

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L  
FROM THE COURT OF APPEAL OF THE  
REPUBLIC OF SINGAPORE

BETWEEN:

COLLECTOR OF LAND REVENUE, SINGAPORE Appellant

AND

PHILIP HOALIM Respondent

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AND BETWEEN

PHILIP HOALIM Appellant

AND

COLLECTOR OF LAND REVENUE, SINGAPORE Respondent

(By Cross Appeal)

CASE for Philip Hoalim, the Respondent  
in the First, and the Appellant  
in the Second abovementioned

Appeals

Record

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1. These are Cross-Appeals by the Collector of Land Revenue, Singapore and Philip Hoalim from a judgment (or Opinion) of the Court of Appeal of the Supreme Court of the Republic of Singapore (the Honourable the Chief Justice, Mr. Wee Chong Jin, the Honourable Mr. Justice Frederick Arthur Chua, and the Honourable Mr. Justice Tan Ah Tah) dated the 18th day of March, 1975 arising out of a Case stated by the Commissioner of Appeals under Section 30 of the Land Acquisition Act (Cap. 272 of the Revised Edition of the Laws of Singapore) and (hereinafter referred to as the Act) for the Opinion of the Court of Appeal on a number of questions of law.

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2. The circumstances under which these Appeals are presented are shortly as follows:-

3. On the 30th day of August, 1968, Notice was given to Philip Hoalim by the Collector of Land Revenue pursuant to the provisions of Section 5 of the Act that certain land owned by Philip Hoalim to wit, Lot 285 of Mukim XXXIII, an island known as Pulau Tekong Kechil comprising an area of 220 acres was required for a public purpose, and pursuant to the said Notice the Collector took proceedings to acquire the island.

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4. Following upon an Enquiry the Collector made an Award to Philip Hoalim in the sum of Singapore \$67,500/-.

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5. Philip Hoalim being aggrieved by the quantum appealed to the Appeals Board constituted under the provisions of Section 19(1) of the Act.

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6. On the 24th day of July, 1974, the Commissioner for Appeals stated a Case for the Opinion of the Court of Appeal, and the Court of Appeal delivered its judgment (or Opinion) on the said 18th day of March, 1975.

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7. Both the Collector and Philip Hoalim have been granted leave by the Singapore Court of Appeal to appeal to the Judicial Committee of the Privy Council from portions of their Opinion, and the formal Orders made giving such leave form part of the Record.

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8. The Collector is appealing against such part of the Opinion of the Court of Appeal as decided that Philip Hoalim is not bound by the terms of the 1860 Grant by reason of the fact that it was never registered. Philip Hoalim is therefore the Respondent in First of the above-mentioned Appeals.

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9. Philip Hoalim is appealing against two parts of the Opinion namely:-

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(i) Where it decided, that the provision contained in the 1860 Grant by the Secretary of State for India in Council for and on behalf of Her Majesty Victoria, Queen to Angus reading "Subject nevertheless to the conditions hereinafter mentioned ....." constitutes

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a condition, and says that in the context in which the same appears in the said Grant, it is not a common law condition but a contractual obligation in the nature of a covenant for an option to repurchase the subject island, and is void for perpetuity.

10 (ii) Where it decided that Philip Hoalim p.46 had constructive notice of the 1860 Grant and says that he did not.

Philip Hoalim is therefore the Appellant in the second of the abovementioned Appeals.

10. Dealing first with 9(i) of Philip Hoalim's Cross-Appeal, the Appellant will seek to submit that the proviso in the original 1860 Grant in the following words:-

20 "Subject nevertheless to the conditions p.37 hereinafter mentioned that is to say the said Gilbert Angus for himself his Heirs **Executors** and Administrators and Assigns Doth hereby covenant and agree to surrender and make over unto the said Secretary of State for India in Council or his Successors in Office the said Land and premises should it at any time be required for public purposes, on a requisition made to him to that effect in writing and upon the payment to him the said Gilbert Angus His Heirs Executors Administrators and Assigns by the Secretary of State for India in Council or his Successors in office of all sum or sums of money that the said Gilbert Angus his Heirs Administrators Executors or Assigns may or shall have incurred expended (sic) upon the said land"

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is in its proper context not a condition in the strict legal sense, like a condition of defeasance, or a legal right of reverter, but a contractual obligation in the nature of an option to repurchase given to the Secretary of State for India in Council.

The words used ('covenant and agree to surrender and make over') are words of contract. The word "condition" has many meanings some of which have nothing to do with agreements, and in

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support of this contention the Appellant will rely upon statements made in Schuler v Wickman Tools (1973) 2 W.L.R. 683 @ 688H per Lord Reid. Nevertheless its primary meaning is contractual (Schuller's Case) @ 701F per Lord Simon; and a secondary meaning is simply a "contractual term" (Lord Simon @ 702C).

10 There are authorities which hold that a particular provision may be both a condition in the strict legal sense, and also a covenant; Sheppard's Touchstone 122; Doe d'Henniker v Watt 8 B & C.308 (108 E.R.1057), but the Appellant will submit that in the present case the condition is defined ('that is to say') as a covenant and an agreement, these being exclusively words of covenant. There are no words such as "provided always," or even "upon condition that" which raise a condition in the strict legal sense, attached to the legal estate.

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20 The Appellant will invite your Lordships to refer to the following authorities which provide illustrations of a "condition" in the strict conveyancing sense:-

(a) The School Sites Act 1841

30 (Halsbury's Statutes, 3rd Edition, Vol.7 page 274). has by Section 2 (the last 6 lines), a statutory form of condition providing for land to revert to the grantor upon it ceasing to be used for a school. It is to be observed that the proviso starts "Provided also", and the operative part is for the immediate reversion to the grantor.

40 (b) In Megarry & Wade on Real Property, 3rd Edition, at page 76 are set out illustrations of conditions.

50 (c) In Bashir v Commissioner of Lands (1960) A.C.44, at page 51 Lord Jenkins, in the last full para., distinguishes the strict 'condition subsequent' ("...the non-fulfilment of which brought the term to an end without any necessity for an express proviso for re-entry...") from obligations in the nature of

covenants ("...the breach of which (in the absence of any express proviso for re-entry) could only afford the Commissioner relief in the shape of damages or injunction.....").

(d) Cooper v Stuart (1889) 14 App.

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Cas.286 @ 288, which is clearly distinguishable from the present provision, being a "reservation" of land not exceeding 10 acres as required for public purposes. This took effect "in defeasance of the estate previously granted" (p.290, at the end of the first para.), and has no words of covenant such as are found in the present provision.

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The Appellant will further submit that there is no valid ground on which the present proviso can be distinguished from that in London & South Western Rly. Co. v Gomm (1882) 20 Ch.D.562, and if so, it is struck down by the Rule against Perpetuities (the judgment of Jessel, M.R. @ 579 et seq.), Woodall v Clifton (1905) 2 Ch.D.257, Worthing Corpn. v Heather (1906) 2 Ch.D. 532.

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11. Still dealing with 9(i) on the question whether the Rule against Perpetuities applies to the Crown or to its successor, the State, the Appellant will contend that the Court of Appeal erred in holding **that** it does, on the authority of Cooper v Stuart (1889) 14 A.C. 286

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The Appellant submits that Cooper v Stuart deals with a common law grant (or gift), and at that time there was no wholesale importation of English common law into New South Wales by either a local enactment or by the United Kingdom legislature. In the case of Singapore there was a wholesale importation by the Charter of 1826. By virtue of this, the Rule against Perpetuities as existing in the United Kingdom became part of the law of Singapore (see observations of Lord Watson on p.291 of Cooper v Stuart).

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There has never been any hint that the Rule does not apply to the Crown in England. The Rule has been applied in the Straits Settlements (of which Singapore formed part) without qualification - Yeap Cheah Neo v Ong Cheng Neo (1875) L.R.6 P.C.381, Choa Choon Neoh v Spottiswoode (1885) 1 Kyshe 216.

The Appellant submits that the reason given for the Rule not being applicable in Cooper v Stuart is that the Colonial government should not be restricted in its right to have available land for public use, and there was no enactment in the nature of a Land Acquisition Act.

10 The position in Singapore today is very different from that in New South Wales in 1823. The basic argument sustaining Cooper v Stuart does not obtain in Singapore today, where there is the Land Acquisition Act governing the compulsory acquisition of land in Singapore.

20 12. On the question of constructive notice, para.9(ii) hereof the Appellant will seek to contend that he had no constructive notice of the 1860 Grant in that the 1878 Conveyance was in itself a good root of title, and in support of this contention he will rely upon statutes and statements made in the following decisions and authorities:-

p.46,47

(i) On what is a good root of title:

30 A good root of title is a document which describes the land sufficiently to identify it, which shows a disposition of the whole legal and equitable interest contracted to be sold, and which contains nothing to throw any doubt on the title Megarry & Wade on Real Property 3rd. ed. @ 586; Cheshire's Modern Real Property, 5th.ed. @ 677.

(ii) On length of title to be deduced:

Section 3(4) of the (Singapore) Conveyancing and Law of Property Act (Cap. 268), which provides for a 30 years title.

40 (iii) On the limitation upon production of deeds prior to the 1878 Conveyance: Section 3(5) of the same Act which is in pari materia with Section 45(1)(a) and (b) of the English Law of Property Act, 1925.

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50 (iv) In this connection, the Appellant will also rely upon the Agreement for Sale dated the 25th day of August 1951 which did not entitle him to go beyond the 1878 Conveyance, and to the Order of Court dated the 13th day of September

1951, which inter alia ordered that the aforesaid Agreement of Sale be carried into effect pursuant to Section 35(2) of the Conveyancing and Law of Property Act (Cap. 268).

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(v) On whether an intending lessee or assign can call for the title to the freehold or leasehold reversion: Section 3(1) and (2) and Section 13(1) of the same Act, which are in pari materia with Sections 44(2), (3) and (4) of the English Law of Property Act, 1925.

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(vi) The cases of Hooper v Bromet 89 L.T.R.37, Patman v Harland (1881) 17 Ch.D.353 and Llewellyn v Jersey 11 M & W 183 referred to in the judgment of the Court of Appeal are all distinguishable from the facts in the Appellant's case, and the Appellant submits that these have no bearing on his case. p.46 p.46 p.47

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13. DEALING with the question of non-registration of the 1860 Grant, on which issue Philip Hoalim is the Respondent and the Collector, the Appellant, it is common ground that the said Grant was not registered, and the Respondent respectfully accepts the reasoning behind the judgment of the Court of Appeal holding that the Respondent is not bound by the 1860 Grant, and will, if necessary, also rely upon the following:- p.48

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- (1.) Braddell, Laws of the Straits Settlements, Vol.2 @ p.p.196,197, 198, 201,202, and to the authorities therein cited, all of which refer to the necessity for registration.
- (2.) The Registration of Deeds Act (Cap.281)

14. On the Appellant's Cross-Appeal, he humbly submits that those two parts of the judgment (or Opinion) of the Singapore Court of Appeal dated the 18th day of March 1975 are wrong and ought to be set aside, and in lieu thereof it should be held that the proviso in the 1860 Grant to Angus is a covenant creating and equitable interest in land and void for perpetuity, and that the Appellant had no constructive notice of the said provision,

for the following, among other

REASONS

- (1) BECAUSE it was held that the provision "subject to the conditions therein-after contained" in the Indenture in Gomm's Case constituted a covenant which created an equitable interest in land.
- (2) BECAUSE Sheppard's Touchstone dealt with "provided always" cases.
- (3) BECAUSE the Crown is subject to the Rule against perpetuities.
- (4) On the question of constructive notice, BECAUSE the 1878 Conveyance was a good root of title.

15. On the Collector of Land Revenue's Appeal, the Respondent humbly submits that the same should be dismissed ~~BECAUSE~~ WITH COSTS the Court of Appeal's judgment on this issue is right and ought to be affirmed.

Yusuf Jumabhoy.