which were within his power to put into effect and it is also noteworthy that the purchaser stood to incur a heavy loss on non-completion of his purchase by reason of the provisions of Clause 4 (page 148 paragraph F). It must be outside the contemplation of any reasonable man that a purchaser should agree to pay a sum in excess of market value when the effect of agreeing to such excess is to increase the loss to be incurred in the event of non-completion of the purchase.

It must be recalled that this agreement was entered into at a time when flatted development was both popular and profitable and in agreeing upon the date for final payment the parties were doing so at a time when they both anticipated that development of the land would be carried out and completed. The fall in demand for tower blocks of flats was a factor arising later and would obviously deflate the value later but what we are concerned with is the market value pertaining, not in the light of after acquired knowledge, but in the light of anticipations and expectations at that date. This agreement was made in April 1964 (which is two months before the acquisition the

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subject matter of this appeal) and the evidence as to the market at that time is to be found in the evidence of PW4 at page 42 paragraphs B and D, page 44 paragraphs B, C and G, page 45 paragraph C, page 47 paragraphs A and B, page 48 paragraph F, page 49 paragraphs E, F and G, page 50 paragraphs F and G, page 51 the whole down to paragraph F, page 52 paragraphs B and C, page 53 paragraphs A and B, page 54 paragraphs E, F and G, page 56 paragraphs C, F and G, page 57 the whole, page 58 paragraph D, page 59 paragraphs A and B in the evidence of DW2 at page 64 paragraphs E, F and G, page 65 paragraphs A, D, E and F, page 67 paragraph D to the foot, page 68 paragraph C and in the evidence of DW3 at page 79 paragraphs A, B and D to the end, page 81 paragraphs F and G. This evidence makes it clear that, at the only time material to this appeal, land developers were proceeding with schemes for the erection of flats and that flatted development of land was a profitable form of development leading to high prices for lands on which this type of development could be carried out. When this evidence is considered, the selling price provided in the sale agreement relating to Lot 1 is not so unreasonable as to justify the learned trial Judge in discarding this piece of evidence.

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Before passing from this ground of appeal it must be pointed out that the learned trial Judge refuted the sale referred to in Ground 8 and this sale in isolation from each other. He made no attempt to consider the two sales together and when this elementary step is taken it at once becomes obvious that each supports the other as affording evidence of market value at the time and that, in each case, the existence of the other sale affords grounds not for rejection of the sale being considered but for its acceptance. In determining market values, one looks not at sales in isolation but at similar sales for purposes of comparison and this step of comparison was one the learned trial Judge failed to consider in over hastily rejecting the evidence of both sales.

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Ground 10 and Ground 15.

These grounds of appeal refer to the judgment at page 104 paragraph B where the learned

10 trial Judge says "Subdividing the land hypothetically into lots and then valuing the land on the basis of the prices which each lot will fetch is not the basis upon which a large piece of land ought to be valued" and at page 107 paragraph E where he said "A bigger piece of land will certainly fetch a lower price than a smaller piece of land in the vicinity". These passages show that, upon the basis of these generalities, the learned trial Judge dealt with the land under acquisition as one unit comprising the whole 22.763 acres and it is contended he was wrong in law and in fact in so dealing with it.

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The case which conclusively establishes the learned trial Judge to be wrong in law in the approach he took is

20 Maori Trustee v Ministry of
Works 1959 AC 1.

30 which was an acquisition case very similar to the one under appeal and it is proposed to examine it in detail. The last paragraph on page 2 shows that in 1948 a plan for the subdivision of the land had been prepared which required the approval of the Minister of Home Affairs (the position corresponding very closely to that of the land the subject matter of this appeal following upon planning approval given in 1957). The acquisition proceedings started in September 1951 and the material date under the New Zealand law was the 15th September 1952. An area of 91 acres was involved (the area did not comprise several titles as was the position in the case under appeal).

The judgment was delivered by Lord Keith and relevant parts are:-

40 Page 13 where it was held it was fundamental the land must be valued in its state at the time of taking but that there are cases where land has a potentiality which may be realizable in the foreseeable future which will give the land an added value over and above its value for the uses made of it at the time of taking.

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Page 14 where it was said that when one found land with potential it is difficult to envisage a sale to more than one hypothetical purchaser who is prepared to buy with a view to developing and realizing the benefit of the potentiality but that there seemed no reason why this need be in all cases an inevitable assumption. If the area of land taken is so large as to be capable of building development in the hands of separate purchasers operating in different sections of the whole area, more than one hypothetical purchaser could be imagined although for valuation purposes the result would seem immaterial.

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Page 15 where the three material factors were said to be (1) that the consent of the Minister had to be given to any sale (2) the sub-division plan could not be carried into execution without the consent of the Minister and (3) there were in fact no sub-divided lots. The first of these factors has no counterpart in the case under appeal. The second has its counterpart in that final planning approval and approval of sub-division would have had to be obtained in respect of the land under appeal but the evidence of DW2 the Town Planner showed there to be little likelihood of a refusal to approve planning and the agreement by State Government to the exchange of land proposals would indicate sub-division would offer no difficulties. The third factor is, of course, identical in both cases and here, at the bottom of page 15, Lord Keith states that the task of the compensation Court is to estimate how far the land was ripe at the date of taking for sub-divisional development and how soon, looking to the need of obtaining any necessary consents, the land would in fact, but for the taking, have been fully developed and value it accordingly. This was certainly not the approach adopted by the learned trial Judge in the case under appeal as he rejected all considerations of potential.

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Page 16 where the passage cited from the judgment of Gresson J. was approved the

parts material to this appeal being the finding that the land must be valued for what it was on the specified date - a tract of land capable as to some, perhaps all of it, of sub-division into building allotments and of being sold at some time and over some period in that form. In estimating what price a purchaser would be willing to pay recourse may be had to an examination of the estimated gross yield from a sub-division as yet notional only and the estimated deductions that a purchaser would have to take into account. This was certainly not the approach taken by the learned trial Judge in the case under appeal although it was the approach taken by the Appellant's valuer.

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Other cases showing him wrong are

20 Secretary of State for India
v Sarla Devi Chaudhrani 1LR
1924 Lah 227 (79 IC 74).

30 cited to him at the hearing (page 89 paragraph
C) but not referred to in his judgment in
which it was said "on the other hand, it has
been repeatedly held that the fairest and
most favourable principle of compensation to
the owners is to estimate the market value
of the property not according to its present
disposition, but laid out in the most
lucrative and advantageous way in which the
owners could dispose of it. This principle
has been recognised and the objectors could
have put forward a scheme showing how the
site in question could have been developed by
splitting it up into various flats. While
evidence has been led to show that the value
of land acquired would be greater if split up
in small plots, no scheme for such a develop-
ment has been put forward and no evidence has
40 been led to show that there was any real demand
for small houses or shops in this vicinity".

In the case the subject matter of our appeal,
the evidence showed proposals for the develop-
ment of the land acquired in a manner
involving splitting into plots which
preceded by a very considerable time the

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acquisition. As will be seen when the Town Planning aspect is reviewed later in this submission these proposals were in existence in 1957. The evidence further showed a demand at the time of acquisition for a particular type of flatted development for which the land acquired could have been utilised. The tests suggested by the case cited were, therefore, satisfied.

Other cases upholding the same principle are 10

U.P. Government v H.S. Gupta
AIR 1957 S.C.202

cited at page 351 of Sanjiva Row.

The Trustees for the Improvement
of the City of Bombay v
Karsandas Nathu 10 Bom LR 688
(1 IC 451)

Government of Bombay v Karim
Tar Mahmud 10 Bom LR 660
(3 IC 273) 20

Khoo Peng Loong & ors v
Superintendent of Lands and
Surveys, Third Division 1966
2 MLJ 156

In the case last cited at page 158 right hand column paragraph D it is shown that the objectors claimed to be entitled to split and to be compensated on the basis of the use to which their lands might be put i.e. shop lots and godown lots. At page 159 left hand column paragraph C the learned Judge agreed with the Government valuer that the prices actually paid for shop lots did not afford a basis of comparison because, where shop lots were sold, the facilities attending such lots had already been provided for (and it is for this reason the Appellant's valuer relied most on sales, not of lots already available for flatting development but of lands to be developed into lots available for flatting development). At page 159 right hand column paragraph I it is shown that the Government valuer examined all sales which had taken place in the town of Sibu in doing his

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10 valuation (there seems to be a remarkable
inconsistency between his approach and the
approach of the Government valuer in the
case under appeal) and at page 161 left
hand column paragraph C it is shown the
Government valuer said he did not agree
the sales were not comparable (again the
inconsistency in Government valuation
approach). At page 162 left hand column
10 paragraph E the learned trial Judge gave
his reasons for not accepting the objectors'
contentions in the case he was dealing with
which were (a) there was no evidence of
any detailed development for the area prior
to the acquisition (there was in the case
under appeal) (b) there was evidence of no
market for the type of development
proposed (the evidence in the case under
20 appeal is that there was a market) (c)
there was in fact no sub-division and no
evidence of a lay-out plan being approved
(in the case under appeal a lay-out plan
had been approved). At page 162 right hand
column paragraph F the learned Judge
accepted that, to assess compensation, one
must take into account the most lucrative
and advantageous way in which the owner
could dispose of his land with reference to
its future utility but excluding mere
30 speculation and impractical imagination and
at page 163 right hand column paragraph A
he held the Court was concerned with the
land's possibilities and not its realised
possibilities. At page 163 left hand
column paragraphs G to H the learned Judge
made his valuation for Lot 1 first on the
basis of three split lots arriving at
40 \$25,000 per lot and adjusting for
developing expenditure and then gave a
higher figure for the land alone. The
higher figure for the land alone clearly took
into account development potential.

50 It is submitted that, on the authorities
cited, the learned trial Judge was bound in
law not to consider the land under acquisition
for market value purposes as comprising one
large block but was bound to consider it as
a piece of land ripe for sub-divisional
development or, at the least, to consider
it on the basis that it comprised seven

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titles individually capable of being dealt with by way of sale on the date of acquisition.

As appears from the Maori Trustee case referred to, if the notional sub-division approach is given effect to, consideration has to be given to the question of how soon the land could have been developed and the element of risk and delay in arriving at a valuation. None of these features received any consideration from the learned trial Judge or from the Respondent's valuer who acted upon the same erroneous belief that the land was to be valued as consisting of one whole area. 10

If the alternative possibility, namely that of considering the seven titles which went to comprise the whole, is adopted then it is submitted that questions of risk and delay became irrelevant. The Maori Trustee case shows that these elements are taken into account because there has not been a sub-division i.e. on the material date a title cannot be passed but it is submitted on the basis of 20

Duke of Buccleuch & anor. v
Inland Revenue Commissioners
1967 LAER 129

that where a title can be passed on the material date then these elements and the further element of a potential flooding of the market must be ignored. Reference is made to the judgments of Lord Reid at page 135 paragraphs B to F, Lord Morris at page 138 paragraph F to the end of his judgment, the judgment of Lord Hodson at page 140, Lord Guest at page 143 paragraph G to page 144 paragraph I and Lord Wilberforce at page 147 paragraph D to page 148 paragraph A and it is contended that these show that where a sub-division of the whole land into separate units is practically achieved on the material date (the date of death in the Duke of Buccleuch case and the date of acquisition in our case) then the basis of valuation is to treat the units as hypothetically sold on that date and ignore all problems which might be connected with the sale. 30 40

As the principle is that the owner gets the most favourable terms, it is submitted that, in the case under appeal, the owner was entitled to

be paid the higher figure resulting from valuation first on the basis of notional sub-division with deductions for risk and delay and secondly from valuation on the basis of sales of the seven titles on the acquisition date, in which case no deductions should be made. These valuations can only be obtained from the Appellant's valuer as he was the only witness to approach the valuation along lines which followed the law applicable. The figures relevant will be examined when the Appellant's valuer's evidence is considered later in this submission. Before passing from these grounds of appeal, however, it should be noted that the largest area involved in any individual title was 6 acres 1 rood 27 poles this being the area of Certificate of Title No: 9787 (see page 12 of the record) and it should further be noted that, even where large blocks of land held on one title and not properly to be notionally sub-divided are involved, it does not automatically follow that they fetch lower prices than a small piece. That this is so can be seen from the judgment of Suffian J. in the Superintendent of Lands, Sarawak case at page 246 right hand column paragraph F. Suffian J. there correctly points out that the principle need not apply where the lands are situate in a densely populated area where there is a large capital surplus and it is submitted that the lands under acquisition were situate close to the densely populated areas of Batu Road and Ipoh Road and that capital surpluses were available as can be seen from the evidence of PW4 at page 42 paragraphs B and C.

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40 Grounds 11, 12, 13 and 16.

It is proposed to consider these four grounds together because the evidence and law involved are largely applicable to all these grounds.

These grounds of appeal are taken against the judgment at page 105 paragraph B where the learned trial Judge rejected the Appellant's contention that sales of undivided

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shares in land did not afford a reliable guide to market value; to the judgment at page 105 paragraph G where the learned trial Judge took the evidence of the previous sale of the land itself as the best evidence of market value and to the judgment at page 107 paragraph G where the learned trial Judge held that the value of ₹3.00 per square foot reflected not only the general increase in the price of land but also a reasonable allowance for the fact that its previous sale was of an undivided half-share.

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It was a fact that the previous sale of the land itself was a sale of an undivided half share only. As can be seen at page 89 paragraph A of the record the attention of the learned trial Judge was drawn to page 362 of Sanjiva Row where it is said that the sale price of an undivided share in property is not dependable as an index of its market value and that, by whomsoever such a share may be purchased, be it stranger or co-sharer, the price does not afford an index for the valuation of the property for the purposes of the Act. The same thing is stated less positively at page 206 of Aggarawala. In his judgment the learned trial Judge makes no reference to these works and gives no grounds for holding that the principles stated are wrong in law.

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Although no authority for the proposition is referred to in Aggarawala or Sanjiva Row, authority does in fact exist in the case of

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Amrita Lal Basack & anor v
The Secretary of State for
India in Council reported
only in 22 IC 78

where at page 82 left hand column MacLean C.J. said

"Of the purchases made in recent years in the neighbourhoods, the appellants place the greatest reliance in support of their case on No: 129 on the plan, which is on the North side of the Square, and which was sold in 1888. It is a small plot consisting of 3 cottas 8 chittaks of land and it was sold at the rate of Rs 1,087 per cotta. An undivided share only was

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sold and the appellants say, and, in my view, correctly, that a smaller price will be given, for an undivided share with its possible burden of litigation to obtain a partition, than for an entire property."

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10 At page 35 of the judgment Banerjee J. rejected the same piece of land as evidence on the basis that "the area of the lot was very small and the purchaser was a very wealthy man who had property in the immediate neighbourhood." For those reasons he rejected the argument that the price paid was low because an undivided share was involved which at first sight seemed to him plausible.

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20 Since the learned trial Judge has seen fit to reject the Appellant's contention that prices paid for undivided shares in land do not afford a reliable guide to market value, it is proposed to consider at some length some of the consequences and effects of being a co-sharer. At the material time, our land law applicable was set out in

The Land Code Chapter 138

and the relevant Sections were:-

30 Section 44 which entitled a co-sharer to have a partition made if the land was not subject to charge or lease (the underlining is ours) and that, if it was under charge or lease, the partition could not be effected without the consent of the chargee or lessee. It was also provided that, if the parties could not agree upon partition, it was to be effected by the Court or the Collector of Land Revenue, as the case may be.

40 Section 45 which provided that upon death of a co-proprietor his share should devolve upon his representative and not his co-proprietor.

Section 46 which made co-proprietors jointly and severally liable for land rent.

Section 48 which permitted transfer,

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transmission devise or charge of an undivided share but prohibited transfer or charge of any area not being the whole area of land comprised in any document of title until after survey, subdivision and the issue of new titles.

Section 106 dealing with how partitions are to be effected in the absence of agreement of the co-proprietors.

On these provisions the following problems arose:- 10

(a) If an undivided share of land was subject to charge or lease, partition could not be carried out without the consent of the chargee or lessee. No provision was made for what should be done if a chargee or lessee refused consent and this was clearly a happening not beyond the bounds of possibility. Charging and leasing of land is a normal procedure on the part of a landowner but this normal procedure was fraught with danger to a landowner whose relationships with his co-proprietor deteriorated making it desirable for him to obtain partition. 20

(b) The imposition of joint and several liability for land rent meant that a co-proprietor who had paid his proportionate share might nevertheless find his land made subject to forfeiture by reason of a default on the part of his co-proprietor. His remedy was not prescribed. Such a default was an obvious danger to any co-sharer. 30

(c) Because of the inherent assumption that a co-sharer is owner not of an identifiable part of the land but of the appropriate share of every part of it, the granting of leases and charges was not practicable. Upon leases being granted, all co-sharers had to join in the letting and this at once gave rise to problems of the nature of the joint holding i.e. was it equivalent to English joint tenancy or tenancy in common. If one, the one co-owner could act on his own e.g. in collecting rent or terminating the tenancy without the aid of his co-owner but if the other then he had to have the co-operation of his co-owner. This point has not been before the High Court in Malaysia but was before the 40

Sessions Court in Kuala Lumpur in a case in which counsel for the appellant was involved in which it was held that the nature of co-ownership was such that both must join in giving notice to quit to any tenant i.e. it was held similar to the English doctrine of tenancy in common. If that case was correctly decided (and it was thought at the time that it was and no appeal was brought) then the simple act of granting leases was fraught with dangers in the case of co-owners.

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Charges likewise gave rise to the problem that the chargee could never identify any specific piece of land held by him as security nor could he be sure of obtaining custody of the title deed if it was in the custody of another co-owner who was not charging his interest. The right to charge was, therefore, more illusory than real and, moreover, the effect of a charge was to charge the whole piece of land although the co-owner had made no borrowing.

(d) Problems arose as to the right to have custody of the title deed. The right to custody was important because a co-owner with custody could create liens (which necessitate the deposit of the title deed with the lender) while a co-owner who did not have custody could not. This problem is now taken care of by

National Land Code 1965
Sect 343(2)

but there was no similar provision in the old Land Code.

(e) Partition, in the absence of agreement between the parties, gave rise to the danger that the Court or Collector might direct sale instead of partition. Such a sale was held by auction and it must be accepted that the price fetched at an auction sale is generally less than the price that can be obtained upon a sale by private treaty unless the subject matter of the sale is something of exceptional intrinsic value. The co-owner applying for partition could not

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prevent an order for sale being made and, therefore, by applying for partition exposed himself to the danger of an auction sale of land he might be most anxious not to have sold. The right to bid at the sale would be of no value to a co-owner whose only substantial asset was the land in question.

(f) Upon sale of an undivided share a purchaser took on himself all the dangers set out above and, if a stranger, undertook these dangers in co-ownership with a totally unknown bed fellow. That he should be prepared to pay a full market price is a possibility inherently totally improbable. 10

Cases which have come before the Courts and which have been reported involving co-owners are set out below and this list cannot comprise other cases brought and settled or cases where partition was resorted to with results that were unsatisfactory to a co-owner. The cases which can be found are:- 20

Don bin Man v Mah Binti
Mohamed 3 Malayan Cases 38

in which the Court of Appeal had to overrule a judgment holding void a sale by a beneficiary of her undivided share and did so by holding the beneficiary could apply for partition in the event of her co-beneficiaries refusing their consents.

Annamalay Chetty v Lau Eng
Min 1917 1FMSLR 342 30

where again the problems of co-ownership reached the Court of Appeal. In this case the problem was whether sale of a portion of land to satisfy a portion of a debt could be ordered where co-owners had charged the land and one had not consented to sale of the proposed portion.

Ichal v Collector of Land
Revenue 1946 MLJ 118

which came before the Court because the Collector refused to carry out a partition. 40

G.P. De Silva & ors v Chua
Yam Thong 1962 MLJ 236

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where the case concerned competing claims
to profit derived.

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Murugappa Chettiar v Chinniah
1962 MLJ 95

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which referred to a claim to be entitled to
share in a building erected by the other co-
owner.

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10 These cases indicate co-ownership of
land as providing a source of litigation and
that such litigation takes varying forms.
It may also be noted that the provisions of
Section 45 of the Land Code providing for
devolution on death, although providing
some assistance on the face of things, in fact
were likely to give rise to even greater
problems for the simple reason that, upon
20 death of a co-owner intestate, one could
expect to find oneself holding jointly not
with one other, but with several others and
with the prospect that, on the death of each
of such others, further multiplications of
the numbers of co-proprietors would result.
Each multiplication would obviously reduce the
chances of obtaining the agreement of co-
proprietors to proposals concerning the land.
In the case under appeal, the aspect of
30 potential addition to co-ownership is further
added to when it is remembered that the
purchasers were going into co-ownership with
the Appellant, who is a member of the
Chettiar Community which raises questions of
joint Hindu family property which it is not
proposed to examine in greater detail. The
mere fact joint family interests might arise
would in itself be sufficient to make such a
co-ownership a less desirable proposition.

40 It is submitted that it must be beyond
doubt that sales of undivided shares of
property involve so many potential sources
of difficulty to a purchaser that they
cannot possibly be any reliable guide to
market value. The learned trial Judge at
page 105 paragraphs C to F merely repeated
the evidence given by the Respondent's valuer

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at page 77 paragraphs F and G, page 78A, page 84 paragraphs E, F and G and page 85 paragraph A. This evidence was not supported by any forms of legal authority nor, as can be seen from page 77 paragraph E, was it supported by any kind of practical experience in contrast to the Appellant's valuer's evidence at page 46 paragraph E which the learned trial Judge apparently rejected without comment. It is noticeable that, having rejected the principle that sales of undivided shares did not afford a reliable guide to market value, the learned trial Judge himself at once proceeded to retreat from this position by introducing qualifications concerning the extent of the undivided share and the size of the piece of land and saying that, in any event, allowances could be made and in this position of retreat he eventually ended up with his contention at page 107 paragraph G that the figure of $\text{₹}3/-$ per square foot made allowance. This final stand was totally inconsistent with his earlier rejection of the principle and, in arriving at it, the learned trial Judge was reduced to doing so without any forms of evidence to support his ultimate conclusion. Assuming it was possible to adjust by making allowances, it would have been necessary to have some evidence to show what percentage of allowance should be made but there was no such evidence. Even worse, the learned trial Judge held an allowance to have been made in the face of evidence which showed no such allowance to have been made. The Respondent's valuer did not suggest any allowance had been made as he had been at pains to set out all the grounds on which his valuation, which the learned trial Judge accepted, had been arrived at. If an allowance should have been made and the evidence showed no such allowance had been made, that is in itself sufficient ground to set aside the learned trial Judge's finding. It was not open to the learned trial Judge to come to a finding on allowances which was not founded upon evidence but apparently upon a personal view taken by the Judge.

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The learned trial Judge also overlooked the fact that there was no room for an allowance having been made. It was the contention

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10 of the Respondent's valuer (page 73
paragraph C) that in reaching his figure of
₹3/- he had allowed for a 40% increase in
prices between the date of the previous sale
and the date of the acquisition. The
learned trial Judge could not, on the
evidence, take any lower figure. Since the
previous sale was carried out at a price of
₹2.20 per square foot, a 40% increase gives
a figure of ₹3.08 per square foot which means
no margin is left to allow for adjustment
being made because the previous sale was on
an undivided share. The learned trial
Judge's findings on this aspect are, there-
fore, not tenable in fact, quite apart from
any legal objections. It is submitted that
the result of the learned trial Judge's
approach, namely varying allowances according
to the extent of the undivided share being
20 dealt in and the size of the land involved,
is just not tenable. It has already been
said that undivided ownership under the Land
Code possesses the features of English
tenancy in common. In England tenancy in
common was abolished by statute because of
the problems which it created. See

Williams on Title 2nd Ed.464

30 Before passing from these grounds of
appeal it must be stressed that, although
sales of undivided shares in land do not
afford a reliable guide to market value,
when land is held in co-ownership and is
acquired, the fact of co-ownership has no
depreciating effect on the amount of
compensation to be paid because for acquisition
purposes the land has to be valued as if all
the interests are combined and an appor-
tionment of the value thus reached is then made
among those interested. The co-ownership
40 aspect has to be ignored. See Sanjiva
Row page 343.

Ground 14.

This ground of appeal is taken against
the judgment at page 107 paragraph A where the
learned trial Judge held that the price paid
for Lot 29 in September 1962 was the best
check on the price paid for the land acquired

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in November 1963. It is contended that the learned trial Judge was wrong in taking September 1962 prices in preference to 1964 prices as evidenced by the sales of Lot 2285 and Lot 1 earlier referred to in reference to a 1964 acquisition.

Lot No: 29 was the subject matter of the sale shown at page 161 of the record i.e. it was a sale of an undivided share at a price of \$1.12 per square foot in September 1962.

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In the case of

Secretary of State for India
in Council v Manmatha Nath
Dey 1925 AIR (Pat) 129
(84 IC 371)

Ross J. and Das J. accepted that the best criterion of market value at the date of the acquisition is the sale nearest in point of time to the acquisition and a further list of cases laying down the same proposition may be found in footnotes 5 and 6 of Aggarawala page 199 supporting the text to the same effect. In taking a 1962 sale in preference to two later sales, the learned trial Judge was flying in the face of this elementary proposition. He also paid insufficient attention to the evidence of steeply rising prices and, in consequence, did not give effect to the principle that, if acquisition takes place during a period of boom prices in land, the Government must pay the boom prices. (See Aggarawala page 191 and Sanjiva Row pages 357 and 365 and also see Government of Bombay v Merwan Mondigar Ali 1924 B 161 (82 IC 796) at page 800 left column of the Indian Cases report). If it should be suggested the 1964 sale was a post-notification sale, then the Appellant relies on the judgment of Suffian J. in the Superintendent of Lands, Sarawak case at page 247 left hand column to show such sales may be considered. There was nothing in the evidence to indicate that the post-notification sale price was in any way influenced or affected by the acquisition. The law requires that the highest value be given as compensation and the highest value was not to be found by taking a 1962 sale to form the basis for a 1964

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10 acquisition, particularly when it was found that the 1962 sale did not even compare, as regards price, with the sale of Lot 56 carried out the same day at a price of 65 cents per square foot although the buyer was in each case the same. Far from one 1962 sale affording a basis of comparison with and a cross-check on the other 1962 sale on the same day, there was a fluctuation in price incapable of reconciliation in contrast to the sales of Lot 2285 and Lot 1 which do cross-check and compare when the fact of price increase is taken into account. Prices found to be out of line with general prices have to be ignored for valuation purposes (Aggarawala pages 188 and 197 following Amrit Lal Bysak v Secretary of State 22 IC 78 @ 83 left hand column) and inspection of other 1962 prices produced by the Respondent's valuer (the Appellant's valuer being of opinion they did not offer a reliable guide) shows at page 162 20 \$2.50 per square foot for Lot 21 and for an undivided 1/6th share; \$2.49 per square foot for Lot 14 (page 163); \$3.95 per square foot for Lot 18 (page 164) none of these prices bearing the slightest resemblance to the prices paid for Lots 56 and 29 which, as has been said, were purchased by the same buyer on the same day. These other 1962 prices do, however, compare with each other indicating that, if any sales were out of line with the then market value, they were the sales of Lots 56 and 29 and yet the sale of Lot 29 was the one found by the learned trial Judge to afford the best comparison.

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Grounds 17, 18, 19 and 20.

40 It is proposed to take these grounds generally as they form further indications of the unsatisfactory nature of the finding appealed against.

Ground 17 is directed to the evidence adduced relating to the sale on the 19th October 1964 i.e. shortly after the material date, of a piece of land by the State to the Ministry of Health. The details are at page 165 of the record and show that the price charged was \$3.50 per square foot and that the

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sale was introduced by the Respondent's valuer although he did not consider it relevant (see page 82 paragraph E). Since this was a transaction between Governments there must be a great likelihood that preferential terms were given and yet the price exceeded the award in the case under appeal. The sale is relevant to show that the State Government considered the market value of land in the vicinity to be in excess of the award although prices by that time had begun to fall (see page 42 paragraph D and page 51 paragraph C) and it was the Respondent's valuer who fixed the price (see page 47 paragraph G).

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Grounds 18, 19 and 20 speak for themselves and it is not proposed to elaborate on them.

It is submitted that the foregoing grounds of appeal show so many errors in law and so many errors of fact, omissions of fact and misinterpretations of facts by the learned trial Judge that his judgment cannot stand. In this position, the question arises as to what should be done and it is submitted that this Court should act as in the Superintendent of Lands, Sarawak case and make a valuation of its own. All the available evidence to enable a valuation to be made is on the record and it is submitted that if this evidence is considered with a correct appreciation of the principles involved then a valuation can be reached. In case it should be of assistance to the Court, it is proposed to consider the evidence as to values considered material and the evidence relating to the factors affecting values. In the first instance attention will be given to the various opinions as to value expressed in the course of the trial except for the opinion of the learned trial Judge which has already been considered. These opinions were given by the assessors, the Respondent's valuer and the Appellant's valuer and it is proposed to consider them in that order.

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The opinions of the assessors appear at page 108. Mr. Keith S. Denning came to a figure of \$4.80 per square foot basing himself on prices prevailing in Imbi Road and other areas suitable for flat development and making suitable allowances. Mr. P.M. Varghese came

to a figure of \$6.00 per square foot basing himself on the agreed price for Lot 1, the price paid for Lot 2285 and the prices generally for similar land in Kuala Lumpur. Both assessors obviously paid greater regard to the evidence led for the Appellant than they did to the evidence for the Respondent and their opinions might be relied upon as persuasive but for the danger that, in arriving at their figures, they were influenced to some extent by the errors of the learned trial Judge, these errors being communicated to them during the course of their discussions with the learned trial Judge. Because of this danger, it is submitted it would be unsafe to stop at the opinions of the assessors and that this Court must go further into the matter to ensure that the final valuation is not influenced by any of the errors affecting it to date. It is, however, submitted that the award cannot be less than the lowest award of the assessors since the assessors approach to the valuation, although expressed so briefly, proceeded along sounder lines than that of the learned trial Judge.

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The next opinion to be considered is that of the Respondent's valuer as it forms the basis of the Court's present award. The report and its supporting documents together with the grounds on which it was based appear at pages 151 to 170 of the record and it is proposed to examine this report in detail together with relevant evidence dealing with it in order to determine what weight, if any, should be given to it. Page 152 sets out the details of gazetting, purpose of acquisition and particulars of titles and areas and these are accepted as accurate. Page 153 deals with inspection and situation and description which are accepted as accurate and also deals with surrounding lands which is accepted as accurate with the exception of the reference to the land being in the poorer section of Jalan Pekeliling (which will be examined in greater detail later) and excepting the accuracy of the statement that the lot opposite was being developed by construction of three storey

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flats, the actual development comprising four storey shop-houses and three storey flats (page 47 paragraph B and page 71 paragraph C).

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At page 154 reference was made to town planning as affecting the land and this requires more detailed examination. The report left the matter on the basis of the annexures to the report appearing at pages 166 to 170 of the record. At page 166 the zoning is shown as "open development" and by

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Municipal Notification No:153
dated 24th February 1954

column 3 this type of zoning permits the erection of detached or semi-detached residences and by column 4 permits (subject to the prescribed procedure being followed) the use of the land inter alia for blocks of houses or flats, residential hotels and shops. The prescribed procedure to obtain column 4 development is set out in the footnote to the notification and involves the Municipality causing the proposed development to be advertised once in a local newspaper and consulting adjoining owners for objections. Any objections have to be considered as a result of which amendments to the proposals may have to be made and eventually the proposals amendments and objections are submitted to the Ruler in Council for decision. As appears at page 168 paragraph D the owners of the land under acquisition had in 1957 gone through the prescribed procedure up to the stage at which reference to the Ruler in Council had to be made as a result of which it was open to them subject only to the granting of the Ruler in Council's approval to utilise the land for column 4 development i.e. they could have used the land for the erection of flats and shops this being borne out by Exhibit P2 which has endorsed on it Town Planning approval to a development involving, as can be seen from the reference on the exhibit, flats, houses, shop-houses and terrace houses. Reference is also made to the letters from the Town Planning Office at pages 113 and 115 of the record confirming the development; to the letter at page 118 showing proposals for similar development of Lot 21 Pahang Road and to the

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advertisement at page 123 showing proposals for similar development of Lots 15 and 56 Pahang Road. Lots 21, 15 and 56 were adjacent to the lands acquired as can be seen from Exhibits P9 and D12. When approval was given by the Planning Office, the result was to increase the value of the land since land values are higher for flat development than bungalow development (page 47 paragraph A). It must here be pointed out that the approval given covered the type of user to which the land might be put but was not conclusive as to the density of that user. Once the type of development had been sanctioned, the density of development could, within limits approved by the Planning Department, be varied (see page 56 paragraph F). The officer in charge of the Town Planning Department was called by the Respondent as DW2 and at page 64 he admitted the land under acquisition would have received approval for development on the basis of 40 flats per acre (the Appellant's valuer having taken 54 flats per acre as appears at page 50 paragraph G) and that Government proposals involved a total of 3023 flats and 56 shops (page 65 paragraph A). He later admitted that a private developer could have 135 flats per acre if he provided the same amenities Government would provide and accepted 54 flats per acre subject to a ten acre school being provided (page 65 paragraphs D to F). As can be seen from Exhibit P3, the school aspect had already been raised at the planning stage and agreement reached whereby the landowners were to make available for the purpose of a school the piece of land shown outlined in red on the plan.

The position on town planning is, therefore, shown to have been that the land had already been approved for the type of development found most profitable, namely flatted development and that there were no obstacles to obtaining 54 units per acre by way of density, this being the density which the Appellant's valuer worked to on the basis of his experience of similar development in other parts of the town.

Reverting to the Respondent's valuer's

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report, at page 154 he passed to evidence of recent sales and first took the previous sale of the land itself. He then talked of recent sales and confined himself to the immediate vicinity. It has been urged in the grounds of appeal he should not have so confined himself and it may also be pointed out that, although he described his sales as recent, the sales of Lots 29, 56 and 21 took place nearly two years before the acquisition and this at a time when prices were rising steeply and that the sale which could most fairly be described as recent, although itself taking place more than one year before the acquisition, was at a price of \$6.39 per square foot.

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At page 156 paragraph C he maintained sales in other areas afforded no evidence of value. He has been shown to be wrong in law in making this assertion in such sweeping terms. He then, having said they afforded no evidence of value, proceeded to put forward grounds of distinction forgetting that it was not the land under acquisition in its then state that he should have compared but that he should have compared the potential of the land under acquisition. He ignored potential altogether.

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At page 157 he listed his grounds for arriving at his valuation and it will be shown that, without exception, all his grounds are untenable as he was himself forced to admit in the case of all grounds bar one, the one being the previous sale of the land itself. Particularly noticeable is the omission of all reference to a general rise in price of land as forming part of his grounds with the result that, when in giving evidence he said he had taken this factor into account, he was able to offer no evidence to substantiate the fact of his having done so, but had to rely on the evidence provided by the Appellant's valuer and also his omission of any reference to potential.

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The first ground given for his valuation related to the size of the land. He approached the question on the footing that the

land formed one whole indivisible area and, it is submitted, he has been shown in the grounds of appeal to have erred in law by virtue of the right of the Appellant to introduce splitting or, at the least, sale of the seven titles individually to offset the argument based on area. In his cross-examination at page 80 paragraph B he conceded the point of ability to split at least into seven titles and put forward an objection to this based on problems of disposal but this objection is shown to be untenable by the Duke of Buccleuch's case cited earlier as also is his suggestion there should be a deduction to allow for postponement or deferment except where the notional sub-division approach was taken. He repeated this objection at pages 76 paragraphs A and B and 83 paragraph D which showed he thought it valid and he has been shown wrong. This ground has no tenable foundation.

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His second ground related to the presence of squatters on the land. At page 81 paragraph E he admitted there was ample vacant land to enable a developer to start work and take time to clear the squatters agreeing with the Appellant's valuer at page 45 paragraph D. This ground also had no sound foundation as his ground was that the presence of the squatters would delay development and he retracted.

His third ground was that this section of Jalan Pekeliling was not a commercial area and was a poorer residential area. In stating this, he viewed the land as it was i.e. vacant or squatter occupied and did not contemplate its potential which he was bound in law to do. His evidence in chief at page 69 paragraph F shows this to be so as does his evidence at page 75 paragraph E which can only be described as fatuous since it goes without saying that vacant land cannot show signs of blocks of terrace houses and the area of this land was so great as to govern the development of the area in which it lay and not to be governed by it. The development of this land itself

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would have established the type of development for the area in which it lay and he eventually conceded to this land the same potential as that of Lots 29, 56 and 2285 (page 79 paragraph E) this potential being for flatted and terrace-house development. At page 81 paragraph F he was led to concede developments which had taken place or were proposed for neighbouring lands and was reduced to saying it was a poor area because there were squatters and mining land. He totally ignored potential and his ground is therefore worthless.

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His fourth ground related to problems of development he said would result from its irregular shape. He had not seen either P2 or P3 or P4 all of which effectively put an end to this ground as he conceded at page 82 paragraph A.

His fifth ground related to the previous sale. This sale has been extensively examined in the grounds of appeal and it is submitted it has been established it formed no sound guide. This was the one ground he eventually left himself with after his cross-examination (page 82 paragraph A).

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His sixth ground he alleged to be other recent sales in the immediate vicinity. It has already been pointed out that his sales were not recent and that he was wrong in considering himself confined to the vicinity. This ground cannot stand.

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His last ground was based on consideration of demand for flats in the area and he talks of a tendency to dim the importance of the locality as a shopping area again viewing the land on an "as is" and not an "as can be" basis. As will be seen when the Appellant's valuer's report is considered, the fact of the matter was that the land in question lay in the centre of and had been by-passed by development of the very kind the Appellant was urging that this land was not suited for and it was also fact that the demand for the type of flats envisaged had not ceased at the date of acquisition nor did it cease thereafter. It may also be noted that this ground flies in the face of the Duke of Buccleuch case which holds

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quite clearly that difficulty in disposing of units is a totally irrelevant consideration if hypothetical sale of the seven titles is resorted to for the purpose of valuation.

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10 There were annexed to the report details of sales but all of these were discarded by him in his evidence with the exception of the sale of the land itself (page 160) the sales of Lots 29 and 56 (page 161) and the sale of Lot 21 (page 162). The evidence afforded by these sales has already been analysed and shown to be of no value in the case of the land itself and Lots 29 and 56 and in the case of Lot 21 it is sufficient to say (a) that it was a sale of an undivided 1/6 share and that this type of sale has been considered at length and (b) that the sale was in August 1962 or nearly two years before the acquisition.

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This analysis shows that the Respondent's valuer's valuation which the learned trial Judge saw fit to accept was totally devoid of merit, valueless and based on completely unscound principles of law. It was a worthless document and the evidence given by the Respondent's valuer in an attempt to substantiate it was equally worthless as his own concession in cross-examination showed.

30 This brings us to the Appellant's valuer's report which appears at pages 126 to 150 of the record and his evidence which appears at pages 41 to 59 of the record supporting a valuation of \$13/- per square foot which the learned trial Judge found (page 103 paragraph C) to be unjustified. Whether or not it was justified on a correct appreciation of facts and of the legal principles of valuation which should have been and were not applied will now be considered.

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At page 127 PW4 dealt with the situation and description of the land and pointed out that it was close to the high density development areas of Jalan Pahang, Jalan Ipoh and Jalan Tuanku Abdul Rahman and that there was easy access from it, not only to all parts of the Town of Kuala Lumpur but to all parts

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of West Malaysia and that it would be difficult to find a better site for ease of access. He elaborated on this in his evidence at page 41 paragraphs F and G, page 47 paragraph B, page 49 paragraph E to the end, page 57 paragraphs C and D and he was borne out by DW2 at page 68 paragraph C and by DW3 at page 81 paragraph F. The land was shown to lie in the V formed by Ipoh Road and Pahang Road as they radiated from Jalan Tuanku Abdul Rahman and it was shown that Jalan Juanku Abdul Rahman, Ipoh Road and Pahang Road were high density development areas with the developments extending out from town beyond the land under acquisition thereby rendering the land peculiarly ripe for development and for high density development and this ripeness gave it a potential ignored by the learned trial Judge and the Respondent's valuer but which the Appellant was entitled in law to have taken into account.

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At page 128 PW4 dealt with planning in terms which made it clear he had looked at the proposals to consider how they might affect his valuation unlike the Respondent's valuer who had not even seen the development plans. Planning and the length to which it had gone was a relevant consideration on the authorities earlier cited.

At page 129 PW4 made it clear that he approached his valuation taking into account the land's potential which he found to be a potential for high density development and that he looked for comparison purposes at sales of similar sites during the year 1963 and 1964 and then, having found the number of comparison sales in the immediate neighbourhood to be limited, expanded his search to take in sales of lands in a district he considered of similar importance from the development point of view (this district subsequently being conceded to have the same potential by the Respondent's valuer - see page 81 paragraph C and page 84 paragraph C. He then went on to consider market conditions i.e. whether prices were rising, static or falling and to consider outside influences bearing upon the market conditions and found prices to have risen up to the end of the second half of 1964.

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At page 130 he dealt with the previous sale of the land itself and shows that, because the price seemed to be below the market value at the time, he was not prepared to accept it at its face value, but made enquiries to satisfy himself as to any reasons leading to this price and, having found reasons which would depress the price and as the price was out of line with prevailing values, he rejected the sale as evidence. This analytical approach to a sale as evidence of market value is, of course, the correct approach.

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PW4 then went on to consider 19 sales for comparison purposes. The first three were of areas at the junction of Ipoh Road with Circular and Maxwell Roads and showed prices of \$15/-, \$16/- and \$21/- per square foot respectively in the months of May 1961, May 1961 and January 1964 respectively. As can be seen from his evidence at page 52 paragraph E read with his evidence at page 58 paragraph B he did not rely on these sales as establishing the market value of the land under acquisition but only for the purpose of establishing that land very near to the land under acquisition was fetching high prices and in order to determine that the locality was one of high and not low prices. These three pieces of land were only about 350 yards from the land acquired (page 153 paragraph D) and were this distance apart along the same stretch of road i.e. Jalan Pekeliling. The fourth sale was unverified and not therefore to be relied upon although not to be discarded as it was also a sale of land close to the area acquired. The price was reported to be \$15/- per square foot in 1964. The fifth and sixth sales were of land in Jalan Raja Laut which PW4 accepted as being a more densely populated area (page 52 paragraph F) with the result that no emphasis was placed on them but they were examined analytically (page 43 paragraph A) for the purpose of discovering reasons for the prices of \$7/- and \$5.60 in March 1963 and October 1964 appearing to be below the market trend and conflicting with the market trend of rising prices as in

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these cases the price fell. The reasons for the prices are set out in the analysis and one of the main features is the loss of some 45% of the available land in order to provide access roads. Sales 7 and 8 have already been examined in some detail in this submission and sale 8 is one of those relied on by PW4 in arriving at his valuation (page 45 paragraph B) because the value exhibited was supported by the price paid on sale 7. Sale 9 was of land expressed to be inferior to the area acquired (see page 43 paragraph E) further from the town than the area acquired and sold in November 1964 at a time when prices were said to be falling at \$4.62 per square foot. Sales 10, 11 and 12 were of lands in Ipoh Road further from town than the area acquired at prices of \$7.85, \$10.85 and \$5.90 - 15.16 respectively in April 1963, April 1964 and August 1963 - May 1965 respectively. These three sales were introduced to show the rising trend in prices and they of course show high values being paid for lands more than one mile further from the town. Sale 11 is then relied on (page 44 paragraph G) because it was most comparable and substantiated by other sales. The thirteenth sale took place in July 1964 for prices ranging from \$3.90 to \$5.00 per square foot and this land was expressed as being in a less desirable area of low values (page 133 paragraph F, page 43 paragraph G, page 58 paragraph F). Sales 14, 15, 16, 17 and 18 related to the Imbi Road area which, as has been said, has been agreed by the Respondent's valuer to be comparable in potential, and show prices of \$5/-, \$11.12, \$10.77, \$5.54 and \$7/- per square foot respectively for sales in August 1963, January 1964, July 1964, November 1963 and December 1964 respectively. Sales 14, 15 and 16 are analysed at page 134 paragraph B where it is shown there will be a loss on development of 40% of the available area and also pointed out that these sales reflect the rise in prices which took place. Sale 16 was relied on (page 45 paragraph B) because it was supported by another sale.

After analysing these 19 sales, PW4 came to the conclusion (page 134 paragraph G) that they established an exceptionally high demand

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for lands capable of development to high density with multi-storey flats and that the prices paid had risen steeply between 1963 and mid 1964. It is submitted both these conclusions were fully justified. PW4 then found the value of the land acquired to be \$12/- per square foot basing himself upon sales Nos: 11, 16 and 8 which he found the most reliable guide and allowing for the relative importance of the land acquired. He then adjusted to allow for the presence of squatters by allowing \$4,000/- per house as compensation for removal.

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Having reached his valuation by comparison methods, PW4 then proceeded (page 136 paragraph B) to apply a cross-check for correction purposes. He considered what had been obtained by developers following upon factual sub-divisions at Ipoh Road¹, Treacher Road and Imbi Road for the sub-divided lots and then applied the resultant figures to a notional sub-division of the land acquired and found the result to be about 85 cents different only from the figure he had reached using the comparison method, thereby supporting the first figure he had arrived at. No attempt was made by the Respondent's valuer to make any kind of cross-check on his valuation and it is submitted that, if this kind of cross-check is legally permissible, then it affords another reason for accepting and not rejecting PW4's valuation. It is submitted this cross-check is sanctioned by the Judicial Committee in the Maori Trustee case at page 16 where the judgment of Gresson J. in which inter alia he said "In estimating what price a purchaser would be willing to pay recourse may be had to an examination of the estimated gross yield from a sub-division as yet notional only" is approved; by Aggarawala page 243 last paragraph and page 245; by Sanjiva Row page 364 last paragraph and also

Marwadi Padamji v Deputy
Collector, Adeni 27 MLJ 106
(24 IC 141)

and by Lee Hun Hoe J. who did the same when

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he valued Lot 1 in his case. At pages 139 and 140 PW4 set out further additional notes rejecting in this instance any attempt to use the residual method of valuation and giving his reason for making no deduction for size when compared with his comparison sales.

It is submitted that throughout his report, PW4 had approached the problem of valuing the land acquired in accordance with sound valuation principles which were supported by legal authority. If his approach was correct, then the only reason for rejecting his valuation would be that the conclusions he drew did not properly follow from the facts he had considered or that the facts he considered were not proper to be considered. It is contended that the facts he considered were, on the legal authorities set out in this submission, all relevant and proper facts and that the only ground for rejection would be that his conclusions were wrong. Before dealing with this aspect, it is proposed to consider his evidence to determine in greater detail the facts on which he based his conclusions and the conclusions he reached.

At page 42 paragraphs A-C PW4 considered the aspect of whether there was a legitimate prospect of the capital required to purchase this land for the sum represented by his valuation being available and points out that capital of this and even larger amounts was available in 1964 as could be shown by reference to actual sales which had taken place. An attempt was made on behalf of the Respondent to distinguish these sales on the basis that they represented sales at a much lower figure per square foot than the figure per square foot he attributed to the land under acquisition but it is submitted that this is not a relevant ground of distinction since what is being shown is the availability of cash resources and not questions of market value and in the case of the sale of the land beside the Odeon Cinema the price paid per square foot exceeded that of the valuation.

At page 44 paragraph G PW4 shows that he took for purposes of his report those sales he considered most comparable, these being sale 11 at \$10.85 per square foot in April 1964, sale 16

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at \$10.77 per square foot in July 1964 and sale 8 at \$7.90 per square foot in April 1964 and he pointed out that he considered the evidence as to value of each sale to be supported by evidence of other sales in the neighbourhood of each sale. (Page 45 paragraph B). He also points out that these were the sales nearest in point of time to the date of acquisition and that all were sales of lands suitable for high density development (page 45 paragraph C).

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At page 45 paragraph E to page 46 paragraph E PW4 elaborated on his cross-check and showed that he carried this out by examining what a developer had been in the practice of paying per flat in the case of other sales and then taking a density of 54 flats per acre for the land acquired which represented 62% of the gross area (this percentage being borne out by comparative percentages in the sales of other lands for flatted development). He found the known price of land per flat to be \$9,000/- which gave him a figure of \$11.15 per square foot for the land acquired but without taking into account the fact that part of the land acquired could have been put to uses more valuable than flatted development. It may be noted that in his calculations he allowed for a greater margin for loss of land than did the Respondent's valuer (see page 46 paragraph D).

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At page 47 paragraphs C-E PW4 analysed the sales of Lots 29 and 56 relied on by the Respondent's valuer and points out he could not find any other sales at such low prices and that they were out of the general trend even in September 1962 (and this is, of course, good ground for rejecting them as evidence of market value).

At page 48 paragraph G is set out one of the reasons for the increase in land prices between 1963 and 1964 namely that property developers from Singapore had begun to turn their attention towards flatted development in Kuala Lumpur.

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PW4 was cross-examined at some length. At page 50 paragraph F appears his cross-examination on the cross-check and it was directed to an attempt to play down its value on the basis (a) that time would be taken to develop (b) that there was a fall in demand for housing (c) that this development would have flooded the market. That time would be taken to develop goes without question and PW4 estimated a period of 2 or 3 years (page 51 paragraph B). Nobody else made any estimate. PW4 had considered the point and he assumed that when the project was completed there would be immediate demand for the units. It is submitted this is reasonable since a project of this kind is not completed all in one day but in stages and it is not, therefore, a question of whether all units could be disposed of on one day but whether they could be disposed of by the time the whole project reached completion and it was PW4's view that they could have been having regard to the state of demand in the market at the time of acquisition. The cross-examination as to a fall in demand for housing was, of course, an improper attempt to apply to June 1964 acquisition post-June 1964 knowledge i.e. it was attempted to be said that because it was now known that demand fell after June 1964, a purchaser in June 1964 would have taken into account this fall in demand. This approach is unwarranted on all legal authority which holds you look at the market on the date of acquisition and not some months later. It was also shown that the facts did not sustain the suggestion since it was only a demand for tower blocks of flats which fell and not the demand for what PW4 termed terrace flats as to which the demand continued. PW4 at page 51 paragraph E categorically denied the development would have flooded the market and he was, as an estate agent, in touch with that market unlike the other witnesses in the case.

At page 51 paragraph F he was cross-examined as to his comparison sales on the basis that they were all of smaller areas (which he admitted and had always taken into account as his report shows when he gives reason for not making any deduction because of

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larger area involved) and on the basis that they were not in the same locality. He also showed he was well aware that land values in different parts of any town will differ and he had, of course, been at pains to select only those areas of the town he considered to be comparable in terms of potential and density of development. At page 52 paragraph C he categorically stated Imbi Road land values were a suitable criterion and the Respondent's valuer, as has been said, conceded this. At page 52 paragraph E he agreed the area was inferior to the Bukit Bintang Road area (with which he had not attempted to compare it) but not inferior to Imbi Road or Ipoh Road areas.

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At page 54 paragraph E he was cross-examined on his evidence on increases in land prices and showed by reference to sales within Sale 12 and to Sales 14 and 15, these being the sales where the closest comparison was available because they were sales either of the same land or of neighbouring land, that prices had more than doubled.

At page 56 paragraph G on re-examination PW4 pointed out that, far from there being a fall in demand for 4-storey flats in 1964 they were still selling when the suit was heard (October 1966) and had continued to sell throughout 1965 so that, if post acquisition evidence was relevant, the evidence supported continuing demand for the type of development envisaged for the land acquired. At page 57 paragraphs C and D the reasons for maintaining this land was suitable for high density development were given and it was pointed out (paragraph E) that the Imbi Road area had only become one of high density development within the last three years.

At page 58 PW4 gave his reasons for not accepting the figure of \$2,000/- per flat site obtained from the sale in the Sentul area in preference to the figure of \$9,000/- he worked on and points out that the reason is that the \$9,000/- figure is substantiated by three sales while the \$2,000/- figure is an

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isolated transaction and it is, of course, a correct principle of valuation to discard an isolated transaction at a price which conflicts with other transactions at prices which sustain each other.

It is submitted that the analysis of PW4's evidence shows that he was well aware of the correct principles of valuation to be followed and that he scrupulously followed these principles, discarding what could not be properly regarded as reliable and retaining only what could but retaining before him the undoubted need to ascribe to the land acquired a potential over and above its then state of use.

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Having analysed the evidence available, it is now proposed to revert to the position that the Appellant was entitled in law to have given to him the higher figure resulting from hypothetical sales of the seven titles on the date of acquisition without deduction or notional sub-division of the whole land into notional building sites in which case deduction must be made to allow for risk and delay.

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The areas of the seven titles involved are set out at page 12 of the record and show areas ranging from 0 acres 1 rood 27 poles in the case of Certificate of Title 9784 to 6 acres 1 rood 27 poles in the case of Certificate of Title 9787. Sale No: 8 relied on by PW4 was of 1.743 acres, Sale No: 11 of about 1½ acres and Sale No: 16 of 2.775 acres. There was not, therefore, any tremendous difference in area between the three sales relied upon and the area of any individual title. The prices were for Sale 8 \$7.90 per square foot, for Sale 11 \$10.85 per square foot and for Sale 16 \$10.77 per square foot. The first of these sales related to the land nearest to the area acquired but was a sale of land on which it was intended to erect tower blocks of flats whereas the third sale was of land accepted as comparable in potential to the land acquired which was intended to be used for the type of flatted development for which the land acquired was considered most suited.

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The first and second sales were in April 1964 while the third sale was in July 1964 i.e. all were about the time of the acquisition. All three were sales of lands where sub-division had not already been carried out but would have to be carried out when development took place i.e. all three were identical sales to the hypothetical sales which might have been made of the seven titles acquired. The second and third sales were for almost identical prices and for identical purposes and it is submitted that since these two sales were for purposes most closely approximating the purposes for which the land acquired might hypothetically have been sold, these prices are those most indicative of the market value of the land acquired. There is nothing in the evidence to show that any lesser price would inevitably have been paid for any of the titles acquired than was paid for the Imbi Road land used for comparison purposes. It is submitted that, even if the Court is unwilling to grant the small additional figure reached by PW4 by reason of his having taken into account the fact that at least part of the land acquired could have been devoted to more profitable user, the Court should find that on approaching its valuation on the comparative sales line, the market value on the date of acquisition was not less than \$10.77 per square foot and this price, on this line of approach, is clear of all deduction for risk and delay on the authority of the Duke of Buccleuch case.

If the method of notional sub-division is resorted to (and it is submitted it should be by way of cross-check of the comparative sale basis of valuation even if it is not to be substantively relied upon) then the factors necessary to be known are (a) the number of notional units the land could sub-divide into and (b) the value of each unit. Taking the values of each unit first, the only evidence available to the Court is provided by PW4 at pages 136 and 137 and shows prices ranging from \$11,670/- per flat site to \$8,125/- per flat site. PW4 took \$9,000/-

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which is below the average of the figures he submitted. PW4 did provide evidence of flat price in the Sentul Road area but discarded it and it is, by now, common ground that the Imbi Road area is the one comparable in potential and the prices there are \$8,125/- per flat site for a density of 60 flats per acre on land sold in January 1964 and \$9,040/- per flat site for a density of 52 flats per acre for land sold in July 1964. It is submitted that the only two prices to be considered are \$8,000/- to give a lowest possible figure and \$9,000/- to give a maximum figure.

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As to the number of notional units, PW4 worked on the basis of 54 flats per acre basing himself on the development undertaken on his sales 15 and 16. In the case of Lot 21 the known density was 46 flats per acre (see page 47 paragraph F) and the lowest possible density was 40 flats per acre (this following from the evidence of DW2 at page 64 paragraph E) who also agreed (page 65 paragraph F) that 54 flats per acre would be in order if a ten-acre school was provided and it has already been shown that arrangements for land for a school were part of the scheme of development, it not following of course, that the need for a ten-acre school means that any landowner has to make the whole ten acres available since part of the responsibility would clearly fall on Government as being responsible for education and part on other landowners whose developments contributed to the need for a school.

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If one takes out the evidence on the two factors in tabular form the result is as follows:-

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Price \$8,000 per
flat site

Density

Price per sq.ft.

40	7.35
46	8.44
54	9.91

Price \$9,000 per
flat site

Density

Price per sq.ft.

10	40	8.26
	46	9.50
	54	11.15

i.e. the lowest price is \$7.35 (which compares with \$7.90 on PW4's sale No:8) and the highest price is \$11.15 (which compares with \$10.77 paid on PW4's sale No:16) but these prices have to be discounted for risk and delay (the Maori Trustee case). It is submitted that problems of discounting can be avoided in the present instance having regard to the close correspondence with the values obtained by using the comparative sales basis and having regard to the evidence of PW4 on demand for the type of development envisaged which indicated the risk to be small and the only evidence on delay is that the period required would be no more than to be anticipated for such an area.

It is submitted that, for the reasons above set out, the Collector of Land Revenue, following the Respondent's valuer, proceeded along wrong principles of valuation and that the learned trial Judge, who found them correct (see page 108 paragraph A) also proceeded on wrong principles and that all excluded from their consideration facts relevant to be considered and considered facts not substantiated by the total sum of the evidence and the Appellant in particular emphasises that no proper allowance was made for general increases in price and for the fact that the previous sale relied upon was of an undivided share. For these reasons the

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Appellant submits that the judgment cannot stand and must be set aside and prays that the Court may be pleased to award such compensation as, upon the evidence and upon correct principles of valuation, is fair and proper in this case. The Appellant asks that the award should be of the figure of \$12/- per square foot as assessed by PW4 but, in any event, should not be less than the figure of \$7.90 as supported by the sale of Lot 1 Section 85A.

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The Appellant prays leave to adopt in support of his case the grounds of appeal and submission thereon of learned counsel for the Appellant Ong Thye Eng as trustee and prays that, in the event of the appeal being allowed, he be permitted to address the Court on the subject of costs.

Sd: Illegible

Counsel for the Appellant

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In the Federal Court

WRITTEN SUBMISSION ON BEHALF OF
ONG THYE ENG

No.39

IN THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

Written Sub-
mission on
behalf of Ong
Thye Eng

FEDERAL COURT CIVIL APPEAL NO.X.32 OF 1967

BETWEEN

Ong Thye Eng as Trustee Appellant

AND

10 Collector of Land Revenue,
Kuala Lumpur Respondent

(In the Matter of Civil Application No.9 of
1965 in the High Court in Malaya at Kuala
Lumpur)

In the matter of Land Acquisition
Act, 1960 (Section 38 (5))

And

20 In the matter of the Acquisition of
Lots 1922 and 1928, Section 85A
Lots 1924 and 1930, Section 79 and
Lots 17, 18 and 19, Section 47,
Town of Kuala Lumpur

Between

Ong Thye Eng as Trustee Applicant

And

Collector of Land Revenue,
Kuala Lumpur Respondent

FEDERAL COURT CIVIL APPEAL NO.X.33 OF 1967

BETWEEN

Synn Lee & Co. Ltd. Appellant

AND

30 Collector of Land Revenue,
Kuala Lumpur Respondent

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mission on
behalf of Ong
Thye Eng
(continued)

(In the Matter of Civil Application No.10 of
1965 in the High Court in Malaya at Kuala
Lumpur

In the Matter of Land Acquisition
Act, 1960 (Section 38 (5))

And

In the matter of the Acquisition of
Lots 1922 and 1928, Section 85A,
Lots 1924 and 1930, Section 79 and
Lots 17, 18 and 19, Section 47,
Town of Kuala Lumpur

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Between

Synn Lee & Co. Ltd.

Applicant

And

Collector of Land Revenue,
Kuala Lumpur

Respondent)

FEDERAL COURT CIVIL APPEAL NO.X.34 OF 1967

BETWEEN

Ng Chong Geng & Sons Ltd.

Appellant

AND

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Collector of Land Revenue,
Kuala Lumpur

Respondent

(In the Matter of Civil Application No.11 of
1965 in the High Court in Malaya at Kuala
Lumpur

In the matter of Land Acquisition
Act, 1960 (Section 38 (5))

And

In the matter of the Acquisition of
Lots 1922 and 1928, Section 85A,
Lots 1924 and 1930, Section 79 and
Lots,17, 18 and 19, Section 47,
Town of Kuala Lumpur

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Between		In the Federal Court
Ng Chong Geng & Sons Ltd.	Applicant	<hr style="width: 10%; margin: 0 auto;"/>
and		No. 39
Collector of Land Revenue, Kuala Lumpur	Respondent	Written Sub- mission on behalf of Ong Thye Eng (continued)

SUBMISSION OF MR. NG EK TEONG
COUNSEL FOR (1) Ong Thye Eng as Trustee
(2) Synn Lee & Company Limited
(3) Ng Chong Geng & Sons Ltd.

10 I have had the advantage of perusing the written submission of Mr. Peddie, Counsel for Alagappa Chettiar and he has covered in detail in his own admirable way with all the various points that have been raised in my Grounds of Appeal. I adopt his submissions and in making my own submissions in these Appeals I will try and present the matter in a more general form from a different perspective and examine the various attempts to assess the value of the lands acquired.

20 Before I do so, I would like briefly to set-out the guide-stones which we should, I humbly submit, bear in mind at all times in making an assessment of the market value of the lands acquired.

Firstly, the relevant date in assessing the market value of the lands acquired is the date of Notice of Acquisition, i.e. 4th June 1964.

30 Secondly, the valuation of the lands acquired is based on the value of such lands being laid out in their most lucrative and advantageous way possible, i.e. with all its potentialities valued to the absolute maximum.

Thirdly, to ascertain what the market value of the lands as on the 4th June 1964 -

- (a) the best guide is the recent sale of the land itself if it is a transaction in which there are no factors to affect the sale price;
- (b) if there is any reason for doubting the sale

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(continued)

price of the lands as representing its market value then the next best guide is the evidence of recent sales of lands of the same quality in the same positions and in the same neighbourhood;

- (c) should for some reason (a) and (b) are not available or do not provide a safe indication as to the market price then one has to look at recent sales of lands in other parts of the same town and which are of similar quality and in similar positions in relation to the town, i.e. lands of a similar distance from the centre of the town with similar terrain and similar position to main roads, and capable of being used for a similar type of development; 10
- (d) evidence of the trend in market values of properties over a period may also be shown by sales in different parts of the town but care should be taken to ensure that comparisons of the sale prices of properties should approximate in time as closely as possible and that they must relate to similar types of property. 20

If these guides as to how to ascertain the market value of the lands acquired are accepted then it would also be necessary to use guides (b) (c) and (d) to check on the reliability of the sale price under (a) and further to use guides (c) and (d) to check the evidence available under (b). It is only by these checks and counter-checks that one can see whether a certain transaction or even a number of transactions provide satisfactory guides for the assessment of the market value of a certain property at a certain time. 30

Besides using the above guides it may be helpful to ascertain in our case what has in fact been generally agreed upon between the parties as factors prevailing in 1963 and 1964 which would have some effect on the general trend of prices for property in Kuala Lumpur.

Pg. 57C
59G
Pg. 78B
85A

Firstly, it is agreed by the Appellant's Value (PW.4) and the Government Valuer (DW.3) that there was a general increase in the value of properties in 1963 and 1964, Mr. Williams being more precise by saying that there was a sharp 40

increase from the end of 1963 to the middle of 1964 but after the introduction of the Federal Budget in November 1964 in which the Capital Gains Tax was introduced the market slumped. There was disagreement between the two Experts as to the effect of the Indonesian confrontation which commenced in September 1963. Mr. Lim the Government Value holding that Confrontation caused a depression in the value of properties in Kuala Lumpur, whilst Mr. Williams thought that Confrontation had no effect on the property market in 1964 and on the contrary caused a sharp rise in properties capable of quick development as a result of Singapore developers rushing up to Kuala Lumpur in view of the slump caused by the cessation of entrepot trade of Singapore.

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(continued)

Pg. 57C
59F
151G

Pg. 78B

Secondly, that the lands acquired are capable of being developed by building thereon flats and terrace houses. A plan for the development of the area had in fact been approved in 1957 and Mr. Williams considered that it would be possible to develop the lands with a density of (54) flats to the acre considering that the present user of the land is for (135) shops and flats per acre, whilst Mr. Watkinson, the Federal Town Planner thought that it would be possible to obtain approval for approximately (40) flats to the acre.

Thirdly, that the lands acquired are held under (7) separate titles, all of which are approximately between one to six acres each. In the circumstances, it would be possible for the Owners to sell one or more of the lands held under separate titles to different developers.

Bearing these various factors in mind, we will now proceed to examine each of the attempts to assess the market value of the lands acquired as on 4th June 1966.

There were altogether six attempts made so far to assess the value of the acquired lands.

1. The Collector of Land Revenue who valued the lands at \$3.00 per square foot.
2. The Government Valuer who also valued the lands at \$3.00 per square foot.
3. Gill, J. who also valued the lands at \$3.00 per square foot

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Written Submission on behalf of Ong Thye Eng (continued)

- 4. Mr. Williams the Appellant's Valuer who valued the lands at \$12.00 per square foot.
- 5. Mr. Keith S. Denning the Assessor who valued the lands at \$4.80 per square foot.
- 6. Mr. P.M. Varghese who valued the lands at \$6.60 per square foot.

I will proceed to examine each of these valuations in broad general outline so as to avoid getting bogged down with details and confusing the leaves with the tree.

10

1. The Collector's Award

The grounds for his Award are shortly stated and appear in Page 9 of the Record. He does not attempt to make any elaborate valuation but sets out shortly the facts or factors that he has borne in mind in arriving in his valuation of \$3.00 per square foot. He notes that the sale at \$2.20 per square foot on 5th November 1963 was for an undivided share in the lands but this is counteracted by the purchaser of a larger area in which the price would be lower than that of the purchase of a smaller area. It will be noted that nowhere in his Award has he considered the sale prices of similar properties at or about the relevant date or dealt with the trend of the market for properties at the relevant times or stated that he had taken into consideration any increase in the market price for properties between November 1963 and June 1964. He has also not examined the validity of accepting the sale on 5th November 1963 at \$2.20 per square foot as a satisfactory guide of the market price for the land at that time by examining the circumstances in which the sale took place. The remarks of Mr. Peddie in his submission with regard to the acceptance of this transaction as a satisfactory indication of the value of the lands in November 1963 are exceedingly material and relevant and I adopt them.

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30

In the circumstances it would be unsatisfactory to accept either the method or the valuation of the Collector without

40

firstly, examining the circumstances in which the sale in November 1963 of the said lands took place and

secondly, in determining not only what would be the proper market value of the lands in November 1963 but also what increase in market value had taken place between November 1963 and June 1964 when the Acquisition took place and

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thirdly, checking the valuation against transactions of similar properties in similar positions in the Town of Kuala Lumpur.

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Thye Eng
(continued)

VALUATION OF MR. LIM MOW CHIN (DW.3)

10 He gave a written report which had attached to it a Schedule of recent sales of properties which he took into account in making his valuation.

In his Report at Page 170C he states that he was confining himself solely to "recent sales of lands in the immediate vicinity".

20 The keystone of his valuation is the sale of the undivided half interest in the lands acquired in November 1963 at \$2.20 per square foot which he considered slightly high. To arrive at this conclusion he checks this sale with other sales in the vicinity which are briefly as follows:-

	<u>Lot</u>	<u>Price per sq.ft.</u>	<u>Date of Sale</u>
	(a) 18	\$ 3.95	25.4.1962
	(b) 21	2.50	17.8.1962
	(c) 56	-.65	29.9.1962
	(d) 29	1.12	29.9.1962
	(e) 2285	6.39	14.3.1963
	(f) 14	2.49	26.3.1963
30	(g) State Land) For T.B.) Hospital)	3.50	19.10.1964

The sale which he says he relies on is (f) which took place on 26.3.1963 for \$2.49 per square foot. This should however be read with what he says at page 86A where he admits that if Lot 14 is a Bungalow lot it is not comparable to the lands acquired. That it is a bungalow lot is attested to by Mr. Williams at Page 50E.

40 He however in giving evidence before the Court dismisses the sale of Lot 2285 for \$6.39 per square

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Thye Eng
(continued)

foot on 14.3.1963 because it was a sale from a director of the purchasing company and therefore not a market sale.

It is strange that he should consider a sale of property from a director to his own company not a safe and proper guide as to the market value at the time. Transactions between directors and their companies must be made *uber-immae fidae* otherwise the shareholders would be entitled to set the sale aside. In fact such sales should be regarded as transactions where both parties have taken special care to see that the company has bought the land at a price which is not above market value as otherwise the whole transaction could be avoided.

10

Having disposed of the sale at the highest price in the areas, he also passes lightly over other sales of small lots suitable only for residential bungalows which were sold from \$2.49 to \$3.95 per square foot although later he says he relies on the sale of Lot 14 which was for \$2.49 per square foot.

20

He also ignored a transaction between the State Government and the Federal Government in which a piece of land of approximately two acres for the T.B. Hospital was transferred at a price of \$3.50 per square foot. He regarded this as not a market sale although being a transaction between two Government Departments i.e. the State Treasury and the Federal Treasury, one may presume that the sale price would in fact have been under valued.

30

He however refused to look at sales of similar properties with similar potential for development with flat and terrace houses.

If we are to reject sales in 1962 as being too far removed in point of time to afford any safe guidance we will find that Mr. Lim's investigations boiled down to his having cited only two transactions made in 1963, one of which was Lot 14 which he relied on in the mistaken belief that it could be used for building of flats. The other remaining transaction is that of Lot 2285 which he discarded because it was a sale from a director. In the final analysis it would seem that Mr. Lim

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of the purchase up to the date of hearing. It is strange that he should consider the fact that the purchase was only in the form of an agreement and that it had not yet been completed as being sufficient to deprive the transaction of all value as a guide to the market value of lands in the area. There was never any hint or attempt to attack the bona fides or validity of the agreement and it must as such indicate beyond all doubt that some independent party had considered in April 1964 that the said Lot 1 was worth \$7.90 per sq. ft. and was prepared to enter into a binding arrangement to purchase it. The fact that subsequent events or his own circumstances should prevent him up to the date of the hearing from completing the purchase is in fact not relevant.

10

He refused to consider all the other transactions cited by Mr. Williams on the ground that those transactions are in respect of sales of lands in other parts of the town and consequently accord no guidance as to the market value of the lands acquired. He however accepted the fact that those transactions could indicate an all round increase in land prices generally from year to year but he failed to say what in fact was the extent of the increase of land prices in 1962, 1963 or more particularly from November 1963 to June 1964. He moreover failed to appreciate that in respect of the transactions carried out for lands in Ipoh Road, they are for properties which are further away from the centre of the town than the lands acquired although in the same direction and that the value of the lands acquired being closer to the centre of the town of Kuala Lumpur cannot be any less than lands situate at the $\frac{3}{4}$ mile, Ipoh Road which were then being developed and sold.

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The Learned Judge having dealt with and dismissed the valuation of Mr. Williams, then considered the valuation of Mr. Lim Mow Chin, the Government Valuer. He correctly stated that the keystone of Mr. Lim's valuation was the sale of the half interest in the lands acquired in November 1963 at \$2.20 per sq.ft. However, he stressed that Mr. Lim took into consideration the sale of lots 29 and 56 for \$1.12 and 65 cents per sq.ft. respectively in September 1962. In fact, Mr. Lim did not make the sale of lots 29 and 56 his main

40

yard-stick. At page 87C he stated that he relied on the sale of lot 14 in Pahang Road at \$2.49 per sq.ft. on 26th March, 1963. This was for land suitable for building bungalow and not for flats or terrace houses and in fact at one stage of his evidence he stated that in such a case he would not rely on such a sale.

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(continued)

10 In the circumstances the Learned Judge came to the conclusion that the best evidence of the market price of the lands acquired in June 1964 was the sale of the half interest in November 1963 and approved of the principle of valuation used by the Collector. He then added to the price of \$2.20 what he considered would be an appropriate increase in the market value from November 1963 to June 1964 together with an allowance for the fact that it was a sale of an undivided interest and came to the conclusion that a value of \$3/- per sq.ft. as on June 1964 was a fair market price.

20 In doing so, he in fact differed from the Collector's Award in that the Collector came to the figure of \$3/- per sq.ft. without taking into account any general increase in prices. He also differed from the reasoning of Mr. Lim in that Mr. Lim based his conclusion that \$2.20 per sq.ft. for an undivided interest in November 1963 for the lands acquired was a slightly high price on no comparison with any recent sales of properties at all whilst the Learned Judge came to the same conclusion that 30 \$2.20 per sq.ft. was the proper market price of the lands acquired by relying on the sale in September 1962 of lots 29 and 56 at \$1.12 and 65 cents per sq.ft. respectively.

40 The Learned Judge failed to make the proper comparisons of the price of \$2.20 per sq.ft. in November 1963 with the other transactions of lands in Ipoh Road and Pahang Road and to consider the transactions cited by Mr. Williams in the Imbi Road area and in consequence could not come to a proper valuation of the market price of the lands acquired in June 1964.

VALUATION OF MR. WILLIAMS (PW 4)

With regard to Mr. William's valuation, he approached the subject by first of all looking at the market conditions for property in 1963. He came

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(continued)

to the conclusion that there was a rise in prices for properties in Kuala Lumpur from 1957 when Malaya achieved Independence and this boom in the property market continued up to the middle of 1964. The formation of Malaysia in September 1963 together with the rush of Property Companies from Singapore gave impetus to the rise in land values with the result that there was a sharp rise between the end of 1963 and mid 1964.

The Indonesian Confrontation did not affect the property market in 1963 and 1964. In fact Singapore was the first to feel the effects of Confrontation caused by a falling off of its entrepot trade with the result that the rather dull trading conditions in Singapore caused development companies in Singapore to rush in early 1964 to Kuala Lumpur where Confrontation had as yet no effect.

10

He realised there was recent sale of an undivided half interest in the lands acquired and consequently he looked into the circumstances of the sale and checked the sale price with prices paid for comparable land in Kuala Lumpur. In view of the fact that the sale was only of an undivided half interest and there were pressing personal reasons for the vendor to sell he checked the sale price with prices paid for comparable lands in Kuala Lumpur. He came to the conclusion that the price of \$2.20 per sq.ft. in November 1963 for the lands acquired was not as high a price as could be obtained in the open market and therefore should not be used as a guide for property values in the area in November 1963.

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Having discarded the sale of the undivided half interest in 1963 as an index of market value of the lands acquired Mr. Williams then looked at

1. The sales of lands in the vicinity especially along Pahang and Ipoh Roads to see if he could find some guidance.
2. He examined transactions in the Imbi Road area as a cross check on the values of lands in similar positions and of a similar quality, i.e. suitable for immediate development for flats and terrace houses.

40

On examining such data he discarded the sales of lots 29 and 56 relied upon by the Learned Judge as being isolated transactions at low prices they were out of line with prices paid for similar lands. He took into consideration the sale prices of the transactions in Pahang Road, Ipoh Road and Imbi Road and came to the conclusion that the market price of the lands acquired should in June 1964 be \$12 per sq.ft.

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(continued)

10 In particular the following sales of lands in the Pahang Road area cited by Mr. Williams should be noted.

1. Sale of No. 4 lot 9 Maxwell Road for \$15/- per sq.ft.
2. Sale of No. 7 lot 2285 Pahang Road at \$6.38 per sq.ft. in March 1964.
3. Sale of No. 8 lot 1 Pahang Road at \$7.90 per sq.ft. in April 1964.
- 20 4. Sale of No. 10 lot 547 Ipoh Road at \$7.85 per sq.ft. in April 1963.
5. Sale of No. 11 lots 122 and 128 Ipoh Road at \$10.85 per sq.ft. in April 1964.
6. Sale of State Land for T.B. Hospital extension at \$3.50 per sq.ft. in October 1964.

30 It will be noticed also that the prices of terrace house lots in the $\frac{3}{4}$ mile Ipoh Road area progressively increased in price from 1963 onwards as the property was developed. In the case of the lands acquired the remaining portions of the property would become more and more valuable as parts of it were built up. This increase in value is only possible in the case of large properties a characteristic which development companies find attractive. The proposition that large properties fetch lower prices than small properties is not exactly true although the size of a property capable of being purchased for development has an optimum limit. However, this property is only some $22\frac{3}{4}$ acres and consequently is of a convenient size for rapid development.

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(continued)

Taking all the circumstances, I would submit that the valuation of Mr. Williams valuation is more reliable guide for the valuation of the market price as on June 1964 of the lands acquired.

ASSESSMENT OF MR. KEITH S. DENNING

As an assessor after hearing the evidence he came to the conclusion that the market value of the lands acquired was \$4.80 per square foot as in June 1964.

He took into account the prevailing prices of lands in Imbi Road and other areas for lands suitable for development (presumably in Pahang Road and Ipoh Road) and made suitable allowances (possibly for the fact that Devarayan Chettiar sold the land in November 1963 as an undivided share and for pressing personal reasons) in arriving at the figure of \$4.80 per square foot. In doing so he appeared to have favoured the method of assessment adopted by Mr. Williams as against that of the Collector, or Mr. Lai Mow Chin or even the Learned Judge.

10

20

I would humbly submit that his approach to the matter is the correct one though the value that he has arrived at is low.

ASSESSMENT OF MR. P.M. VARGHESE

Like Mr. Denning he heard the evidence and by his own independent assessment he came to the conclusion that the proper market price of the lands acquired should be \$6.60 per sq.ft. as in June 1964.

30

He took into account the agreed sale price of lot 1 which the Learned Judge erroneously disregarded as providing any indication of market value because it was only a transaction by written agreement, of lot 2285, which was also discarded by the Learned Judge and Mr. Lim Mow Chin as a transaction between a director and his company, and of prices generally for similar land in Kuala Lumpur which presumably included those paid for lands in Imbi Road and Ipoh Road.

40

In making his assessment, it appears clear that Mr. Varghese preferred the method of valuation

adopted by Mr. Williams to those of the Collector,
Mr. Lim Mow Chin and the Learned Judge.

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I would humbly submit that he was right in
doing so as although the price he arrived at was
low compared to that of Mr. Williams.

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Conclusion

Written Sub-
mission on
behalf of Ong
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(continued)

10 It is noteworthy the 2 assessors who are
businessmen in close touch daily with the market
conditions in the country and particularly Kuala
Lumpur should both independently have come to the
conclusion that the approach of Mr. Williams to
the question of valuation of the land acquired is
correct. Although they differed in their final
conclusions as to the value of the land as at June
1964 nevertheless they appeared to be so convinced
that their approach to the question was the correct
one that they preferred to state their own
conclusions independently in preference to accepting
the Learned Judges conclusions.

20 I would humbly submit that the Collector's
Award and the valuation of the Government valuer,
Mr. Lim Mow Chin were not made on any sound basis
and that the Learned Judge in arriving at his
valuation was wrong in depending on the 2 sales of
lots 29 and 56. These were sales in 1962 and were
too remote in point of time to afford any proper
guidance especially at a time when prices were
generally rising. His preference for sales
30 completed in 1962 as against sales entered into in
1963 both in Pahang Road and in 3 $\frac{1}{4}$ mile Ipoh Road
cannot I humbly submit be supported. He should
have taken them into account especially as the
lands in Ipoh Road could be regarded as similar
lands of similar quality which were then being
developed, although by virtue of their being further
away from the centre of the town of Kuala Lumpur
than the lands acquired, they would fetch a lower
price.

40 In conclusion I would submit with deference to
the Learned Judge that his decision should be set
aside and that the Court do value the lands acquired
as at 4th June 1964 on the basis of Mr. Williams
method of valuation which has been endorsed by the
two assessors.

Sgd. Illegible.

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WRITTEN SUBMISSION ON BEHALF OF THE
RESPONDENT IN APPEAL BY ALAGAPPA CHETTIAR
WITH APPENDICES A AND B

Written Sub-
mission on
behalf of the
Respondent in
Appeal by
Alagappa
Chettiar with
Appendices
A and B

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR
(Appellate Jurisdiction)
CIVIL APPEAL NO: X. 24 OF 1967

Between

A.K.A.C.T.V. Alagappa Chettiar .. Appellant

And

10

Collector of Land Revenue,
Kuala Lumpur. .. Respondent

(In the matter of Civil Application No: 6 of
1965 in the High Court in Malaya at Kuala
Lumpur

Between

A.K.A.C.T.V. Alagappa Chettiar .. Applicant

And

Collector of Land Revenue,
Kuala Lumpur. .. Respondent) 20

CIVIL APPEAL NO: X. 26 OF 1967

Between

Chuah Say Hai as Trustee .. Appellant

And

Collector of Land Revenue,
Kuala Lumpur. .. Respondent

(In the matter of Civil Application No: 2 of
1965 in the High Court in Malaya at Kuala
Lumpur.

Between

30

Chuah Say Hai as Trustee .. Applicant

And

Collector of Land Revenue,
Kuala Lumpur. .. Respondent)

CIVIL APPEAL NO: X. 27 OF 1967In the Federal
Court

Between

Pong Kien Ngor as Trustee .. Appellant

No.40

And

Collector of Land Revenue,
Kuala Lumpur. .. RespondentWritten Sub-
mission on
behalf of the
Respondent in
Appeal by
Alagappa
Chettiar with
Appendices
A and B
(continued)(In the matter of Civil Application No:4 of
1965 in the High Court in Malaya at Kuala
Lumpur.

10

Between

Pong Kien Ngor as Trustee .. Applicant

And

Collector of Land Revenue,
Kuala Lumpur. .. Respondent)CIVIL APPEAL NO: X. 28 OF 1967

Between

Han Leck Juan as Trustee .. Appellant

And

20

Collector of Land Revenue,
Kuala Lumpur. .. Respondent(In the matter of Civil Application No:5 of
1965 in the High Court in Malaya at Kuala
Lumpur.

Between

Han Leck Juan as Trustee .. Applicant

And

Collector of Land Revenue,
Kuala Lumpur. .. Respondent)CIVIL APPEAL NO: X. 29 OF 1967

30

Between

Ooi Teng Kang as Trustee .. Appellant

And

Collector of Land Revenue,
Kuala Lumpur. .. Respondent

In the Federal
Court

No.40

Written Sub-
mission on
behalf of the
Respondent in
Appeal by
Alagappa
Chettiar with
Appendices
A and B
(continued)

(In the matter of Civil Application No:7 of
1965 in the High Court in Malaya at Kuala
Lumpur.

Between

Ooi Teng Kang as Trustee .. Applicant
And
Collector of Land Revenue,
Kuala Lumpur. .. Respondent)

CIVIL APPEAL NO: X. 30 OF 1967

Between

Kheoh Aik Law as Trustee .. Appellant
And
Collector of Land Revenue,
Kuala Lumpur. .. Respondent

(In the matter of Civil Application No:8 of
1965 in the High Court in Malaya at Kuala
Lumpur.

Between

Kheoh Aik Law as Trustee .. Applicant
And
Collector of Land Revenue,
Kuala Lumpur. .. Respondent)

Written Submission on behalf of the
Respondent, the Collector of Land Revenue,
Kuala Lumpur.

The brief facts of this case which is under
Appeal are clearly set out by the learned trial
Judge at pages 93 to 95 of the Record.

It is important to observe from the undisputed
facts that -

- (a) Since 1962, the lands acquired which comprised
of 7 contiguous lots with a total area of
22.763 acres (991,730 sq.ft.), were owned by
Alagappa Chettiar (PW1) and Devason Chettiar
as co-owners.

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- (b) On 5th November, 1963 (i.e. approximately 7 months prior to the material date of valuation), Devarayan Chettiar sold his undivided half share in all the seven lots to 9 persons at the price of ₹2.20 cts per square foot, so that, at the time of the compulsory acquisition, the lands were owned by 10 persons, namely the 9 purchasers and Alagappa Chettiar, in undivided shares.
- 10 (c) All the seven contiguous lots were compulsorily acquired at one and the same time.
- (d) The material date for the purpose of determining the "market value" of these lands was 4th June 1964, in accordance with paragraph 1(1)(a) of the First Schedule to the Land Acquisition Act No: 34 of 1960.
- 20 (e) At the Enquiry held by the Collector, all the 10 co-proprietors were represented by Mr. W.R. Brewster (see notes of Enquiry by Collector at pg. 25 of the Record). Subsequently each of them objected to the Collector's award of ₹3.00 per sq. foot, and all their objections were referred to the High Court where the applications were heard together with the consent of the parties, except Application No: 3 of 1965 which could not be heard together because the objector had since died.
- 30 (f) The sales quoted by the Appellants' valuer (PW 4) are contained in Appendix "A" and the sales quoted by the Respondents' valuer (DW 3) are in Appendix "B" contained herein.

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Written Sub-
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behalf of the
Respondent in
Appeal by
Alagappa
Chettiar with
Appendices
A and B
(continued)

As regards the twenty grounds of Appeal taken by Alagappa Chettiar against the finding of the learned trial Judge, my submission is as follows:-

GROUND NO: 1

The Judgment of the learned trial Judge runs from pg. 93 to pg. 109 of the Record. (17 pages)

40 If the 5 lines in paragraph D of pg. 98 are read in isolation, it may well give the wrong impression that the learned trial Judge allowed evidence to be produced only on one ground to

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(continued)

attack the previous sale of \$2.20 cts per sq.foot viz. evidence of general increase in land prices since the date of purchase. It is my submission that the Judgment of the learned trial Judge must be considered as a whole and it is clearly unfair to distort the Judgment by relying on a few lines here and there to support the Appellants' contention that 'the learned trial Judge appeared to indicate that no other grounds for attacking such an earlier sale were open'. It is my submission that if the Judgment of the learned Judge is considered as a whole, the contention that the learned trial Judge had restricted himself in the manner as alleged by the Appellant cannot be sustained.

10

Aggarawala Compulsory Acquisition of Land 3rd Edition at pg. 190 (penultimate paragraph) page 191 (1st paragraph) and pg. 197 (last paragraph) put the legal position clearly where, as in the present case, the property under acquisition has been recently purchased. It is not true that no case law is cited to support the principles set out in pages 190 and 197 of Aggarawala. The following authorities should also be considered as supporting the proposition that - when the property under acquisition has been recently purchased, the price paid is prima facie the market value thereof:-

20

- (1) K.P. FRENCHMAN V. ASST. COLLECTOR HAVELI (1922) AIR Bom. 399 - Property bought in July 1918 for Rs. 92,500; acquired by Government in April 1919 for Rs. 55,688. On reference owner claimed 2 lacs;
- (2) GOVT. OF BOMBAY V. ISMAIL AHMAD (1924) AIR Bom. 326. (362) - Property bought on 29.1.1920 for Rs. 91,000; acquired by Government on 21.4.1921; Court awarded Rs. 91,000.
- (3) GHULAM HUSSAIN V. LAND ACQUISITION OFFICER, SOUTH SALSETTE, BANDRA AIR (1928) P.C.305. - Property purchased on 30.11.1919 for 7½ annas per square yard. Govt. acquired on 10.2.1921 also at 7½ annas per sq.yd. High Court of Judicature reduced the award. On further appeal, Privy Council restored the award to 7½ annas per sq.yd.

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40

Applying these principles and the authorities cited, to the present case, there are two principles of law which must be followed:-

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Written Sub-
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behalf of the
Respondent in
Appeal by
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Chettiar with
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(continued)

10

1. In calculating the value of the 7 contiguous lots of land as on 4.6.64, the price of ₹2.20 cts per sq. foot paid about 7 months previously (5.11.63) for the portion of the same land afforded infinitely the best material which can possibly exist if the prices remain stationary.

20

2. The price of ₹2.20 cts per sq. foot paid on 5.11.63 is prima facie the market value of the lands on the date of acquisition (4.6.64). The land owners could attack this prima facie value in the following ways:-

(a) by proving that they had bought the property at less than the prevailing market value at the time of purchase; for example by proving that the previous sale was -

(i) a forced sale

(ii) not a genuine sale

In other words they had bought it cheap or;

(b) by proving that there had been a general rise in the value of the property between the date of purchase (5.11.63) and the date of declaration (4.6.64).

30

These propositions had in fact been submitted by me to the learned trial Judge (see pg. 87 paragraph D of Record). The learned trial Judge dealt with them in his Judgment at pg. 98, paragraph C, and pg. 106 paragraph F.

The learned trial Judge had in fact considered in his Judgment the evidence adduced by the Appellant to rebut the prima facie market value based on the previous sale not only -

40

(a) On the issue of a general rise in the value of the property between the date of purchase (5.11.63) and the date of declaration (4.6.64), but also

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(b) on the Appellants' contention that the previous sale at \$2.20 per sq. ft. which took place only 7 months prior to the date of declaration, was below the market value at that time on various grounds. These grounds were considered by the learned trial Judge from paragraph C of pg. 99 to paragraph D of pg. 101. The learned trial Judge had therefore given careful consideration to all the grounds raised by the Appellants to show that the previous sale in November 1963 was a cheap one i.e. less than the market value. He had also given reasons for rejecting these grounds, and in so doing I submit that the learned Judge in effect was satisfied that -

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(i) the previous sale was a bona fide and genuine sale, and not a forced sale. Devarayan Chettiar was a willing vendor, there being no compulsion or undue influence;

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(ii) the previous sale was not cheap i.e. not lower than the prevailing market value.

To put it shortly the learned Judge was satisfied, having considered the evidence that 9 of the co-owners did not purchase a portion of the land in November 1963 at a cheap price.

It is therefore not true that the learned trial Judge restricted himself only on the issue of all-round increase in the price of land since the date of previous sale.

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In my submission the effect of his Judgment at page 98 paragraph D; pg. 101 paragraph C; page 102 paragraph E, and pg. 107 paragraph G, is that although the Appellants had failed to satisfy the Court that the price of \$2.20 per sq. ft. at the previous sale was below the market value, he was satisfied that there was a degree of general rise in the value of the property between the date of purchase (5.11.63) and the date of declaration (4.6.64) having regard to the all-round increase in the price of land generally between these periods.

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As has been submitted earlier the prima facie market value of these lands on the material date of valuation (4.6.64) is \$2.20 cts. It should be

noted that this was not a case where the Collector had awarded a figure below the prima facie market value, but he had awarded compensation of \$3.00 per sq. ft. which in the words of the learned trial Judge at pg. 107 paragraph G, "reflects not only the general increase in the price of land annually but also a reasonable allowance for the fact that its previous sale was of an undivided half share".

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10 As regards the allegation that the evidence
given by the Respondents' Valuer at the trial that
he had taken the increase into account, was an
after-thought, (see pg. 6 of Appellants' written
submission), I need only refer to pg. 154 para-
graphs F and G of the Record, and his valuation of
the lands at \$3.00 per sq.ft. as on 4.6.64 at pg.
157 paragraph B. Having regard to the price of
the previous sale, the Respondents' Valuer must by
implication have taken into account the general
20 increase in land value from the date of the previous
sale (see his evidence at pg. 77 paragraph A).
Therefore it is not true that he had failed to take
the increase into account in his report. His
valuation of \$3.00 per sq.ft. speaks for itself.
If he had not taken the increase into account, then
he would be compelled under the Law to value the
land at \$2.20 cts - that being the prima facie
market value of the lands on the material date of
valuation.

30 However, even if the Court found that the
Government Valuer did not sufficiently deal with
the increase in land value in his report the onus
was clearly on the Appellant land-owners to prove
that there was such an increase, and therefore it
is my submission that the fact that the Government
Valuer did not mention it in so many words in his
reports, would not by itself be a valid ground for
allowing this appeal. As the onus of proof was
on the Appellant, it was not for the Respondent to
40 adduce evidence of sales on which the degree of
increase could be ascertained, and the Respondents'
Valuer was perfectly entitled legally to rely upon
the evidence adduced by the Appellants' Valuer
(PW 4) to disprove the Appellants' claim as to the
extent of the increase in land value.

It would appear that as a ground for attacking
the prima facie market value, it was the contention
of the Appellants Valuer (PW 4) (at pg. 54 paragraph

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E) that the general rise in the land value between November 1963 (the date of previous purchase) and of 4th June, 1964 (the date of declaration) was more than 40%. But this contention was clearly not supported by the sales which he himself had quoted as a basis of his valuation. In fact in the case of sales Nos. 15 and 16, he was forced to admit that there was even a drop in land value. (See pg. 54 of Record, paragraph G). The sales quoted by him in fact showed a general appreciation of between 20 to 40 per cent in land value during these periods (see pg. 54 paragraphs F and G). In the case of sales Nos. 14 and 15 the increase by 100% was obviously out of line with the general trend, and the reason for the low price in sale No. 14 had been explained by the Government Valuer (DW 3) at page 74 paragraph E.

10

GROUND 2 and GROUND 7

The Judgment of the learned trial Judge at page 98, paragraph E, and page 102 paragraphs B and C are correctly based on the Judgment of the Federal Court in the case of SUPERINTENDANT OF LANDS AND SURVEYS, SARAWAK v. AIK HOE & CO. LTD. (1966) 1 M.L.J. 243 at pg. 247. For the purpose of this Appeal the relevant passage of Lord Romer's Judgment in the case of VYRICHERLA NARAYANA GAJAPATIRAJU v. REVENUE DIVISIONAL OFFICER, VIZAGAPATAM (1939) AC 302 = AIR (1939) Journal 98, and adopted by the Federal Court is as follows:-

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"..... In the case of land, its value in general can also be measured by a consideration of the prices that have been obtained in the past of land of similar quality and in similar positions," (see pg. 97 paragraph F of Record).

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The relevant passage of Buhagiar J's Judgment in NANYANG MANUFACTURING CO. v. THE COLLECTOR OF LAND REVENUE JOHORE (1954) M.L.J. 69 @ page 71 which is also adopted by the Federal Court is as follows:

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"I consider that the safest guide to determine the fair market value is evidence of sales of the same land or similar land in the neighbourhood, after making due allowance for all the circumstances". (See pg. 98 paragraph B of Record).

It is submitted that there is no real distinction between the principle enunciated by Lord Romer and that of Buhagiar J. Land 'in similar positions' as the land acquired must inter alia mean that the position of the land should be in the neighbourhood of the land acquired. As Buhagiar J. put it, the land must be "similar land in the neighbourhood".

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10 The principle that only evidence of recent sales of similar lands in the neighbourhood should be considered for the purpose of proving market value is already well-established. This principle is dealt with by Aggarawala 3rd Edition at page 191 last paragraph. Authorities cited are:

(i) GOVERNMENT OF BOMBAY V. KARIM TAR
MOHAMAD ILR 33 Bom 325.

(ii) AMRIT LAL BYSAK V. SECRETARY OF STATE
22 I.C.78 (Cal.) (Book not available).

20 (iii) SECRETARY OF STATE V. SARLA DEVI
CHANDRURANI AIR (1924) Lah. 548.

The principle is also dealt with by Aggarawala at page 192, second paragraph and at pg. 193, second paragraph. Authorities cited are:

(i) HEMCHANDRA V. SECRETARY OF STATE 31 Cal.
L.J. 304

(ii) COLLECTOR OF NAGPUR V. ATMARAM BHAGWANT
AIR (1925) Nag. 292.

30 It is also submitted that in VYRICHERLA NARAYANA GAJAPATIRAJU case, unlike the case of NANYANG MANUFACTURING CO. and the other cases cited above, the Privy Council was dealing primarily on the question of whether the value of the special adaptability of the land acquired as a water supply could be awarded where the acquiring authority was the only possible purchaser. The method of valuation in that case did not involve the sales of other lands. Therefore when Lord Romer spoke of comparison being made with prices obtained in the past for 'land of similar quality and in similar position', he was merely stating how the value of land could be measured in general. It should also be noted that, when dealing with the question of

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building potential that should be granted in determining the market value of land possessing the possibility of being used for building purposes, Lord Romer himself said in the same Judgment that what should be considered is " 'evidence of the prices paid in the neighbourhood, for land immediately required for such purposes'. (See Judgment of Lord Romer quoted by Suffian J. In (1966) 1 M.L.J. 243 @ page 246 paragraph G).

It is therefore a fallacy to say that the basis used by Lord Romer affords a much wider area of comparison than the basis used by Buhagiar J. The allegation that Lord Romer's Judgment allows a comparison to be made if land is shown to be of similar quality and in similar positions, although situate in another neighbourhood is completely unfounded. Such a liberal interpretation would lead to absurdity especially as in the present case where the land acquired is in the capital of Malaysia, and not in a village or a rural area.

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In the SHORTER OXFORD ENGLISH DICTIONARY, the word "neighbourhood" is defined, inter alia, as -

- (a) the quality, condition, or fact of being neighbours or lying near to something; nearness;
- (b) the vicinity, or near situation, of something.

In ALLIANCE ECONOMIC INVESTMENT CO. V. BERTON & ORS. (1923) 92 L.J., K.B.C.A. 750 @ 752, although the case involved an application under the HOUSING, TOWN PLANNING ACT, 1919, one of the matters that the Court of Appeal had to determine was, 'what does a neighbourhood consist? or what area is comprised within a neighbourhood.' Bankers L.J. said that in country districts people are said to live in the same neighbourhood who live many miles apart, but the same cannot be said of dwellers in a town where a single street or a single square may constitute a neighbourhood. (See page 752 paragraph 3).

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Under the circumstances the learned trial Judge was correct when he stated in his Judgment that, "In the nature of things values of lands in any town in the world must vary from one part of the town to another part of the town. What is

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10 paid for lands in one sector of the town is no
index of what lands in another sector of the town
away from it will fetch". (See page 102 para-
graph D of Record). Even the Appellant's Valuer
agreed with the principle that 'Land Value in
different parts of any town differ' (page 51
paragraph G to page 52 paragraph A). The learned
trial Judge did not therefore err in law and in
fact when he observed at pg. 102 paragraphs B and
C of the Record, that most of the sales which Mr.
William (PW 4) took into consideration in arriving
at his valuation were sales of lands which could
not be said to be lands in the neighbourhood or
vicinity of the land acquired, and the learned
trial Judge was justified in coming to the conclu-
sion that the prices paid for such lands were
wholly irrelevant to the issue in this case,
except in so far as they indicated an all-round
increase in the value of land generally. (See
20 paragraph E, pg. 102 of Record).

With regard to the Judgment at page 28
paragraph E, the learned trial Judge stated:

"Where there has been no recent sale of
the same land, only sales within a reasonable
period of lands more or less similarly
situated in the same neighbourhood and
possessing similar advantages are helpful in
determining the market value of any land".

30 It is submitted that in this part of the
Judgment, the learned trial Judge was merely stat-
ing the law in cases where there had been no
recent sale of the land itself. But fortunately
in the present case, there was evidence of sale of
the land itself which took place only seven months
prior to the material date of valuation, and this
previous sale would be a better guide than a sale
of other properties however similar.

40 Regarding the Respondent's Valuer's evidence
the stand which he took is clearly set out at page
75 paragraph B, where he stated that "The 19 sales
mentioned by Mr. Williams, apart from two instances
(i.e. sales Nos. 7 and 8) in the vicinity of the
land acquired, are not comparable sales". As for
sales Nos. 14, 15 and 16 mentioned by Mr. Williams
(PW 4), although the Respondent's Valuer said that
they had the same potentiality as the land acquired,

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they were situated in Imbi Road, and therefore could not be said to be in the neighbourhood of the land acquired.

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In this case there was a difference of opinion as to the amount of compensation not only between the two assessors, but also between them and the learned trial Judge. Having regard to the evidence, the learned trial Judge was entitled under section 42(3) of the Land Acquisition Act 1960, to reject the opinions of the assessors and to impose his own valuation.

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GROUND 3 and GROUND 4 and GROUND 6

As has been submitted under GROUND 1, when the property under requisition has been recently purchased, the price paid is prima facie the market value thereof. In the present case the price paid at \$2.20 cts on 5th November, 1963 for an undivided half share of all the seven contiguous lots was the prima facie market value of the land as on 4th June, 1964 i.e. the material date of valuation. It is submitted that the special burden of proof for establishing that the previous sale was not a free and voluntary sale; or that it was a forced sale; or that the land was bought cheap because the vendor (Devarayan Chettiar) was unable to live in Malaysia and was subject to heavy Indian Taxation, lies with the Appellant. (See section 103 Evidence Ordinance 1950).

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The learned trial Judge's attack on the evidence adduced by the Appellant which was supposed to negative the prima facie market value of the land was well-founded on the following grounds:-

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(a) & (d). Although it may be conceded that the learned trial Judge was bound to take judicial notice of the Immigration laws of this country, there was no admissible and reliable evidence adduced that Devarayan Chettiar had ever applied to the Immigration Authority for an extension of his visit pass and nor was there any admissible evidence that the Immigration Authority had turned down such an application. The suggestion that he had been given a final extension expiring in June 1964 was merely on the hearsay evidence of Alagappa Chettiar (PW 1) at page 30, paragraph G and

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page 34 paragraph C, and also by the hearsay evidence of Palaniappa Chettier (PW 3) at page 39 paragraph D. According to Alagappa Chettier (PW 1) at page 34 paragraph D, "Before returning to India, Devarayan Chettier gave a general power of attorney to one Manickam Chettier", because he had other properties in this country. Yet no attempt was made to call Manickam Chettier let alone Devarayan Chettier himself, to establish that the Immigration Authority had notified Devarayan Chettier that his application for extension of stay (if any) had been refused. In the absence of such evidence, the learned trial Judge was therefore justified in finding that there was no evidence that Devarayan Chettier was in danger of being deported at any time. There appears to be no conceivable reason why the Immigration Authorities would turn down his application for another year's extension after June 1964, having regard to the admitted fact that he had been allowed to stay in this country on a visit pass for various periods totalling 4 years without any apparent difficulty. (See PW 1's evidence at page 30 paragraph 3).

The crux of the Appellant's case for negating the prima facie market value of the land was that the previous sale was a forced sale. According to PW 1 on 5th November, 1963 the proper price of the land should be \$20/- to \$21/- per square foot (page 33 paragraph D). But Devarayan had sold it for a mere \$2.20 cts per square foot. As the difference in the two figures would involve millions of dollars, it is material to enquire whether Devarayan Chettier was in such a hurry to go back to India that he was going to sell the land at any price he could get.

The crux of the Appellant's case for negating the prima facie market value of the land was that the previous sale at the price of \$2.20 cts per square foot was a forced sale. (See Aggarawala 3rd Ed. pg. 198 last paragraph). It is submitted that the mere fact that there was an Immigration Law in this country and capital gain tax under the taxation laws of India, would not be sufficient by themselves for the Court to infer that there was compulsion operating on Devarayan Chettier. In

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this case the Appellant had failed to prove that Devarayan Chettier had been given final extension to stay in Malaya by June 1964. The failure of the Appellant to call Devarayan Chettier or the Immigration Authority to give evidence that Devarayan's application for extension of stay in this country after June 1964 (if any) had been turned down, was a serious omission. In the absence of such evidence, there was therefore no evidence that Devarayan Chettier was at any material time in danger of being deported, and as such, at the time of the previous sale (5.11.63) he could not, on the evidence adduced be said to be under any compulsion to sell. (See PW 3's evidence at page 40 paragraph D of Record).

10

It was suggested by Alagappa Chettier (PW 1) that on 5th November, 1963 the market price of the land should be between \$20/- to \$21/- per sq.ft. (Pg. 33 paragraph D of Record). It was also suggested that Devarayan Chettier sold the land at a mere \$2.20 cts because he did not know the value of land in this country and he was in a hurry to go home in order to avoid the Indian capital gains tax. (Page 34 paragraph B of Record). It is submitted that notwithstanding the capital gain tax operating in India, there was no evidence adduced that Devarayan Chettier was in such a hurry to go back to India that he was prepared to sell property worth \$20/- to \$21/- per square foot at a mere price of \$2.20 cts. Nobody testified that Devarayan said at any time he was going to sell at any price he could get. The absence of such evidence was fatal to the Appellant's endeavour to prove that the previous sale was a forced sale.

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It is also worthy of note that the evidence adduced by the Appellant was contradictory. On the one hand it was alleged that the cheap price fetched at \$2.20 cts was agreed upon because Devarayan Chettier was young and inexperienced, and did not know the value of land, whilst on the other it was suggested that he was experienced enough to know the complicated Tax Legislation in India and how to avoid the capital gains tax. (See evidence of PW 1 at pg. 34 paragraph B; evidence of PW 3 at pg. 39 paragraph F and pg. 40 paragraph E). Again, on the one hand it was alleged that Devarayan wanted to stay in this

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country (but could not do so because of the alleged refusal of the Immigration Authority to grant his application), whilst on the other hand, it was also suggested that he was in great hurry to go home to India in order to escape capital gains tax despite the admitted fact that he still had other properties in this country which were yet unsold. (See pg. 34 paragraph D).

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10 On the evidence adduced by the witnesses for the Appellant, it is submitted that the learned trial Judge was justified in finding that the evidence adduced was merely produced to boost the Appellant's claim to higher compensation. Nor did he err in refusing to hold that the sale by Devarayan was a forced sale. There was ample evidence in this case that the previous sale was a genuine and open-market sale, even if the tests suggested in GOVERNMENT OF BOMBAY V. MERWAN MOONDIGAR ILR 48 Bom. 190 (quoted by Aggarawala 3rd Edition pg. 196 paragraph 2) were to be applied,
20 one Kasi Chettier living as far away as Alor Star recommended the land to one of the nine purchasers, Ng Chong Geng (PW 5) who lived in Taiping. According to PW 5 Kasi Chettier came to Taiping and informed him about the land in early September 1963 (see page 61 paragraph C of Record). As stated by the learned trial Judge at page 105 paragraph F, "In the present case the purchasers were undoubtedly complete outsiders. There is
30 nothing to suggest that the transaction was not genuine and bona fide. Without doubt, it was a sale in the open market and the parties were at arm's length". It should be noted that four of the nine purchasers were from Taiping and one from Penang.

40 (b) Alagappa Chettier (PW 1) admitted that he left this country for India in September 1963, i.e. about two months before the sale by Devarayan Chettier took place. Yet it was on his evidence apart from the evidence of Palaniappa Chettier (PW 3) that the Appellant wanted the Court to believe what was in the mind of Devarayan Chettier when he sold the land on 5th November 1963. Therefore the observation of the learned trial Judge that PW 1 was in no position to say under what circumstances the land was sold was not only relevant to the case, but also showed the unsatisfactory manner

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the Appellant was trying to prove 'the forced sale theory' by making great play on the Immigration Law of this country and the Income Tax Legislation of India.

(c) "Evidence of offers is admissible; but as an offer merely amounts to an expression of opinion on the part of the person making it, oral offers unsupported by any documentary evidence do not carry any weight or afford any assistance. (See Aggarawala 3rd Ed. pg. 200 last paragraph). 10

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(1926) Lah. 618.

As the brokers had not been called to give evidence, and there was also no documentary evidence produced to support the alleged offer of ₹10/- per sq.ft. in 1964 in respect of Lots 95 and 96, the evidence of PW 3 at page 39 paragraph G was of no value. Therefore, there was no necessity for the learned trial Judge to refer to this particular evidence, and he was therefore correct in placing no reliance on the evidence of PW 3 as it was admitted that he (PW 3) did not know whether ₹2.20 cts per sq. ft. was a fair price for the land acquired in November 1963. 20

(e) It was admitted by NG CHONG GENG (PW 5) the leader of the 9 purchasers that he first came to know of the land being offered for sale in early September 1963. (See page 61 paragraph C of Record). Therefore it took only two months to round up the other purchasers and for the sale of seven lots to be finalized. The facts speak for themselves and it is submitted that there was in fact no difficulty involved in the disposal of an undivided interest of the lands acquired. In sales of undivided shares a good deal must depend upon the extent of the undivided share (see page 105 of Judgment at paragraphs C to G). In the present case the share involved was large and the land acquired was also large (22.763 acres). Under the circumstances the learned trial Judge was correct, if he did so suggest, that the lapse of time between Devarayan's 30 40

acquisition of the land and his sale of it showed he was in no hurry and under no compulsion to sell.

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10 (f) and (g) These grounds appeared to have been directed to page 100 paragraphs D to F of the Judgment. Devarayan Chettier became the owner of the land in 1962, and it is inconceivable that from that time till he sold the land, he never sought the assistance of any member of the Chettier community as to the market value of his land. It is submitted that the Judge was reasonable in making no reliance on the evidence of PW 1 and PW 3 that Devarayan never consulted them regarding the market value of the land. (See pg. 33 paragraph F; and pg. 39 paragraph F). According to PW 3's evidence, Devarayan sought his assistance on many matters and even asked him to sell his share of the land, and yet he was not prepared to admit a simple truth that Devarayan did consult him on the value of the land.

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It is submitted that Devarayan must have sought the advice of his Chettier colleagues before he sold the land at \$2.20 cts per sq. ft., and that price must therefore represent the true market value of the land at that time.

30 If the market value of the land was between \$20/- to \$21/- per sq. ft. as on 5th November, 1963, as suggested by PW 1, then there was no earthly reason why Devarayan should want to escape tax. As the difference between \$2.20 cts and the price suggested by PW 1 would involve millions of dollars, it would be more profitable for him to sell the land at \$20/- per sq. ft. and pay the tax rather than to dispose of it at \$2.20 cts without paying tax.

(h) This will be dealt with in Ground 5.

GROUND 5.

40 It is submitted that on the basis of the judgment of Broomfield J. in ASSISTANT DEVELOPMENT OFFICER, BOMBAY v. TAYABALLI ALLIBHOY BOHARI AIR (1933) Bom. 361, and quoted with approval by Suffian J. in the Federal Court Case of SUPERINTENDENT OF LANDS & SURVEYS SARAWAK v. AIK HOE &

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CO. LTD. (1966) 1 M.L.J. 243 @ 247, the general burden of proof in land acquisition cases is always on the party claiming for enhanced compensation.

In the present case the Collector had adopted the previous sale of the land itself as the basis of his valuation - a method recognized by a number of authorities as the best method:

- (i) Aggarawala 3rd Edition page 190 paragraph 3.
- (ii) Case of MUNJI KHETSEY I.L.R. 15 Bombay (1891) 279, 283. 10
- (iii) QAMAR ALI v. COLLECTOR OF BAREILLY AIR (1914) Allahabad 66.

Despite these authorities, the Appellants' Valuer (PW 4) persisted in his evidence that he did not agree that previous sale of the land itself would be a better guide than sales of other lands however similar (see page 47 paragraph C). Under cross-examination at page 50 paragraph C, he confirmed that in arriving at his market value as on the date of acquisition he had ignored altogether the previous sale of the land itself which took place only 7 months prior to acquisition. On this ground alone, it is clear that the valuation of the Appellant's valuer cannot be relied upon as it was based on a wrong principle of valuation. 20

But on further cross-examination the Appellant's Valuer was forced to modify his stand when he stated that, "If there had not been anything abnormal about the sale of this land itself in November 1963, that would be the best basis for valuation". (Pg. 52 paragraph B). 30

It is therefore submitted that in effect the Appellant agreed that the previous sale of the land itself was the best evidence but for the abnormalities. By 'abnormalities' he meant -

- (i) the previous sale was a forced sale and was cheap;
- (ii) the previous sale was merely on an undivided half share of the land acquired. 40

Under abnormality No.(i), it is again submitted that the price of \$2.20 cts per square foot paid 7 months prior to the material date of valuation was prima facie the market value thereof as on 4th June, 1964. The special burden of proof was therefore on the Appellant to establish that the previous sale was a forced sale and cheap. It is submitted that this was precisely the reason why the Appellant had called PW 1 (Alagappa Chettier), PW 2 (Pong Kien Ngor), PW 3 (Palaniappa Chettier), PW 5 (Ng Chong Geng) and PW 6 (A. Varadachari) to give evidence. As the onus of negating the prima facie market value was on the Appellant, it was for them to call Devarayan Chettier to give evidence, and he was the only person who could properly testify as to what was in his mind when he sold the land at \$2.20 cts per square foot. Without him, the Appellant's allegation that he was unable to renew his visit pass and that he wanted to escape paying capital gains tax could not stand. On the authority of QUAMAR ALI v. COLLECTOR OF BAREILLY AIR (1914) Allahabad 66 @ 67, it was for the Appellant to show that Devarayan Chettier was ready and did sell to the nine purchasers (the nine Appellants) property worth 10 millions or 11 millions dollars for a petty sum of nearly 2 million dollars on 5th November, 1963. On the contrary it is urged that the Court should invoke the presumption under section 114 paragraph (g) of the Evidence Ordinance, 1950 that if Devarayan Chettier had given evidence, he would have given evidence against the Appellant.

On the authorities cited earlier, it is submitted that only when there was no evidence of sale of the land itself or any part of it, other methods of valuation such as sales of similar lands in the neighbourhood may be considered. Therefore the Judge's statement at page 100 paragraph F was a correct proposition in law.

40 GROUND 8.

In the case of YUEN C. FOON & ANOR. v. COLLECTOR OF LAND REVENUE K.L. High Court Civil Application No. 23 of 1965 (unreported), Dato' Abdul Aziz J. had this to say as regards a sale by a director to his own company:

"As respects Lots 791 to 815 which were

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vacant land suitable for housing development, these lots were firstly situated in a more favourable locality, and secondly the evidence as to the value based on a previous sale is not reliable as it was not strictly a sale in the open market. There is evidence which we accept that the sale took place within the company".

Similarly, in the present case it was not in dispute that the sale of Lot 2285 (Sale No: 7 in Appendix "A" of this written submission) was from one GAN TECK LOON to a company of which he was one of the three directors. (See Exhibit D 14 of page 171 of Record). It would also appear that two of the three Directors were brothers, of which one of them was the vendor in the transaction. On the evidence and the authority cited above the learned trial Judge was justified in coming to the conclusion that it was not a sale in the open market and should be discarded. Whatever might be the extent of the Director's shares in the company, the fact remained it was not a sale in the open market, and as the Appellants' Valuer (PW 4) was forced to admit at pg. 53 paragraph C of the Record, such a sale would not be a reliable comparison.

It should be noted that the judgment of Dato' Abdul Aziz J. referred to above was cited to the learned trial Judge at the trial although it was not quoted by him in his Judgment. (See pg. 88 paragraph B of Record).

GROUND 9.

Lot 1 section 85A Pahang Road (Appellant Valuer's sale No. 8) was effected by an agreement of sale dated 18th April 1964 (Exhibit P 11) at a price of \$7.90 cts per square foot. The nature of this Agreement was such that there was no knowing when the balance of the purchase price (\$255,000/-) would be paid. The agreement was also subject to various conditions that there was no knowing what was actually the sale price per square foot. For example under clause 3(1) and clause 6 of the Agreement the so-called price of \$7.90 cts per sq.ft. included expenses to be incurred to remove and to evict squatters on the land, and it also included payment of quit rents and assessment until such time as vacant possession

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of the land could be given to the purchasers.

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10 It is further submitted that this particular sale was an unregistered sale, and therefore it could not be considered for the purpose of varying the award of the Collector. (See Aggarawala page 199 2nd paragraph). Even the Appellant's Valuer appeared to have conceded that where the unregistered sale had not been completed at the material date of valuation, it would not be reliable as a basis for valuation. (See page 53 paragraph E of Record).

As the sales in respect of Lot 2285 and Lot 1 could not be relied upon individually, it would follow that any attempt to consider the two sales together would only lead to false conclusion as to the true market value of the land in that neighbourhood. Both Lots could not therefore be a suitable basis for the valuation of the land acquired.

GROUND 10 and GROUND 15

20 It is submitted that the Judgment of the learned trial Judge at page 104 paragraph B was directed at the alternative method of valuation advanced by the Appellant's Valuer (PW 4) at pg. 136 paragraph C onwards of Record. His conclusion at page 137 paragraphs E and F was entirely hypothetical and not based on any plan likely to be approved in respect of the land acquired. As clearly admitted by Appellant's Valuer in his evidence, it would appear that he based his calculation on Imbi Road sales Nos. 15 and 16 which are not anywhere in the neighbourhood of the land acquired (see pg. 56 paragraph F). It is assumed that the "modern plan" referred to by him at page 153 paragraph A of Record was Exhibit P4, which was a plan that was never even being submitted to the Planning Authority for approval (see evidence of Mr. F. Watkinson at pg.64 paragraph D).

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40 In this case it is worthy of note that the land acquired was zoned for 'open development' area at all material times (see evidence of Mr. F. Watkinson DW 2 at page 64 paragraph A). Under Municipal Notification dated 25th February, 1964, the lands could only be used for the erection of detached or semi-detached residences, but with special permission, subject to necessary

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advertisements and the right of the adjoining owners to object, the lands could also be used inter alia for blocks of flats or houses as distinguished from terrace houses. (See page 66 paragraphs E, F and G). The Imbi Road sales Nos. 15 and 16 relied upon by the Appellants' Valuer, were capable of being used and were in fact used for terrace houses (see page 68 paragraphs D and F). Therefore it was clearly wrong for the Appellant's Valuer to value the land acquired by sub-dividing the land hypothetically into Lots for terrace houses on the basis of sales Nos. 15 and 16, as the type of buildings that could be erected on the land acquired was restricted, even with permission, only to flats which according to Mr. Watkinson means point blocks or tower blocks; and as admitted by him at pg. 51 paragraph C, there was definitely a fall in the demand for flats in tower blocks in 1964, and he also agreed that from 1964 onwards the demand for housing units was on the decline. This decline in the demand for flats or tower blocks was reflected in sales No. 7 (lot 2285) and No. 8 (Lot 1) along Pahang Road. Although the areas of these two lots were small and they were bought in March 1963 and April 1964 respectively for the purpose of building flats, none of the proposed projects had materialized up to now. (See pg. 53 paragraphs B and E). This evidence if anything showed that there was no real demand for development not only on the land acquired but also on lands adjoining to it.

In valuing the land acquired, it is not true that the learned trial Judge had rejected all considerations of potential. At page 103 from paragraph D to page 104 paragraph B of the Judgment, it is obvious that the potentiality of the lands had been considered on the basis of the sub-division plan (Exhibit P 3) which had been prepared as far back as 1957.

Unlike the case of MAORI TRUSTEE v. MINISTRY OF WORKS (1959) ACT 1 and the other cases cited, in the present case there was a previous sale of the land acquired seven months prior to the material date of valuation. The sale price in November, 1963 must, having regard to the evidence, took into account the building potentiality of the land on the basis of the approved plan (Exhibit P 3), and this

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would be a better guide than a sale of other pro-
perties however similar as the elements of dis-
similarity will be least present when the trans-
action sought to be applied is a previous purchase
of the same property which is under acquisition.

It is proposed to quote the following
authorities:-

- (1) K.P. FRENCHMAN v. THE ASSISTANT COLLECTOR
HAVELI AIR (1922) Bom. 399.

Property bought in July 1918 for
Rs. 92,500; acquired by Government in April
1919 for Rs. 55,688. On reference owner
claimed 2 lacs. The plot in question were
situated near the centre of the business part
of the Poona City. Shah J. at page 401 said,
"I agree that the market value in this case
should be fixed at Rs. 92,500 which is the
amount paid by the claimant for this property
in July 1918. I do not think that under the
circumstances of this case the figures
supplied to the lower court on certain hypo-
thetical bases afford any assistance to the
Court in determining the true market value."

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- (2) QAMAR ALI v. COLLECTOR OF BAREILLY AIR (1914)
Allahabad 66.

Appellant purchased the property in
September 1909 for Rs. 2,000. Some time in
1913 the property was compulsorily acquired
and on reference to the District Judge, he
awarded compensation at Rs. 6408. The
Appellant claimed Rs. 15,000 whilst the
Government also appealed contending that the
award of Rs. 6408 was too high. It was held
that the mere fact that the owner of the
acquired property had obtained it cheap would
not entitle the Government to get it under
the fair market value but the price which was
paid by the owner very shortly before the
publication of notification would be of
valuable piece of evidence to help the court
in ascertaining the true market value of the
property. Both the appeal by the Appellant
and the Government were dismissed. As
regards the purchase of the property by the

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sic

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Appellant in September 1909, the Court remarked, "... the appellant has certainly not shown to our satisfaction that the owners of the property were ready to and did sell him property worth Rs. 15,000 to Rs. 40,000 for the petty sum of Rs. 2,000".

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(3) IN THE MATTER OF THE LAND ACQUISITION ACT X OF 1870; MUNJI KHETSEY 1 L.R. 15 Bom. 279, 282.

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10 The following were held to be the recognized modes of ascertaining the value of land for the purpose of determining the amount of compensation:-

(i) If a part or parts of land taken up has or have been previously sold, such sales are taken as a fair basis upon which, making all proper allowances for situation as to determine the value of that taken.

20 (ii) To ascertain the net annual income of the land and to deduce its value by allowing a certain number of years purchase of such income according to the nature of the property.

(iii) To find out the prices at which lands in the vicinity have been sold and purchased, and making all due allowance for situation, to deduce from such sales the price which the land in question will probably fetch if offered to the public.

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At pg. 283, Farran J. said, "In the present case, there is no evidence of the purchase and sale of the land itself or any part of it, sufficiently recent to enable the court to adopt the first method of valuation".

40 It is therefore submitted that if there had been evidence of the previous recent sale of the land itself or any part of it, the Court would have adopted the first method of valuation.

In the present appeal the learned trial Judge had also adopted the first method of valuation.

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The previous sale of the half undivided share in the land acquired - consisting of half undivided share of 22.763 acres (991,730 sq.ft.) must in my submission afford a reliable guide to market value rather than the second or third method.

It is submitted that the quotation from page 362 of SANJIVA ROW and page 206 of AGGARAWALA are mere general statements of the learned authors and they do not have the backing of any judicial authority. At page 206, Aggarawala merely said that, 'The sale of an undivided share of a property is also not ordinarily dependable ...'. This statement does not in fact say that sales of undivided shares must automatically be discarded. At page 105 of the Judgment the learned trial Judge had given his reasons for accepting the previous recent sale, and under the first method of valuation in the case of MUNJI KHETSEY, the learned trial Judge was legally entitled to rely on the previous sale as a fair basis to determine the value of the land acquired.

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The case of AMRITA LAL BASACK & ANOR. v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL 22 IC 78 is no authority for excluding previous sale of half undivided share of the land acquired, especially where the area of the land is big as in the present case. The case cited above can be differentiated from the present case under Appeal in that -

- (i) the previous sale of undivided share relied upon (No. 129 on the plan) was not the land acquired or part of it. Whereas in this Appeal, the sale of the half undivided share was in respect of the land acquired itself.
- (ii) The previous sale of the undivided share was in respect of a small plot of land; whereas in this Appeal the land acquired was a big one.
- (iii) The extent of the vendor's undivided share was not known. Presumably it was small; whereas in this Appeal, the previous sale involved half undivided share of the whole land.

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Having regard to the circumstances of this particular case, the learned trial Judge did not err -

(1) in holding that the sale of undivided shares is dependable where the share involved is large and the land itself is a large piece of land. (See pg. 105 paragraph E);

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(2) in holding the sale in November 1963 was the best evidence of market value;

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(3) in holding that a suitable allowance could be made for sales of undivided interests for the purpose of using such sales to determine market value;

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(4) in holding that the value of \$3.00 per sq.ft. reflected not only the general increase in the prices of land annually but also a reasonable allowance for the fact that its previous sale was of an undivided share. In this connection it should be observed that from the 19 sales quoted by Mr. William (PW 4) the general increase in land prices from the date of previous sale and the date of valuation was roughly between 20% to 40% (see Appendix "A" to this written submission). At pg. 52 paragraph F, Mr. William (PW 4) admitted that in respect of sales No. 5 and 6 which are situated near the land acquired, there was a definite drop in price between March 1963 and October 1964. Sales Nos. 15 and 16 also show a depreciation in land values between November 1963 and July 1964. It is submitted that nowhere in the Judgment did the learned trial Judge state that he agreed with the Respondent's Valuer that the proper increase that should be given in this case was the maximum increase of 40%. It is an accepted principle that market value cannot be calculated with mathematical precision, and the learned trial Judge could not be said to have erred in law as long as he took into consideration allowances that should be taken in the circumstances of the case. The fact that the learned trial Judge said at pg. 107 paragraph G that "the value of \$3.00 per square foot reflects not only the general increase in the price of land annually but also a reasonable allowance for the fact that its previous sale was of an undivided half-share", clearly indicates that he had applied his mind to all the allowances that should be made in arriving at his valuation.

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It is an accepted principle that no hard and fast rule can be laid down regarding the method to be adopted for assessing the compensation to be paid and each case must be considered in view of its own special features. (See Aggarawala 3rd Ed. pg. 189 first paragraph). In this case the Appellant has failed to show that there is any judicial authority to support their contention that the method of valuation adopted by the learned trial Judge was legally wrong. Under the circumstances it is not proper for them to resort to the provisions of the Land Code as a basis for attacking the method of valuation adopted by the learned trial Judge. There might be potential sources of difficulty to a purchaser of undivided shares. But such potential sources of difficulty are irrelevant to the legal issue in this case. If that basis of attack is pursued to its logical conclusion, at the most, the evidence as to potential sources of difficulty would tantamount sic 20 to admitting that the value of the land acquired at the material date of acquisition should be lower than it was at the previous sale, for the simple reason that in November 1963 there were only two co-owners whereas in June 1964 there were ten owners in undivided shares. 10

GROUND 14.

It is submitted that the judgment at page 107 paragraph A where the learned trial Judge held that the price paid for Lot 29 (sale B) in September 1962 was the best check on the price paid for the land acquired in November 1963, must be read in the context of the whole paragraph starting at pg. 106 paragraph E. 30

Reading from the whole paragraph it is obvious that the fundamental basis of the learned trial Judge's valuation was the recent previous sale of the land acquired. The price of ₹2.20 cts paid in November 1963 was the direct evidence of the market value of the land at that time, and on the authorities already cited in GROUND 1 that price was also the prima facie market value thereof in June 1964. 40

The learned trial Judge made reference to Lot 29 (sale B in Exhibit D 12) merely for the purpose of a cross-check vide the third method of

valuation as contained in the case of MUNJI KHETSEY 1 L.R. 15 Bom. 279 i.e. on the basis of prices at which other lands in the vicinity have been sold and purchased. But before sales of other lands can be considered they must be actually parallel with the land acquired (see Aggarawalla 3rd Ed. pg. 192 paragraph 2). It must however be conceded that lands precisely parallel in all circumstances are difficult to get. (see page 202 Aggarawalla paragraph 1). Having analysed all the sales adduced in evidence in this case the learned trial Judge had come to the conclusion that sale of Lot 29 was the most comparable, because as can be seen from the map (Exhibit D 12) except for size, this piece of land was the most similar in situation and quality as the land acquired.

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It had been suggested that sale of Lot 2285 (sale No. 7 in Exhibit P 9 or sale E in Exhibit D 12) and sale of Lot No. 1 (sale No. 8 in Exhibit P 9) were more comparable to the land acquired. It is submitted that these two sales are not comparable, and reasons have already been set out in GROUND 8 (page 31) and GROUND 9 (page 32). Sale of Lot 2285 was not a sale in the open market, and sale of Lot 1 was an unregistered sale and in fact was not a sale at all. These two sales must therefore be discarded even for the purpose of cross-checking the market value of the land acquired as on November 1963. The fact that these transactions took place in 1964 and therefore more recent in point of time to the acquisition would not make them more comparable than sale of Lot 29.

As regards sales of Lots 21, 14 and 18 (i.e. sales D, G and H respectively in Appendix 'B' of this written submission), they are clearly not comparable for the reasons stated in column 6 and column 7 of Appendix 'B', which are taken from the Respondent Valuer's Report at pages 160 - 165 of the Record.

GROUND 17.

As regards the alienation of State Land to the Ministry of Health, this cannot be treated as a sale in the open market. The price paid is not a safe guide for the purpose of valuation of sales in the open market. The price paid might include other considerations. Even if this transaction

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could be treated as a sale the apparently high price can be attributed to the special adaptability of the land to the purchaser for extension of the Tuberculosis Hospital and Clinic. In any case the Government Valuer was never asked (if he did so value the land) why he had valued it at that price.

GROUND 18

The learned trial Judge had given sufficient reason for disagreeing with the opinion expressed by the two assessors. The first assessor based his opinion on prices of lands in Imbi Road which is entirely in a different sector of Kuala Lumpur as the land acquired. The second Assessor, Mr. P.M. Varghese based his opinion on prices paid for Lot 2285 and Lot 1, which are clearly wrong in law. (See GROUND 8 and GROUND 9 at pages 31 and 32 respectively). This matter has also been dealt with at pg. 18 paragraph C ante.

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GROUND 19

The award of nearly three million dollars was not too low by whatever standard. This is not a case where the Government was trying to get valuable land at a cheap price. The award was based on the best method of valuation and it was in accordance with well established principles.

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GROUND 20

As regards the evidence by Palaniappa (PW 3) at page 38 of Record, oral offers unsupported by any documentary evidence do not carry any weight or afford any assistance for the purpose of assessing market value (See Aggarawalla 3rd Ed. page 201 top page).

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CONCLUSION

It is respectfully submitted that in this case both the Collector of Land Revenue and the learned trial Judge had adopted a method of valuation based on the previous sale of the land itself which took place only 7 months prior to date of acquisition. After considering the evidence adduced by both parties, the learned trial Judge had come to the conclusion that the principle upon which the Collector had proceeded to value the land acquired

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was the correct principle and he had also come to the conclusion that the methods suggested by the Appellant was not suitable for the purpose of valuation in this particular case. The first method advanced by the Appellant was on the basis of sales of similar lands in the neighbourhood. The Applicants' Valuer had cited 19 sales in all and the learned trial Judge as he was legally bound to do, had analysed each sale from page 101 paragraph D to page 103 paragraph C, and had found all the sales could not be relied upon and had found no justification whatsoever in the Appellants' claim of enhanced compensation. The next method suggested by the Appellants was by sub-dividing the land hypothetically into lots based on Imbi Road sales and then valuing the land on the basis of the prices which each lot would fetch. The learned trial Judge also found this method of valuation unsuitable, and came to the conclusion that the price paid for the land at \$2.20 cts per sq. ft. on 5th November 1963 in fact represented the prevailing market value at that time. He also cross-checked this figure with sale of Lot 29, which he found to be the most comparable sale in the neighbourhood. On the authorities already cited the price paid on 5th November 1963 was the prima facie market value of the land acquired as on 4th June 1964. The Appellant was at pains to negative the prima facie market value by various means. They had made great play on the Immigration law of this country and the Tax Legislation of India. They even went to the extent of describing Devarayan Chettier, who was not called to defend himself as a young and inexperienced Chettier and wanted the Court to believe that he was stupid enough to sell his half share in the property worth according to PW 1 nearly ten million dollars for a mere one million dollars. It is submitted that on the facts of the case the learned trial Judge was correct in rejecting the evidence of the witnesses as wholly unreliable. If the land was sold cheap in November 1963, PW 1 who described himself as a wealthy man would be the first person to grasp at the opportunity especially when he was the other co-owner and was supposed to be interested in developing the land. His Attorney was present in this country when the land was sold and they were in communication with each other at all material times (see pg. 33 paragraph G of Record), and yet

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there was no interest at all shown on his part to buy the land. All the evidence adduced were consistent with the fact that the price of \$2.20 cts was the fair market value of the land at that time. The increase by 80 cts per sq. ft. after a lapse of only 7 months shows conclusively that the award of \$3.00 per sq. ft. made by the learned trial Judge was more than fair and adequate.

It is submitted that this Appeal has no merit and should be dismissed with costs.

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Sgd. Illegible
COUNSEL FOR THE RESPONDENT.
PENASIHAT UNDANG 2
SELANGOR.

SALES QUOTED BY APPELLANTS' VALUER (PV 4)

1	2	3	4	5	6	7
TITLES	DATE OF SALE	AREA	LOCALITY	PRICE Per sq.ft.	EVIDENCE OF DISSIMILARITY	REMARKS
1	May 1961	2 small frontage strips	Circular Rd. Sec.47 part of Lots 50 and 264	₹15.00	Not relevant 1. Small area 2. For road widening	Admitted by PV 4 that they should be excluded. (Page 52 para. F)
2	May 1961	5,091 sq.ft.	Ipoh Rd. Sec.47 Lot 55	₹16.00	1. Small compound with half million sq.ft. sold on 5.11.63. 2. Different Locality	-- do --
3	January 1964	7 shop lots	Ipoh Rd. Sec. 48 Lots 74 to 80	₹21.00	1. 7 vacant shop lots 2. Small area	-- do --
4	1964	.60 and 1 acre State Land.	Maxwell Rd. Lot 9 (part)	₹15.00 (₹12/-)	1. State Land 2. Vacant possession 3. Sale to M.I.C.	No full detail available. (M.I.C. is appealing). (Page 52 para. F)
5	March 1963	0.307 acre	Jalan Raja Laut Sec. 46 Lot 391	₹7.00	1. Small area 2. Different locality.	(Page 52 para. F)

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6.	October 1964	2.025 acres	Jalan Raja Laut Sec. 46 Lot 1118 etc.	₹5.60	1. Small area. 2. Different locality.	Item 5 & 6 - there was a fall in price from ₹7/- to ₹5.60 (Page 54)
7.	March 1963 (See Govt. Valuer's Report Item E.)	1.437 acres	Pahang Road. Lot 2285	₹6.38	1. Bought before confrontation. 2. Vacant land. 3. No squatters. 4. Sale from director to his own company Gan Teck Loon to Bee Seng & Co. - Dato' Aziz case.	Bought for building 16 storey block of good class flats. Now abandoned.
8.	April 1964	1.743 acres	Pahang Road Sec. 85A Lot 1	₹7.90	1. Small area. 2. Unregistered sale - Pg.199 Aggarawala cannot be relied upon	Items 7 & 8 appreciation between March 1963 & April 1964 - about 20% only. (Page 54)
9.	November 1964	1.240 acres	Setapak Village Lot 1	₹4.62	1. Small area. 2. Different locality. 3. Sale after acquisition.	

10.	April 1963	2.5 acres	Ipoh Rd. Lot 547	₹7.85	1. Small area. 2. Different locality.	Compare it with items 2 and 3. Small plots have higher value?
11.	April 1964	1.5 acres	Ipoh Rd. Lots 122 to 128	₹10.85	1. Small area. 2. Different locality.	Items 10 & 11 - appreciation between April 1963 & April 1964 38%. Ipoh Road commercial area compared with locality in question. (Page 54)
12.(a)	August 1963	(a) 47 lots		(a) ₹ 5.90	1. Different locality.	
(b)	April 1964	(b) 19 "		(b) ₹13.42	2. Established commercial area.	
(c)	May 1964	(c) 20 "	Ipoh Rd. 3/4 m.s.	(c) ₹13.56	3. (d) is petrol station.	
(d)	March 1965	(d) 8 "		(d) ₹15.16	4. Terrace houses. Easier to sell.	
(e)	May 1965	(e) 0.410 acre		(e) ₹ 9.49		
13.	July 1964	40 terrace lots.	Off Sentul Rd. Lots 106/116, 223/225 and 249/262	₹90 to ₹5.00	1. Different locality. 2. Low price. 3. After confrontation. 4. Terrace houses.	

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14.	August 1963	2.569 acres	Imbi Road Sec. 67 Lot 418	₹5.00	<ol style="list-style-type: none"> 1. Different locality. 2. Small area. 3. Established residential. 4. More densely developed. 5. Price low because at that time there was a proposal by Municipality to build another ring road (pg. 74). 	
15.	January 1964	1.341 acres	Imbi Road Sec. 67 Lot 424	₹11.12	<ol style="list-style-type: none"> 1. Different locality. 2. Small area. 3. Established residential area near B. Pintang. 4. More densely developed. 	
16.	July 1964	2.775 acres	Imbi Road Sec. 67 Lots 273 and 428	₹10.77	<ol style="list-style-type: none"> 1. - do - 2. - do - 3. - do - 4. - do - 	Items 15 and 16 & depreciation. (Page 54).
17.	November 1963	2.606 acres	Imbi Road. Sec. 57 Lot 3	₹ 5.54	<ol style="list-style-type: none"> 1. - do - 2. - do - 3. - do - 4. - do - 	Items 17 & 18 appreciation only 26% between November 1963 and December 1964. (Page 54).

18.	December 1964	1.547 acres	Imbi Road Sec. 67 Lot 12	₹7.00	After Acquisition 1. 2. - do - 3. 4.	
19.	October 1964	35 terrace lots	Treacher Rd.	₹21.32	After Acquisition 1. 2. - do - 3. 4.	

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Appendix B

SALES QUOTED BY RESPONDENT'S VALUER (DV 3)

(1) ITEMS	(2) DATE OF SALE	(3) AREA	(4) LOCALITY	(5) PRICE Per sq.ft.	(6) EVIDENCE OF DISSIMILARITY	(7) REMARKS
A sic	5.11.63	99,730 sq.ft. ($\frac{1}{2}$ undivided share - 495,865 sq.ft.)	Circular Rd./ Pahang Rd. sec. 47, 85A, 79. Lots 17, 18, 19, 1922, 1928, 1924, 1930.	₹ 2.20	None (same land).	The land forms the present subject of acquisition.
B sic	22.9.62	124,142 sq.ft. for 9/10th share (2,850 acres).	Pahang Road. sec. 85A Pt. 15 (New Lot 29).	₹ 1.12	Same neighbourhood as land acquired (comparable). Same potentiality as regards development (flats). 9/10th share sold.	Lot 29 is situated at the rear of Caltex Oil Co. which purchased the front portion, that is, the 1/10th share. Both sites were covered with numerous squatters at the time of sale but these were recently demolished.
C	29.9.62	169,928 sq.ft. (3,901 acres)	sec. 55A - Lot 56	₹ 0.65	Same neighbourhood as land acquired (comparable). Same potentiality as regards development (flats). Whole.	The land has been made ready for the erection of 5 blocks of 14 storey good-class flats at the ground floor and provided with lifts.

D	17.8.62	57,586 sq.ft. (1.322 acres)	Circular Rd./ Pahang Rd. sec. 47. Lot 21.	\$ 2.50	Same neighbourhood as land acquired (comparable). Same potentiality as regards development (flats). 1/6th share.	It was purchased with a pre-war timber and tile detached bungalow and two temporary buildings. The erection of ten 3-storey flats is nearing completion and seven 3-storey shop houses will be constructed in the near future.
E	17.3.63 (See Appellants' Valuer's sale No. 7).	62,596 sq.ft. (1.437 acres)	Pahang Road sec. 86A. Lot 2285.	\$ 6.39	Same neighbourhood as land acquired. Same potentiality as regards development (flats). Not encumbered with squatters. Not open market sale. Director/Manager to his own company. Two directors/managers are brothers. All in there are three directors.	It is below road level. The site was being cleared and the erection of a 15-storey building which comprises good-class flats is commencing.
F	16.7.62	13,800 sq.ft. for 1/10th share.	Pahang Road sec. 85A Pt. 15 (New Lot 30)	\$7.00	Dissimilar use - petrol station.	It was purchased for the erection of a petrol filling station. The Caltex Oil Co. is a special purchaser because it is prepared to pay an abnormally high price in order to outbid the market and obtain the site. Therefore, this sale offers no evidence of market value for present comparison purposes.

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Written Submission on behalf of the Respondent in Appeal by Alagappa Chettiar with Appendices A and B

Appendix B
(continued)

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Written Sub-
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behalf of the
Respondent in
Appeal by
Alagappa
Chettiar with
Appendices
A and B

Appendix B
(continued)

G	26.3.63	14,462 sq.ft.	Pahang Rd./Nge Ngee Road. Sec. 86A Lot 14.	₹ 2.49	Dissimilar use. Bunge- low lot. If it cannot be used for flats it is not comparable.	It is vacant.
H	25.4.62	12,153 sq.ft.	Pahang Rd./Nge Ngee Road. Sec. 86A Lot 18.	₹ 3.95	With pre-war house. Not applicable unless flats are permitted. Dissimilar use. Bungalow lot.	It was purchased with a pre- war house.
I	25.4.62	12,153 sq.ft.	Pahang Rd./Nge Ngee Road. Sec. 86A. Lot.18.	₹ 6.23	Dissimilar use - petrol station.	It was purchased by the Shell Co. for the erection of a petrol station. This company is a special purchaser because it is prepared to pay an abnor- mally high price in order to outbid the market and obtain the site. Therefore, this sale offers no evidence of market value for present comparison purposes.
J	19.10.64	87,120 sq.ft. (2 acres)	Pahang Road State Land.	₹ 3.50	Not open market sale. Mentioned it to show a new T.B. hospital coming up. Special relationship of vendor (State Govt.) and purchaser (Federal Govt.).	V/Val/703. Alienation of State land to the Ministry of Health for the future extension of the T.B. Hospital and Clinic. Situated on the east side of the T.B. Hospital covered with 14 squatters. Apart from the erection of the Clinic exten- sion the site can be used for the erection of multi-storey flats.

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WRITTEN SUBMISSION ON BEHALF OF THE
RESPONDENT IN APPEAL BY ONG THYE ENG

IN THE FEDERAL COURT OF MALAYSIA

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO.X.32 OF 1967

No. 41

Written sub-
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behalf of
Respondents -
Appeal by Ong
Thye Eng

10

B E T W E E N :

Ong Thye Eng as Trustee Appellant

AND

Collector of Land Revenue,
Kuala Lumpur Respondent

(In the Matter of Civil Application No.9
of 1965 in the High Court in Malaya at
Kuala Lumpur)

20

In the matter of Land Acquisition Act, 1960
(Section 38(5))

- and -

In the matter of the Acquisition of
Lots 1922 and 1928, Section 85A,
Lots 1924 and 1930, Section 79 and
Lots 17, 18 and 19, Section 47,
Town of Kuala Lumpur

30

B E T W E E N :

Ong Thye Eng as Trustee Applicant

And

Collector of Land Revenue,
Kuala Lumpur Respondent

FEDERAL COURT CIVIL APPEAL NO.X.33 of 1967

B E T W E E N :

Synn Lee & Co. Ltd. Appellant

AND

Collector of Land Revenue,
Kuala Lumpur Respondent

In the Federal
Court of
Malaysia

(In the Matter of Civil Application No.10
of 1965 in the High Court in Malaya at
Kuala Lumpur

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No. 41

In the Matter of Land Acquisition Act,
1960 (Section 38 (5))

- and -

Written sub-
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behalf of
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Appeal by Ong
Thye Eng
(Continued)

In the matter of the Acquisition of
Lots 1922 and 1928, Section 85A,
Lots 1924 and 1930, Section 79 and
Town of Kuala Lumpur.

10

B E T W E E N :

Synn Lee & Co. Ltd. Applicant

- and -

Collector of Land Revenue,
Kuala Lumpur Respondent

FEDERAL COURT CIVIL APPEAL NO.X.34 OF 1967

B E T W E E N :

Ng Chong Geng & Sons Ltd. Appellant

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AND

Collector of Land Revenue,
Kuala Lumpur Respondent

(In the matter of Civil Application No.11
of 1965 in the High Court in Malaya at
Kuala Lumpur

In the matter of Land Acquisition Act,
1960 (Section 38(5))

AND

In the matter of the Acquisition of
Lots 1922 and 1928, Section 85A,
Lots 1924 and 1930, Section 79 and
Lots 17, 18 and 19, Section 47,
Town of Kuala Lumpur

30

B E T W E E N :

Ng Chong Geng & Sons Ltd.

Applicant

In the Federal
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AND

Collector of Land Revenue,
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(Continued)

10

Written submission on behalf of the Respondent,
the Collector of Land Revenue, Kuala Lumpur

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As learned Counsel for the Respondent in this
Appeal (No.X 32 of 1967) has adopted the written
submission of Mr. Peddie, Counsel for Alagappa
Chettier in Civil Appeal No.X 24 of 1967, I submit
that it is not necessary for me to make submission
on the 17 grounds of Appeal taken by Ong Thye Eng
as trustee of the Appellant.

My submission on the general comments made by
Counsel for the Appellant is as follows :-

Page 2 last paragraph.

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To ascertain what the market value of the
lands acquired as on 4th June, 1964 the
recognized methods of valuation for the purpose
of determining the amount of compensation are
contained in the case of MUNJI KHETSEY I.L.R.
15 Bom. 279, which have been quoted with approval
in 1914 in the case of AMRITA LAL BASACK v.
SECRETARY OF STATE FOR INDIA 22 I.G. 78.

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Thus, whilst methods (a) and (b) do
represent the correct legal principles, it is
submitted that methods (c) and (d) have no
judicial backing and should not be adopted in
preference to the recognized methods enunciated
in the cases cited above. It is further sub-
mitted that in cases where there is evidence of
the previous sale of the land itself or part of
it, then no checks and counter checks are
legally necessary, because if the previous sale
is sufficiently recent, as in the present case
under appeal, the price paid will be the prima
facie market value of the land as on the

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material date of valuation. The owner can of course claim more than the prima facie market value by proving that he bought the property at less than its market value or that there has been a general rise in the value of the property between the date of purchase and the date of declaration. (See Aggarawala 3rd Ed.pg.197 last paragraph). In this case the Appellant had chosen to establish that the previous sale was a forced sale as showing that the property had been purchased in November 1963 at less than its market value. On the evidence, the learned trial Judge found that the Appellant had failed to negative the prima facie market value. The learned trial Judge had given cogent reasons for coming to this conclusion. (See Judgment from pg.107 paragraph F to page 112 paragraph A).

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Page 4.

As regards factors prevailing in 1963 and 1964 :-

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(1) The Appellant's Valuer (PW 4) persisted in contending that the general rise in the price between November 1963 and June 1964 was more than 40%. He did not even agree that the appreciation in land values during that period was between 20% and 40% (see pg. 58 paragraph C of Record). But this contention was clearly not supported by the 19 sales which he himself had quoted as a basis of his valuation. In sales 5 and 6 there was in fact a depreciation, and so were sales 15 and 16. The Government Valuer (DW 3) was therefore correct in his opinion that both the stringent Federal Budget in November 1964 and the Indonesian Confrontation which started in September 1963 did have some adverse effect on land values generally.

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On the contrary, the Appellant's Valuer (PW 4) claimed that Indonesian Confrontation caused a sharp rise in properties capable of quick development as a result of Singapore developers rushing up to Kuala Lumpur. It is submitted that this opinion has no basis at all, and

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as pointed out by Broadway J in SECRETARY OF STATE v. SARLA DEVI CHAUDRANI, AIR (1924) Lah 548 @ 550, "Where experts give no real data in support of their opinion, the evidence is admissible but may be excluded from consideration as affording no assistance in arriving at the correct value".

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Written submission on behalf of Respondents - Appeal by Ong Thye Eng
(Continued)

10 (2) Although a plan for the development of the land acquired had in fact been approved in 1957 (Ex. P2) at a density of about 9 units per acre. (See page 60 paragraph D of Record), Mr. Williams had decided to adopt as an alternative a hypothetical method of valuation based on data obtained from developments along Ipoh Road, Treacher Road and Imbi Road. (See his Report at pg.154 paragraph B to page 156 paragraph A).

20 Mr. William used average figures obtained from these three localities which apart from anything else were not areas in the neighbourhood of the land acquired. As the data used by him as regards standard lot area, density per acre and the selling price per unit were based on comparatively small development projects, it is submitted that his conclusion on the market value of ~~£~~11.15¢ per sq.ft. cannot be relied upon. The value of ~~£~~9,000/- per unit taken by Mr. William was clearly wrong.

30 Even the small development at Sentul which was nearer to the land acquired was sold only at ~~£~~2,000/- per unit (See page 151 paragraph F of his Report). It is submitted that small developments cannot be made the basis of valuation for a big project as in the present case where the land acquired was 22.763 acres.

40 As regards the density of 54 units per acre used by Mr. William, it should also be noted that according to the Town Planner (DW 2) at pg. 70 paragraph A), such a project would be all right if there was provision for a ten-acre school.

It should also be noted that on the material date of valuation (4th June 1964) the Municipal Notification dated 25th February 1964 was already in force. Therefore,

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any amendment to the approved plan (Ex. P2) or any new plan such as Ex. P3 and P4 submitted for planning permission must conform with that notification. Thus according to the evidence of the Town Planner (DW 2) the new plan (Ex P4) had not in fact been submitted for approval by the Appellant at any time, and if it had been submitted, he would not have recommended it. (See page 63 paragraphs D and E). 10

With regard to the Town Planner's evidence that it would be possible to obtain approval for approximately 40 flats to the acre (see page 68 paragraph E), it must be read in the light of his evidence at pg. 73 paragraph B, where he said that he would not recommend the building of terrace houses on the land acquired, but he would recommend the building of flats. There is therefore a distinction between flats and terrace houses. It is submitted that from the evidence of the Town Planner "flats" mean tower block flats, and as shown in DW 2's evidence at page 73 paragraph C, in June 1964 the demand for tower block flats was on the decline. This is confirmed by the Appellant's Valuer (PW 4) at page 54 paragraph E. From his evidence at page 54 paragraph E, it also seems obvious that the Appellant's Valuer was not aware of the difference between flats and terrace houses. This is another reason why his alternative method of valuation cannot be relied upon. By taking sales 15 and 16 at Imbi Road as the basis of his calculation, he was clearly under the mistaken belief that the development there was for flats when in fact they were sub-divided for terrace houses. (See DW 2's evidence pg. 72 paragraph C and pg. 73 paragraph B). Under the circumstances PW 4's opinion on the hypothetical building plots in his report at page 155 paragraphs D and E was correctly rejected by the learned trial Judge as it was based on wrong data and wrong principles. 20 30 40

The present user of the land at 135 50

shop and flats per acre should not be taken into account. Government is a privileged developer. The low cost housing scheme is heavily subsidised by the Government. No private developer will undertake such a scheme. In any case, it is submitted that such factor should be excluded from consideration under paragraph 3 (e) of the First Schedule to the Land Acquisition Act 1960.

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10 (3) In view of the irregular shape of the land, it would not be advantageous to sell the land title by title. If this mode of disposal was adopted then the land with the best quality would be disposed first leaving the remaining lands with poor quality difficult to sell. In any event for the purpose of valuation in this case, it was agreed by both parties that it was not
20 necessary to value the land held under each title separately (see pg. 30 paragraph G of Record).

Page 6. The Collector's Award.

It should be observed that although the Appellant was served with Form 'F' under section 11 of the Act, to furnish a written statement declaring separate valuations of the land and showing the basis upon which such valuation was made, the Appellant had failed to comply with the
30 request. (See page 11 of Record).

At the Enquiry before the Collector the Appellant claimed \$30/- per sq. ft. and this claim was based on two sales.

- (i) Lots 74 to 86 section 48 sold on 8.1.64 at \$21/- per sq.ft. (i.e. sale No. 3)
- (ii) sale of State Land in section 48 to the Malayan Indian Congress at \$15/- per sq.ft. (sale No. 4)

(See pg. 25 of Record).

40 Both sales are not comparable (see PW 4's evidence at pg. 56 paragraph C).

It is obvious from the Collector's ground of

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award that he took the previous sale of \$2.20
cts per sq.ft. of a portion of the land
itself as the basis of his valuation. (See
page 9 of Record). As the Appellant had
failed to produce before the Collector a proper
basis of his valuation of the land, it is
submitted that the Collector did not err, having
regard to the evidence adduced by the Appellant,
to adopt the above-mentioned method of valuation.

Page 8 - Valuation of Mr. Lim Mau Chin (DW 3)

It is also submitted that by taking the
previous sale in November 1963 as the keystone
of his valuation, the Respondent's Valuer was in
fact following the principle of valuation as
enunciated in the case of *MUNJI KHETSEY*
I.L.R. 15 Bom 282.

Unlike the Respondent's Valuer, DW 3 was
more realistic and fair in his approach. He
only quoted sales in the neighbourhood
irrespective of whether they were low or high
sales. On the contrary, the Appellant's
Valuer appeared to have selected only high
sales in Kuala Lumpur regardless of whether they
were situated in a different neighbourhood from
the land acquired; and it was only under cross-
examination that he finally realised that his
evidence of sales was practically worthless
(see pg. 55 paragraph D, and pg. 56 paragraph C).

As regards his evidence discarding the sale
of Lot 2285 (sale No. 7) and sale of Lot No. 1
(sale No. 8), I adopt the same submissions as
contained in GROUND 8 and GROUND 9 respectively
in Appeal No. X 24 of 1967.

The Government Valuer had quoted all the
sales available in the neighbourhood of the land
acquired. The lack of sales showed, if anything,
the lack of demand for development in that area.

Page 12 - The learned trial Judge's assessment.

The rejection by the learned trial Judge of
sales of Lot 2285 and Lot 1 have been dealt with
in GROUNDS 8 and 9 in Appeal No. X 24 of 1967.

It is an accepted principle that market

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value cannot be calculated with mathematical precision, and the learned trial Judge could not be said to have erred in law as long as he took into consideration allowances or factors that should be taken in the circumstances of this case. The fact that the learned trial Judge said at pg. 116 paragraph F that "the value of ~~83~~/- per sq.ft. reflects not only the general increase in the price of land annually but also a reasonable allowance for the fact that previous sale was of an undivided half-share" clearly indicates that he had applied his mind to all the allowance and factors that should be made in arriving at his valuation. It is submitted that as there was evidence from the 19 sales quoted by the Appellant's Valuer of a general increase in land prices between 1963 and 1964 at a rate of between 20% to 40% (although in two instances there was in fact a depreciation), it was not necessary for the learned trial Judge to state what in fact was the extent of the increase from November 1963 to June 1964. As regards period 1962 - 1963, it is even more unnecessary for the learned trial judge to state the extent of the increase, as there was evidence of the previous sale of the land acquired itself in November 1963.

It is submitted that the sales along Ipoh Road quoted by Mr. William are in respect of small lots. (See Judgment at pg. 110 paragraph D) Further these sales were in respect of lands adjoining to densely developed areas of Ipoh Road. (See BERTAN CASE (1965) M.L.J. 171 @ 173 2nd column). The mere fact that the lands acquired were closer to the centre of the town of Kuala Lumpur is not sufficient to show that their value should not be less than those sales along Ipoh Road; other factors such as size, locality, physical layout and quality must also be taken into consideration. Further, the Ipoh Road sales were already sub-divided lots when sold. (See Ex. P10, item 10(b) (c) and (d) - Pg. 142 of Record).

As regards Lots 29 and 56, the Respondent's Valuer (DW 3) did in fact take them into consideration not only in his Report (see page 171 paragraphs D and E) and in his evidence

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(page 75 paragraph B). It is true that he did not rely on them as his main yard-stick, but he did rely on them as a cross-check on sales of other lands in the vicinity. His evidence at page 88 paragraph C regarding Lot 14 is qualified by his earlier evidence at page 86 paragraph F where it was indicated that Lot 14 would only be comparable if planning permission could be obtained. At page 87 paragraph A, he also stated that Lot 14 was not comparable.

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It is respectfully submitted that there was no distinction in substance between the basis of the award of the learned trial Judge and that of the Collector and the Respondent's Valuer - their main yard-stick in each case being the previous sale of part of the land acquired which took place only 7 months prior to the date of valuation. The only difference (if at all it can be described as a difference) is that the learned trial Judge made a cross-check of the land value of \$2.20 cts per sq.ft. with the sale of Lot 29.

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Page 15 - Valuation of Mr. William (PW 4)

As has been submitted earlier, the Government Valuer's approach to the valuation of the land acquired was more fair and realistic than that of Mr. William (PW 4). Reading his report and evidence in chief, one gets the impression that either by mistake or design, he had chosen only high sales as the basis of his valuation irrespective of whether the lands were situated in a different sector of the Federal Capital or not. He did not seem to care whether the lands were similar to the land acquired. It was only in cross-examination that PW 4 was finally forced to admit that out of his 19 sales only sales 1, 7 and 8 were in the same locality. The rest of the sales were in different localities and he also agreed that land values in different parts of any town will differ. (See pg. 55 paragraph D). Out of these three sales in the neighbourhood, he was also forced to agree at page 56 paragraph B, that sale No. 1 should be ignored. With that he was therefore left with sales 7 and 8 (i.e. Lot 2285 and Lot 1 respectively). As regards sale 7, PW 4 also admitted under

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cross-examination that he did not realize it was a sale by a director to his Company. It is therefore obvious that he never checked this sale before relying on it, and it will not be unfair to assume that he had chosen this sale merely because of the high price. Similarly, with sale No. 8, he admitted at page 87 paragraph B that this was an unregistered sale, and as he agreed that the sale had not been completed even at the date of trial, such sale would not therefore be reliable. Thus, in the final analysis Mr. William was finally left with no reliable sale at all on which to base his opinion on the value of the land acquired, and on the authority of SECRETARY OF STATE v. SARLA DEVI CHAUDRANI, AIR (1924) Lah 548 @ 550, the learned trial Judge was correct in excluding from consideration PW 4's opinion as affording no assistance in arriving at the correct value.

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Although it is a well established principle that the best guide for valuing land is the recent sale of the land itself or part of it, Mr. William had ignored completely the November 1963 sale, presumably because it showed a price of \$2.20 cts per sq.ft. which was consistent with sales of adjoining lands (Lot 29 and Lot 56), both of which sales he had also omitted to include in his list of sales.

As Mr. William's alternative method of valuation on the notional development scheme at page 154 to 155, was also based on Sales No. 12(b)(c)(d) (Ipoh Road); sale No.19 (Traicher Road) and sales Nos. 15 and 16 (Imbi Road), and as those sales on Mr. William's own admission, were not comparable in view of their situation and locality, it is submitted that his opinion in arriving at the value of \$11.15 cts per sq.ft. must also be excluded from consideration. His opinion was based on sales which were not comparable and therefore its value was nil. Further, the effect of Mr. William's notional development scheme would be to flood the market with flats. In view of the admitted fact that the demand for flats in 1964 was poor, it is submitted that this method of valuation should not be adopted in the absence of evidence of demand for flats, in preference to the best method of valuation viz. on the basis of the

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previous sale of the land itself.

Pages 18 and 19 - Assessment of the two Assessors.

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(Please see GROUND 18 in written submission in respect of Appeal No. X 24 of 1967).

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CONCLUSION.

As stated by Maclean C.J. in AMRITA LAL BASACK v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL 22 I.C. 78 @ page 80, "..... whilst the claimants are entitled to the full and fair market value of their property, by reason of the fact that they are compelled to sell, it must equally be remembered that the Government are the guardians of the public purse and are bound to see that in purchasing property under these conditions, they do not give more than the true market value of the property they are purchasing".

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This is not a case where the Government was trying to get valuable land at a cheap price. The award was based on the best method of valuation and it was in accordance with well established principle. The award of nearly three million dollars was not low by any standard. In this case, once the Appellant had failed to prove that the previous sale was a forced sale, it is submitted that the price paid was the best guide in determining the market value of the lands seven months afterwards.

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It is respectfully submitted that this Appeal has no merit and should be dismissed with costs.

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Sgd: (Mohd. Azmi bin Dato
Hj.Kamaruddin)

COUNSEL FOR THE RESPONDENT.

No. 42

REPLY TO RESPONDENT'S SUBMISSION
IN APPEAL BY ALAGAPPA CHETTIAR

CIVIL APPEAL NO: X.24 OF 1967
Reply to Respondent's Submission

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No. 42

Reply to
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10 The points made by the respondent's
submission to which it is deemed necessary to
reply are as follows :-

Page 5 paragraphs A-D.

20 The wording of the submission for the
respondent makes it clear that the respondent
concedes that the passage in the judgment
against which the appeal has been brought does
apparently contain the restriction referred to in
the appellant's submission. As can be seen from
the grounds of appeal, this ground is qualified
by the words "if he did so hold". These words
are used because, although as is said for the
respondent the learned trial Judge did not
restrict himself in his examination of the case
for the appellant, he does not anywhere show that
he directed himself in law that it was open to
the appellant to challenge the evidence of the
previous sale on grounds other than those of
general increases in value. The only ground he
30 specifically found to be open to the appellant
was that of general increases and it is because
of his failure to note any other grounds that the
point is taken that the restriction, if he
imposed it, was wrong in law as an attack may be
made on other grounds.

Page 5 paragraph E.

40 There is a misconstruction of the appellant's
submission at page 5. It is not the case for the
appellant that no authority exists to support the
proposition advanced by the respondent but that
no authority is cited in the text books to
support the other grounds which the appellant
urged may be advanced to challenge evidence
afforded by a previous sale i.e. that the sale must
be a genuine one; that the fact an owner was able
to acquire at a cheap price does not justify a low
award by the Collector and that a claimant may

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prove by evidence of other sales that the land is worth more than was paid by him.

The proposition stated by the respondent is not, of course, denied by the appellant nor is it suggested by the appellant that the three cases cited at page 6 of the respondent's submission were wrongly decided. What the appellant contends is that the proposition is a generalisation admitting of exceptions and requiring as its starting point that there should be nothing inherent in the facts of the prior sale to render it an unreliable guide to value and further requiring that nothing should have occurred subsequently to render it an unreliable guide. In the three cases relied on by the respondent, the facts show that the generality was applicable and nothing is disclosed to indicate the prior sale might be an unsound guide to value. The case for the appellant is that the facts of the case before this Court show that the general rule is inapplicable and that this case forms one of the exceptions. The reasons for it forming an exception are that there are inherent in the prior sale features rendering it an unreliable guide to value, these features being that there was present a sufficient element of compulsion operating upon the vendor to prevent it being held it was a free voluntary sale (the type of sale which an enquiry into market value must look for); that the prior sale was not a sale of the land or even of a part of the land but of an undivided interest in the land (the vital distinction between sales of parts and sales of undivided interests will be enlarged upon later in this reply) and that the evidence to be obtained from comparison with other selling prices showed this price to be out of line and therefore unreliable and there is the further reason that a general increase in land prices took place after the prior sale. If the Court finds that none of the grounds put forward by the appellant for saying the prior sale is not a reliable guide to market value are sound, then the general rule stated by the respondent will apply but, as soon as the Court finds any one or more of the appellant's grounds sound, then the general rule no longer applies and the prior sale

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ceases to be of value for determining market value on the date of acquisition.

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Page 6 paragraph F.

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10 The principle stated assumes there are not inherent in the facts of the prior sale grounds to show it could not be a reliable guide and that nothing has occurred subsequently to render it an unreliable guide. This is begging the question. The facts of the prior sale must first be investigated and only when they have been found to be beyond legitimate criticism can the principle enunciated by the respondent take effect. The respondent accepts this to be so as can be seen from page 7 paragraph A of his submission where he reduces the value of the sale to that of affording prima facie evidence only, capable of being rebutted by evidence of facts or legal propositions establishing it to be an unsound guide.

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Page 8.

30 The respondent here seeks to rely on findings of fact made by the learned trial Judge in relation to the prior sale. The appellant's submission shows that the learned trial Judge went completely wrong in his approach to the facts and misdirected himself in law in relation to the facts. In those circumstances his findings are of no value since they were based upon unsound reasoning and erroneous legal principles.

Page 9.

40 Paragraphs B and C show acceptance by the respondent that the evidence established as an inescapable fact that a general increase in land prices had taken place between the date of the prior sale and the date of acquisition. The acceptance of the fact of the price increase inevitably involves acceptance of the fact that the prior sale afforded no guide to market value as it is conceded for the respondent that one of the grounds on which an owner can attack a prior sale is that there has been general increase in value (see the respondent's submission page 7 paragraph D). The respondent appears to have overlooked that acceptance of price increase

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inevitably destroys the value of the prior sale as evidence and that its acceptance of price increase inevitably involves it in conceding that the appellant was correct in one of his grounds for maintaining the prior sale could not be relied upon. Once this position is reached, the whole of the respondent's case disappears as it is noticeable that its submission reverts over and over again to that prior sale and that it can offer nothing except it for the purpose of arriving at market value.

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As regards paragraph F of the submission, it is pointed out that the evidence at page 154 paragraphs F and G does not support the respondent's contention that its valuer took price increase into account. The evidence in question indicates the contrary as it comprises a statement that the previous sale of the land itself afforded a better guide than sales of other lands however similar followed by a reference to the interval of seven months between the sale and the acquisition and then the opinion it was "highly unlikely" the value of the land had rocketed up in this period. The words "highly unlikely" show no enquiry was made into what increase if any had in fact occurred and show the witness was not prepared to state as a fact that the increase claimed by the owners had not in fact occurred. He should have been able to state that fact if he had considered the matter as he was subsequently led to contend. The appellant maintains that, far from contradicting the appellant's contention that the valuer's evidence was an afterthought, the passage referred to conclusively establishes that his evidence that he had considered general price increase was an afterthought forced upon him because of the evidence given by the appellant's valuer. The respondent has to resort to implication (page 10 paragraph A of the submission) to supply the gap but there cannot be room for implication when a report has been made by the valuer giving in detail the grounds on which the valuation is based. Such an obvious factor as price increase is one any valuer must take into account and no valuer who has taken it into account is going to omit it from his report and hope to rely on implication.

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Reference by way of contrast may be made to the appellant's valuer's report (record page 129 paragraph G, page 132 paragraph F, page 133 paragraph D, page 134 paragraph C, page 135 paragraph A) showing that he appreciated the importance of this factor and put it in his report.

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Page 10 paragraph C to page 11 paragraph B.

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10 Since the function of a valuer is to produce unbiased facts to assist the Court in arriving at a fair valuation, it is extraordinary that the respondent should advance the proposition as to onus of proof. The respondent appears to suggest that it is legitimate for a valuer acting for the Government to suppress essential features bearing upon market value. If this is the practice in the
20 Government valuation department, it is to be hoped immediate steps will be taken to bring it to an end and to ensure that fair valuations are made without suppression of material facts. The mere suppression, when discovered, must throw doubt on the bona fide of the whole valuation.

30 It may be noted that the respondent concedes it has produced no evidence relating to price increase and has to rely on the appellant's evidence. In this situation it is not open to the respondent to take those parts of the appellant's evidence which suit it and to discard those parts which do not. If the respondent has to rely on the appellant's evidence on this point, it must accept the whole and the whole is to the effect that prices doubled from mid 1963 to mid 1964 (see Record page 54 paragraph E). The respondent seeks to approbate and reprobate
40 on the evidence on price increase and this it cannot be permitted to do in the absence of any evidence of its own. The appellant's valuer made it clear that his evidence was founded upon sales of the same or contiguous lands (Record page 54 paragraph G) and it is, of course, the respondent's whole case that prior sales of the same land afford infinitely the best guide to value. In this instance the sales within the appellant's valuer's sale 12 were perfect illustrations of the general rule and did show

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prices had doubled.

Page 12 paragraph E.

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The respondent has clearly not examined the cases it relies on. Had it done so, it would have found the Secretary of State case to be against it, not for it. It is one of the cases relied on by the appellant in support of his proposition (see appellant's submission page 10) and the facts speak for themselves. The respondent has made no attempt to distinguish the two Privy Council cases relied on by the appellant (appellant's submission page 11) dealing with "neighbouring" and approving a widening of the scope of enquiry beyond contiguous lands. Even the dictionary definition of "neighbouring" only refers to nearness and not to contiguousness. The Privy Council judgment in the New Plymouth case has to be preferred to the judgment in the Alliance Economic case relied on by the respondent at page 14 of its submission.

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Page 16.

The passage in the respondent's valuer's evidence which is relied on occurred in examination in chief and before cross-examination. The respondent's valuer said a great deal in examination in chief which did not stand up to cross-examination and this statement also did not stand up. He conceded the appellant's valuer's sales 14, 15 and 16 to have the same potentiality and the respondent is driven in consequence to rely on differences in neighbourhood to try and circumvent the results flowing from its valuer's concession.

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Page 17 paragraphs E and F.

The Immigration laws limit visit passes to a period of one year. It was known Deivarayan had been in Malaya for more than one year. It was an inevitable consequence that he had had to obtain extensions of his visit pass already.

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It is not correct to describe PW1 and PW3's evidence as hearsay. Evidence given by a witness as to information given to him by another

person is direct evidence of what the other person said although not direct evidence of the truth of the other person's statement. It is not a matter of hearsay rendering evidence inadmissible but of weight of admissible evidence. PW1 who was associated with Deivarayan in common ownership of land had every reason to keep himself informed of Deivarayan's affairs and was entitled to put forward information given to him by Deivarayan as to the latter's immigration problems. What PW1 is entitled to say is "It is a fact that Deivarayan said to me he had immigration problems". The weight to be given to this evidence is now a matter for the Court which has to look for supporting features and in this case the supporting features were inescapably to be found from the immigration laws and from the undisputed fact that Deivarayan did leave Malaya and had never returned. In this connection the argument advanced by the respondent at page 18 paragraph D is a non sequitur. If a person is permitted into the country for a limited period of time it must be obvious that every extension of time reduces the prospects of obtaining a further extension and does not increase the prospects as suggested by the respondent. The longer the previous stay and the greater number of the previous extensions the closer the date of inevitable departure.

Page 20 paragraph C.

The suggested contradiction does not in fact exist. The respondent overlooks the elementary fact that Deivarayan was a visitor to Malaya and therefore unlikely to be knowledgeable on Malayan values while he was a resident of India and therefore had every reason to have personal acquaintance with its Income Tax laws.

Page 20 paragraphs F and G.

Again the suggested contradiction does not exist. Deivarayan wishes to stay in Malaya. He is refused a further stay. Now he is in a hurry to go back to avoid the consequences of the Indian taxation laws. His hurry results from inability to stay further.

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Page 21.

The argument appears to be advanced that, whenever a purchaser is a complete outsider, the purchase price inevitably represents the true market value. This argument is so full of fallacies that it is startling to find it put forward. Complete outsiders can and do get bargains and the evidence of PW5 was to the effect that he got a bargain.

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Page 22 paragraphs D-F.

The citation from Aggarawala is accepted as correct but in this instance the evidence of the oral offer was corroborated and in consequence substantiated by the evidence relating to the actual selling prices of other lands and did not stand alone. The passage cited clearly deals with the situation where such evidence stands alone.

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Page 23 Paragraph B.

The respondent suggests that the fact it only took two months to round up other purchasers supports a contention that the selling price reflected the true market value. In fact, of course, this piece of evidence supports a contention that the selling price was a bargain. It is always easier to find buyers of a bargain than to find buyers for market value.

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Page 23 paragraph C.

A non sequitur is involved. PW5 was arranging joint investment and not selling undivided interests. There is certainly no difficulty in disposing of an undivided interest if the price is a bargain and PW5 said it was.

Page 23 paragraph D.

No authority was cited by the learned trial Judge for the proposition and none is cited by the respondent. As will be seen later the respondent does not know the difference between a part of land and an undivided interest in land and it seems this

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lack of knowledge contribute to the proposition put forward.

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Page 25 paragraph E.

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10 The evidence given by the appellant's valuer shows he did not ignore the prior sale of the land. He knew of it and investigated it and then, when his investigations showed it to be an unreliable guide he ignored it. (See Record page 130 paragraphs D-G, page 42 paragraph D page 50 paragraphs B and C). He approached this prior sale in exactly the way a valuer should approach any sale namely analytically and critically and not in a spirit of blind acceptance which is the approach taken by the respondent which the respondent only too naturally would like to force on everybody else.

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Page 26 paragraphs C-F.

20 It is accepted that in acquisition cases, the initial onus of proof lies upon the claimant who has to establish that the Collector's award is wrong. In doing so, he must, of course, attack the foundations of the Collector's award and if, as in the present case, there is a prior sale effecting the land acquired and this is made a foundation of the Collector's award, he must inevitably attack that prior sale. If, however, he is prima facie successful in his attack and prima facie succeeds in rebutting the
30 prima facie case afforded by the award of the Collector and by the foundations of the Collector's award, the onus now reverts back and it is for the Collector to substantiate his award. This analysis makes it clear that what a claimant has to do is rebut the Collector's award and its foundations. If he is rebutting his evidence is called by way of rebuttal. If he is prima facie successful in his rebuttal then the
40 Collector is obliged to produce evidence in substantiation of his award and its foundations. Applying these principles to this case, assuming the prior sale offered prima facie evidence of market value, once the claimant prima facie rebutted that evidence it was for the Collector to produce evidence to show the sale was for market value i.e. to produce Deivarayan, particularly when it is borne in mind that the

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claimant had produced the other party to the sale who was entitled to give direct evidence i.e. the purchaser and that other party led evidence to say the sale was carried out below market value. Evidence as to contracts may be given by either of the parties to them. The appellant produced one of the parties to give direct evidence that the sale was carried out below market value and the onus was immediately placed upon the respondent to call Deivarayan to say it was not.

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It is clearly shown by the passages in the respondent's submission which are being considered that the respondent recognises that the nature of the evidence which would be led by the appellant would be by way of rebuttal. Once it is accepted that this is the nature of the evidence it is clear the appellant's contentions are well founded. It is again stressed that no authority exists to compel a party to call a witness whose evidence he intends to rebut. When it was known evidence by way of rebuttal would certainly be led it was clearly for the respondent to prove the transaction which was about to be rebutted. The respondent did not prove the transaction and the rebuttal evidence must then stand in the absence of proof of the transaction as genuine.

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Page 27 paragraphs A and B.

In view of what has been said as to the nature of the evidence led for the appellant which shows the onus of proving the transaction to have lain on the respondent, if the presumption is to be applied it must properly be applied against the respondent.

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Page 27 paragraph D.

The facts of the case are not given to us nor is it shown whether any investigations into the sale were carried out. If there was evidence to show some doubt as to whether the sale was genuine then the judgment of Dato Abdul Aziz J. is unexceptionable. If, however, as in the present case there was no evidence to cast doubt on the bona fides of the sale then the judgment involving as it does criticism of a director's conduct and

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reflections on his honesty without his being able to defend himself cannot possibly be sound. To impugn such a sale something more is required than the mere fact it is a sale by a director to his company or the judgment results in a finding that all directors are dishonest in their dealings with their company.

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Page 29 paragraphs B and C.

10 The appellant's submission shows sale agreements to be valid evidence of sales and in this case there was a sale agreement. In a country using a Torrens system of conveyancing sale agreements are inevitable if only a part of the land is being sold and in any country they are inevitable if time is being given for completion. They are not unregistered sales but are agreements for sale and good evidence.
20 The appellant's valuer did not say the evidence offered by this sale was unreliable.

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Page 29 paragraph D.

30 The respondent's reasoning is unsound. If two sales are found and each of them standing in isolation affords uncertain evidence of value, nothing prevents them being compared with each other for the purpose of showing both are in fact good evidence of value. If the values of the two do not correspond then both must be rejected but if, as in this case, the values of the two correspond, then each supports the other and both become good evidence. This would be so even if there were doubts as to each when viewed in isolation and in this case it is submitted there were no good grounds to doubt either when viewed in isolation.

Page 29 paragraphs E and F.

40 It is shown in the appellant's submission that the Maori Trustee case supports the approach taken by the appellant's valuer and that the evidence of DW2 (the Town Planner) shows there would have been no obstacle to obtaining planning approval for the type of development the appellant's valuer contemplated. It is also pointed out that the principle of neighbourhood does not apply to this method of valuation even

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if it applies to the comparative sales method as the respondent contends. The hypothetical development and the comparative sales methods are two entirely different methods of valuation and the neighbourhood concept urged by the respondent is only applicable to the latter method.

Page 30 paragraph F.

Examination of the record shows that DW2 did not say flats meant point blocks or tower blocks at any point in his evidence and in fact spoke of 4 storey flats at page 66 paragraph G and page 68 paragraph G. Four storey flats are not point or tower blocks. What DW2 was trying to do was distinguish in a manner unintelligible to all but himself between 4 storey terrace houses and 4 storey flats. He said he would recommend use of the land for flats (page 68 paragraph F). In fact, as conceded by DW2 at page 65 paragraphs B-D and page 67 paragraph B the exhibit P3 together with the first four letters in P1 and exhibit P2 showed that planning approval had already been given for the erection of terrace houses as well so that his attempt at distinguishing terrace houses and flats became a waste of time and he was reduced to saying that the approval which his Department had already given was illegal.

It is also pointed out that examination of the record shows that DW2 nowhere said that from 1964 onwards the demand for housing units was on the decline although the respondent contends he said this. He said the demand for tower blocks was on the decline but tower blocks are not and never have been representative of all housing units. The evidence showed that in Circular Road/Pahang Road, Ipoh Road and Imbi Road housing units continued to be put up through and after 1964. The non-development of Lot 2285 and Lot 1 resulted from those being intended for tower blocks and it was never disputed that the demand for these declined.

Page 31 paragraph C.

If the parts of the judgment referred to by

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the respondent reflect all that the respondent has been able to find to show the learned trial Judge considered the potential of the land, it is contended that the appellant's submission that he gave no adequate consideration at all to this aspect is amply borne out. The short passage referred to in what was a lengthy judgment shows no proper consideration of the aspect of potential but a trite dismissal of this aspect on the basis of valuation on the basis of possibilities and not realised possibilities. The Maori Trustee case shows much more is involved.

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Page 31 paragraph D.

The grounds advanced for distinguishing the Maori Trustee case postulate blind acceptance of the evidence as to value afforded by the previous sale. If the previous sale goes, the purported grounds of distinction go and the respondent is left with no escape from the Maori Trustee case.

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Page 31 paragraph F - page 32 paragraph E.

It is noted no grounds are advanced for distinguishing the Duke of Buccleuch case if the appellant was entitled to ask for valuation on the basis of notional sales of the seven titles on the date of acquisition and that it is not contested that the appellant is entitled to be given the most advantageous terms. The latter proposition is borne out by Aggarawalla at page 181 and Sanjiva Row at pages 255 and 328. It is said this method was not asked for at the hearing but this is not correct. Reference is made to page 89 paragraph C of the Record showing this was asked for and the appellant is entitled to have the method whether or not any valuer put it forward. The statement made at page 28 paragraph C relied on by the respondent is to the effect it is accepted the same value should be given to all the land and that there is no need to enquire into differences arising from topography, lack of access or road frontage etc. The appellant still adheres to this but also contends he is entitled to have a valuation made on the basis of notional sales of seven separate titles if basis should prove to be the most

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advantageous to him.

Pages 33, 34 and 35.

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In none of the three cases cited did the Court have to deal with sales of undivided shares in land and in none of them did the Court have to consider whether or not the prior sale was carried out at the genuine market price. All three cases merely state the proposition to be found in our own Malayan case of

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Er Boon Yan & ors v The Collector of Land Revenue, Port Dickson 1955 MLJ 133

and none of them are apposite to the facts of the present case. The third case the respondent relies on coupled with its submission at page 35 paragraph F shows the lack of appreciation of the difference between sales of parts and sales of undivided shares and it is this lack of appreciation which runs through the whole of the respondent's case and which has regrettably been transmitted to the learned trial Judge's judgment. If a person buys part of an area of land, he can then point to that part as being his own to the exclusion of all others. In Malaysia the Land Code does not permit registration of dealings in parts and such transactions are carried out by the parties entering into a sale and purchase agreement whereby the vendor undertakes to sub-divide so that a separate title to the part sold will be available and the purchaser registers a caveat to protect his exclusive right to the part he has purchased. If a person buys an undivided share in land, he buys that undivided share in every fractional square inch which goes to make up the whole land. He acquires no exclusive right to any part of the land but shares his rights with his co-owners in respect of all the land. He cannot (except by contract) exclude his co-owners from any part of the land.

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This fundamental distinction between sales of parts and sales of undivided shares is vital. A person buying a part is not affected by the considerations set out in the appellant's submission which weigh upon

the purchaser of an undivided share. If, as seems clear, the respondent has never appreciated this distinction, this offers a reason for the poor state in which the case for the respondent finds itself. It is impossible to approach this case properly if the distinction is not kept in mind and every authority cited by the respondent shows the distinction to have been hopelessly lost. Not one word is said in the respondent's case on this aspect which is in any way tenable. All the cases cited by the respondent refer to sales of the whole land or sales of part of the land and none deal with sales of undivided shares.

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Page 36 paragraph E to page 37.

The grounds advanced for distinguishing the case relied on by the appellant do not bear examination. The first seeks to show that the proposition that sales of undivided shares are unreliable guides applies only when those sales relate to the land acquired. The true point is that all comparative sales are admissible but must be examined. The Court was looking at a comparative sale for valuation purposes and rejected it on the basis that any such sale, whether of the land acquired or of another piece of land produced for comparison purposes, should be rejected as unreliable if it was a sale of an undivided share. It is a principle of valuation applicable whether the prior sale be of the land acquired or of other land.

The second and third grounds of distinction seek to put forward as a principle that, if the area of land is large and the undivided interest substantial, there is no effect on market value. This ignores the fundamental problems which underlie co-ownership whatever the size of the land or the extent of the undivided interest. It also necessarily involves a concept of percentage adjustment according to area of land and extent of undivided interest. Such a concept is unsupported by any authority except the judgment of the learned trial Judge and would lead to avenues of exploration which no Court could or should embark on. That such avenues should open up is sufficient in itself for any Court to reject evidence afforded by sales of

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undivided interests unless that evidence draws support from other valid sources. Such support was not present in the case the subject matter of this appeal. It may also be noted the respondent has nothing to offer to suggest what percentage of adjustment should be taken and the learned trial Judge likewise had nothing to offer but contented himself by saying the award of \$3.00 per square foot allowed for an adjustment. It is difficult to conceive of any more unsatisfactory position.

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Page 38 Paragraph C.

Another remarkable submission where the respondent asks that the opinion of its own valuer should not be accepted. This opinion was the lowest opinion on price increases as the appellant's valuer's opinion was that prices had more than doubled. It is correct that the Judge makes no finding on the percentage of the increase although accepting as a fact that an increase had taken place. If an enquiry into percentage of increase is proper then the percentage of the increase was not a matter within the Judge's knowledge or one of which he could take judicial notice but one to be decided on the evidence and the evidence established the lowest percentage increase in the opinion of valuers who had assessed the evidence (which would include evidence available to them but not necessarily the Judge) to be 40%. There is no room for a finding that the percentage was anything less than 40% and it may be noted the respondent, while asking that its own witness' evidence be rejected did not seek to advance its own figure.

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The reason for saying "if any enquiry into percentage increase is proper" in the previous paragraph is that it is submitted that the mere fact that the respondent puts in issue the percentage of the increase (at the expense of discarding its own witness) shows that this type of an investigation is not one on which the Court should embark. The evidence as to increase is led, not for the purpose of establishing percentages, but for the purpose of negating the evidential value which might be afforded by a prior sale. It is submitted that,

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once this purpose is achieved, the prior sale disappears as evidence of value and cannot be retained for the purpose of applying to it some percentage in order to arrive at market value on some later date. The percentage increase concept was introduced by the respondent and the appellant has made use of it only for the purpose of showing that if one takes the lowest percentage led in evidence, there is then no room for the award of \$3.00 per square foot reflecting not only that percentage increase but also a percentage allowance to cater for the fact the previous sale was of an undivided share. It is submitted that this Court should not embark upon the investigation into percentages which the respondent invites it to do but can confine itself to holding that the prior sale did not afford good evidence of market value because it was established that land prices in general had risen. It is then for the Court to look for other evidence of market value free from the millstone of the prior sale which hangs round the respondent's case. The invitation to investigate percentages is fatal to the respondent's case that the prior sale is evidence of market value on the date of acquisition.

Page 39 paragraphs B-D.

An extraordinary submission which once again shows the respondent's complete inability to understand the fundamental principles underlying co-ownership. To argue that the appellant is not entitled by reference to the appropriate law to show how unreliable a guide sales of undivided shares in land are is fantastic. The potential sources of difficulty are the whole basis of the contention that sales of undivided share must be unreliable and this contention has been made by the appellant throughout the proceedings. The Land Code Sections shows what the potential sources of difficulty are.

The logical conclusion arrived at by the respondent is not a logical conclusion at all because the law is against it. Reference is made to page 43 of the appellant's submission and to page 106 of the record where the learned trial Judge correctly states the law to be applied where undivided interests are acquired.

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On acquisition, all co-owners have to be assumed to have combined by common consent to sell all their undivided interests and it is not a matter of one undivided owner only selling while the other retains his interest which is the position in the case of ordinary sales of undivided shares in land.

Page 40 paragraph D.

As Lot 29 was sold in September 1962 (see Record page 161) and as it is accepted fact that prices were rising steeply, it is impossible to accept that this sale affords any evidence of market value on the date of acquisition even assuming it suffered from no other defects and the appellant's valuer has shown it to be open to the additional criticism that it did not reflect the market value even on the date on which it was made.

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Page 41 paragraph A.

The statement that the fact that sales are more recent in point of time does not make them more comparable runs contrary to all valuation principles. It is fundamental to valuation that sales made closest to the acquisition date afford the best evidence of value in the absence of other evidence.

Page 41 paragraph B.

Reference to column 6 of appendix B shows that DW3 thought the land comprised in Lot 21 was comparable and there is nothing in Column 7 to show he did not think so.

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It is clear from the submission for the respondent taken as a whole that the respondent stands or falls on the previous sale of an undivided share of the land itself as there is a constant reference back to this sale and the respondent has nothing constructive to offer beyond it. No authorities are cited or facts put forward to controvert the case for the appellant. If the respondent loses its previous sale, it loses the whole backbone and indeed the whole of its case and has nothing left to offer. It is submitted that the grounds put forward

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by the appellant for saying the previous sale is not a guide to market value are cumulatively and individually unanswerable and it is again stressed that the respondent has conceded one of those grounds and the learned trial Judge has accepted one of those grounds to have been proved namely the ground of general increases in value. This being the situation, the respondent has nothing left to offer by way of law or fact or valuation and has to accept the case for the appellant and concede to the assessment of compensation from the evidence brought by the appellant.

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Sgd. Illegible
 Counsel for the appellant
 A.K.A.CT.V. Alagappa Chettiar.

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NOTES OF ARGUMENT RECORDED BY ONG HOCK THYE,
JUDGE, FEDERAL COURT, MALAYSIA.

IN THE FEDERAL COURT OF MALAYSIA AT KUALA LUMPUR

No. 43

(APPELLATE JURISDICTION)

Notes of
Argument
Recorded by
Ong Hock Thye.
18th October
1967

FEDERAL COURT CIVIL APPEAL NO. X. 24/67

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A.K.A.C.T.V. Alagappa Chettiar Appellant

AND

Collector of Land Revenue,
Kuala Lumpur Respondent

(In the matter of Civil Application No. 6/65
in the High Court in Malaya at K.Lumpur.)

B E T W E E N :

A.K.A.C.T.V. Alagappa Chettiar Applicant

AND

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Collector of Land Revenue,
Kuala Lumpur Respondent

Coram: Ong Hock Thye, Judge, Federal Court,
Malaysia
Raja Azlan Shah, Judge, High Court,
Malaya,
Pawan Ahmad, Judge, High Court,
Malaya.

NOTES OF ARGUMENT RECORDED BY ONG, F.J.

Wednesday, 18th October, 1967.

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C.A.X.24 & X. 26 to X. 30/67 - S.D.K. Peddie
X.32 to X.34 - Ng Ek Teong with Vincent Ponniah
Inche Azmi Kamaruddin, Legal Adviser for the
Respondent
Peddie hands up written submission - A
N.E.Teong " " " - B
L.A. hands " " " - C & D
Peddie also hands up " " in reply - E
Peddie: I. Common grounds there was an increase

in land prices generally between November 1963 and June 1964.

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Refer P7 of "C" (b) general rise in value - Submit, that finding as to the previous sale at \$2.20 is open to attach.

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Court asked to apply percentage increase - this has never been done before - not proper method. So, is previous sale evidence of true value? - the price of \$100 was based on \$2.20 as true price - the key.

Notes of Argument Recorded by Ong Hock Thye.

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II. Difference between market value put forward by appellants and respondent. See p. 89 C - there were 7 titles in all - all these titles held in undivided shares.

Duke of Buccleuch's case - the same principle to be applied here!

Landowner entitled to highest value.

What price, then, if 7 titles separately disposed of?

3 methods -

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- (1) Huccleuch
- (2) National development
- (3) Comparative sales

Leave it to this Court to give true value!

Ng Ek Teong:

See "B" - p2 - "secondly etc."

(1936) A.I.R. Lahore p. 599

"Thirdly etc." (a), (b), (c), (d)

Romer L.J. in (1939) A.C. 302 @ 312

cf. "D" p3 - as to (c) - in reply

Reliance placed on Romer L.J.(ubi sup.)

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"D" p5 - "2000 per unit" (?)
Relevance of development at
3½ mile Ipoh Road - look at
development of surrounding lands
(see Ex.P9)
"D" P9 - "The Government Valuer etc."
- lack of sales - lack of demand -
- yes and no to above -
- owners could not go ahead for
personal reasons - 10
- hence necessary to look farther
afield for comparable sales.

Devarayan was on "Visit pass"

Lim Mow Chin - now he regards \$2.20
as the key

Gill J. did not rely on Lim Mow
Chin, in effect, (Gill J. took
Lots 29 & 56 into account)
cf. p.59D of X.32/67 - (Lots 29 & 20
56 - sales were in 1962 - cannot
be relied on) -
- and p.63A (cannot reconcile)

Lim Mow Chin, Collector of Land
Revenue & Gill J. - three views -
irreconcilable - note the
assessors' views.

Azmi, L.A.

- submit no distinction in sub-
stance between basis of valua-
tions of C.L.R., Lim and Gill J. 30

- only difference was that Gill J.
made a cross-check against Lot 29 -
appellant's valuer did not suggest
value of land in November 1963.

- submit, Respondent relied on sale
price of the Land itself.

- concede there was general price
increase between November 63 &
June '64 - 40

Judge of course couldn't be more
precise.

By admitting general rise in price,
deny basic price of \$2.50 was wrong.

Aggrawala (3rd Ed.) p.197, last para

In the Federal
Court of
Malaysia at
Kuala Lumpur

Prima facie, basic price was sale
at \$2.20, but by reason of the
general rise in the 7th months -
the Judge awarded a figure reflecting
the same.

No. 43

Notes of
Argument
Recorded by
Ong Hock Thye

10

Re Valuation of the land as
separate titles - submit - that
wouldn't be of best advantage to
the owners - no evidence adduced
before Gill J. along those lines -
Court now should confine itself to
the issues actually raised and dealt
with. cf. Williams -

18th October
1967
(Continued)

20

- to summarise his report and
evidence

1st method - comparable sales

19 instances - on arriving at
price of \$12/- per Sq. ft.

- submit he chose only high priced
sales.

But, it was at appellant's express
request that the land be valued as
a unit (X. 24, p. 28A)

30

Duke of Buccleuch's case - not
relevant because it was a case of
valuation for estate duty purposes.
(1967) 1 A.E.R. 129

sic.

XXN. destroyed value of evidence of
the 19 sales instanced. - X.32 -

p. 55 D, sales 1, 7 & 8
p. 56 D, sales 1, 2 & 3 can be
ignored"
No. 7 = sale by Co-director.
No. 8 = Lot 1, Pahang Road
(re No. 7 see p.56G and p.57)

40

In the Federal
Court of
Malaysia at
Kuala Lumpur

Secretary of State v. Sarala Devi

A.I.R. (1924) Lahore 548 (b) -
William's alternative method (p.154D)
Submit - appellants' valuers valuation
shows no merits - and Gill J. was right.

No. 43

Ng Ek Teong

Notes of
Argument
Recorded by
Ong Hock Thye

I.D, 1 Cal. 363

10

C.A.V.

18th October
1967
(Continued)

(Sd) H. T. Ong

Salinan yang di-akui benar.

Sgd. Illegible

Setia-usaha kepada Hakim
Mahkamah Persekutuan
Malaysia
Kuala Lumpur.

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No. 44

NOTES OF ARGUMENT RECORDED BY RAJA
AZLAN SHAH, JUDGE, HIGH COURT, MALAYA

In the Federal
Court of
Malaysia
Holden at
Kuala Lumpur

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

No. 44

(APPELLATE JURISDICTION)

10

CIVIL APPEAL NO. X. 24 OF 1967

Notes of
Argument
Recorded by
Raja Azlan
Shah. J.

B E T W E E N :

A.K.A.C.T.V. Alagappa Chettiar Appellant

18th October
1967

AND

Collector of Land Revenue,
Kuala Lumpur Respondent

20

(In the matter of Civil Application No. 6 of
1965 in High Court, Malaya, at Kuala Lumpur)

CIVIL APPEAL NO. X 32 OF 1967

B E T W E E N :

Ong Thye Eng as Trustee Appellant

AND

Collector of Land Revenue,
Kuala Lumpur Respondent

(In the matter of Civil Application No. 9 of
1965 in High Court, Malaya, at Kuala Lumpur)

30

CORAM: Ong Hock Thye, F. J.
 Raja Azlan Shah, J.
 Pawan Ahmad, J.

NOTES OF SUBMISSIONS AS RECORDED
BY RAJA AZLAN SHAH, J.

18TH OCTOBER, 1967

Peddie for appellant in FCCA.X.24/67.

In the Federal
Court of
Malaysia
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Kuala Lumpur

No. 44

Notes of
Argument
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Raja Azlan
Shah. J.

18th October
1967
(Continued)

Ng Ek Teong for appellant in FCCA.X.32/67.
Legal Adviser, Selangor, for respondents.

Peddie puts in written submission - "A".
Ng Ek Teong puts in written submission - "B".
Legal Adviser puts in written submissions - "C"
and "D".
Peddie puts in reply - "E".

Peddie adds:

Conceded there was increase in land prices
generally between November 1963 and June 1964.

Refers to "C", p.7 para. 2(b).
Submits evidence of previous sale - to
inject percentage.
Difference between market values.
Sub-division (Maori Trustee approach).
P.89 of record.

Seven title in all held in undivided
shares.

Duke of Buccleuch's case.
Government relying on same principle.
Appellants entitled to the highest figure
of compensation.

Unprecedented case.

Between \$7,000/- and \$9,000/-.

Sale of 7 titles which valuer did not
have.

Comparative sales.

Buccleuch's case and notional development

Figure on market.

Ng Ek Teong adds:

Not replied to Legal Adviser's submissions.

"B" p.2 (1936) A.I.R. Lahore, 599.

"D" pp.3, 5.

Messrs. Scott & English - present area.

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Vol. II FCCA.X.24/67, p.4, Exh. P9.

"D", p.9 refers. "Lack of sales".

Disputes.

We have to look towards Imbi Road sales.

Government valuer.

10 Sales of land in 1962 except 2 cases in 1963,
i.e. Lot 1 and Lot 2285.

Judge relied on Lots 29 and 56, sold in 1962.
P.59, D. & E.

Ng Ek Teong (contd):

P. 63A.

20 Collector of Land Revenue's award - does
not rely on general increase.

P.117 of record.

Legal Adviser adds:

Judge's award no different in substance
between Collector of Land Revenue's award and
respondent's valuers.

Government relying on sale of land itself.

Aggrawala, p. 197 (3rd edn.).

Land valued as separate titles - submit not
to best advantage of land acquired.

30 Williams' report and evidence in summary.

Comparable sales of 19 Lots.

P.28 Vol. II, FCCA.X. 24/67.

Cross-examination destroyed Williams'
evidence re 19 sales.

P.55 of FCCA.X. 32/67; pp. 56, 57.

Duke of Buccleuch's case not applicable.

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(1967) 2 A.E.R. 129.

Secretary of State v. Sarla Devi, (1924)
A.I.R.

Lahore, 548.

No. 44

Williams' second method - p. 154 of FCCA.X.
32/67.

Notes of
Argument
Recorded by
Raja Azlan
Shah. J.

Sales 12(b), 12(c), 12(d), 19, 15, 16.

10

Both methods can be adopted.

Peddie replies:

18th October
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Whole of evidence.

(Continued)

Ng Ek Teong replies:

1 Calcutta, Indian Decisions, 363.

C. A. V.

(Sgd) RAJA AZLAN SHAH
JUDGE
HIGH COURT.

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Certified true copy

Sd. illegible

Secretary to Judge
Kuala Lumpur. 22/5/68.

No. 45

NOTES OF ARGUMENT RECORDED BY PAWAN AHMED,
JUDGE, HIGH COURT, MALAYA

No. 45

Kuala Lumpur,
Federal Court,
18th October 1967

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Notes of
Argument
Recorded by
Pawan Ahmad. J.

Federal Court Civil Appeal Nos.X. 24/67 -
X. 34/67.

18th October
1967

Mr. Peddie for appellants in X.24, X.26 to
X.30 of 1967.

Mr. Ng Ek Teong (Mr. Ponniah with him)

for appellants in X. 32 to X. 34 of 1967.

Mr. Azmi bin Dato Kamaruddin (Legal Adviser Selangor) for respondent.

In the Federal Court of Malaysia Holden at Kuala Lumpur

Mr. Peddie hands up written submissions - A.

Mr. Ng Ek Teong hands up " " - B.

No. 45

Mr. Azmi bin Dato Kamaruddin hands up written submissions - C & D.

Notes of Argument Recorded by Pawan Ahmad. J

Mr. Peddie hands up written submissions in reply - E.

18th October 1967
(Continued)

It is common ground that there was an increase in land price generally between November 1963 and June 1964.

(1) Submits the evidence as to previous sale at \$2.20. What we should consider is whether evidence of previous sale is applicable.

The price of \$3.00 was based on \$2.20 - p.7 (b) of C.

(2) The potential market value - the Maori trustee approach.

(3) There were 7 titles in all but the learned judge considered them as one piece. In all the 7 titles they were affected by sic

Legal Adviser:

30 Indivisible half-shares.

The same principle in the English case (Duke of Buccleuch) should be applied. If by applying the Maori case another figure is obtained then the highest figure should be given. Therefore the highest figure for any of the 7 titles should be given to the appellants.

Three methods: (1) Duke of Buccleuch; (2) notional development; (3) comparable sale.

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Notes of
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Pawan Ahmad. J.

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Mr. Ng Ek Teong:

Refers to B p. 2 - 1936 A.I.R. Lahore p.599.
Valuation of lands acquired is based on the
nature of such lands being laid out at their
most lucrative and advantageous way possible.
Judgment of Romer, J., is summarised in (c) p.3.

Refers to D p. 3 - With regard (c) states
that Romer, J.'s judgment should apply and with
(d) it is only procedural. 10

Submits that land 3/4 mile away from the
centre of the city cannot be higher than the
price of this area. Refers to p. 9.

Refers to page 9 of D para. 2 No
development because the co-owners could not
get together. He was on a visit pass and
could not stay as long as he liked to get a
good buyer. So this sale cannot be taken into
consideration but to look for neighbouring
lands of a similar nature and their prices. 20

Mr. Ng Ek Teong:

All cases except for two cases cited by the
government valuer is of sales of neighbouring
lands in 1962. He does not rely on the two
1963 sales.

The judge did not accept the valuation
given by the government valuer because the
valuer did not rely on any lot. Gill, J.,
took into account lots 29 and 56 sold in 1962.
Refers to page 59 of Ong Thye Eng's record at
D the lot on which the judge based his award. 30

The reasons given by the collector,
government valuer and the judge at \$3.00 were
not based on similar reasons but for different
reasons.

Legal Adviser:

There is no difference in valuation by the
collector, government valuer and the judge. 40
The Government was relying on the sale of the
land itself.

Conceded rise of price of land between September 1963 and June 1964. No percentage of increase was suggested.

By admitting general rise of price of land between the relevant dates does not apply.

Aggrawala 3rd Edition p.197 last para.

10 The judge thought that the increase from \$2.20 to \$3.00 reflected an increase in the general value of land during the relevant period.

Land to be treated as separate titles. If they were taken in that light it would not be in the interest of the owners because the owners of poor lots would have difficulty in disposing their lots. Asks the court to consider only on the grounds adduced by the appellants at the trial in the High Court.

William's method

20 Comparable sales arrived at \$12/- per sq. ft. He chose only sales of lands of high prices. Previous sale of land was the basis agreed by the judge, government valuer and also by the government.

Refers to Peddie's opening at p.28 of record. Mr. Peddie agrees that the lots should be read as one lot.

30 Submits the Duke of Buccleuch's case does not apply to this case because in that case it is required by the Finance Act that the land should be treated as separate lots - (1967) 1 A.E.R. p. 129. There is no similar provision in this country.

Cross-examination destroys the value of evidence of Mr. Peddie's expert at p.55 of X. 32/67. He was only left with sales Nos. 7 and 8. Expert admitted that he did not know sale No. 7 was a sale by a director to the company.

40 Legal Adviser:

Again at p.57 B the expert admitted that sale

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No. 8 was an unregistered sale. Secretary of
State v. Sarla Devi Chaudhrani (1924) A.I.R.
Lahore 548, headnote, right hand column.

His second method of sale at p.154 should
not be accepted.

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Submits that the judge had taken all
relevant consideration in arriving at his
figure of valuation.

Notes of
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Recorded by
Pawan Ahmad. J.

C.A.V.

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Sgd: Pawan Ahmad
Judge

18th October
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(Continued)

True Copy

Sgd: illegible

Secretary to Judge
High Court, Malaya, Ipoh
18/6/68

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No. 46

JUDGMENT OF ONG HOCK THYE, JUDGE,
FEDERAL COURT, MALAYSIA

In the Federal
Court of
Malaysia
Holden at
Kuala Lumpur

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

(APPELLATE JURISDICTION)

No. 46

FEDERAL COURT CIVIL APPEAL NO. X.24 of 1967

Judgment of
Ong Hock
Thye, J.

B E T W E E N :

A.K.A.C.T.V. Alagappa Chettiar Appellant

20th February
1968

AND

Collector of Land Revenue,
Kuala Lumpur Respondent

(In the matter of Civil Application No.6
of 1965 in the High Court in Malaya at
Kuala Lumpur.)

B E T W E E N :

A.K.A.C.T.V. Alagappa Chettiar Applicant

AND

Collector of Land Revenue,
Kuala Lumpur Respondent)

Coram: Ong Hock Thye, Judge, Federal Court,
Malaysia,
Raja Azlan Shah, Judge, High Court,
Malaya,
Pawan Ahmad, Judge, High Court,
Malaya.

JUDGMENT OF ONG HOCK THYE, F.J., MALAYSIA.

This appeal raises the question: what was the proper market value, as on June 4, 1964, of the parcel of land 991,730 square feet in area (22.763 acres) situate within a 2-mile radius of the centre of Kuala Lumpur, which was compulsorily acquired by the Selangor State Government for its housing purposes. The appellants claim \$12.00 per square foot. The award of the Collector of

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Land Revenue, at \$3.00 per square foot, was upheld on appeal by Gill, J. This is an appeal against his judgment.

Since the learned judge held that "the principle upon which the Collector proceeded to value the land acquired was the correct principle and that in arriving at his valuation he has taken into account all the circumstances of the case", it follows that in the Collector's award no error or omission could be found in the facts relied on or the inferences derived therefrom. A careful examination of the award itself is therefore imperative. Entitled "Grounds on which the amount of compensation was determined," the award made and delivered on December 16, 1964 was in the following terms:

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

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

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

40

Under the circumstances, I value the land at \$3.00 per sq. foot and award a total compensation of \$2,975,190.00 to be divided amongst the owners according to their respective shares in the lands."

I think it not at all unfair to say that the whole tenor of the award was rather depreciatory. Salient negative features considered as rendering the property unattractive were pointed out, namely, (a) its situation as "not within the commercial centre of the town, but in a comparatively poor residential section"; (b) its irregularity in shape, entailing "considerable loss of land" for roads; (c) the presence of numerous squatters, expensive to evict, thus "tending to reduce" the land value; (d) its size itself, being a disadvantage, in that "any prospective buyer of land of this size would inevitably expect a lower price" than for the purchase of a smaller area.

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Although the Collector was performing a quasi-judicial function, in which there should be no room for any appearance of bias or partiality, whoever reads the award must be left with the impression that there was nothing worthy of mention on the credit side that might have attracted the prospective investor or speculator as purchaser. It is therefore not a little surprising that the land which cost \$2.20 per square foot on November 5, 1963 - no bargain price at that, according to the Government Valuer's report itself - should nevertheless have been considered as appreciating by no less than 80 cents in the short space of 6 months for no apparent reason. I say "no apparent reason" because none was given and neither the learned judge nor this court is at liberty to indulge in speculation on what he thought but failed to say. If the increase was fixed arbitrarily, why no more or no less? If not, on what principle, if any, was the price increase based? It must, of course, be assumed that all material facts affecting the price, whether upwards or down, were considered and that, if the grounds of award omitted any relevant fact, it was because such fact had either not occurred to the Collector or he had brushed it aside.

In all fairness to the Collector, however I hasten to add that his award was based entirely on the report made by the Valuation Officer in the Treasury. Consequently, I propose to take the next logical step by examining the report of the

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valuation officer. In this connection I think it pertinent to remind oneself that there is an appreciable distinction between a valuation made by the Government Valuer with a view to acquisition - which could be dropped if the price to be paid was found unacceptable - and a valuation made after acquisition when it ceased to be revocable and there was no escape from paying the price. In this case the Government Valuer was well aware of the fact and the tenor of his report shows what was uppermost in his mind when he approached his task. He duly inspected the land on October 1, 1964 - after notice of intended acquisition had been gazetted - made further researches and completed his report, Exhibit D. 13, in December, a week or two before the Collector made his award. It is true that he subsequently gave evidence before Gill J. on October 27 and 28, 1966 but, in my opinion, his report, made 20 months earlier, should provide a more reliable guide as to whether or not he had made a fair and proper assessment of the market value, and whether omissions to take material facts into account were being supplemented at the appeal by afterthoughts. For the moment I shall refer only to the latter portion of his report, which was not a summary, but a statement in detail, setting out precisely and completely the grounds on which he valued the land at \$3.00 per square foot; it runs as follows :

" In arriving at my market value under paragraph 2(a) of the First Schedule to the Land Acquisition Act, 1960 I have taken into account the following :-

(1) The land acquired comprises a total area of 22.763 acres, that is 991,730 sq. feet. A prospective purchaser buying a piece of land of this size in the town of Kuala Lumpur would invariably expect a reduction in value as an inducement to take over the bulk of the property as a whole and a sufficient margin of profit for the risk undertaken to justify embarking on development.

(2) The rear portion and the northwest corner are covered with numerous squatters

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(approximately 58) which can be extremely problematic from the development point of view. Some of the occupiers are paying ground rents to the owners. Their presence would depreciate the value of the land as a prudent developer would take into account the amount he would compensate them before demolishing the temporary building in order to speed up development.

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(3) This section of Jalan Pekeliling is not only NOT a commercial area but also a poorer residential area of Jalan Pekeliling.

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(4) The land is irregular in shape, slightly elevated at the rear and bisected by a rectangular strip of State Land. Development would entail a comprehensive system of roads involving about 4 acres of land. The shape makes it difficult to have a good layout unless State Land which adjoins it is included, without which there will be some wastage of land.

(5) Previous sale of land in question which took place only seven months before acquisition, the purchase price being \$2.20 per square foot (that is, \$95,832 per acre).

(6) Other recent sales in the immediate vicinity.

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(7) There is unlikely to be an immediate demand for good-class flats in this locality in view of the number of such flats that are being or will soon be erected on the adjoining lands and each phase of development will satisfy demand to a great extent. Regarding the low-cost flats demand depends entirely on the price placed on the flat. Demand for flats seems to be on the decline and banks are reluctant to loan money for the purchase of flats. This locality is conspicuously void of shops apart from a block at the front of Jalan Taiping. Perhaps, there is an established and important shopping thoroughfare too near it, namely Jalan Ipoh, which tends to dim the importance of this locality, as a shopping area. Shops suitable for this area will be lock-up shops catering for daily needs for which demand is

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limited. It must be noted that it is demand which creates value."

Before I turn to the judgment I should first mention briefly certain facts in the light of which the first sale of the land should have been considered. First, the land was not held by the appellants as an undivided unit, under a single title, but under seven separate titles, varying in area from approximately $6\frac{1}{2}$ acres to just under a half-acre. Secondly, all these titles were held in undivided shares by several owners, Alagappa Chettiar alone being the proprietor of a half-share acquired by his father over 30 years ago. Thirdly, purchase of the other half-share was made by Alagappa's co-owners from one Devarayan Chettiar, a man in his early twenties who had acquired his title by partition following long litigation between the partners of a Chettiar firm; This young Chettiar was an Indian citizen, who had entered Malaya on a visit pass, granted by the Immigration authorities, for the purpose of getting his share of the partnership estate, and who, on that account, had been able to obtain extensions, permitting him to remain in this country for about 4 years, of which the last 3 were continuous; having finally succeeded in his objective in 1962, the final extension of his pass was due to expire in June 1964. Fourthly, the sale by him before the expiry of his permit to stay resulted in the proceeds being exempt entirely from liability to heavy Indian capital gains tax - a saving of approximately 65 per cent.

I come now to the judgment itself. The learned judge has upheld the Government Valuer's opinion that the earlier sale price of the land itself was the true "keystone" of his valuation. It continues to be maintained by the respondent in this court that both the Government Valuer and the judge rightly relied on such "keystone".

The appellants strongly contest this assumption. They say that the previous sale price by itself afforded no absolute criterion. It could not be considered in isolation, without taking into account relevant circumstances

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under which that sale took place. In a nutshell, they claim that, at the price of \$2.20, the purchase had in fact been at a bargain price well below market value.

It may therefore be said here and now that, in the main, the award stands or falls according as the accepted market value of \$2.20 proves to have been founded on firm bedrock or on sand.

In the opinion of the learned judge "the fundamental rule is that when the property under acquisition has been recently purchased, the price paid is prima facie the market value thereof." In effect, by his judgment he has found that this rule applied without any qualification whatever. How he reached this conclusion is explained thus :-

" It is clear from the authorities that where land acquired was purchased by the owner within a reasonable time of its compulsory acquisition, the price paid affords infinitely the best material for calculating its market value, the reason being that the elements of dissimilarity will be least present when the transaction sought to be applied is a previous purchase of the same property. The owner, of course, can show that since his purchase there has been an all-round increase in the price of land generally, in which case a proper allowance can be made for such increase. Where there has been no recent sale of the same land, only sales within a reasonable period of lands more or less similarly situated in the same neighbourhood and possessing similar advantages are helpful in determining the market value of any land. As no two lands can be precisely similar in all their circumstances and conditions, a suitable allowance can be made for any differences. No hard and fast rule can be laid down for the allowances to be made in respect of the increase in value of the same land or for the differences between the land acquired and the neighbouring lands, but market value is not required to be calculated with mathematical accuracy and precision. What is required is a fair

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estimate of market value. It is only in the absence of evidence of recent sales of the same land or lands in the same vicinity that other methods of ascertaining the market value can properly be resorted to. Estimates of value by experts are undoubtedly some evidence, but their value is not great, as expert opinion is liable to err, unless it is supported by or coincides with other evidence."

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The authorities which he referred to were the judgment of this court delivered by Suffian J. (as he then was) in Superintendent of Lands (1) & Surveys v. Aik Hoe & Co. Ltd., the well-known dicta of Lord Romer on "market value" in Vyricherla Narayan Gajapatiraju v. Revenue Divisional Officer, Vizagapatam and other dicta by Buhagiar J. in Nanyang Manufacturing Co. v. Collector of Land Revenue, Johore. With all respect, none of those decisions, in my judgment, went as far as the learned judge thought they did. They certainly did not purport to enunciate any inflexible rule as to what are or are not relevant to be taken into consideration. If the learned judge in the instant case intended to lay down the rule, as a deduction from those judgments, that "it is only in the absence of evidence of recent sales of the same land or lands in the same vicinity that other methods of ascertaining the market value can properly be resorted to," then I would respectfully record my dissent. The general principles for assessing market value applicable in acquisition, rating and estate duty matters, as exemplified in leading cases, are well-known and do not call for recapitulation here. Suffice it to say that, in the final analysis, the appropriate principles to be applied must depend on the special facts of each particular case and be applied according to sound practical commonsense, rather than by some artificial rule of thumb. To illustrate what I mean I would refer to the judgment of Lord Denning in Duke of Buccleuch v. Inland Revenue Commissioners where the Master of the Rolls

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- (1) (1966) 1 M.L.J. 243, 245, 247
- (2) (1939) A.C. 302
- (3) (1954) M.L.J. 69, 71.
- (4) (1965) 3 W.L.R. 977

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at pages 989-990) said: "(1) You are to envisage a hypothetical sale at the time of the death of the deceased etc.," and concluding thus: "applying those principles here, it seems to me the hypothetical sale we must envisage is that which the Lands Tribunal envisaged..."

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Perhaps in the last paragraph I have expressed myself at some length, but my purpose, at the outset, is to make clear my opinion beyond peradventure that there was no justification, upon any authority, for applying the restricted view in the instant case that the previous price paid for the same land "affords infinitely the best material for calculating its market value," to the entire exclusion of all surrounding circumstances and relevant facts. As the learned judge himself said: What is required is a fair estimate of market price." Ex concessis, therefore, the determination of the "market price" clearly involves proper inquiry into comparable prices, and what prices are comparable as relevant must invite a commonsense approach to the question. The only artificial limits imposed on the scope of such inquiry are those laid down in the First Schedule to the Land Acquisition Ordinance, 1960.

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To return to the judgment, the learned judge proceeded next to discuss the case put forward by the appellants. This may be summarised under four heads. First, he discounted in toto the evidence of both Alagappa and Palaniappa that Devarayan sold at a disadvantage for personal reasons. Secondly he discussed the evidence of Mr. Williams, the appellants' valuation expert, and rejected it also in toto, on the ground that the prices paid on sales of land not in the immediate vicinity of the land acquired were "wholly irrelevant" and "must be disregarded". Thirdly, he discussed the potentialities of the land but dismissed them shortly with the remark that "this was certainly not a case where the Collector treated the land acquired as agricultural land for the purpose of assessing its market value." My only comment is: Can anyone lump non-agricultural land indiscriminately together as though all building land must belong to a single class? Fourthly, the judge dismissed the appellants' contention that the sale price of an

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undivided partial interest in land afforded no true criterion of market value when assessing the price of the whole interest in the same land. In his judgment, because the sale was "in the open market and the parties were at arm's length", the sale of the land itself in November 1963 was the best evidence of its market value.

I shall now deal with these four heads in turn, but taking the first and fourth together as they are closely related, the question boils down to this: Did Devarayan manage in fact to obtain for his undivided half-interest the same price which the same acreage of land would have fetched had he been the sole proprietor thereof selling in open market? Starting with the facts, I quote the uncontradicted evidence of Alagappa: "He (Devarayan) asked me to join him in selling the land, because nobody would want to buy an undivided share." Another witness, again uncontradicted, was Palaniappa who said: "After he got the lands Deverayan Chettiar was trying to sell the lands. He asked me to assist him in selling his share because it was difficult to sell half a share in the land. Alagappa Chettiar did not agree to sell his half share. Then Deverayan tried to sell his share. No one came forward to buy." Ng Chong Geng, the major purchaser said: "I found out that only an undivided half-share in the lands was to be sold... I was not keen to buy it, because at that time I did not know the owner of the other share." And then Mr. Williams to this effect, that in his practice as estate agent he had on occasions been asked to sell undivided shares in the land, but found it extremely difficult and purchasers invariably paid less than the proportionate value of the land. The lone voice in qualified dissent was that of the Government Valuer in whose opinion "it is a general statement that reliance should not be placed on sale of undivided shares. This is not necessarily true in all cases." But what experience had he? He admitted that he had none. So much then for the evidence, which clearly was all one way: Devarayan had been unable to find a ready purchaser because of the nature of his interest in the land.

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Nor was it senseless prejudice against undivided interests in land. The truth is that practical difficulties are well-known to have constantly been encountered by owners of such interests under the land law formerly in force, which are by no means solved by the legislation which now replaces it. Since the Land Code (Cap.138) was applicable at the relevant time, the difficulties confronting the owner of an undivided interest under the prevailing law necessarily should have been taken into account in considering what price a purchaser of such interests in the open market would have been ready and willing to pay. A fortiori by the judge himself, as the question was strenuously canvassed before him and he has himself more than a nodding acquaintance with the provisions of the Land Code. I feel almost hesitant having to state the obvious, but in my judgment there can be no doubt that sales of undivided interests in land involve so many practical and potential difficulties for the purchaser that they can hardly be considered as a reliable guide to market value, unless the most thorough inquiry is made into the special circumstances of each case. Putting it briefly, subdivision, the only means to get rid of undivided interests, was even by itself fraught with impediments in the absence of agreement between all the co-owners: and the more co-owners the greater the problem of course. Were Alagappa to die, for instance, leaving problems of succession in the Hindu joint family to be sorted out, the position of the purchasers from Devarayan would have been very unfortunate. They would have been faced with an effective moratorium on every attempt to develop or even lease a portion of the land, unless and until the question of succession to Alagappa's estate had been sorted out.

Indeed, at every stage and in every transaction affecting undivided interests in land the co-owner indubitably has not the same individual freedom of action as the owner of the whole interest; simply because the co-owner is not owner of any identifiable part, but merely co-sharer of every portion of the whole. I think I need say no more on the point here. Should this case go further, counsel will have ample opportunity then to dilate on this point, if an issue is made of it.

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The Government Valuer's report, however, took no account of this fact. What the appellant purchasers obtained in November, 1963 was in truth a title inferior in nature and quality to the title acquired subsequently by the Government in June, 1964. That being so, I fail to see how the Government Valuer could fairly have applied the one price as the basis for calculating what the other should be. Had the Government acquisition been of a similar undivided half-interest then there would have been a common factor present in both the transactions. Where no such common factor exists, by what formula had the equation been achieved? It seems to me an insoluble mystery. In my judgment, therefore, this fact alone demolishes the so-called keystone and any reliance thereon as an essential premise of the award was misplaced and wholly unjustified

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Now, as to the supporting ground, relied on by the appellants in support of their contention that \$2.20 was below market value, this was the view taken by the learned judge:-

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" I cannot believe that Devarayan Chettiar, young though he was, had not the wit to make enquiries as to what the fair market value of the land was before selling it. If the applicants were going to rely on the fact that the land was sold cheap, it was open to them to call Devarayan Chettiar as a witness or have his evidence taken on commission in India. They thought fit not to do so and are asking the court to say that he sold his land cheap merely because he had no intention of living in this country."

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With respect I regret to say that I consider this conclusion against the weight of the evidence on the record. I shall now recapitulate the facts not open to dispute, which should have been considered, but were not. They are as follows :-

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1. Devarayan had been in Malaya 4 years, the last 3 continuously, until he departed finally in May, 1964;
2. He was a young man between 22 and 24 years of

age in 1962 who was here to claim his patrimony.

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3. He was an Indian national resident in India to whom the Immigration laws are strictly applied. "In 1963 he got an extension of one year on his visit pass, until June 1964. He was told it was the final extension." In fact he did leave for India in May, 1964.

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4. "He wanted to stay here, but he could not get permission from the Immigration authorities. He had to leave the country by the middle of June 1964 and in order to escape the capital gains tax he had to sell the land before April 1964."

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5. "Capital Gains Tax is profit on the sale of land 75% of the income tax rate ... about 65%. Devarayan did not have to pay the Indian capital gains tax if he sold the land when he was in this country." To qualify for exemption an Indian "has to be outside India for one year to avoid capital gains tax." Devarayan "had to sell his land before April 1964 to avoid capital gains tax."

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6. Ng Chong Geng said he "had reason to believe that the Chettiar was prepared to sell the land cheap because he was in a hurry to go back to India."

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The above facts were testified to by both Alagappa and Palaniappa, with corroboration by Ng Choong Geng. On the incidence and rate of capital gains tax and how exemption could be claimed, their evidence was supported by Mr. Varadachari, a chartered accountant of India. The testimony of all these witnesses as to the above facts was never challenged or contradicted. On what grounds then could the learned judge have said as he did: "I have no hesitation whatsoever in saying that I can place no reliance whatsoever on all this evidence, which to my mind, was produced in order to boost the applicant's claim to higher compensation"? Was it a strain on anyone's credulity to imagine that the young man might have felt unbearably homesick at last, for wife or family, after long absence?

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Was it at all unreasonable or improbable that, having no further grounds for hoping for an extension of his visit pass, by reason of his having succeeded in getting in his estate, he bowed to the inevitable - that he had to make his final departure before June 1964? Having tried and failed to sell his half-share, after Alagappa refused to join in selling the whole interest, was it at all improbable that he became reconciled to accept any offer within reason, even if he knew it was below the market price? Was not the saving of 65% of the proceeds from taxation cogent reason enough to influence him in accepting the best offer made? In short, was there in truth any ground for holding both Alagappa and Palaniappa unworthy of any credit "whatsoever"? Had either of them been caught out telling any lie before the judge, particularly as Palaniappa was a disinterested witness? True that Alagappa was interested to the extent of a half-share, but having a legitimate interest in the outcome of litigation is surely no disqualification. Since the appeal against the award was unashamedly to obtain the higher compensation which he felt was due to him, why should this Chettiar be denied the credit that is due to all men who had done nothing to forfeit it?

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Furthermore, all that the judge said about Devarayan and his business acumen was nothing but pure surmise. The judge himself had never seen him to observe his demeanour. On the other hand, the witness who knew him best had said he was inexperienced. Was that necessarily false or are all Chettiars, even inexperienced ones, assumed to be astute? What else was this young man expected to do, after he had made every effort to sell his half-interest and failed? Therefore, laying on the appellants the onus of calling Devarayan as their witness, under pain of having the established facts in their favour rejected in default, seems to me quite unwarranted. Having supported their contention by established facts and uncontradicted evidence, was Devarayan's oral testimony not superfluous or at least dispensable? For the above reasons I am satisfied, at this stage, that the appellants have discharged the onus of proof to the extent of showing (a) that \$2.20 was not even prima Facie

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the true market value of the undivided half-interest on November 5, 1963 (b) that there were ample grounds for the conclusion that Devarayan accepted an offer below the market value of his share and (c) that, in any event, the sale price of the undivided half-interest provided no proper criterion for the subsequent valuation of the whole interest.

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10 I propose next to deal with the potentialities of the land and the experts' valuation, together, since both subjects are closely related.

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20 Before doing so, however, certain other incidental matters will be more conveniently disposed of at this stage. In my judgment the Government Valuer's report was replete with serious errors, some of which will be discussed later, with particular reference to potentialities. For the present I refer to paragraph (2) of his report, on the presence of squatters being a depreciatory factor.

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In the first place, there was an omission by the Government Valuer to take into account a striking difference between the condition of the land as it was in November 1963 and in June 1964. On this point the uncontradicted evidence of Alagappa was as follows:-

30 "There were some huts on 5 or 6 acres of the land which has been acquired by the Government. The rest of the land was occupied by the Military. The Military occupied about 10½ acres. The Military vacated the land after Devarayan Chettiar sold his share and before the acquisition."

Ng Chong Geng, purchaser of the majority interest from Devarayan, also gave uncontradicted evidence as follows:-

40 " I saw the land before I bought it. Kasi Chettiar took me there. There was an Army Camp on a portion of the land I bought the land for the purpose of building houses. I wanted to develop the land. I knew that I could not develop the land immediately because of the Army Camp, but I made a gamble If the Army Camp was not removed from the land

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would not be able to develop the land at all
and my capital would be tied down."

When the Government Valuer inspected the land on October 1, 1964, he found no Army Camp, but only squatters huts. But across the road a portion of the camp still remained. It is true that the Government Valuer did say, "The Army Camp on Lots 18 and 19, according to the records I have seen, were demolished in 1962. There was a small camp opposite the road on Lots 95 and 96. The Government took a lease of three years from 1958." However, as both Alagappa and Ng Chong Geng had categorically stated in their evidence that the camp was a prominent feature of the land in November, 1963, their evidence stood unrebutted because the records were never produced and the Valuer's testimony on the point was pure hearsay. Moreover, the expiry of the three-year lease in 1961 proved nothing, because the Government probably continued to hold over for some time as it did on Lots 95 and 96 across the road. Indeed, the fact that the Camp still existed at the time of the purchase was an admitted fact within the Valuer's own knowledge, as appears from his own evidence, as follows:-

" I did not make any investigations as to the circumstances of the sale of the land under acquisition on 5th November, 1963.

There was ample vacant land on the land acquired for a developer to start work and take time to clear the squatters from the other area. What was not vacant was the area the Army had occupied."

It cannot be denied that, if the presence of squatter huts on 5 or 6 acres was thought bad enough to depress the market value of the land as a whole, the Army Camp occupying, in addition, almost half its total area was even more unfortunate for Devarayan. Had the Camp not been voluntarily vacated and removed, would it not have presented the purchasers a far greater problem to recover vacant possession from the Government than from private squatters? The opinion expressed by Mr. Williams in this

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respect must be accepted as well-founded when he said

" I knew about the sale of the land under acquisition in November, 1963. I considered it and discarded it for what I considered good reasons. The reasons were that it was a sale of an undivided share and the presence on the land of an Army Camp, so that developers were not interested in that land in that condition.... The army camp extended over the road to Lots 97 and 98. The land therefore was not on the market for development."

When the military presence subsequently disappeared, was not the desirability of the land vastly improved ipso facto in the eyes of any prospective purchaser in open market? This fact itself, in my judgment, lends strong support to the appellant's contention that the land was wholly unattractive, except to speculators, when sold by Devarayan, who consequently had to be content with whatever offer he could get and was thus unable to demand its full market value. On the other hand, because this drawback had disappeared before Government acquisition, the market value should have easily doubled, at least, quite apart from the trend of a rising market generally. Thus the Government Valuer's failure to take account of a highly material factor which depressed the price fetched by the land in November 1963 is further ground for holding the award defective and bad. I should add that on the evidence I am compelled to regard the omission as deliberate in view of the admission in his evidence which I have just quoted. It seems to me wholly wrong for the Government Valuer to have passed over this material fact in complete silence as though it did not matter.

In the second place, the Government Valuer was again in error in assuming that a prospective purchaser buying land of the size of 22.763 acres "would invariably expect a reduction in value as an inducement to take over the bulk of the property as a whole." His explanation for so doing was that he "was required to value the land as a whole as they are contiguous lots." Had the whole land been held under a single title, this might have been plausible, but not if the result

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was that the true facts were disregarded to the prejudice of the owners in favour of the acquisition authorities. Since the land comprised seven separate units, held under separate titles, varying in area between approximately $6\frac{1}{2}$ acres and just under a half-acre, there was never any compulsion on any prospective purchaser in open market, as alleged, to take more than he needed or could pay for. There was a variety of sizes to meet all demands and pockets. On this ground then the report, and the award and the judgment upholding it, has also been proved to rest on false assumptions of fact.

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In the third place, another material factor taken into consideration as reducing the market value on acquisition was that the land was irregular in shape, entailing wastage of some four acres in the process of development. This criticism of course was no longer valid since 1958. As Alagappa said, it was a fact that "irregularity of the land was overcome in 1958 by reason of the adjustment shown in the plan" (Ex.P3). The Government Valuer, however, admitted that he had not seen Ex.P3 before making his report and he has agreed that "the shape of the land had been improved as a result of this plan."

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To sum up, I am abundantly satisfied that the award of \$3.00 per square foot cannot stand simply because it was based on false premises. It is only necessary to refer to two fundamental errors: (a) that no distinction was observed between the market value of an undivided interest and the whole interest in land, the lack of a common factor destroying any basis for comparison between the two; (b) that in the open market, the value of the same land was depressed by the presence thereon of an Army Camp occupying approximately $10\frac{1}{2}$ acres at the date of sale of Devarayan's half-interest, but enhanced considerably by the removal of such camp at the date of Government acquisition. No account was ever taken of this material fact in the grounds of award.

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Since it has thus been demonstrated that the award must be set aside, it follows that

the question of market value is now at large. For this reason it is no longer necessary to discuss in detail the appellants' manifold criticisms of the judgment itself. Suffice it to say generally that in my judgment the grounds of appeal are well-founded.

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10 It will now be the task of this court to make our own assessment of the market value of the land. On this point I may say at once that, with all respect, I do not share the views expressed by the learned judge on the value of the expert evidence in this case. Paradoxically, though, I observe that he was able to voice unqualified approval of the evidence and opinion of the Government Valuer on the one side, while rejecting completely the evidence of Mr. Williams in opposition. High authority for the view I would respectfully adopt here is that expressed by Danckwertz L.J. in the Duke of
20 Buccleuch's case: (4)

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30 " It seems to me that the sale which is supposed... is a hypothetical sale .. in the open market at the best price which could reasonably be obtained... The best price which can be obtained by the best reasonable method, by which the price will be ascertained, therefore, is a pure question of fact and it is presumed, or rather imagined, to take effect on the date of the testator's death. That seems to me to be a question of fact for the tribunal which can only be ascertained on expert evidence. It is not really a matter of law at all."

40 In the same case it will also be noted that both Lord Denning M.R. and Danckwertz L.J. approved and applied the principle enunciated by Sankey J. in the Ellesmere (5) case, that what has to be envisaged is a sale of the property "in such a manner and subject to such conditions as might reasonably be calculated to obtain for the vendor the best price for the property". In Khushiram v. Assistant Collector, Shikarpur (6)

- (4) *ibid.* p. 991, 992
(5) (1918) 2 K.B. 735
(6) A.I.R. (1925) Sind 112.

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this principle was stated in similar terms, that "the fairest and most favourable basis on which compensation should be given to the owner is to take into account the estimate of the market value of the property in accordance with the most lucrative and advantageous way in which such land can be sold in open market at the time of the acquisition." Market value, therefore does not mean simply the value of the land from the manner it is being actually used for the time being but includes all future possibilities on which a prudent purchaser would calculate and a vendor would base his expectations, both parties being actuated by business principles. That is to say, market value necessarily includes the potential value, if any.

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With regard to the potentialities of this piece of land diametrically opposite views had been expressed by the valuation expert on each side. Since the evidence for valuation purposes emanating from the other witnesses is so exiguous as to be negligible, this Court has to fall back entirely on the expert evidence. Fortunately the reports on each side are replete with useful data showing how their respective inferences and conclusions had been drawn. I shall now proceed to discuss these reports in turn,

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As to the Government Valuer's report I regret having to say that I regard its objectivity with grave doubt, particularly as it turned so largely on his personal opinion that "the previous sale of the land itself under acquisition would be a better guide than sales of other lands however similar." Reading the same and taking paragraph (?) by way of illustration, it seems to me that, where any incidental reference to the potentialities was inevitable, he could only do so in disparaging terms. Indeed, the report appears less an objective presentation of facts than an exercise in special pleading. Thus in describing the land as "not only NOT a commercial area but also a poorer residential area of Jalan Pekeliling" the reason he gave was: "The flats all round had not come up. I therefore called it a poor area because

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of squatters on the land and mining land nearby." One should have thought that the extent of the land itself provides its own answer regarding the type of development for which it is best suited. Not only was this the commonsense view, but in the same report he even refuted himself: see paragraph (7) where he spoke of "good class flats" coming up in this very locality and that "in June 1964 there were proposals for several tower blocks."

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The question which may now be asked is whether or not the Government Valuer took into account the potentialities of the land when assessing its market value. It will be observed that the report made no mention of any ground on which the increase of 80 cents was awarded. In his subsequent evidence, however, he explained the omission by saying that he considered "a certain increase ought to be given to take into account a general rise in values between 5th November, 1963 and 4th June, 1964." This being the case, it is of course clear that the whole of the increase was awarded exclusively on the specific ground stated: expressio unius exclusio alterius. The respondent is, therefore, precluded from contending that the award of \$3.00 took any account whatsoever of the potentialities of the land at the date of acquisition. Neither should it have been open to the learned judge to hold, as he would seem to have done, that "a suitable allowance can be made if the previous sale was of an undivided share." In the result, I consider that the proper conclusion to be drawn from the Government Valuer's report and evidence, taken together, is that the Collector's award of \$3.00 was one which had wholly disregarded the potentialities of the land. Hence the reassessment of market value which now falls to be made by us must take that factor into consideration.

As regards such potentialities the evidence of the appellants' expert Mr. Williams, is as follows:-

" In my report I have valued the land as at 4th June, 1964. I have visited the lands. They are within two miles from the

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centre of the town.

I considered the land in relation to accessibility. It is an excellent site for access from all parts of the town. The value of the surrounding land would improve with the cutting through of a 100-foot wide road.

I consider the site suitable for high density development. It is an area where one can expect a high concentration of population such as attracts the middle and upper artisan class. Just across the river there are three-storey flats and also across the road. This is the sort of development I would envisage on this land. There are few sites of this area within the town."

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The above was, of course, an expression of opinion. It was not, however, merely opinion based on conjecture, as the following evidence goes to show:

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" I see (plan) P4. It shows the new proposed Circular Road. The proposal is to have tower blocks south of this new road. According to this plan the proposal is to have a cinema and offices to the north of the road. To the left there is to be a hotel, flats and shops. The plan makes provision for three types of development. The reserve for transmission lines is not proving a disadvantage. The road deviation makes very little difference. The new road would, however, give road frontage to the property on either side. There is marked in yellow on the plan a site for a petrol station. There is a Shell Station on the other side of Gombak River. It is normal for another company to put up a petrol station near another petrol station. There would be a potential demand for petrol stations on the side.

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There is a cinema called the "Golden City" near the roundabout at Ipoh Road

about 350 yards away. Another cinema could be accommodated in the District.

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There is a junction at Princess Road, Pahang Road, Ipoh Road and Jalan Tuanku Abdul Rahman. From there Pahang Road and Ipoh Road run out in V-shape. This land in Circular Road lies within this V. All along Pahang Road there has been development right up to Setapak. Similarly Ipoh Road has been developed well past the Circular Road. Closer to town there would be few areas more suitable for development than this land in Circular Road. This is the nearest site from the town you can get for development. There are flats and terrace houses to the south, west and north-east of this land. The natural development of the land would be for flats and terrace houses."

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The plan was a fact, the genuineness of which was never in doubt. As the learned judge himself said: "Indeed there is evidence that soon after they purchased their respective shares from Devarayan Chettiar the new purchasers put up a building plan of their own which commended itself to Alagappa Chettiar." By itself, this plan is valuable evidence, affording proof of a genuine intention on the part of the appellants to exploit the potentialities of the land to its fullest extent as property developers. It was, therefore a factor which Mr. Williams very properly considered.

With the keystone of \$2.20 in mind, and still regarding it as "slightly high", the Government Valuer had sought evidence of market value in the following sales of land in the immediate vicinity of the land acquired:

	<u>Lot</u>	<u>Price per</u> <u>Sq. ft.</u>	<u>Date of Sale</u>
(a)	18	\$3.95	25.4.1962
(b)	21	2.50	17.8.1962
(c)	56	0.65	29.9.1962
(d)	29	1.12	29.9.1962
(e)	2285	6.38	14.3.1963
(f)	14	2.49	26.3.1963
(g)	State land for T.B. Hospital	3.50	19.10.1964

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It is evident, from his report as well as the judgment upholding it, that the sale of Lot 29 was the only one considered as relevant, although it was by no means the nearest in point of time to the purchase made by the appellants on November 5, 1963. In point of size, apart from Lot 29, only three of the above were sales in excess of one acre, namely, Lots 56, 2285 and 14. While accepting Lot 29 for comparison purposes, Lots 14 and 2285 were rejected. The reason is not difficult to discern. It is clear that if the prices fetched by Lots 14 and 2285 were accepted, they would have the inevitable result of demonstrating that at \$2.20 the acquired land had indeed been purchased in a rising market 8 months later at well below market value, as alleged by the appellants. On the other hand, admitting the sale price of \$6.38 for Lot 2285, sold 14 months before Government acquisition, as reflecting market value, would have made the award of \$3.00 look manifestly absurd.

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I turn now to the report and evidence of Mr. Williams. He had explained how he approached his task thus: first, by a study of market conditions, he was led to conclude that there was a steady rise in prices of Kuala Lumpur lands from Merdeka Year 1957, continuing as boom conditions until the latter part of 1964; secondly, he rejected the purchase price of the undivided half-interest as any true criterion for the reasons given; thirdly he looked to sales of land in the vicinity, proceeding from those in the immediate vicinity to others farther off along the Pahang and Ipoh roads; finally, he examined comparable transactions in the Imbi Road area as a cross-check on the value of lands in similar positions and of similar quality. In all 19 sales were listed as having been studied: (see Ex.P8). Counsel for the appellants urge that particular note be taken of the following:-

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1. Sale of No. 4, Lot 9 Maxwell Road for \$15/- per sq. ft.
2. Sale of No. 7, Lot 2285, Pahang Road at \$6.38 per sq. ft. in March, 1963

- | | | |
|-------|---|---|
| 3. | Sale of No. 8, Lot 1 Pahang Road at \$7.90 per sq. ft. in April, 1964. | In the Federal Court of Malaysia Holden at Kuala Lumpur |
| 4. | Sale of No. 10, Lot 547, Ipoh Road at \$7.85 per sq. ft. in April, 1963. | No. 46 |
| 5. | Sale of No. 11, Lots 122 and 128, Ipoh Road at \$10.85 per sq. ft. in April, 1964. | Judgment of Ong Hock Thye, J. |
| 10 6. | Sale of State land for T.B.Hospital extension at \$3.50 per sq. ft. in October, 1964. | 20th February 1968
(Continued) |

As to item (1) above, sale No. 4, Mr. Williams explained that he had quoted this sale, together with sales Nos. 1, 2 & 3, merely to show what price these lands situate approximately a quarter-mile from the acquired land were able to fetch at the relevant time. For present purposes I do not think these sales are of practical assistance since other transactions will be seen to be more pertinent.

20 The sales which may now be considered are sales Nos. 7 and 8 relating to Lot 2285 and Lot 1. As against these transactions the Government Valuer cited three other sales, namely, of Lots 29 and 56, both sold by their owners on the same day September 29, 1962 for \$1.12 and 65 cents per sq. ft. respectively, and of Lot 21, a one-sixth undivided interest which fetched \$2.50 per sq. ft. on August 17, 1962. As will be seen in the town plans, Ex. P9 and Ex. D.12, these five lots are all in the immediate neighbourhood of the acquired land. For easy comparison the following table in chronological order should be helpful:

30	(i)	Lot 21	1.322 acres @ \$2.50	17.8.62
	(ii)	Lot 29	2.85 acres @ \$1.12 (9/10 interest)	22.9.62
	(iii)	Lot 56	3.901 acres @ \$0.65	22.9.62
	(iv)	Lot 2285	1 a.1. rd. 30p. @ \$6.38	14.4.63
40	(v)	Lot 1	1a.2rd.38.9p. @ \$7.80	18.4.64

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It was conceded by the Government Valuer that Lots 29, 56, 2285 and 1 had the same potentialities as the acquired land. A study of the town plan bears this out. The curious and striking feature about the sale of Lots 29 and 56 by the owners thereof to the same purchasers on the same date at such great disparity in prices, not only inter se but also in relation to the price of Lot 21, which fetched more than double the price of Lot 29, and four times that of Lot 56, must give rise to speculation as to the reasons. This discrepancy in prices is so wide that in my opinion they are quite irreconcilable. Since these lands in the same close vicinity have the same potentials and all three transfers were registered within a short space of five weeks, it is impossible to say which of the sales was a truer reflection than the others of the prevailing market value. After careful thought, however, I am satisfied and find as a fact that a simple explanation exists. Under the Torrens system, the registration of a transfer of land frequently takes place at varying intervals of time, as may be agreed between vendor and purchaser, after the agreement of sale. This is readily discernible as instanced in the sale of Lot 1, where the Agreement (Ex.P11) was made on April 18, 1964 but postponement of completion and registration of transfer over a considerable interval was expressly provided for in clause 3(iv). This is common practice well-known in this country, and particularly convenient for property developers. Thus, in the case of Lot 1, whether the eventual registration of transfer took place last year or will take place in the future, the date of transfer affords no indication of the market value at the date of registration. Assuming, therefore, as one should, that the sale of Lot 56, 29 and 21 were made between business men at current market prices, the only reasonable and probable explanation, consistent with the disparity in prices, must be that the various agreements of sale had been made at different times, the earliest being in respect of Lot 56, followed by Lot 29, and finally Lot 21. Particularly as the purchasers of these lots were property

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10 developers, I have no doubt that the transactions had followed the pattern of Lot 1 in broad lines, at least in respect of the delay between agreement and completion. If this conclusion is correct, as I believe it is, it follows that none of the three sales afforded any reliable guide on market value, since the date of the prior agreement must remain a guess at random. I would accordingly hold that both the learned judge and the Government Valuer erred in fact in accepting the date of registration of the transfer of Lot 29 as the date the sale price thereof was agreed.

As against the sale of Lot 29 the appellants' expert witness relied on the sales of Lot 2285 and Lot No. 1. The learned judge held that they should be disregarded for the following reasons:

20 " The sale of Lot 2285 was a sale by a director to his company. It was not a sale in the open market. As Mr. Williams himself was forced to admit, if the sale was by the director to his company, then it would not be a reliable comparison. The so-called sale of Lot No. 1, was not a sale at all. It was an agreement to sell in April 1964 at \$7.90 per sq. ft. A small portion of the agreed purchase price was paid on the date of the agreement and the payment of the balance of the purchase price was subject to the fulfilment of various conditions. There is no knowing when the balance of the purchase price will be paid and there had been no completion of purchase up to the date of hearing. The agreement speaks for itself, so that there is no need for me to go into its details. In my judgment, an agreement such as this cannot be a suitable basis for the valuation of another piece of land in the neighbourhood."

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With respect I do not agree. Mr. Williams had cited the sale of Lot 2285 for what it was worth. The land was intended for a 16-storey block of good class flats. When the price paid came under consideration, it seems to me that the object of the purchase could not be wholly ignored. A tower block is a prestige building, not simple two-storeyed shops or dwelling-houses for which \$6.38 per square foot might possibly have been thought somewhat expensive. The only ground, however, which carried weight with the learned judge was that it was a sale by a director to his company, not even that for such reason it was over-priced. It was left to innuendo that the price was too high. But was there an iota of fact or evidence to show that the transaction was in any way dishonest, or that the co-directors were parties to a shady transaction which should reflect on the price? In my judgment, there were no grounds whatsoever for impugning the price paid and if the respondent had any grounds to attack the bona fides of the parties concerned therein, the **onus** was never discharged. It is not that this transaction was being considered in isolation, since, in the immediate vicinity, the price agreed upon for the sale of Lot 1 in April 1964 was \$7.90 per sq. ft., showing a rise of no less than \$1.50 in 13 months. If \$7.90 was a genuine reflection of market value in April 1964, could \$6.38 have been rejected out of hand as false in March 1963?

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Next it was said, in respect of Lot 1, that an agreement to sell was "not a sale at all". The genuineness of that transaction could not have been ~~impugned~~ at all and it was not. But was a binding agreement of sale any less a criterion of market value than the sale itself which was to follow at the agreed price? There was not even any evidence incidentally showing that the sale had been called off, but merely that; for

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the time being, building operations had not been proceeded with, for reasons which satisfied the parties concerned. The truth is that, as between the owner and the purchasers, the price of the land was by common consent fixed at \$7.90 and if that was to be disregarded as a fair indication of market value I fail to understand what better evidence thereof could have been adduced. Considered each by itself, perhaps it may be argued that one swallow does not make a summer, but, taken together, it seems to me that they afforded each other mutual support to the extent that they became unshakable evidence of current market prices of land in the vicinity. As even the Government Valuer admitted, "I find nothing wrong with the agreement (P11). The price mentioned in this agreement is consistent with the price of Lot 2285." Accordingly, in my judgment, the values accepted in March 1963 and April 1964 ought to have been taken into consideration in any fair and proper assessment of the market value of the appellants' land. Both transactions were certainly more proximate in time than the sale of Lot 29 in September 1962.

Lest it be said that I have overlooked the transfer of State land for the Tuberculosis Hospital extension, at \$3.50 per square foot in October 1964, it may be said briefly that other considerations apply, which do not to this compulsory acquisition. A sale of State land to the Ministry of Health can hardly be said to belong to the category of business transactions.

Proceeding farther afield, but for comparison and cross-checking purposes, Mr. Williams went on to consider values of land in Imbi Road, Ipoh Road and Pahang Road. Having carefully examined the other sales listed by Mr. Williams, I hold that they bear out the conclusions which he arrived at. In particular I find that those

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instances do not in any way detract from the weight of the evidence afforded by the sales of Lot 2285 and Lot 1 as to the proper market value which should be placed on the acquired land.

As regards the Imbi Road area, Mr. Williams in his evidence claimed that "Imbi Road land values are a suitable criterion for valuing this area." This was conceded by the Government Valuer. As he said, "Lands comprised in sales 14, 15 and 16 mentioned by Mr. Williams have the same potentialities as the land under acquisition, provided it is permitted by the authority." It is difficult to envisage any sort of planning permission being granted for the Imbi Road lands which would have been denied these appellants. The Government Valuer did not elaborate. Hence the Imbi Road lands could be regarded as comparable. These three sales were as follows :-

- "14. Lot 418, Imbi Road 2.569 acres, sold in August 1963 at \$5.00 per sq. foot.
- 15. Lot 424, Imbi Road, 1.341 acres, sold in January 1964 at \$11.12 per sq. ft.
- 16. Lots 273 & 428, Imbi Road, 2.775 acres sold in July 1964 at \$10.77 per sq. ft.

Before I conclude I think a few words may be said further about the development potentialities. Mr. Williams, for cross-checking purposes, had based his calculations on 54 units per acre to arrive at his assessment of \$486,000/- or approximately \$11.15 per square foot (see Ex.P8). Mr. Watkinson of the Federal Department of

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Town and Country Planning also gave evidence on this point. I do not propose to discuss at length his expressions of opinion about what he would or would not have recommended, although he was prepared to approve 40 units per acre. Since, however, Government plans have gone very much higher - in fact to 135 flats per acre, which Mr. Watkinson still regarded as "open development," he conceded that "a private owner can have the same development if he provides amenities." It has been shown that for Imbi Road 60 units per acre was allowed. Hence it seems to me that there was nothing impracticable in Mr. Williams' thesis based on 54 units. If enlightened town planning sees no harm in permitting the density envisaged by the Government, I have no doubt that the appellants would have obtained approval for their plan, with such modifications as may be called for, to enable development of their land based on no higher than 54 units per acre.

In conclusion I would repeat what was said by Danckwertz L.J. in the Duke of Buccleuch's case, that the question which falls to be decided here is "a question of fact for the tribunal which can only be ascertained on expert evidence." For the various reasons above set out I hold that the assessment of market value made by Mr. Williams was based on sufficient reliable data in accordance with sound principles. As I have already explained, the contrary views of the Government Valuer cannot be sustained. Superior evidence must tell and be **accepted**. I should add that the inferences which I myself have drawn from the facts and figures adduced in evidence lead me to the same conclusion as the appellants' expert witness. I accordingly accept the evidence of Mr. Williams, generally, and the sales of Lot 2285 and Lot 1, in particular, as true reflections of market value at the relevant time. Allowing, in

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the respondent's favour, the possibility that prices were about to become static at the crest of the boom, the market value per square foot of the acquired land, in my judgment, ought to be fixed at \$8.00. In so finding, I have not overlooked the opinions of the assessors. I have given careful thought to their respective views, but, in the light of the evidence, I think that, despite the three different conclusions reached in the court below, those views out of deference for the judge, could not fail to have been coloured to an appreciable extent by the strong views and, possibly directions in law, of the judge himself.

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I have, at any rate, given the most anxious consideration to every possible factor which ought to be taken into account in the respondent's favour towards reducing the price that will have to be paid. Two such factors are (a) the presence of squatters, who would have to be cleared, and (b) the question of land wastage on provision for roads. As regards the former, Mr. Williams' information - derived from the appellants and based, I should think, on rent collection - was that there were 47 squatter houses on the land. He made an allowance of \$4,000 per building for their clearance, making an estimate total of \$188,000/-. I have again not overlooked the evidence of Mr. Koh Eng Lim, the Administrative Officer (Housing) attached to the office of the Commissioner of the Federal Capital, who testified that a census of this area taken from July 19 to 28, 1965, showed 181 squatter houses on the land. In cross-examination, however, he was unable to say how many buildings there were, although he disputed "the figure of 47 houses given by the Collector" as correct. This evidence, generally, seems to me rather unsatisfactory as he could not say, again, since when the

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squatters he referred to had been living on the land. Remembering that the notice of intended acquisition was gazetted on June 4, 1964, it would be natural for the appellants to realise immediately that their future concern in the land had evaporated. It was and is a notorious fact - of which the Commissioner of the Federal Capital is more keenly aware than anybody else - that the pressure of a rising population has made squatters move illegally into vacant lands in Kuala Lumpur the way that nature abhors a vacuum. Hence there was every likelihood that an increase in illegal occupation by squatters took place after the appellants had lost interest in the land themselves. Taking all circumstances into consideration, therefore, I would go along with Mr. Williams and allow, in round figures, \$200,000 for squatter clearance.

Next, there is the question of land wastage in provision for roads. I should point out that I have not accepted Mr. Williams' assessment of \$11.15 per square foot to which reference was made a little earlier in this judgment. I have accepted, instead, the agreed prices on the sale of Lot 2285 and Lot 1. It is self-evident enough to go without saying that buildings were not planned to occupy these lots to the last square foot, but that roadways are a sine qua non. As the price paid by the purchasers necessarily took that fact into consideration, the same must be said of this acquired land when priced at the same level. On the other basis of \$11.25 per square foot, of course, special deduction for roads would have been inevitable. Therefore, the wastage of 4 acres, or approximately 18 per cent of the total area acquired, which the Government Valuer allowed for, would not apply. At any rate the agreed adjustment of boundaries, which for practical purposes was a fait accompli.

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must, as conceded, reduce such wastage by an appreciable extent; there is no evidence what this area would be, if any.

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

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This appeal being thus allowed, the cost of 991,730 square feet at \$8.00 would amount to \$7,933,840. Deducting \$200,000 for squatter clearance leaves a balance of \$7,733,840. Deducting again 10 per cent of this figure leaves my net award at the sum of \$6,960,456, which works out at \$7.09 per square foot. I direct that this sum be paid to the appellants in the proportion of their respective shares, less the amount awarded by the Collector in case the same had already been paid.

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In accordance with the provisions of section 48 of the Land Acquisition Act, 1960, I further order that interest be paid on the excess figure of \$3,985,266 at the rate of 6 per cent per annum from June 26, 1965, the date on which the Collector took possession, till date of payment.

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As to costs, the order of the learned judge is set aside. By virtue of the provisions of para (c) of Section 51(1) of the Act, I would make no order as to costs both here and in the court below.

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Kuala Lumpur,
20th February, 1968.

No. 47

In the Federal
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ORDER OF FEDERAL COURT
ALLOWING APPEALS

No.47

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

Order of
Federal Court
Allowing
Appeals

(APPELLATE JURISDICTION)

20th February
1968

FEDERAL COURT CIVIL APPEAL NO. X. 24 of 1967

Between

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A.K.A.C.T.V. Alagappa Chettiar .. Appellant
and

Collector of Land Revenue,
Kuala Lumpur .. Respondent

(In the matter of Civil Application No. 6
of 1965 in the High Court in Malaya at
Kuala Lumpur

Between

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A.K.A.C.T.V. Alagappa Chettiar .. Applicant
and

Collector of Land Revenue,
Kuala Lumpur .. Respondent)

CORAM:

ONG HOCK THYE, JUDGE, FEDERAL COURT, MALAYSIA;
RAJA AZLAN SHAH, JUDGE, HIGH COURT, MALAYA; AND
PAWAN AHMAD, JUDGE, HIGH COURT, MALAYA.

IN OPEN COURT

THIS 20TH DAY OF FEBRUARY, 1968.

O R D E R

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THIS APPEAL coming on for hearing as a
test appeal on the 18th day of October, 1967
in the presence of Mr. S.D.K. Peddie of Counsel
for the Appellants in Civil Appeal Nos. X24
and X.26 to X.30 of 1967, Mr. Ng Ek Teong (with

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(continued)

Mr. Vincent Ponniah) of Counsel for the Appellants in Civil Appeals Nos. X.32 to X.34 of 1967 and Tuan Haji Mohd. Azmi bin Dato Haji Kamaruddin, Senior Federal Counsel for the Respondent in all Appeals AND UPON READING the Record of Appeal filed herein AND UPON HEARING the arguments of Counsel aforesaid AND UPON READING the written submissions submitted by Counsel aforesaid IT WAS ORDERED that Judgment be reserved AND the same coming on for Judgment this day in the presence of Mr. S.D.K. Peddie of Counsel for the Appellants in Civil Appeals Nos. X.24 and X.26 to X.30 of 1967, Mr. Vincent Ponniah of Counsel for the Appellants in Civil Appeals Nos. X.32 to X.34 of 1967 and Tuan Haji Mohd. Azmi bin Dato Haji Kamaruddin, Senior Federal Counsel for the Respondent in all appeals IT IS ORDERED that the Appeals be and are hereby allowed AND IT IS ORDERED that the Respondent do pay to the Appellants in the above mentioned Civil Appeals in the proportion of their respective shares the sum of \$6,960,456/- (Dollars Six million nine hundred and sixty thousand four hundred and fifty-six only) less the sum of \$2,975,190/- already paid AND IT IS FURTHER ORDERED that the Respondent do pay to the said Appellants interest at the rate of 6% per annum on the sum of \$3,985,266/- from the 26th day of June, 1965 to the date of payment AND IT IS FURTHER ORDERED that the deposits made by the said Appellants into Court as security for costs be refunded to the Appellants AND IT IS LASTLY ORDERED that there be no costs in these Appeals and in the Court below.

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Given under my hand and the seal of the
Court this 20th day of February, 1968.

Sgd. Au Ah Wah
CHIEF REGISTRAR,
FEDERAL COURT,
MALAYSIA.

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No. 48

ORDER OF FEDERAL COURT
GRANTING CONDITIONAL LEAVE TO
APPEAL TO H.M. THE YANG DI PERTUAN AGONG
IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. X24 of 1967

Between

10 A.K.A.C.T.V. Alagappa Chettiar .. Appellant

And

Collector of Land Revenue,
Kuala Lumpur .. Respondent

(In the matter of Civil Application No. 6
of 1965 in the High Court in Malaya at
Kuala Lumpur

Between

A.K.A.C.T.V. Alagappa Chettiar .. Applicant

And

20 Collector of Land Revenue,
Kuala Lumpur .. Respondent)

FEDERAL COURT CIVIL APPEAL NO. X32 OF 1967

Between

Ong Thye Eng as Trustee .. Appellant

And

Collector of Land Revenue,
Kuala Lumpur .. Respondent

In the Federal
Court

No. 48

Order granting
conditional
leave to appeal
to H.M. The
Yang di Pertuan
Agong

13th May 1968

In the Federal Court

No. 48

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13th May 1968

(continued)

(In the matter of Civil Application No. 9 of 1965 in the High Court in Malaya at Kuala Lumpur.

In the matter of Land Acquisition Act, 1960 (Section 38 (5))

And

In the matter of the Acquisition of Lots 1922 and 1928, Section 85A
Lots 1924 and 1930, Section 79 and
Lots 17, 18 and 19, Section 47,
Town of Kuala Lumpur.

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Between

Ong Thye Eng as Trustee

Applicant

And

Collector of Land Revenue,
Kuala Lumpur.

Respondent).

CORAM: SYED SHEH BARAKBAH, LORD PRESIDENT,
FEDERAL COURT, MALAYSIA;
SUFFIAN, JUDGE, FEDERAL COURT, MALAYSIA;
MACINTYRE, JUDGE, FEDERAL COURT,
MALAYSIA.

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IN OPEN COURT

This 13th day of May, 1968

O R D E R

UPON MOTION made unto the Court on the 6th day of May, 1968, by Mr. Ajaib Singh, Senior Federal Counsel, on behalf of the Respondent in the presence of Mr. S.D.K. Peddie of Counsel for the Appellant in Federal Court Civil Appeal No. X24/67 and Mr. Vincent Ponniah of Counsel for the Appellant in Federal Court Civil Appeal No. X32/67 AND UPON READING the Notice of Motion dated the 9th day of April 1968, the Affidavit of Mohd Azmi bin Haji Kamaruddin affirmed on the 22nd day of March, 1968, the Notice of Motion dated the 9th day of April, 1968, the Affidavit of Alagappa

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Vengatachalam s/o Alagappa Chettiar affirmed on the 20th day of March, 1968, the Notice of Motion dated the 9th day of April, 1968, the Affidavit of Ong Thye Eng (as Trustee) affirmed on the 2nd day of April, 1968 all filed herein:

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(continued)

10 AND UPON HEARING Counsel as aforesaid for the parties IT WAS ORDERED that leave be granted to the above named Respondent to Appeal to His Majesty the Yang di-Pertuan Agong against the judgment of the Federal Court given in Federal Court Civil Appeal No. X24/67 dated the 20th day of February, 1968 AND IT WAS ORDERED that the above named Respondent do within three (3) months from the date hereof enter into good and sufficient security to the satisfaction of the Chief Registrar of the Federal Court in the sum of \$5,000/- (Dollars Five thousand only) for the due prosecution of the Appeal, and the payment of all such costs as may become payable 20 to the above named Appellant in the event of the above named Respondent not obtaining an Order granting final leave to appeal, or of the Appeal being dismissed for non-prosecution, or of His Majesty the Yang di-Pertuan Agong ordering the above named Respondent to pay the above named Appellant costs of the Appeal, as the case may be AND IT WAS ORDERED that the said Respondent do within the said period of (3) 30 three months from the date hereof take the necessary steps for the purpose of procuring the preparation of the Record and the despatch thereof to England:

40 AND IT WAS ORDERED that the Appellant in Federal Court Civil Appeal No. X24/67 be granted conditional leave to cross appeal to His Majesty the Yang di-Pertuan Agong against that part of the Judgment and Order of the Federal Court by which there was deducted from the compensation awarded to the Appellant ten (10) per centum thereof to cover unforeseen contingencies provided a principal appeal is presented by the Respondent AND IT WAS ORDERED that the Principal Appeal of the Respondent and the Cross Appeal of the Appellant be consolidated and be heard on one printed case on each side and do come on for hearing on the same

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printed transcript record as the Principal Appeal AND IT WAS ORDERED that the Appellant do within three (3) months from the date hereof enter into good and sufficient security to the satisfaction of the Chief Registrar of the Federal Court in the sum of \$5,000/- (Dollars Five thousand only) for the due prosecution of the Cross Appeal, and the payment of all such costs as may become payable to the above named Appellant in the event of the above named Appellant not obtaining an Order granting final leave to cross appeal, or of the Cross Appeal being dismissed for non-prosecution, or of His Majesty the Yang di-Pertuan Agong ordering the above named Appellant to pay the above named Respondent costs of the Appeal, as the case may be AND IT WAS ORDERED that the costs of the Motions be costs to the cause:

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AND IT WAS ORDERED that the Motion in Federal Court Civil Appeal No. X32 of 1967 be adjourned to the 9th day of May, 1968 for further hearing AND the same coming on for hearing on the 9th day of May, 1968 in the presence of Mr. Vincent Ponniah of Counsel for the Appellant in Federal Court Civil Appeal No. X32/67 and Mr. Ajaib Singh, Senior Federal Counsel, for the Respondent AND UPON HEARING Counsel as aforesaid IT WAS ORDERED that the said Motion do stand adjourned for further hearing and the same coming on for hearing this day in the presence of Mr. Ng Ek Teong (Mr. Vincent Ponniah with him) of Counsel for the Appellant in Federal Court Civil Appeal No. X32/67 and Mr. Ajaib Singh, Senior Federal Counsel, for the Respondent:

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IT IS ORDERED with the consent of Mr. S.D. K. Peddie Counsel for the Appellant in Federal Court Civil Appeal No. X24/67 that the Order made by the Court on the 6th day of May, 1968 in Federal Court Civil Appeal No. X24/67 be and is hereby varied and the following joint order in Federal Court Civil Appeals Nos. X24/67 and X32/67 be made:

40

- (a) that leave be granted to the above named Respondent to Appeal to His

Majesty the Yang di-Pertuan Agong against the judgment of the Federal Court given in Federal Court Civil Appeal No. X24 of 1967 dated 20th day of February, 1968;

In the Federal Court

No. 48

Order granting conditional leave to appeal to H.M. The Yang di Pertuan Agong

13th May 1968

(continued)

10

- (b) that the above named Respondent do within three (3) months from the date hereof enter into good and sufficient security to the satisfaction of the Chief Registrar of the Federal Court in the sum of \$5,000/- (Dollars Five thousand only) for the due prosecution of the Appeal, and the payment of all such costs as may become payable to the above named Appellants in the event of the above named Respondent not obtaining an Order granting final leave to appeal, or of the Appeal being dismissed for non-prosecution, or of His Majesty the Yang di-Pertuan Agong ordering the above named Respondent to pay the above named Appellants costs of the Appeal, as the case may be;

20

- (c) that the above named Respondent do within the said period of three (3) months from the date hereof take the necessary steps for the purpose of procuring the preparation of the Record and the despatch thereof to England;

30

- (d) that the Appellants in Federal Court Civil Appeal Nos. X24/67 and X32/67 be granted conditional leave to cross appeal to His Majesty the Yang di-Pertuan Agong against that part of the judgment and order of the Federal Court by which there was deducted from the compensation awarded to the Appellants ten (10) per centum thereof to cover unforeseen contingencies provided a principal appeal is presented by the Respondent;

40

In the Federal
Court

No. 48

Order granting
conditional
leave to appeal
to H.M. The
Yang di-Pertuan
Agong

13th May 1968

(continued)

(e) that each of the above named Appellants in Federal Court Civil Appeal Nos. X24/67 and X32/67 do within three (3) months from the date hereof enter into good and sufficient security to the satisfaction of the Chief Registrar of the Federal Court in the sum of \$5,000/- (Dollars Five thousand only) for the due prosecution of the cross appeals, and the payment of all such costs as may become payable to the above named Respondent in the event of the above named Appellants not obtaining an Order granting final leave to cross appeal, or of the Appeal being dismissed for non prosecution, or of His Majesty the Yang di-Pertuan Agong ordering the above-named Appellants to pay the above named Respondent costs of the Appeal or the Cross Appeals as the case may be; 10

(f) that the Cross Appeals by the Appellants in Federal Court Civil Appeal Nos. X24/67 and X32/67 be consolidated and that both Cross Appeals be consolidated with the Appeals in Federal Court Civil Appeals Nos. X24/67 and X32/67; and 20

(g) that the consolidated appeals be heard on one printed transcript with a printed case on each side. 30

AND IT IS LASTLY ORDERED that the costs of the Motions be costs in the Appeal.

GIVEN under my hand and the seal of the Court this 13th day of May, 1968.

Sgd. Au Ah Wah
CHIEF REGISTRAR,
FEDERAL COURT, MALAYSIA.

No. 49

ORDER OF FEDERAL COURT GRANTING
FINAL LEAVE TO APPEAL TO H.M.
THE YANG di PERTUAN AGONG

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. X24 of 1967

Between

10 A.K.A.C.T.V. Alagappa Chettiar .. Appellant

And

Collector of Land Revenue,
Kuala Lumpur. .. Respondent

(In the matter of Civil Application No. 6 of
1965 in the High Court in Malaya at Kuala
Lumpur

Between

A.K.A.C.T.V. Alagappa Chettiar .. Applicant

And

20 Collector of Land Revenue,
Kuala Lumpur .. Respondent)

FEDERAL COURT CIVIL APPEAL NO. X32 of 1967

Between

Ong Thye Eng as Trustee .. Appellant

And

Collector of Land Revenue,
Kuala Lumpur .. Respondent

(In the matter of Civil Application No. 9
of 1965 in the High Court in Malaya at
Kuala Lumpur

30

In the matter of Land Acquisition Act, 1960
(Section 38(5))

And

In the Federal
Court

No. 49

Order of Federal
Court granting
final leave to
appeal to H.M.
The Yang di-
Pertuan Agong

19th August
1968

In the Federal Court

No. 49

Order of Federal Court granting final leave to appeal to H.M. The Yang di-Pertuan Agong

19th August 1968

(continued)

In the matter of the Acquisition of Lots 1922 and 1928, Section 85A, Lots 1924 and 1930, Section 79 and Lots 17, 18 and 19, Section 47, Town of Kuala Lumpur

Between

Ong Thye Eng as Trustee .. Applicant

And

Collector of Land Revenue, Kuala Lumpur .. Respondent) 10

CORAM: ONG HOCK THYE, JUDGE, FEDERAL COURT, MALAYSIA; SUFFIAN, JUDGE, FEDERAL COURT, MALAYSIA; MACINTYRE, JUDGE, FEDERAL COURT, MALAYSIA.

IN OPEN COURT

THIS 19TH DAY OF AUGUST, 1968

O R D E R

UPON MOTION made unto this Court this day by Enche Ajaib Singh, Senior Federal Counsel on behalf of the above-named Respondent, Mr. Peter Mooney of Counsel for the Appellant in Federal Court Civil Appeal No. X24/67 and Mr. Ng Ek Teong (Mr. V. Ponniah with him) of Counsel for the Appellant in Federal Court Civil Appeal No. X32/67 AND UPON READING the Notice of Motion dated the 31st day of July, 1968 and the affidavit of Ajaib Singh affirmed on the 30th day of July, 1968 and filed herein AND UPON READING the Notice of Motion dated the 1st day of August, 1968 and the Affidavit of Siew Ying Kong affirmed on the 1st day of August, 1968 and filed herein AND UPON READING the Notice of Motion dated the 7th day of August, 1968 and the Affidavit of Ong Thye Eng affirmed on the 2nd day of August, 1968 and filed herein AND UPON HEARING Counsel as aforesaid for the parties IT IS ORDERED that final leave be and is hereby granted to the Respondent above named to appeal to His Majesty the Yang di-Pertuan Agong AND IT 20 30 40

IS FURTHER ORDERED that final leave be and is hereby granted to the Appellants in Federal Court Civil Appeal Nos. X24/67 and X32/67 to cross appeal to His Majesty the Yang di-Pertuan Agong against that part of the judgment and order of the Federal Court by which there was deducted from the compensation awarded to the Appellants ten (10) per centum thereof to cover unforeseen contingencies provided a principal appeal is presented by the Respondent AND IT IS LASTLY ORDERED that the costs of this Application be costs in the cause.

10

GIVEN under my hand and the Seal of the Court this 19th day of August, 1968.

Sgd. Au Ah Wah
CHIEF REGISTRAR,
FEDERAL COURT,
MALAYSIA.

In the Federal Court

No. 49

Order of Federal Court granting final leave to appeal to H.M. The Yang di-Pertuan Agong

19th August 1968

(continued)

PLAINTIFFS' EXHIBITS

20

P.1 - BUNDLE OF CORRESPONDENCE

Your ref: 15/KLM/922/57

Our ref: P/TLH/14063/57

The Planning Officer,
The Municipality,
Kuala Lumpur.

28th September, 1957

Dear Sir,

Proposed New Street Line for
Circular Road

30

We are instructed by A.K.A.C.T.V. Alagappa Chettiar to submit for approval the appropriate plans for development of the area adjoining the above proposed new road. Three layout plans and two building plans are enclosed herewith.

Our client instructs us to emphasise that these plans are submitted on the basis that Circular Road will be widened regardless of

Plaintiffs
Exhibits

P.1

Bundle of correspondence

28th September 1957

Exhibits

P.1

Bundle of
correspondence

28th September
1957

(continued)

any objection our client might take and are not to be construed as being an application by our client to have approved a 100 foot wide road through the property. Our client has no need for a road of that width.

Referring to the site plans, our client respectfully requests that the Municipality should lend its support to an application by our client for the alienation to him of the areas shaded green on the plans in exchange for the surrender of the areas shaded yellow, due adjustment being made with the State Government with respect to the relative areas of the land alienated and surrendered with appropriate payment on either side. We should be grateful if the Municipality could see its way to advising the land office that it approves of and supports the exchange contemplated.

10

Yours faithfully,

Sgd: Bannon & Bailey.

20

KUALA LUMPUR MUNICIPALITY
Town Planning Branch
MUNICIPAL ENGINEER'S DEPT. K.L.

18th October, 1957.

Our ref. 51/KLM.3356
Your ref. P/TLH/14063/57

Messrs. Bannon & Bailey,
P.O. Box 80,
KUALA LUMPUR.

Exhibits

P.1

Bundle of
correspondence

18th October
1957

10 Dear Sirs,

Layout and subdivision proposal
for lots 17-19, 1922, 1924, 1928
& 1930 sec.47, Circular Road,
Kuala Lumpur.

I refer to your letter dated 28th September,
1957 forwarding plans of the above proposal.

20 2. I am to inform you that the Town Planning
Committee considered these plans at its
meeting on 8th October, 1957 and as the devel-
opment envisaged conformed generally to the
draft plan for the area, the Committee agreed
to the development plans as submitted subject
to the following conditions :-

30 (i) The land required for street, lane,
service road and open space reserves
to be surveyed excised and surrendered
free of charge, except the land for
street in excess of 66 ft. wide for
which compensation will be paid
according to the law.

(ii) No objections being received from
adjoining landowners to the flats,
shop and terrace house development
under column 4 of the reference to
zoning.

(iii) Development of the shop and terrace
house plots to be restricted to 41%
of the net area of each plot.

40 (iv) No subdivision into individual shop
and terrace house plots will be

Exhibits

P.1

Bundle of
correspondence
18th October
1957

(continued)

permitted until the buildings have
been erected.

- (v) Street and drainage plans to be submitted to the Municipal Engineer under Section 101, Municipal Ordinance.
- and (vi) No development to take place on plots 62, 63, 64, V, XIII and IX as these plots include State land (coloured Green), until the State land has been obtained from the State Government either through exchange or alienation proceedings.

10

3. Action on condition (ii) will be initiated shortly and as this will involve an advertisement in a local newspaper, a bill for the advertisement costs will be sent to you in due course.

4. With regard to condition (vi), this relates to paragraph 3 of your above mentioned letter.

20

5. The draft plan R.113 for the new streets has been submitted to the Ruler in Council for approval, and until this plan is approved, it would be premature to approach the State Government on the exchange proposals. It is suggested therefore that your client awaits the approval of the draft plan R.113, after which it would be opportune for him to submit his exchange proposals direct to the District Officer, Kuala Lumpur for consideration.

30

Yours faithfully,

Sgd: Illegible

Planning Officer,
for Municipal Engineer,
Kuala Lumpur.

KUALA LUMPUR MUNICIPAL COUNCIL

Town Planning Branch
Municipal Engineer's Dept.
Municipal Offices,
P.O. Box 1022
KUALA LUMPUR.

Exhibits

P.1
Bundle of
Correspondence
20th August
1958

Ref: 2/KLM.3356 Pt.11

20th August, 1958.

M/s. Bannon & Bailey,
Laidlaw Building,
Kuala Lumpur.

10

Dear Sirs,

Layout and subdivision proposal for
Lots 17-19, 1922, 1924, 1928 & 1930,
Sec. 47 Circular Road, K. Lumpur.

I refer to your letter of 31st July, 1958
in connection with the above subject.

2. As stated in my letter of 16th October,
1957 to you, the development plans as submitted
by your client conformed generally to the draft
plan for the area. Since then plan No. R.113
for the new streets have already been approved
by the Ruler-in-Council.

20

3. I wish to draw your attention to the
request of Mr. A.E. De Alwis the adjoining
landowner who wanted some adjustment made to
the layout plan in order to provide for access
to lot 3095 at the west through the proposed
road, as shewn dotted Blue on your plan, a
copy of which is returned herewith.

30

4. The matter of exchange of land with the
State Government can now be taken up by your
clients with the Collector of Land Revenue
bearing in mind the adjustment mentioned in
para (3) above.

Yours faithfully,

Signed.

for Planning Officer,
Municipal Engineer,
Kuala Lumpur.

Exhibits

P.1

Bundle of
correspondence1st October
1958

1st October, 1958

p/TLH/14063/57

The Collector of Land Revenue,
Kuala Lumpur.

Sir,

We act for A.K.A.C.T.V. Alagappa Chettiar and R.M.P.M.P. Sinnameyappa Chettiar who are registered as the proprietors as trustees and as administrators of the estate of R.M.P. Meyappa Chettiar deceased respectively of the lands held under Lots No. 17, 18, 19, 1922, 1924, 1928 and 1930 Section 47 Mukim of Setapak, Kuala Lumpur.

10

Our clients are anxious to develop the Lots in question and for that purpose to obtain sub-division. Before applying for sub-division, however, they had to obtain the approval of the Town Planner, Municipality, Kuala Lumpur. That approval has now been obtained, but our clients still cannot apply for sub-division as the approved plans involve certain exchanges of land in order that proper lots can be obtained.

20

We now enclose herewith a site plan of the property. Outlined on it in red ink is the land belonging to our clients. Coloured yellow on it are areas of our clients' land which they are prepared to surrender to the State. Coloured green on it are areas of State land our clients would like alienated to them in order to make up proper building lots.

30

We are now instructed to enquire whether the State would be prepared to alienate to our clients the areas of land coloured green in exchange for a surrender by our clients of the areas coloured yellow and the payment by our clients of a proper value for the State land alienated to them in excess of the area surrendered by our clients to the State.

It will be seen on reference to the plan enclosed that it is only by some form of

40

exchange of land that it will be possible to avoid wastage of large areas of land in this part of the town development. Unless some system of exchange is possible some areas of our clients' land will be incapable of development.

10 If you would like to discuss the matter with us and our clients, we will be happy to call on you at a time convenient to you. It may well be that a short discussion of the considerations involved on both sides would avoid a lengthy correspondence and lead to a more rapid agreement.

We have the honour to be,
Sir,
Your obedient servants,

Exhibits

P.1

Bundle of
Correspondence

1st October
1958

(continued)

Exhibits

P.1

Bundle of
correspondence10th June
1960C O P Y

MAJLIS PERBANDARAN KUALA LUMPUR

Chawangan Peranchang Bandar,
Pejabat Jurutera
Perbandaran,
Peti Surat 1022,
Kuala Lumpur.Surat Kita;
8/KLM.1483/55 Pt.11

Dear Sir,

Date: 10th June, 1960.

Proposed 7 two-storey shophouses
and 10 two-storey terrace houses
on lot 21, sec. 47, Pahang Road, K.L.

10

An application has been received for permission to use the above mentioned lots for shops & block of houses (terrace development); this land adjoins land in your ownership.

2. The lot is zoned "Open Development" in the Approved Town Plan, but under the new reference to zoning which has been approved by the Ruler in Council, shops & block of houses (terrace), may be permitted in this area.

20

3. I shall be pleased to know if you have any objection to this proposal before it is further considered, and if so, you should give specific reasons for your objection.

4. Your reply should be received within 21 days of the date of this letter and if no communication is received from you within that period, it will be assumed that you have no objection to the proposal being approved.

5. A plan of the proposed development may be inspected in this office during office hours.

30

Yours faithfully,

Sgd. Illegible

Pegawai Peranchang,
b.p. Jurutera Perbandaran,
Kuala Lumpur.Mr. A.K.A.C.T.V. Alagappa Chettiar,
86 Ampang Street,
KUALA LUMPUR.

337.

No. (23) in CLRKL.2/1204/58

Pejabat Tanah,
Kuala Lumpur.

30th August, 1960

Messrs. Bannon & Bailey,
Advocates & Solicitors,
P.O. Box 80,
Kuala Lumpur.

Exhibits

P.1

Bundle of
correspondence

30th August
1960

Gentlemen,

10 Layout and sub-division proposed for
 Lots 17-19, 1922, 1924, 1928 and 1930
 Section 47 Circular Road, K. Lumpur

I have the honour to refer to your letter
No. P/TLH/14063/57 dated 4th March, 1960
addressed to the Municipal Engineer, Kuala
Lumpur with a copy to me on the above subject.

20 2. I forward herewith a copy of plan
 No. D.166E (Part) submitted by the President
 Municipal Council, Kuala Lumpur, showing the
 revised general redistribution proposals
 affecting State land and your clients' land
 for your information.

3. If the proposals are acceptable to your
clients, will you please have the plan
endorsed by them and returned to this office?

I have the honour to be,
Gentlemen,
Your obedient servant,

Sgd. Illegible

30 Pemungut Hasil Tanah
 Kuala Lumpur.

Exhibits

P.1
Bundle of
correspondence
6th September
1960

COPY

BANNON & BAILEY,
ADVOCATES & SOLICITORS,
NOTARIES PUBLIC
COMMISSIONERS FOR OATHS

Laidlaw Building,
Kuala Lumpur.

6th September, 1960.

Our Ref. P/SA/14063/57

A.K.A.C.T.V. Alagappa Chettiar,
30, Ampang Street,
Kuala Lumpur.

10

Dear Sir,

re: Circular Road Property

We have now received a letter from the
Land Office forwarding a copy of plan No.
B 166E, setting out a revised distribution
proposal affecting state land and your land.

This plan is exactly in accordance with
the last plan prepared by you and submitted to
the Land Office for approval, and we therefore
take it that you will accept the proposals set
out in it.

20

If the plan is acceptable, will you
please have it signed by yourself and by
R.M.P.M.P. Sinnameyappa Chettiar as
administrator of the estate of R.M.P. Meyappa
Chettiar deceased, and then return it to us.

Yours faithfully,

Sgd.

Bannon & Bailey

339.

28th September, 1960

Your Ref: (23) in CIR.KL. 2/1204/58
Our Ref: P/TLH/14063/57

Pemungut Hasil Tanah,
Pejabat Tanah,
Kuala Lumpur.

Sir,

Layout and Sub-division proposed for
lots 17-19, 1922, 1924, 1928 and 1930
Sec. 47 Circular Road, Kuala Lumpur.

10

We refer to your letter of the 30th August 1960 and are instructed by our clients to ask for clarification of the plan endorsed therewith. In that plan an area to be reverted to the State has been coloured green but the area outlined in red as being required for a school includes other land belonging to our clients.

20

We should be obliged if you would inform us whether it is intended that our Clients should surrender the green area only or whether they should surrender all the land belonging to them within the area outlined in red.

Yours faithfully,

Sgd.

Bannon & Bailey

Exhibits

P.1

Bundle of
correspondence

28th September
1960

Exhibits

No. (28) in CLR.KL.2/1204/59

P.1

Pajabat Tanah,
Kuala Lumpur.

Bundle of
correspondence

7th November
1960

7th November, 1960.

Messrs. Bannon & Bailey,
P.O. Box 80,
Kuala Lumpur.

Gentlemen,

Layout and subdivision proposed
for lots 17-19, 1922, 1924, 1928
& 1930 Sec. 47 Circular Road, K.L.

10

I am to refer to your letter P/TLH/14063/
57 dated 28.9.60 and to say that the matter
was referred to the President Municipal
Council who in reply states that only the area
coloured "green" would be required for
surrender.

I am, Gentlemen,
Your obedient Servant,

Sgd. Illegible.

Pemungut Hasil Tanah
Kuala Lumpur.

20

EXHIBIT P.5

ADVERTISEMENT IN MALAY MAIL
19.8.1963 Monday

The Malay Mail, Monday.

PUBLIC NOTICES

PESUROHJAYA IBU KOTA KUALA LUMPUR

APPROVED TOWN PLAN NOTICE

Exhibits

P.5

Advertisement
in Malay Mail

19th August
1963

10 AN application has been made for approval of the use of lots 15 and 56, sec. 85A, Jalan Pahang for 20 shops and 300 flats contained in a development scheme of 5 blocks of 14-storey flats and 2 blocks of 2-storey shops and flats above. These lots are zoned "Open Development" in the Approved Town Plan but blocks of houses or flats and shops may be permitted under Column IV of the Reference to Zoning of the Approved Town Plan.

20 2. Objections to the proposed use of this land should be made in writing to the Setia Usaha Perbandaran, Ibu Kota Kuala Lumpur, within 21 days from the date of this Notice.

3. A plan of the proposed development is available for inspection in the Chawangan Peranchang Bandar, Pejabat Jurutera Perbandaran, Kuala Lumpur, during office hours.

30 PESUROHJAYA,
Ibu Kota Kuala Lumpur,
(Haji Ismail bin
Panjang Aris)
K.L.M. 1418/55
Dated: 15th August, 1963.

Exhibits

P.6

Report headed
Plan to
broaden
Circular Road
27th July 1961

EXHIBIT P.6

Report Headed Plan to Broaden
Circular Road

Thursday, 27.7.61. M. Mail

PLAN TO BROADEN CIRCULAR ROAD

A Dual-carriageway along the whole of Circular Road from Ipoh Road to Pudu Road, is one of several projects planned in the development of Kuala Lumpur.

"This is just a plan for the future. It does not mean we have to carry it out immediately," an official of the engineer's department, Municipality of Kuala Lumpur, said yesterday.

10

Meanwhile work has started on phase two of this year's extensions to the Ipoh Road dual-carriageway.

This will extend the carriageway from Maxwell Road roundabout to Station Road, Sentul.

20

The initial phase was completed in March, advancing the dual-carriageway from the Gombak River bridge to the Maxwell Road junction.

Among the other projects which will cost the Municipality several million dollars are its new offices costing about \$3 million and a by-pass to ease congestion along Batu Road.

EXHIBIT P.7REPORT HEADED WORK ON CIRCULAR ROAD
DUAL-CARRIAGE HIGHWAY

The Malay Mail, Wednesday, January 3rd, 1962.

Work on Circular Road dual-carriage highway

850,000 to be spent on Major Phase this Year

10 Ten-year-old plans for turning Circular Road into a dual-carriage highway get a head start this year with work on a major phase between the Ipoh Road and Pahang Road junctions.

Following on the completion, in recent months, of the new dual-carriage bridge along this stretch, the Commissioner for Kuala Lumpur has authorised the spending of \$850,000 for the remaining works in this busy link of the town's only by-pass.

20 The first step to be launched within the next few days, is the laying of a double track between the bridge and the new Ipoh Road roundabout.

The Municipal Engineer, Mr. C.P. Hosking, said yesterday that, unlike the precautions taken with the bridge works last year, there would be no necessity for closing the road to traffic while these improvements were carried out.

30 Each traffic lane in the new thoroughfare will be 30 feet wide. These measurements are in keeping with the Ipoh Road improvements and considerably wider than the standard 22 feet allowed on Federal dual-carriage roads.

The reason is that Circular Road is already taking considerably more traffic than it was ever intended for, and is certain to be carrying even heavier streams in the future.

Exhibits

P.7

Report headed
Work on Circular
Road dual-
carriage
highway

3rd January
1962

ExhibitsClosed Down

P.7

Report headed
Work on Circular
Road dual-
carriage
highway

3rd January
1962

(continued)

The old extension barracks and transport pool of the 5th Battalion, Royal Malay Regiment, have already been closed down on the east side of the bridge.

As soon as these are demolished, the dual-carriageway will be extended, sweeping through this site in a straight line to join Pahang Road at a point just opposite the Circular Road continuation.

10

Here a serious traffic block will be removed by the provision of another roundabout - on the same dimensions as the Ipoh Road roundabout, with a diameter of 150 feet.

Mr. Hosking commented that unlike the row of ancient shophouses which still proved an obstacle to the finishing touches on the Ipoh Road circus, the only property affected by the Pahang Road roundabout was a group of squatter huts. No difficulty was foreseen.

20

The Estimates

All these works are expected to be finished within the year. And they are not the only revisions allowed for in the estimates.

An order has been placed for traffic lights at the Princess Road and Gurney Road junctions, farther east on Circular Road.

Coupled together to provide a suitable time lapse, these lights, situated 100 yards apart, will relieve the hold-ups that occur at all times of the day on this much-used stretch of highway.

30

Next project on the records is a massive 190-foot roundabout - as big as the one at the top of Batu Road - to replace the existing traffic lights at the Circular-Ampang Road junction.

345.

This will be started as soon as new accommodation can be found for the police station and quarters which stand on that corner. Stretches of dual-carriage approach will be laid on either side.

Exhibits

P.7

Report headed
Work on
Circular Road
dual-carriage
highway

3rd January
1962

(continued)

Exhibits

P.8

Report and
Valuation of
C.H. Williams
17th May 1966

EXHIBIT P.8Report and Valuation of C.H. Williams

C.H. WILLIAMS

206 Asia Insurance Buildings,
Jalan Weld,
Kuala Lumpur.

REPORT AND VALUATION

17th May, 1966.

Messrs. Skrine & Co.,
Solicitors,
Straits Trading Building,
KUALA LUMPUR.

10

Dear Sirs,

Re: Land Acquisition
Circular Road

On the instruction of Mr. A.K.A.C.T.V. Alagappa Chettiar, I have inspected the lands listed below for the purpose of valuation in connection with their compulsory acquisition.

Notice under Section 4 of the Land Acquisition Act, 1960 in the Selangor Government Gazette of 4th June, 1964, gives the title details as follows (G.N. No. 335 - Page 188).

20

District: Kuala Lumpur

Township: Kuala Lumpur

<u>Survey Lot No.</u>	<u>Title No.</u>	<u>Area of Lot</u>
1924	C.T. 9795	3a 3r 04p
1930	C.T. 9787	6a 1r 27p
1922	C.T. 9784	1r 27p
1928	C.T. 9786	1a 1r 38.9p
17	C.T. 10800	4a 3r 09.5p
18	C.T. 10801	2a 0r 28.8p
19	C.T. 14401	3a 2r 27.6p

30

Total area = 22a 3r 02.8p
= 991,752 sq. feet

The Registered Proprietors are given as A.K.A.C.T.V. Alagappa Chettiar S/o Sithambaram Chettiar as trustee, Ng Chong Geng & Sons Limited, Synn Lee & Co. Limited, Ong Thye Eng as trustee, Kheoh Aik Law as trustee, Chuah Say Hai as Trustee, Chai Wai Leong as trustee, Pong Kien Ngor as trustee, Han Leck Juan as trustee and Ooi Teng Kan as trustee.

Exhibits

P.8

Report and
Valuation of
C.H. Williams
17th May 1966
(continued)

10 The proposal to acquire was confirmed by notice under Section 8 of the Land Acquisition Act given in Gazette Notification No. 678 dated 8th October, 1964.

SITUATION & DESCRIPTION:

20 This site of 22 3/4 acres is situated within two miles of the centre of Kuala Lumpur and has a frontage to some 500 yards to the north side of Circular Road between Jalan Pe'ang and the Gombak River. The land is generally level and is close to areas of high-density development in Jalan Pehang, Jalan Ipoh and Jalan Tuanku Abdul Rahman.

Parts of the area to the north and west were encumbered at the time of acquisition with temporary dwellings comprising a total of 47 buildings containing 102 units. The remainder of the land was vacant.

ACCESS.

30 There is easy access from the site to all parts of Kuala Lumpur, i.e. by Jalan Tuanku Abdul Rahman to the centre, by Circular Road to the Ampang and Freeman high class housing districts and beyond to the Bukit Bintang/Imbi Road/Pudu area, by Maxwell Road to the Kenny Hill district and beyond to Petaling Jaya.

In addition, access to the North, South and West of Malaya is available by Ipoh, Circular and Pahang Roads and a new by-pass will improve the road to Klang/Port Swettenham.

40 It would be difficult to find a better site for ease of access to all parts of Kuala Lumpur town and the whole country.

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PLANNING.

I am advised that the owners of these lands have over a long period given consideration to their development for residential purposes and that an architect was employed in 1957 to draw up plans for a comprehensive layout of the site into shophouse, terrace house, compound house and flat sites. Approval was given for the proposed development but progress was held up during negotiations on (a) a new road-line for Circular Road and related questions of payment for loss of land and (b) an exchange of lands between the owners and the State Government designed to give more convenient boundaries.

10

From a plan provided by the Collector of Land Revenue showing the Government's proposals for this exchange it is noted that an electric light transmission reserve, which would otherwise complicate development, appears to be abandoned as a reserve since it is included in the development area for roads and buildings.

20

The 1958 plans proposed a total of 200 dwellings and 12 shops on the land but by 1964 this plan had become out-of-date since with rising land prices much higher densities of development had become necessary and acceptable

A draft layout prepared for new owners in January, 1964, shows a project for 865 dwelling units and 21 shops plus a cinema, hotel super-market, petrol station and 3 office blocks. The plan was not submitted to the Local Authority for approval but the proposal is an indication of the change that had taken place.

30

VALUATION:(a) General:

I have considered the value of these lands as a site suitable for high-density development in one of the more important 'popular' residential areas of Kuala Lumpur. This was at the time of acquisition one of the few large sites

40

remaining available in Kuala Lumpur for comprehensive development close to existing high-density residential areas.

I have endeavoured to find for comparison purposes similar (though necessarily smaller) sites which were purchased during the years 1963 and 1964 for development with 4-storey or larger blocks of flats as this site could have been.

10 In view of the limited number of similar sites in the immediate neighbourhood, I have also examined sales of such sites in the Imbi Road district which I consider to be of similar importance as a popular residential district suitable for high-density development.

(b) Market Conditions:

20 The land market in Kuala Lumpur has shown a rising trend over many years up to the second half of 1964. The growth in size and importance of the town from 1957 has formed the background of this rising market while the prospect and then the formation of Malaysia during 1963, together with purchasing pressure from Property Companies gave new impetus to the rising values of sites for development.

30 The start of Indonesian Confrontation in September, 1963, did not immediately appear to affect the market but reaction was evident towards the end of 1964 and from then till the present time the market has been static and in some instances a little easier.

(c) 1963 Sale:

40 I have taken note of the sale, registered in November, 1963, of an undivided half-share of the land now being acquired at a price reflecting \$2.20¢ per square foot overall. My own opinion is that the price was substantially below the

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market value at that time and I have made enquiry into the reasons for sale at this figure.

I am advised that a part-owner making this sale was under pressure to sell within a limited time before the expiry of a visit permit to Malaysia, in order to avoid heavy taxation of the proceeds of sale in his home country.

In these circumstances and since the price can be demonstrated to be below market value, I consider that the transaction should be ignored as a basis of valuation.

10

(d) Comparisons:

I list below the comparisons which I have considered in relation to the value of the lands under acquisition.

1. Lots 50 (part) and 264 (part) Section 47, Circular Road, sold for \$15/- per sq. ft. in May, 1961.

20

These are two small frontage strips close to the Ipoh Road junction taken by the Municipality for road widening.

2. Lot 55, Section 47, area 5,091 sq. ft., sold for \$16/- per sq. ft. in May, 1961. A vacant corner site at the junction of Circular Road with Ipoh Road.
3. Lots 74 to 80, Section 48, sold for \$21/- per sq. ft. in January, 1964. These are even vacant shop-lots at the junction of Ipoh Road with Maxwell Road.

30

NOTE:

The above are the nearest sales but are too small to be close comparisons for the large site now being considered. They do, however, show this to be an area of high values.

4. Lot 9 (part) Section 48, Maxwell Road. Approximately one acre of State Lane in Maxwell Road near Ipoh Road junction was sold to the M.I.C. in 1964 at a reported price of \$15/- per square foot with vacant possession.
5. Lot 391, Section 46, Jalan Raja Laut, 0807 acre sold in March, 1963, at \$7/- per square foot.
- 10 6. Lot 1118 etc. Section 46, Jalan Raja Laut, 2.025 acres, sold in October, 1964, at \$5.60¢ per square foot.

The above two sales are of lands thickly covered with squatter huts except for the frontage which is some ten feet below road level and used as a local rubbish dump. Development of part is now proceeding with four-storey flats, involving lots of some 45% for access roads.

20

7. Lot 2285, Pahang Road, 1.437 acre sold in March, 1963, at \$6.38 per square foot.

A vacant site some ten feet below road level.

8. Lot 1, Section 85A, Pahang Road, 1.743 acre, sold in April, 1964, at \$7.90¢ per square foot.

Now vacant but formerly occupied by squatter huts. The frontage is level with the road but the land drops at the rear by some 12 feet.

30

9. Lot 1, Section 6, in the Village of Setapak, behind Pahang Road, 1.240 acre, sold in November, 1964, at \$4.62¢ per square foot.

This site is beyond the 3rd mile Pahang Road and is back land with poor access. Now partly developed with 4-storey flats.

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10. Lot 547 etc., Ipoh Road, approximately 2½ acres, sold in April, 1963, at \$7.85¢ per square foot.

This site has frontage to Ipoh Road but is heavily encumbered with motor repair workshops.

11. Lots 122 to 128, Ipoh Road approximately 1½ acres, sold in April, 1964, at \$10.85¢ per square foot.

At 3rd mile, Ipoh Road, below road level and very thickly occupied by squatters. Sales 10 and 11 demonstrate a substantial rise between 1963 and 1964.

10

12. Lands at 3 1/4 mile, Ipoh Road, sold in terrace lots ready for development.

(a) 47 lots sold in August, 1963, for 2-storey terrace houses at \$5.90¢ per square foot.

(b) 19 lots sold in April, 1964, for 3-storey shops and flats at \$13.42¢ per square foot (\$27,000 per lot).

20

(c) 20 lots sold in May, 1964, for 3-storey shops and flats at \$13.65¢ per square foot. (\$27,500 per lot).

(d) 8 lots sold in March, 1965, for 3-storey development at \$15.16¢ per square foot. (\$35,000 per lot).

(e) Island site, 0.410 acre sold in May, 1965, for \$9.49 per square foot. (Not yet developed).

30

The above sales arise from a comprehensive development, more than a mile further out than the land to be valued. They also provide evidence of a substantial rise in value between 1963 and mid-1964.

13. Lots 106/118, 223/235 and 249/262, off Sentul Road. A total of 40 terrace lots

behind Sentul Road sold in July, 1964, at ~~₹~~8,000 per lot reflecting prices from ~~₹~~3.90 to ~~₹~~5.00 per square foot.

These lots are now developed with 4-storey flats. Sentul Road is a less desirable area but even allowing for this the price of ~~₹~~8,000 per lot is only ~~₹~~2,000 per flat which seems very low.

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- 10
14. Lot 418, Section 67, Imbi Road, 2.569 acres, sold in August, 1963, at ~~₹~~5/- per square foot.
 15. Lot 424, Section 67, Imbi Road, 1.341 acres, sold in January, 1964, at ~~₹~~11.12 per square foot.
 16. Lots 273 and 428, Section 67, Imbi Road 2.775 Acres, sold in July, 1964, at ~~₹~~10.77 per square foot.

NOTE:

20

The above 3 lots are part of the Jalan Walter Grenier complex and lots 424 and 273 are now developed with 4-storey flats. Development involves the loss of land for 3 roads, 2 backlanes and a central pedang area in each case amounting to some 40% of the area.

A substantial price-rise is again shown between 1963 and 1964 for lands suitable for this type of development.

- 30
17. Lot 3, Section 67, Imbi Road, 2.606 acres, sold in November, 1963, at ~~₹~~5.54 per square foot.

Below road level and encumbered with squatters.

18. Lot 12, Section 67, off Imbi Road, 1.547 acres, sold in December, 1964, at ~~₹~~7/- per square foot.

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A level site, now vacant, with access by an unmade track only.

19. 35 terrace lots behind Treacher Road, sold in October, 1964, at \$21.32¢ per square foot. (\$38,000 per lot).

Now being developed with 4-storey flats. Sites below roadway requiring special construction.

CONCLUSIONS:

It appears from the above comparisons that in mid-1964 there was an exceptionally high demand for lands capable of development to high density with multi-storey flats (4 storey or better). 10

It appears that prices paid for such lands rose very steeply between 1963 and mid-1964 with evidence of cases where prices more than doubled over the period.

The price of \$2.20¢ per square foot recorded for the Circular Road land in November, 1963, is entirely out of line with the general level of prices paid for such lands in 1963 and more so in 1964. 20

Valuation must be made by comparison with sales which took place within a few months only of June, 1964.

ESTIMATED VALUE:

The main comparisons relied on, in line with the conclusions reached above, are the sale of lots 122 to 128 at 3rd mile, Ipoh Road, (No. 11 above) Lot 273, Imbi Road (No. 16 above) and Lot 1, Pahang Road, (no. 8 above) the prices shown being in each case supported by sales of nearby lands. 30

Allowing for the relative importance of the Circular Road site, I estimate the value of the land under acquisition as a vacant site as at June, 1964 at \$12/- per square foot, giving a total price for 991,752 square feet

of \$11,901,024/-.

This price requires adjustment to allow for the presence of squatters on part of the site. I am advised that the major part of the site (up to 15 acres) was vacant at the time of acquisition and that some 47 tenants occupied parts of lots 1930, 1924, 17 and 1928.

10 If development commenced on the vacant areas, a developer would have ample time to arrange clearance of the remainder and could do this fairly cheaply through Court action. I propose, however, to make a generous allowance of \$4,000 per building for clearance giving a total for 47 buildings of \$188,000 leaving a net value for the site of, say, \$11,713,000/- (Dollars: Eleven million, seven hundred and thirteen thousand).

20 As an alternative method of arriving at a value for this site I have considered the price which might be obtained by the sale of sites for development.

Taking the sales of subdivided flat sites gives results as follows:-

Ipoh Road, 3 1/4 Miles.

1. 19 lots sold in April, 1964
at \$27,000 per lot for 3-
storeys = \$9,000 per flat.
Standard lots 20ft. x 90ft. = 1,800 sq.ft.
- 30 2. 20 lots sold in May, 1964
at \$27,500 per lot for 3-
storeys = \$9,170 per flat.
Standard lots 20ft. x 90ft. = 1,800 sq.ft.
3. 8 lots sold in March, 1965,
at \$35,000 per lot for 3-
storeys = \$ 11,670 per flat.
Standard lots 21ft. x 90ft. = 1,890 sq.ft.

Treacher Road (The sites are behind Treacher Road with unmade access and are difficult for building).

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4. 35 lots sold in October, 1964, at
\$38,000 per lot for 4-
storeys = \$9,500 per flat.
Standard lots 20ft. x 80ft. = 1,600 sq.ft.

Imbi Road The sales of lots 424 and 273
before subdivision represent prices
for the subsequent development as
follows :-

5. Lot 424, sold in January, 1964,
and now developed with 20 blocks 10
of 4-storey flats. Cost was
\$650,000 = \$32,500 per site = \$8,125 per flat.

Standard lots 21.5ft. x 80ft. = 1,720sq.ft.
Total area of 20 lots = 34,560 sq.ft.
= 59.2% of whole area.
Density = 60 flats per acre.

6. Lots 273 and 428, sold in July, 1964, and
now developed with 36 blocks of 4-storey
flats. Cost was \$1,302,000 = \$36,166 per
site = \$9,040 per flat. 20
Standard lots 25ft. x 80ft. = 2,000 sq.ft.
Density = 52 flats per acre.

It is anticipated that development of the
same type at Circular Road would be in lots of
2,000 sq. ft. (25ft. x 80ft.) and a minimum density
of 54 flats and shops per acre would be expected.
This gives a net area for development sites of
27,000 sq.ft. out of each acre or 62% of the
gross area. I estimate the land value on this
basis at \$9,000 per unit which at 54 units per 30
acre gives a value per acre of \$486,000 or
approximately \$11.15¢ per square foot, as at
June, 1964.

Some of the sites would provide shops on
the ground floor whereas part of the compari-
sons used above are of flats only.

Not all of the area would be used for
4-storey flat development since some parts,
particularly the frontages to the new major
road line, could be put to more valuable use 40
(see the modern plan produced).

I consider that a valuation on this alternative basis supports the overall figure of ~~£~~12/- per square foot arrived at by direct comparison.

I therefore recommend that your clients should claim the sum of ~~£~~11,713,000 based on a value per square foot of ~~£~~12/- as compensation for the acquisition of their lands.

Yours faithfully,

Sd. C.H. WILLIAMS

B.Sc., F.R.I.C.S., F.A.I., F.R.V.A.,
Licensed Appraiser.

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10

ADDITIONAL NOTES:

1. A further method of valuation is known as the 'residual method' in which the estimated rents from a notional development are capitalised and the residue after deducting the probable cost of construction and making allowances for deferment, fees, risk, profits and other items, is taken to be the value of the land.

20

It is generally accepted that this method should only be used as a last resort where no other course is open. The calculations required contain so many variable factors that the method should always be rejected if any other is available.

The best and safest method of valuation to be used if at all possible is direct comparison with other sales.

30

2. Although the site being valued is larger than the comparisons used I do not consider it necessary to make any reduction on this account. The demand for land at the time of acquisition was considerable and the site is in the centre of a growing city which is capable of providing large sums for land purchase when required.

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Sales of the order of \$10 million did in fact take place around the acquisition date at Batu Road, Wardieburn Estate and Sungei Way Estate.

3. The 100-foot wide major road reserve is larger than normally required but no special allowance is made for this since I understand that the Municipality had agreed to pay for the extra width over 66 feet.

4. As an alternative to the form of development envisaged above, I consider that the site could have been used for de-centralised commercial offices. A number of large firms with offices in the congested central area of Kuala Lumpur are actively seeking sites which are out of the present centre, large enough to provide parking, reasonably priced by comparison with central values and with easy access to the town's main exit roads and residential areas.

10

The Circular Road site fulfils all these conditions.

20

EXHIBIT P.10LAND OFFICE SCHEDULE 20.10.66.DISTRICT OF KUALA LUMPURExhibits

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Land Office
Schedule
5th May 1961
to 11th
January 1965

1. Lot 264 Sec. 47 G.11373 Area: 1a.2r.11.8p.
Transfer: CCLXXVIII/122
To: Commissioner of the Federal Capital of
Kuala Lumpur.
Date: 5.5.61.
Consideration: \$37,050/- for 2,470 sq.ft.
- 10 Lot 50 Sec. 47 CT.11107 Area: 1a.1r.28.6p.
Transfer: CCLXXVIII/120
To: Commissioner of the Federal Capital of
Kuala Lumpur
Date: 5.5.61.
Consideration: \$64,950/- for 4,330 sq. ft.
2. Lot 55 Sec. 47 CT.13119 Area: 18.7p.
Transfer: CCLXXVIII/119
To: Commissioner of the Federal Capital of
Kuala Lumpur
- 20 Date: 5.5.61.
Consideration: \$81,456/-
3. Lot 74 Sec. 48 CT.15188 Area: 1576 sq.ft.
Lot 75 Sec. 48 CT.15189 Area: 1200 sq.ft.
Lot 76 Sec. 48 CT.15190 Area: 1200 sq.ft.
Lot 77 Sec. 48 CT.15191 Area: 2498 sq.ft.
Lot 78 Sec. 48 CT.15192 Area: 1417 sq.ft.
Lot 79 Sec. 48 CT.15193 Area: 1417 sq.ft.
Lot 80 Sec. 48 CT.15194 Area: 3357 sq.ft.
- 30 Transfer: CCCX/85
To: Kenneison Brothers Ltd.
Date: 8.1.64.
Consideration: \$265,965/-
4. Lot 391 Sec. 46 CT.7147 Area: 3r. 9.2p.
Transfer: CCXCIX/153
To: Yap Beng Kong as Trustee.
Date: 22.3.63.
Consideration: \$139,146/- for 2/3 share.

Exhibits

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Land Office
 Schedule
 5th May 1961
 to 11th
 January 1965
 (continued)

5. Lot 1118 Sec. 46 CT.23263 Area: 2a.Or.4p.
 Transfer: CCCXX/116
 To: Capital Housing Development Co. Ltd.
 Date: 29.10.64.
 Consideration: \$550,587.50¢ (With lots 1122
 to 1128)
6. Lot 2285 Mk. of Setapak E.M.R.3623
 Area: 1a. 1r. 30p.
 Transfer: LXXXII/110
 To: Bee Seng Co., Ltd. 10
 Date: 14.3.63.
 Consideration: \$400,000/-
7. Lot 1 Sec. 6 CT.4283 Area: 1a. Or. 38.5p.
 Village of Setapak
 Transfer: CCCXXII/28
 To: Boon and Cheah Quarries Ltd.
 Date: 21.11.64
 Consideration: \$250,000/-
8. Lot 26 Sec. 46 G.909 Area: 2a.Or.36.3p.
 Lot 342 Sec. 46 CT.12327 Area: 17.66p. 20
 Transfer: CCC/100
 To: Pun Jong San etc.
 Date: 9.4.63.
 Consideration: \$800,000/-
9. Lot 123 to 128 Sec. 83 G.12331 etc.
 Transfer: CCCXIII/119
 To: Pan Malaysia Development Co., Ltd.
 Date: 3.4.64.
 Consideration: \$700,000/- for 1a.1r.36.8p.
10. Lot 396 to 409 Sec. 83 CT.20126 etc. 30
 (a) Lot 411 to 430 Sec. 83
 Lot 432 to 444 Sec.83
 Transfer: CCCV/143
 To: Nanyang Development Co. (M) Ltd.
 Date: 29.8.63.
 Consideration: \$483,000/- for 81,789 sq.ft.

Exhibits

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Land Office
Schedule
5th May 1961
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January 1965

(continued)

- (b) Lot 329 to 332 Sec. 83 CT.20659 etc.
 Lot 339 to 343 Sec. 83
 Lot 349 to 352 Sec. 83
 Lot 359 to 364 Sec. 83
 Transfer: CCCXIII/152
 To: Low Kim Yee and Andrew Chang
 Date: 7.4.64.
 Consideration: \$510,000/-
- 10 (c) Lot 324 to Lot 328 Sec. 83 CT.20054 etc.
 Lot 333 to Lot 338 Sec. 83
 Lot 345 to Lot 348 Sec. 83
 Lot 354 to Lot 358 Sec. 83
 Transfer: CCCXIV/195
 To: Nanyang Development Co. (M) Ltd.
 Date: 8.5.64.
 Consideration: \$550,000/-
- 20 (d) Lot 712 to Lot 719 Sec. 83 CT.25505-12
 Transfer: CCCXXV/188
 To: B.P. Malaysia Ltd.
 Date: 30.3.65
 Consideration: \$280,000/- for 18,464 sq.ft.
- (e) Lot 344 Sec. 83 CT.20074 Area: 1r.25.6p.
 Transfer: CCCXXVII/24
 To: Low Yoke Seng etc.
 Date: 14.5.65.
 Consideration: \$169,596/-.
- 30 11. Lot 106 to Lot 118 Sec. 79 G.13226-38
 Transfer: CCCXVIII/43
 To: Hock Lock Mansion Ltd.
 Date: 25.7.64.
 Consideration: \$976.04 Interest
 \$104,000/- Principal
- Lot 223 to Lot 235 Sec. 79 CT.18201-13
 Transfer: CCCXVIII/44
 To: Kong Lock Mansion Ltd.
 Date: 25.7.64.
 Consideration: \$976.04 Interest
 \$104,000/- Principal

Exhibits

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Land Office
Schedule
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to 11th
January 1965

(continued)

- Lot 249 to Lot 262 Sec. 79 CT.18235
Transfer: CCCXX/104
To: Ng Choo Kiat Construction Co., Ltd.
Date: 20.9.64.
Consideration: \$112,000/-
12. Lot 418 Sec. 67 CT.9538 Area: 2a.2r.11p.
Transfer: CCIV/157
To: Chong Kok Lin & Sons Ltd.
Date: 10.8.63
Consideration: \$559,528.20¢ 10
13. Lot 424 Sec. 67 CT.9665 Area: 1a.1r.14.5p.
Transfer: CCCX/122
To: Nanyang Development Co. (M) Ltd.
Date: 13.1.64.
Consideration: \$650,000/-
14. Lot 273 Sec. 67 G.9972 Area: 2a.2r.26p.
Lot 428 Sec. 67 G.11781 Area: 18.17p.
Transfer: CCCXVII/42
To: K.L. Properties Ltd.
Date: 2.7.64.
Consideration: \$1,302,000/- 20
15. Lot 3 Sec. 67 G.748 Area: 2.606 ac.
Transfer: CCCVIII/88
To: Soh Lin Sin etc.
Date: 11.11.63
Consideration: \$630,000/-
16. Lot 12 Sec. 67 G.1616 Area: 1.547 ac.
Transfer: CCCXXII/143
To: Home Luck Investment Ltd.
Date: 8.12.64.
Consideration: \$429,000/- 30
17. Lot 798 to Lot 803 Sec. 57 CT.18337 etc.
Lot 813 to Lot 829 Sec. 57
Lot 937 to Lot 943 Sec. 57
Lot 945 to Lot 949 Sec. 57
Transfer: CCCXX/179
To: Chin & Sons Realty Ltd.
Date: 9.10.64.
Consideration: \$1,330,000/-

18. Lots 797, 830, 936 and 950 Sec.57
CT.18336 etc.

Transfer: CCCXX/178
To: Chin & Sons Realty Ltd.
Date: 9.10.64.
Consideration: \$170,000/-

Exhibits

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Land Office
Schedule
5th May 1961
to 11th
January 1965
(continued)

19. Lot 1832 Sec. 41 CT.24163 Area: 4a.3r.25p.
Lot 1833 Sec. 41 CT.24164 Area: 4a.3r.27p.
Lot 1834 Sec. 41 CT.24165 Area: 3a.0r.02p.
Transfers: CCCIX/156 dated 23.12.63.
CCCXVI/42 dated 5.6.64.
To: Capital Properties Ltd.
Consideration: \$10,000,000/-

20. Lot 1131 Mk of Damansara CT.15114
District of Klang Area: 1440.562ac.
Transfer: CCCXXIII/178
Date: 11.1.65.
Consideration: See Schedule.

Schedule

20 "We, the Sungei Way (Selangor) Rubber Co.,
Ltd., a Company incorporated in Scotland and
having an agency office at 72, Jalan Ampang,
Kuala Lumpur, being registered as the
proprietors subject to the leases, charges or
other registered interests stated in the docu-
ment of title thereto of the whole of the land
held under Certificate of Title No. 15114 for
Lot 1131, Mukim of Damansara in the District
of Klang in area 1440 acres 2 roods 10 poles
in consideration of the sum of dollars Ten
million three hundred and seventy two thousand
(\$10,372,000/-) paid to us by Malaysia
Projects Development Corporation Ltd., a
company incorporated in the States of Malaya
and having its registered office at Lee Rubber
Building, 145 Jalan Bandar, Kuala Lumpur, and
in consideration of the sum of dollars Eight
million five hundred thousand (\$8,500,000/-)
paid to the said Malaysia Projects Development
Corporation Ltd. by Chang Ming Thien of 29,
Bintong Park, Singapore, pursuant to Clause 4
of an Agreement dated the 9th day of October,
1964 made between the said Malaysia Projects
Development Corporation Ltd. of the one part

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40

Exhibits

P.10

Lane Office
Schedule
5th May 1961
to 11th
January 1965
(continued)

and the said Chang Ming Thien on the other part the receipt of the first mentioned sum we hereby acknowledge do hereby transfer to the said Chang Ming Thien as Trustee all our right and interest in the said land."

P.11

Sale
Agreement
18th April
1964

EXHIBIT P.11

SALE AGREEMENT

AN AGREEMENT made this 18th day of April, 1964 between LIEW OON ENG (f) of No. 121-F, Jalan Ipoh, Kuala Lumpur (hereinafter called "the Vendor" which expression shall wherever the context so admits include her successors personal representatives and permitted assigns) of the one part and LIAN SENG (K.L.) CONSTRUCTION COMPANY LIMITED, a company incorporated in the States of Malaya and having its registered office at No. 169, Jalan Imbi, Kuala Lumpur and MALAYA UNION COMPANY LIMITED, a company incorporated in the State of Singapore and having its registered office at No. 154, Clemenceau Avenue, Singapore 9 (hereinafter called "the Purchasers" which expression shall wherever the context so admits include their successors in titles and assigns) of the other part.

10

20

WHEREAS the Vendor is the registered owner of the land held under Grant No. 9226 for Lot No. 1 Section 85A in the District of Kuala Lumpur containing an area of 1 acre 2 roods 38.9 poles (hereinafter referred to as "the said Land").

30

AND WHEREAS the said Land is being occupied by various tenants and the Vendor has given her undertaking to give vacant possession of the said Land on or before the 16th day of July, 1965.

AND WHEREAS the Vendor is desirous of selling and the Purchasers are desirous of

purchasing the said Land with vacant possession for the sum of Dollars Six hundred thousand (₹600,000/-) for the purpose of erecting a building of flats thereon.

Exhibits

P.11

Sale
Agreement
18th April
1964
(continued)

NOW THIS AGREEMENT WITNESSETH as follows:-

10 1. In consideration of the sum of Dollars Sixty thousand (₹60,000/-) now paid by the Purchasers to the Vendor by way of deposit for the purchase of the said Land (the receipt of which sum the Vendor hereby acknowledge) the Vendor shall sell and the Purchasers shall purchase the said Land free from all encumbrances imposed by or with the consent of the Vendor with vacant possession.

2. The balance of the purchase price of Dollars Five hundred and forty thousand (₹540,000/-) shall be paid in the following manner:-

20 (a) The Purchasers shall pay to the Vendor the sum of Dollars Thirty thousand (₹30,000/-) on or before the 17th day of October, 1964.

30 (b) The Purchasers shall pay to the Vendor the sum of Dollars Two hundred and fifty five thousand (₹255,000/-) within one (1) calendar year after the delivery of the property to the Purchasers with vacant possession according to Clause 3(iv) herein. PROVIDED ALWAYS and it is hereby expressly agreed between the parties hereto that the said period for payment referred to in this sub-paragraph shall be extended for a further period of three (3) months subject to the payment of interest on the said amount due at the rate of 5% per annum.

(Sic)

40 (c) The Purchasers shall pay to the Vendor the balance of Dollars Two hundred and fifty thousand (₹255,000/-) after the completion of the building thereon and within a period of six (6) months from the date of the receipt of the Certificate of Fitness for Occupation for all the flats thereon.

3. The Vendor hereby covenants with the Purchasers as follows:-

Exhibits

P.11

Sale

Agreement

18th April

1964

(continued)

- (i) Immediately after the signing of this agreement to take all necessary steps to remove and/or to evict all existing tenants and occupants of the said Land.
- (ii) To allow the Purchasers and/or their agents or workmen at all reasonable times to enter the said Land for the purpose of surveying and/or inspecting the said Land.
- (iii) To sign all plans and execute all documents of whatsoever nature and do all acts and things at the request of the Purchasers relating to the said Land for submission to the appropriate authorities for the purpose of sub-division. 10
- (iv) To give vacant possession of the said Land to the Purchasers on or before the 16th day of July, 1965. PROVIDED ALWAYS and it is hereby expressly agreed between the parties hereto that in the event of the Vendor failing to give vacant possession of the said Land liquidated damages shall at all times be payable by the Vendor to the Purchasers at the rate of \$300/- per day from the 17th day of July, 1965 as a pre-estimate of the loss due to the Purchasers. 20
- (v) To execute a proper registrable transfer of the said Land to the Purchasers and/or their nominee or nominees on completion of the purchase referred to in Clause 2(c). 30

4. If for any reason the Purchasers shall fail to pay any of the payments referred to in Clause 2 herein then this agreement shall thereupon be at an end and shall cease to be of any force or effect and whatever sums paid by the Purchasers to the Vendor hitherto under this agreement shall be irrevocably forfeited to the Vendor. 40

5. At the time of the completion of the purchase the Vendor shall deliver to the

Purchasers a proper registrable transfer of the said Land in favour of the Purchasers and/or their nominee or nominees and shall do or cause to be executed and done all such documents acts and things as may be necessary for eventual transferring to and vesting the said Land in the Purchasers or their nominee or nominees.

Exhibits

P.11

Sale
Agreement
18th April
1964

(continued)

10

6. All quit rents and assessments in respect of the said Land shall be paid by the Purchasers upon and after the date of possession of the said Land, referred to in Clause 3(iv) herein.

7. Time wherever mentioned in this agreement shall be of the essence of this contract in relation to all its provisions with regard to the payment of money and with regard to the time of compliance by the Purchasers or Vendor with notices served on either party respectively by the other.

20

8. This agreement shall be binding on the executors administrators and assigns of the Vendor and the successors and assigns of the Purchasers.

IN WITNESS WHEREOF the Vendor has set her hand hereto and the Purchasers have caused their common seals to be hereunto affixed the day and year first above written.

SIGNED by the Vendor the)
aforesaid LIEW OON ENG (f))
in the presence of :-)

30

The Common Seal of LIAN)
SENG (K.L.) CONSTRUCTION)
COMPANY LIMITED was here-)
unto affixed in the presence)
of:-)

Director

Secretary

Exhibits
P.11
Sale
Agreement
18th April
1964
(continued)

The Common Seal of MALAYA)
UNION COMPANY LIMITED was)
hereunto affixed in the)
presence of :-)

Director

Director

EXHIBIT D.13
GOVERNMENTS VALUATION

Exhibits
D.13
Governments
Valuation

R E P O R T

AND

V A L U A T I O N

ACQUISITION OF LOTS 17, 18 AND 19 OF SECTION 47,
LOTS 1924 AND 1930 OF SECTION 79 AND LOTS
1922 AND 1928 OF SECTION 85A, KUALA LUMPUR.

BY:

10

LIM MAU CHIN A.R.I.C.S., A.A.I.
APPROVED BY R.G. FRASER,
F.R.I.S., F.I.S.
KETUA PENAKSIR,
BAHAGIAN PENILAI,

KEMENTERIAN KEWANGAN

Acquisition of lots 17, 18 and 19 of
Section 47, Lots 1924 and 1930 of Section 79
and Lots 1922 and 1928 of Section 85A, Kuala
Lumpur

20

1. Gazetting

Notification that the above land is likely to be acquired in accordance with Section 4 of the Land Acquisition Act, 1960 was published on 4th June, 1964 in the Selangor Government Gazette No. 335. This was subsequently followed by declaration of intended acquisition under Section 8 of the 1960 Act which was published on 8th October, 1964 in the Selangor Government Gazette No. 678. Therefore, the

Exhibits

D.13

Governments
Valuation
(continued)

relevant date upon which the valuation falls to be made is 4th June, 1964.

2. Purpose of Acquisition

The above land is being acquired for the purpose of erection of houses and flats.

3. Particulars of Titles and Areas of lots Acquired

	<u>Lot 17</u>	<u>Lot 18</u>	<u>Lot 19</u>	<u>Lot 1924</u>	<u>Lot 1930</u>	<u>Lot 1922</u>	<u>Lot 1928</u>
Sect- ion	47	47	47	79	79	85A	85A 10
Title	C.T. 10,800	C.T. 10,801	C.T. 14,401	C.T. 9,785	C.T. 9,787	C.T. 9,784	C.T. 9,786

Registered Proprietor A.K.A.C.T.V. Alagappa Chettiar s/o Sithambaram Chettiar as trustee (1/2 undivided share)

Ng Chong Geng & Sons Ltd.	<u>20</u> 120	share of	} 1/2 undivided share	20	
Synn Lee & Co. Ltd.	<u>20</u> 120	share of			
Ong Thye Eng as trustee	<u>20</u> 120	share of			
Kheoh Aik Law as trustee	<u>12</u> 120	share of			
Chuah Say Hai as trustee	<u>12</u> 120	share of			
Chai Wai Leong as trustee	<u>18</u> 120	share of			
Pong Kien Ngor as trustee	<u>6</u> 120	share of			
Han Leck Juan as trustee	<u>3</u> 120	share of			} 30
& Ooi Teng Kang as trustee	<u>9</u> 120	share of			

Area of 4,809A 2.180A 3.672A 3.775A 6.419A
 Lot 0.419A 1.493A

Exhibits

D.13

(TOTAL AREA: 22.767 acres or 991,730 sq.ft.) Governments

Valuation
(continued)

Area

Acquired 4.809A 2.180A 3.672A 3.775A 6.419A 0.419A 1.493A

Annual

Rent \$24 \$11/25 \$1/85 \$4 \$6/50 50¢ \$1/60

4. Inspection

10 The above land was inspected by Enche
 Lim Mau Chin and Enche Richard Manuel of the
 Bahagian Penilai, Kementerian Kewangan on 1hb
 Oktober, 1964.

5. Situation and Description

20 The land acquired is situated on the north
 side of Jalan Pekeliling about 220 feet from
 the junction with Jalan Pahang to the east and
 about 350 yards from the junction with Jalan
 Ipoh to the west.

It has a total frontage of approximately
 1,420 feet onto Jalan Pekeliling. Apart from
 the rear portion which is slightly elevated the
 land is generally flat. It is irregular in
 shape. It is covered with numerous squatters
 which are located at the rear and the north-
 west corner.

30 Water and electricity are available.
 There is a bus service operating along Jalan
 Pekeliling but only in respect of the section
 after the junction with Jalan Pahang toward
 the east. Other bus services are available
 along Jalan Pahang and Jalan Ipoh.

6. Surrounding Lands

The land is sited in a predominantly
 residential area which is the poorer section
 of Jalan Pekeliling.

40 Its western boundary is bounded by
 Sungei Gombak. Directly opposite, there are

Exhibits
 D.13
 Governments
 Valuation
 (continued)

many dwelling houses and some squatters' huts and there is in progress on a lot the erection of three-storey shop houses and flats. To the east of the land acquired there are many Government quarters fronting onto Jalan Pekeliling.

Immediately at the rear of the land acquired are the Tuberculosis Hospital and Clinic which has been extended recently and numerous squatters' huts which constitute the Kampong Siam. A few sites in the immediate proximity on either side of Jalan Pahang have been made ready for building development.

10

To the northeast across Jalan Pahang are the Jalan Kuantan School and the Teachers' Day Training Centre.

To the south of the land acquired are the Rediffusion House and some shop houses and to the southeast across Jalan Pahang are the General Hospital and the Institute for Medical Research.

7. Town Planning

20

Details of the town planning position of the land are contained in the letter of the Pesurohjaya, Ibu Kota Kuala Lumpur dated 12th November, 1964 in reply to this Bahagian's letter dated 9th October 1964. (A photostat copy of this letter is enclosed herewith).

8. Evidence of Recent Sales

There is a previous sale effected in respect of the land acquired (See Appendix I). An undivided half share was conveyed from Deivarayan Chettiar to Ng Chong Geng & Sons Ltd. and eight others at \$2/20 per square foot (or \$95,832 per acre) on 5th November 1963. The previous sale of the land itself which is under acquisition would be a better guide than sales of other lands however similar. This is a recent sale having occurred only seven months before acquisition. During this period it is highly unlikely that the value of land has rocketted up to \$30 per square foot (that is, \$1,306,800 per acre) as claimed by the owners.

30

40

Recent sales of lands in the immediate vicinity are in respect of lands with an area of over one acre which are also capable of flat or other types of residential development and have in fact been purchased with a view of such development. Instances of such sales are as follows:-

Exhibits
D.13
Governments
Valuation
(continued)

10 (1) Lots 29 and 56 in Section 85A with an area of 2.85 acres and 3.901 acres respectively were purchased by Embassy Finance Corporation Ltd. and Kok Fah Yin Co. Ltd. on 29th September, 1962 at \$1/12 and 65 cents per square foot respectively. These lots have been made ready for the development of five blocks of 14 storey good class flats with shops at the ground floor (Likok Gardens).

20 (2) Lot 2285 in Section 86A with an area of 1.437 acres was sold to Bee Seng & Co. Ltd. on 14th March 1963 at \$6.39 per square foot. The erection of a 16 storey block of good class flats is now in progress on the site but no shops will be built.

(3) Lot 21 in Section 47 with an area of 1.322 acres was sold to Yap Hong Onn on 17th August 1962 at \$2.50 per square foot. Ten three-storey fair class flats are being erected on the site and seven three-storey shop houses will be constructed soon.

30 Details of the above sales are given in Appendix II. Though smaller in area several times lesser than the area of the land in question which comprises an area of 22.767 acres or 991,730 square feet but capable of similar development they were only conveyed at prices varying from 65 cents to \$6.39 per square foot.

40 In view of the foregoing, the sale of the half undivided share of the land in question seems slightly high.

Appendix III shows details of recent sales of lots of less than one acre in the immediate vicinity.

Exhibits
 D.13
 Governments
 Valuation
 (continued)

On 19th October 1964 2 acres of State Land fronting onto Jalan Pahang were alienated to the Ministry of Health for the future extension of the T.B. Hospital and Clinic at \$3.50 per square foot (See Appendix IV).

Sales other than those in the immediate vicinity, such as those at Jalan Ipoh, can offer no evidence of value for determining the market value in question by virtue of their location, distance, area and dissimilarity in use. They are sited in a good shopping street and, therefore, meant for the development of shops and other commercial uses. Moreover, there is a demand for shops and other commercial premises along this street which is an established shopping area. But the section of Jalan Pekeliling in question is a residential area and sales for comparison purposes should be restricted to this precinct. 10

A shop, flat or bungalow lot usually has an area of 2,000 sq. ft., 1,600 sq. feet or 6,000 sq. feet respectively. By virtue of the smallness in area they would invariably fetch a very much higher price. Therefore, the purchase price for such lots cannot be made the basis of valuation for a large plot of land like the one now in question. 20

Sales after the material date should also be ignored for present comparison purposes because they are effected by conditions arising subsequent to the acquisition and the fact that acquisition is now made known. 30

9. Owners' Claim

The owners have claimed compensation at \$1,306,800 per acre (that is, \$30 per square foot).

Market value under para. 2(a) of the First Schedule to the Land Acquisition Act, 1960 as at 4th June 1964.

991,730 sq. ft. @ \$3 p.s.f. = \$2,975,190 40

NoteExhibits

D.13

Governments
Valuation
(continued)

In arriving at my market value under paragraph 2(a) of the First Schedule to the Land Acquisition Act, 1960 I have taken into account the following:-

- 10 (1) The land acquired comprises a total area of 22.767 acres, that is, 991,730 square feet. A prospective purchaser buying a piece of land of this size in the town of Kuala Lumpur would invariably expect a reduction in value as an inducement to take over the bulk of the property as a whole and a sufficient margin of profit for the risk undertaken to justify embarking on development.
- 20 (2) The rear portion and the northwest corner are covered with numerous squatters (approximately 58) which can be extremely problematic from the development point of view. Some of the occupiers are paying ground rents to the owners. Their presence would depreciate the value of the land as a prudent developer would take into account the amount he would compensate them before demolishing the temporary building in order to speed up development.
- 30 (3) This section of Jalan Pekeliling is not only NOT a commercial area but also a poorer residential area of Jalan Pekeliling.
- 40 (4) The land is irregular in shape, slightly elevated at the rear and bisected by a rectangular strip of State Land. Development would entail a comprehensive system of roads involving about 4 acres of land. The shape makes it difficult to have a good layout unless State Land which adjoins it is included, without which there will be some wastage of land.
- (5) Previous sale of the land in question

Exhibits
 D.13
 Governments
 Valuation
 (continued)

which took place only seven months before acquisition, the purchase price being \$2.20 per square foot (that is, \$95,832 per acre).

- (6) Other recent sales in the immediate vicinity.
- (7) There is unlikely to be an immediate demand for good-class flats in this locality in view of the number of such flats that are being or will soon be erected on the adjoining lands and each phase of development will satisfy demand to a great extent. Regarding the low-cost flats demand depends entirely on the price placed on the flats. Demand for flats seems to be on the decline and banks are reluctant to loan money for the purchase of flats. This locality is conspicuously void of shops apart from a block at the front of Jalan Taiping. Perhaps, there is an established and important shopping thoroughfare too near it, namely Jalan Ipoh, which tends to dim the importance of this locality as a shopping area. Shops suitable for this area will be lock-up shops catering for daily needs for which demand is limited. It must be noted that it is demand which creates value.

10

20

11. Opinion

I am of the opinion that the compensation properly payable under paragraph 2(a) of the First Schedule to the Land Acquisition Act, 1960 can be fairly stated at \$2,975,190 as at 4hb Jun, 1964.

30

MAP REF: 77-D-IV-16
& 85-B-II-4

EVIDENCE OF RECENT SALES

Appendix I

TOWN: KUALA LUMPUR

SITUATION: JALAN PEKELILING

Lot	Section	Title	Area Sq. Ft.	Vendor	Purchaser	Date	Consideration	Price P.S.F.	Description
17		C.T. 10,800							The land forms the present subject of acquisition. It is vacant at the front but covered with numerous squatters at the rear and the northwest corner
18	47	C.T. 10,801							
19		C.T. 14,401							
1922	85A	C.T. 9784	991,730 f.s. (1/2 share = 495,865 f.s.)	R.M.M.AR. FR.M. Deivarayan Chettiar s/o Meyyappa Chettiar	Ng Chong Geng Sons Ltd. Syrn Lee Co. Ltd. Ong Tnye Eng & six others	5.11.63	RM1,090,927.53	RM2.20	
1928		C.T. 9786							
1924		C.T. 9785							
1930	79	C.T. 9787							

Exhibits

D.13

Governments
Valuation
contd.

Appendix I

Exhibits

D.13

Governments
Valuation
contd.

Appendix II

MAP REF: 77-D-IV-16

SITUATION: JALAN PAHANG

EVIDENCE OF RECENT SALES

APPENDIX II

KUALA LUMPUR

Lot	Sec-tion	Title	Area Sq. Ft.	Vendor	Purchaser	Date	Consideration	Price P.S.F.	Description
Pt. 15 (New Lot 29)	85A	C.T. 11,537 (New C.T. 25,335	124,142 f.s. for 9/10th share (2.850 acres)	Ong Aik Huah	Embassy Finance Corp.Ltd. and Kok Fah Yin Co. Ltd. as Trustees	29.9.62	RM139,200 (9/10th share)	RM1.12	Lot 29 is situated at the rear of Caltex Oil Co. which purchased the front portion that is, the 1/10th share. Lot 56 front onto Jalan Pahang. Both sites were covered with numerous squatters at the time of sale but these were recently demolished.
56	85A	C.T. 13,515	169,928 f.s. (3,901 acres)	Ong Kian Heng	Embassy Finance Corp.Ltd. & Kok Fah Yim Co. Ltd. as Trustee	29.9.62	RM110,800	65¢	The land has been made ready for the erection of 5 blocks of 14 storey good-class flats with shops at the ground floor and provided with lifts.

EVIDENCE OF RECENT SALES

KUALA LUMPUR

SITUATION: JALAN PAHANG

Lot	Section	Title	Area Sq. Ft.	Vendor	Purchaser	Date	Consideration	Price P.S.F.	Description
21	47	C.T. 20,595	57,586 f.s. (1,322 acres)	Wong Fong	Yap Hong Omn	17.8.62	RM24,000 (1/6th share)	RM2.50	The land fronts onto Jalan Perkeliling and Jalan Pahang. It was purchased with a pre-war timber and tile detached bungalow and two temporary buildings. The erection of ten 3-storey flats is nearing completion and seven 3-storey shop houses will be constructed in the near future.
2285	Mukim of Setapak (now section 86A)	E.M.R. 3623	62,596 f.s. (1,437 acres)	Gan Teck Loon	Bee Seng Co. Ltd.	17.3.63	RM400,000	RM6.39	The land fronts onto Jalan Pahang. It is below road level. The site was being cleared and the erection of a 16-storey building which comprises good-class flats is commencing.

Exhibits

D.13

Governments
Valuation
contd.

Appendix II

Exhibits

D.13

Governments
Valuation
Contd.

Appendix III

MAP REF: 77-D-IV-16

SITUATION: JALAN PAHANG

EVIDENCE OF RECENT SALES

KUALA LUMPUR

Lot	Section	Title	Area Sq. Ft.	Vendor	Purchaser	Date	Consideration	Price P.F.S.	Description
Pt. 15 (New Lot 30)	85A	C.T. 11,537 (New C.T. 25,336)	13,800 s.f. for 1/10th share	Ong Aik Huah	Caltex Oil Co.	16.7.62	₹97,020 (1/10th share)	₹7 as stated in the document of transfer	The land fronts onto Jalan Pahang. It was purchased for the erection of a petrol filling station. The Caltex Oil Co. is a special purchaser because it is prepared to pay an abnormally high price in order to outbid the market and obtain the site. Therefore, this sale offers no evidence of market value for present comparison purposes.
14	86A	C.T. 8854	14,462	Khong Sen Wan	Pritam Singh	26.3.63	₹36,000	₹2.49	It is situated at the junction of Jalan Pahang and Jalan Ng Ngee. It is vacant.

TOWN: KUALA LUMPUR

EVIDENCE OF RECEIPT SALES
APPENDIX III

MAP REF. 77-D-IV-16
SITUATION: JALAN PAJANG

Lot	Section	Title	Area Sq.Ft.	Vendor	Purchaser	Date	Consideration	Price F.S.F.	Description
18	86A	C.T. 8846	12,153 s.f.	Lee Gek Lung & Chia Kheng Soo	Law Joo Kooi	25.4.62	₹48,000	₹3.95	The land is situated at the junction of Jalan Pahang and Jalan Ng Menee. It was purchased with a prewar house.
18	86A	C.T. 8846	12,153 s.f.	Law Joo Kooi	Shell Co. of Malaya	25.4.62	₹100,000	₹8.23	- do -. It was purchased by the Shell Co. for the erection of a petrol filling station. This company is a special purchaser because it is prepared to pay an abnormally high price in order to outbid the market and obtain the site. Therefore, this sale offers no evidence of market value for present comparison purposes.

Exhibits
D.13
Governments
Valuation
contd.
Appendix III

Pesuroh Jaya,
Ibu Kota Kuala Lumpur
Peti Surat 1022

Exhibits

D.13

Governments
Valuation

(continued)

Surat Kita: (3) in KLM.3356 Pt.III

Surat Tuan: V/VAL/720/LMC

Ketua Penaksir,
Bahagian Penilai,
Kementerian Kewangan,
Persekutuan Tanah Melayu,
Kuala Lumpur.

10

Tuan,

Municipal Housing - Kuala Lumpur
Lots 17, 18 and 19, Section 47
Lots 1924 and 1930, Section 79
Lots 1922 and 1928, Section 85A
Gazette Notification -
4.6.64.

I refer to your letter of 9th instant in
connection with the development of the above
lots.

20

2. The reply to your query is as follows,
viz:

(i) The lots are at present zoned "Open
Development" in the Approved Town Plan
the suggested density is 3 houses to
an acre. Please see copy of
Reference to Zoning attached here-
with. Also these lots are partly
zoned "New Streets" as shown in the
attached copy of Plan No. R.133
approved by the Ruler-in-Council
vide Selangor Government Gazette
Notification No. 623 of 27.11.57.

30

(ii) The history of development is con-
tained in the attached copy of notes
and plans.

(iii) It is reasonable to expect the
development of these lots for flats;
the maximum density permissible for
point block flats would be in the
region of approximately 200

40

Exhibits
 D.13
 Governments
 Valuation
 (continued)

persons/acre and at 5 persons to a flat about 40 flats to an acre. Such development however, will be subject to the design i.e. layout to the approval of the Pesurohjaya in the first instant.

3. Should you require, you or your representative may call at my office and inspect the files.

Yang benar,

10

Sd.

Pesurohjaya
 Ibu Kota Kuala Lumpur
 (Hj. Ismail b. Panjang Aris)

NOTES OF THE DEVELOPMENT FOR LOTS 17, 18
 and 19, SECTION 47: LOTS 1924 and 1930,
 SECTION 79 AND LOTS 1922 and 1928. SEC.85A

The Landowners submitted an application to the District Officer, Kuala Lumpur, for subdivision of their lots on 21st November 1952, in accordance with the then Federal Town Planner's Plan No. 1622. This was referred to the then President Municipal Council, for action under Section 149, Town Boards Enactment (F.M.S.Cap.137). 20

2. As a result, Requisition for Survey Plan No. 61/54 was submitted to the District Officer, Kuala Lumpur, for survey action by the then President, Municipal Council. A copy of Plan No. 61/54 is attached herewith.

3. A revised copy of draft Plan No. D166(a) was forwarded to the landowners by the Planning Officer for consideration. This copy of layout was subsequently approved in principle by the Town Planning Committee on 8th January, 1957. 30

4. After some correspondence, the landowners submitted revised plans i.e. Plan No. 2156 very similar to above Plan No. D166(A). This was approved by the Town Planning Committee on

8th October 1957. A copy of this Plan No. 2156 is attached herewith. In accordance with Column IV of the Reference to Zoning as indicated in the copy of Reference to Zoning, action on press advertisement and consultation with adjoining landowners was taken with regard to the revised Plan No. 2156 submitted by the applicants. An objection to this was received, but this was later withdrawn by the objector who was the landowner of adjoining lot 3095.

10

Normally, planning permission in accordance with Plan No. 2156 would have been issued to the applicants. But it was then found necessary to prepare a redistribution of land scheme since a site for a school was then considered necessary. A copy of the land redistribution scheme Plan No. D.166(E) was therefore prepared and submitted by the then President, Municipal Council to the Collector of Land Revenue on 12th August 1962 for further action since this matter involved the exchange of State land with the applicants' land.

20

5. However, the solicitors of the applicants wrote on 11th July 1961, to the Collector of Land Revenue, Kuala Lumpur requesting for deferment of the matter as explained in attached copy of letter.

6. The solicitors of the applicants further wrote on 20th August, 1964 to the Jurutera Perbandaran, Ibu Kota Kuala Lumpur, explaining that there was no point in their clients proceeding with the matter if there was any possibility of acquisition of their land by the Government.

30

Exhibits

D.13

Governments
Valuation
(continued)

386.

Exhibits

D.13
Governments
Valuation
(continued)

C O P Y

Laidlaw Building,
Kuala Lumpur.

11th July 1961.

Your Ref: (35) in CLR.KL./1204/58

Our Ref: P/AR/14063/57

Pemungut Hasil Tanah,
Pejabat Tanah,
Kuala Lumpur.

Dear Sir,

Layout and Subdivision proposed for
Lots 17-19, 1922, 1924, 1928 and 1930
Sec. 47, Circular Road, Kuala Lumpur

10

We refer to your letter of the 7th instant
and very much regret the delay in dealing with
this matter.

The position is that as you are well aware,
the property is owned by two joint owners. In
the case of one of these owners there is a
recent litigation which resulted in the property
in question being vested in a new owner. The
final details of the change of this ownership
are still being worked out and the transfer of
the undivided half share will no doubt be
presented in due course for registration. Until
such time as this transfer has been registered
dealing with this undivided half share are not
possible.

20

Yours faithfully,

Sd. Bannon & Bailey.

EXHIBIT D.14CERTIFIED TRANSFER OF
E.M.R. 3623, Lot 2285Exhibits

D.14

Certified
Transfer14th March
1963

Minutes of a Directors' meeting of Bee Seng Co., Ltd. held at the registered office, 14/16, Klyne Street, Kuala Lumpur on the 5th March, 1962 at 10.00 a.m.

Presents:-

10

Mr. Tee Teh (in the Chair)
Mr. Gan Teck Loon
Mr. Gan Teck Yeow

In Attendance:-

Mr. Lim Yeow Ham (Secretary)

The minutes of the previous meeting held on the 24th October, 1962 was read and was signed by the Chairman.

LAND AT PAHANG ROAD UNDER EMR.3623 LOT 2285 IN
THE MUKIM OF SETAPAK IN THE DISTRICT OF K.L.
IN AREA 1a. Tlr. 30p.

20

Proposed by Mr. Tee Teh and seconded by Mr. Gan Teck Yeow and passed unanimously that it was received to purchase from Mr. Gan Teck Loon the piece of land held under EMR. 3623 Lot 2285 in the Mukim of Setapak in the District of Kuala Lumpur in area lac. lr. 30 poles for a sum of \$400,000/- (Dollars Four hundred thousand only) and that the company seal be used in the execution of the transfer of this land.

30

Certified true copy

(sd) Tee Teh

Exhibits

D.14

Certified
Transfer
14th March
1963
(continued)

SCHEDULE XX (Land Code 22 -
Rev.10/60)
(Section 110)

Presentation No. 29379

MEMORANDUM OF TRANSFER
LXXXII - 110

Stamp \$4000
Stamp Office,
Kuala Lumpur.
14 III 63.

I Gan Teck Loon i/c No. SL.139387 of 10, Ring Road, Kuala Lumpur being registered as the proprietor subject to the leases charges or other registered interests stated in the document of title thereto of the whole of the land held under E.M.R. No. 3623 for lot No. 2285 in the mukim of Setapak in the district of Kuala Lumpur in area 1 acre 1 rood 30 poles in consideration of (a) \$400,000/- (Dls. Four hundred thousand only) paid to me by Bee Seng Co. Ltd. of 14/16 Klyne Street, Kuala Lumpur, the receipt of which sum I hereby acknowledge (b) do hereby transfer to the said Bee Seng Co. Ltd. all my right title and interest in the said land. 10

TRUE COPY

stamp.

(sd) Gan Teck Loon

Signature of transferor

I Bee Seng Co. Ltd. of 14/16 Klyne Street, Kuala Lumpur accept this transfer in the terms stated.

SEAL (sd.)xxx
Director
(sd.)xxx
Secretary

30

Dated this 14th day of March, 1963.

Memorial made in the Register or Setapak volume VI folio 165 this 14th day of March, 1963 at 11.30 a.m.

(sd) Yahya
Collector of Land Revenue

SEAL

District of Kuala Lumpur
State of Selangor.

FIRST SCHEDULE

(Section 4 of the Act of Parliament
No. 1 of 1960)

FORM A

Exhibits

D.14

Certified
Transfer
14th March
1963
(continued)

10

I Yahaya bin Mohamed Sani, Deputy Registrar of
Titles, Selangor hereby testify that the
signature of Gan Teck Loon, Transferor written
in my presence on this 14th day of March, 1965
is according to my own personal knowledge the
true signature of the said Gan Teck Loon who
has acknowledged to me that he is of full age
and that he has voluntarily executed this
instrument.

As witness my hand this 14th day of March,
1963.

SEAL

(sd) Yahya
Registrar of Titles,
State of Selangor.

FORM B

20

I Yahya bin Mohamed Sani, Deputy Registrar of
Titles, Selangor, hereby certify that on this
day the seal of Bee Seng Co. Ltd. was duly
affixed to the above written instrument in
accordance with the rules and regulations of the
company.

As witness my hand this 14th day of March,
1963.

SEAL

(sd) Yahya
Registrar of Titles,
State of Selangor.

30

Exhibits

D.15

Certified
Copy of
Company
Registry

16th January,
1952.

EXHIBIT D.15CERTIFIED COPY OF
COMPANY REGISTRY

Form 9

THE COMPANIES ORDINANCE, 1940 to 1946

Particulars of Directors or Managers

Pursuant to Section 147

Name of Company } BEE SENG COMPANY, LIMITED

Presented for filing by:-

Gan Teck Loon I.C. No. SL.139387 KLM.
No. 15 & 17 Klyne Street,
Kuala Lumpur.

10

Particulars of the Directors or Managers of

BEE SENG COMPANY, LIMITED,
15 & 17 Klyne Street, Kuala Lumpur.

Name	Nationality	Residential address	Occupation
Gan Teck Loon	Chinese	10, Ring Road, Pudu, Kuala Lumpur	Merchant 20
Gan Teck Yeow	Chinese	35 Doraisamy Street, Kuala Lumpur	Merchant
Tee Teh	Chinese	16 - do -	Merchant

16th January 1952.

Sgd. Gan Teck Loon
Director.

Certified true copy,
Signed.

(Teh Siang Eng)
Asst. Registrar of Companies,
Malaysia.
October 24, 1966.

30

EXHIBIT D.16CERTIFIED COPY OF
MEMORANDUM OF TRANSFERSCHEDULE XX
(Section 110)

Presentation No. 87802

MEMORANDUM OF TRANSFER CCCVIII-45

Stamp \$10,910.00
State Office,
Kuala Lumpur.
5 XI 63.Exhibits
Certified
Copy of
Memorandum of
Transfer
4th November,
1963.

10 I RM.M.AR.PR.M. Deivarayan Chettiar son of
Meyyappa Chettiar, No. 30, Ampang Street, Kuala
Lumpur being registered as the proprietor subject
to the leases charges or other registered
interests stated in the document of title
thereto of an undivided 1/2 share of the land
held under Certificate of Title Nos. 10800, 10801
and 14401 for Lots Nos. 17, 18 & 19 Section 47
in the town of Kuala Lumpur in the District of
Kuala Lumpur and Certificates of Title Nos.
20 9784 and 9786 for Lots Nos. 1922 and 1928
Section 85A in the Mukim of Setapak in the
District of Kuala Lumpur and Certificate of
Title Nos. 9785 and 9787 for Lots Nos. 1924 and
1930 Section 79 in the Mukim of Setapak in the
district of Kuala Lumpur in total area 22 acres
3 roods 02.8 poles in consideration of (a)
\$1,090,927.53 (Dollars one million ninety
thousand nine hundred and twenty seven and cents
fifty three only) paid to me by NG CHONG GENG &
30 SONS LIMITED of 10, Theatre Road, Taiping,
SYNN LEE & COMPANY LIMITED of 10, Theatre Road,
Taipong, ONG THYE ENG as Trustee of 2, Simpang
Road, Taiping, KHEOH AIK LAW as Trustee of 88,
Parrack Road, Taiping, CHUAH SAY HAI as Trustee
of 15 Sultan Street, Kuala Lumpur, CHAI WAI
LEONG as Trustee of 15 Sultan Street, Kuala
Lumpur, PONG KIEN NGOR as Trustee of 15, Sultan
Street, Kuala Lumpur, HAN LECK JUAN as Trustee
of 11, Sultan Street, Kuala Lumpur and OOI TECK
40 KANG as Trustee of 18, Siam Road, Penang, the
receipt of which sum I hereby acknowledge
(b) do hereby transfer to the said

Exhibits

D.16

Certified
Copy of
Memorandum of
Transfer
4th November
1963
(continued)

FIRST SCHEDULE

(Section 4 of the Act of Parliament
No. 1 of 1960)

FORM A

I Ng Kok Thoy, an Advocate & Solicitor of the Supreme Court of the Federation of Malaya hereby testify that the signatures of transferees written in my presence on this 4th day of November, 1963 is according to my own personal knowledge the true signatures of the said Ong Thye Eng as Trustee, Khech Aik Law as Trustee Chai 10 Wai Leong as Trustee, Pong Kien Ngor as Trustee, Han Leck Juan as Trustee, and Ooi Teng Kang as Trustee who have acknowledged to me that they are of full age and that they have voluntarily executed this instrument.

As witness my hand this 4th day of November,
1963

(sd) Ng Kok Thoy,
Advocate & Solicitor,
Kuala Lumpur.

20

FORM B

I Ng Kok Thoy, hereby certify that on this day the seal of NG CHONG GENG & SONS LIMITED was duly affixed to the above written instrument in accordance with the rules and regulations of the said company.

As witness my hand this day of

19

FORM B

I Ng Kok Thoy, hereby certify that on this day the seal of Synn Lee & Company Limited was duly affixed to the above written instrument in accordance with the rules and regulations of the said company.

As witness my hand this day of 19 .

Exhibits

D.16

Certified
Copy of
Memorandum
of Transfer
4th November
1963
(continued)

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

B E T W E E N :

COLLECTOR OF LAND REVENUE Appellant

- and -

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

AND B E T W E E N :

COLLECTOR OF LAND REVENUE Appellant

- and -

ONG THYE ENG (As Trustee) Respondent

(and Cross-Appeals)

R E C O R D O F P R O C E E D I N G S

STEPHENSON, HARWOOD & TATHAM,
Saddlers' Hall,
Gutter Lane, Cheapside,
London, E.C.2

Solicitors for the Collector
of Land Revenue

GRAHAM PAGE & CO.,
49/55, Victoria Street,
Westminster, London, S.W.1

Solicitors for A.K.A.C.T.V.
Alagappa Chettiar and
Ong Thye Eng.