

ON APPEAL
FROM THE FEDERAL COURT OF MALAYSIA

BETWEEN:

GARDEN CITY DEVELOPMENT BERHAD Appellant

- and -

COLLECTOR OF LAND REVENUE FEDERAL TERRITORY Respondent

CASE FOR THE APPELLANT

HISTORY

Record

- 10 1. The Appellant filed Originating Motion 96/76 dated 11th October 1976 for an Order that the Notice in Form 7A dated 12th July 1976 served on the Appellant by the Respondent be cancelled on the ground that the Notice is bad in law and invalid. p. 1
- 2. Notice of Motion dated 6th January 1977 was filed by the Respondent for an order that the Appellant's Originating Motion be set aside on the grounds set out therein namely:- p. 2
 - (1) That the application is vague ambiguous and wrong in law.
 - 20 (2) That the Applicant failed to make an appeal to the High Court and has already exhausted his remedies under the National Land Code.
 - (3) That the Court has no jurisdiction to entertain the Application of the Applicant.
- 30 However at the hearing before Harun, J., on 20th January 1977, the Respondent stated that he was not proceeding with the application. The said Notice of Motion was dismissed with no order as to costs. The Originating Motion was adjourned to a date to be fixed. p. 3
- 3. The Originating Motion was heard on 18th April 1977 by Harun, J. Judgment was reserved. On 1st June 1978, the Originating Motion was allowed with costs to be paid by the Respondent. p. 20
- 4. Notice of Appeal 95/78 dated 22nd June 1978 was filed by the Respondent against the whole of the decision of the High Court of Kuala Lumpur. The Respondent further filed a p. 21

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Notice of Motion dated 1st July 1978 in the High Court seeking leave to appeal to the Federal Court and to have the execution of the High Court judgment stayed. The said Notice of Motion was heard on 8th August, 1978, and the Appellant making no objection to the application, an order in terms of the application was granted. On 8th November 1978 the Appeal was heard in the Federal Court before Chief Justice Lee Hun Hoe and Justices Chang Min Tat and Wan Suleiman. Judgment was reserved. On 14th December 1978 judgment was delivered by the Federal Court and the Appeal was allowed. The Order of the High Court dated 1st June 1978 was set aside and the Appellant was ordered to pay costs in the Court below and costs of the Appeal to be taxed. 10

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5. The Appellant filed a Notice of Motion dated 6th March 1979 for an order that conditional leave to appeal to the Yang Di Pertuan Agong be granted to them against the Order of the Federal Court given on 14th December 1978 and for a further order that execution of the judgment appealed from be stayed pending the Appeal. The Notice of Motion was heard on 19th March 1979 before Chief Justice Lee Hun Hoe and Justices Wan Suleiman and Abdul Hamid. Conditional leave to appeal was granted subject to the usual terms and the execution of the Federal Court Judgment was stayed pending the appeal. Application for final leave to appeal was granted on 19th September 1979. 20

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FACTS

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6. The case concerns a piece of land held under Certificate of Title ("C.T.") No. 3443 Lot 36 Section 58 City of Kuala Lumpur ("the land"). The land was part of a larger area of land first alienated to H.C. Syers on 20th July 1886 under Lease for Agricultural Land No. 746 ("Lease No. 746") in area 100 acres. Lease No. 746 was a lease in perpetuity. There was no express condition regarding user of the land endorsed on the title. 30

7. In March 1894 H.C. Syers transferred that piece of land held under Lease No. 746 to one Loke Yew and Lease No. 746 was at this juncture substituted and cancelled in exchange for C.T. No. 495 in area 101 acres 2 roods 37.3 poles. Following a resurvey C.T. No. 495 was replaced by C.T. No. 1189 in area 98 acres 2 roods 10 poles. This land was then subdivided and one of the subdivided lots in area 16 acres 1 rood 35 poles was issued with C.T. No. 2786 on 22nd December 1896. This C.T. No. 2786 was subdivided again and one of the subdivided lots was the land, measuring 2 acres 1 rood 34 poles and issued with C. T. No. 3443 on 8th August 1909 to the said Loke Yew who held the land until his death. 40

8. It is not disputed that a residential house known as No. 147, Janlan Ampang, Kuala Lumpur stood on the land until it was demolished in 1973 or 1974. The quit rent for the land was imposed at the rate for a residential house, and municipal rates were assessed at the rate for a residential house.

9. The Appellant became the registered proprietors of the land on 9th June 1972. 50

10. The Appellant wanted to develop the land and therefore applied to the City Planning Committee of Kuala Lumpur for planning permission for an office-cum-shopping complex. Planning permission was granted subject to the surrender of part of the land for road widening.

To this end the land had to be subdivided to carve out that part designated for road widening. Application for subdivision was made on the Appellant's behalf on 20th July 1972 in Form 9A of the National Land Code (N.L.C.). On 13th April 1973 the Respondent stated that an application must first be made for "conversion" under Section 124 of the NLC (i.e. "the imposition of a new and appropriate express condition and for rent amendment"). On 7th June 1973 the clients in response to the Respondent's letter of 13th April 1973 applied for "conversion" under Section 124.

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11. The residential house on the land was demolished and in September 1974 the construction of the commercial building now known as Wisma Central was commenced and was completed in December 1975.

12. In February 1974 the powers of the Selangor State Authority were transferred to the Land Executive Committee ("Land Exco") in respect of lands in the Federal Territory.

13. On 14th February 1975 the Director of Lands and Mines of the Federal Territory conveyed to the Appellant the results of the Land Exco's deliberations, namely the Appellant's applications for "conversion" and subdivision would not be considered as submitted but approval would be given on certain conditions being complied with by the Appellant viz:-

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(a) the Appellant was to apply for the surrender of the perpetuity title and accept in exchange a lease for 99 years for the portion of the land retained by them; and

(b) additional premium and new taxes amounting to M\$656,471.00 were to be paid by the Appellant.

14. On 13th May 1975 the Appellant's Solicitors, Mah-Kok & Din applied to the Land Exco to reconsider on grounds set out in the said letter. The Director of Lands and Mines claimed that on 13th January 1976 he had written to the said Solicitors stating that the Appellant's appeal had been rejected. This letter was never received. On 17th February 1976 the Director of Lands and Mines wrote again to the Appellant referring to his letter dated January 13th 1976 and stated that the Land Exco's intentions as per the letter of 14th February 1975 were to be implemented forthwith but the premium payable however was to be reduced to M\$623,199.00 to be paid within a month of 17th February 1976. The Appellant did not surrender the title to the land nor pay the premium and on 12th July 1976 the Respondent issued a Notice in Form 7A under Section 128 of the NLC to the Appellant reading as follows:

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"Whereas I the undersigned am satisfied that a breach of the condition schedule below has ~~arisen~~ arisen in that

Failing to amend the condition of land use from that of Agriculture to Commercial.

Now therefore in exercise of the powers conferred by section 128 of the National Land Code I hereby require you within a period of 3 months from the date of this notice to take the following action to remedy this breach -

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From Agriculture to Commercial by payment in the sum of

Record

M/623,199.00 as stated in the letter of this Department No.
(22) dlm. PTG/WP - 6/305/74 dated 17th February, 1976"

This Notice was served on the Appellant on 12th July 1976.

15. On 11th October 1976 the Appellant appealed to the High Court by way of Originating Motion against this Notice pursuant to S.418 of the National Land Code. The Appeal was allowed and the Respondent subsequently appealed to the Federal Court against the High Court decision. The Federal Court allowed the appeal and the Appellant is therefore now appealing to the Privy Council.

IN THE HIGH COURT

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16. The Originating Motion for an order that the Notice in Form 7A dated 12th July 1976 served on the Appellant be cancelled was heard before Mr. Justice Harun. The Judge decided against the Respondent and declared the Notice issued by the Respondent in Form 7A to be void and of no effect for the following reasons:-

- 14 Line 2 (1) There was no breach of condition of the use of the land as:-
- p. 14-15 (a) The land was no longer agricultural land but was town land. The coming into force of the NLC on 1st January 1966 does not alter the rights of the proprietors acquired under the Federated Malay States Land Code (FMSLC) as Section 4 of the NLC preserves these rights though making them subject to the provisions of the NLC. The relevant provision of the NLC applicable is Section 53(3) which provides that the land shall not be used for agricultural or industrial purposes. There is therefore no breach of the implied condition under sub-section.
- 17 Lines 1-24
- 17 Lines 13-33
- 17 Lines 36-42
- 19 Lines 9-16 (3). Even assuming the land is agricultural land Wisma Central comes within Section 53(3)(ii)(b) being a building within the meaning of Section 116(4)(b) of the NLC and could therefore have been lawfully erected if the land was subject instead to the category "building".
- 14 Lines 2-9 (b) Even if the land was agricultural land and there had therefore been a breach of condition of the user of the land, the Land Office had all along treated the land as residential for the purpose of revenue collection. It is therefore too late to say that the land is now agricultural. The collection of the revenue at the enhanced rate for residential house constituted an acquiescence and waiver of any breach.
- 18 Lines 6-11
- 19 Lines 17-21 (2) Even if there is a breach the land is not subject to forfeiture except upon payment of compensation under Section 53(4) of the NLC. No offer of compensation has been made in this case.
- 18 Lines 21-35
- 18 Lines 22-28 (3) The performance of the condition to remedy the purported breach under Section 128 of the NLC is contrary to law as it is conditional on the exchange of the perpetuity title to the land for a 99-year lease which condition the High Court had held that Land Exco had no power to impose (O.M.44/76).
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IN THE FEDERAL COURT

17. The Federal Court Lee Hun Hoe, G. J. S. Wan Suleiman, F.J. and Chang Min Tat, F.J. reversed the decision of the High Court and allowed the appeal of the Respondent holding that there was a breach of condition of the use of the land by reason of which action under Section 128 of the NLC could be taken. The reasons of the Federal Court can be summarised as follows:-

p. 52-53

10 (1) The land became town land held under Registry Title with the coming into force of the FMSLC and remained so with the coming into force of the NLC. p. 43

(2) Being town land held under Registry Title it comes within Section 53(3) of the NLC and shall be used neither for agricultural nor for industrial purposes. p. 46

20 (3) Until the land is declared to be of the category "building" under Section 54 of the NLC or the Appellant applies under Section 124 of the NLC for an imposition of the category "building" thereon, the land is in a sort of "limbo" having no category of land use. It cannot be used for agricultural, industrial or building purposes. p. 49

(4) Since the land had not been declared to be of the category "building" under Section 54 the Appellant has the duty to apply under Section 124 for the imposition of the category of use of building before they can erect the Wisma Central. The failure to do so constituted a breach of condition by reason of which action under Section 128 may be taken. p. 49

30 (5) The Notice Form 7A was erroneous in that the breach stated therein was for failure to alter the condition of the land use from agricultural to commercial. The land was not agricultural land and there is no category land use known as "commercial". However the error had not misled the Appellant nor was it so fundamental that it should avoid the whole proceedings. p. 49-50

40 18. Notwithstanding that in the High Court the Respondent did not proceed with his Notice of Motion to set aside the proceedings, he contended in the Federal Court that the proceedings were out of time, in that the appeal to the High Court from the decision of the Land Exco as conveyed by the Director of Lands and Mines, Federal Territory had exceeded the 3 months allowed under Section 418 of the NLC. The Federal Court held that the Originating Motion to the High Court by the Appellant was in fact out of time but went on to state that it saw no necessity to labour this point as it had dealt with the appeal in substance rather than on procedure. p. 50

50 19. The Federal Court did not deal with the Appellant's contention that the Respondent had no power to levy a premium on "conversion" in this case.

MAIN SUBMISSIONS

The Appellant submits :-

- (1) There is no breach of condition, Save for the restriction that the land cannot be used for agricultural or industrial purposes, the land can be used for any other purposes including the erection of a building thereon.
- (2) No premium is payable although it is open to the State Authority to revise the quit rent payable pursuant to the NLC.
- (3) In any event the notice under S.128 of the NLC is bad because the land is not liable to forfeiture for breach of condition, as required by S.128(i)(a). 10
- (4) The appeal was not out of time. In any event the matter is res judicata and was not raised in Respondent's Memorandum of Appeal.

20. THE APPELLANT'S FIRST SUBMISSION

p. 83-86

- (1) The land is held under CT No. 3443 situated in the Town of Kuala Lumpur. The Land, like all other lands in Kuala Lumpur, was originally agricultural land with cultivation conditions imposed thereon. With the introduction of the FMSLC the conditions on the land were removed through the operation of Section 35 of the FMSLC which provides as follows :- 20

"When alienated land is brought within the boundaries of a town or village any condition as to the cultivation of such land, other than a condition forbidding the cultivation of any particular product or class of products, shall cease to be operative."

Since the land is situated in the Town of Kuala Lumpur it is clearly town land and therefore by virtue of Section 35 the conditions as to cultivation ceased to operate. 30

p. 14

- (2) However this does not (contrary to the judgment of his lordship Harun J. in the Federal Court) mean that the land had ceased to be agricultural land. It only means that the conditions as to cultivation had ceased to operate, but the land could still be used for agricultural purposes. This conclusion is supported by Section 32(i) of the FMSLC which provides as follows:-

"No town or village land shall be used for the erection of any building other than a building, together with the outbuildings and appurtenances thereof, used solely as a dwelling house or solely for agricultural purposes unless such land is held under a grant or lease of State land or certificate of title." 40

Since the land is town land held under a Certificate of Title, by virtue of Section 21(i) the land could be used for the erection of any building including buildings used solely for agricultural purposes.

- (3) Thus the legislature through the FMSLC was seeking to convert the use of lands from that of solely agricultural to other

types of purposes by :-

- (a) removing conditions relating to the cultivation of land from lands brought within the boundaries of a Town or village;
- (b) limiting the restriction that town or village land be used for the erection of buildings solely for a dwelling house or solely for agricultural purposes to town or village lands not held under Grant or Lease of State land or Certificate of Title;
- (c) allowing town or village lands held under Grant or Lease of State land or Certificate of Title to be used for the erection of any building.

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- (4) Thus at the coming into force of the NLC, the land in this case was not subject to any requirement of cultivation but could be used for the erection of buildings and had in fact been so used.
- (5) On 1 January 1966 the NLC came into force replacing the FMSLC. The question is: does the NLC affect the existing rights of the proprietor of the land?

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Section 4(1) of the NLC provides as follows:-

"Nothing in this Act shall affect the past operation of, or anything done under, any previous land law or, so far as they relate to land, the provisions of any other law passed before the commencement of this Act:

Provided that any right, liberty, privilege, obligation or liability existing at the commencement of this Act by virtue of any such law shall, except as hereinafter expressly provided, be subject to the provisions of this Act."

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Thus the rights of the proprietors of lands acquired under the old laws are preserved but subject to the provisions of the new Code, the NLC.

- (6) The NLC sought to continue the process of classification of land use commenced by the FMSLC by the introduction of the category system which sought not only to classify the land use but to secure proper use and control of land development.
- (7) Under the category system of the NLC all lands are at one stage or another to fall within one of the 3 different types of categories viz "agricultural", "building" or "industrial" with the implied conditions spelt out in Section 115, 116 or 117 respectively. The old land system before the coming into force of the NLC did not possess these different categories but as earlier submitted, all lands in Kuala Lumpur were initially agricultural land.

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(8) To determine to which particular category a particular piece of land is subject, the NLC provides that the category of land use be endorsed on the document of title. Endorsement on the document of title is effected in 2 ways :-

- (a) As and when the documents of title are issued; or
- (b) On or before the date on which a declaration by the State Authority pursuant to Section 54 of the NLC is to take effect.

Once the endorsement of the category of land use is made on the document of title, the respective implied conditions as provided for under Sections 115, 116 and 117 apply. 10

(9) To implement this scheme, alienated lands are placed in three separate classes; viz:-

- (a) New lands - lands alienated under the NLC where the endorsement is made as and when the documents of title are issued - Section 52(2) and (3) of the NLC. In this event the implied conditions under Section 115, 116 or 117 as the case may be will apply;
- (b) Old lands - lands alienated before the commencement of the NLC. These are dealt with under Section 53 of the NLC i.e. the transitional stage; 20
- (c) Declared lands - lands alienated before the commencement of the NLC but have become subject to a declaration under Section 54 of the NLC in which event the endorsement on the document of title is made on or before the date on which the declaration is to take effect. There after the implied conditions under Section 115, 116 and 117 as the case may be will apply i.e. old lands subject to new laws.

(10) In the present case no declaration pursuant to Section 54 has been made in respect to the land. The land therefore belongs to the class of old lands in the transitional stage and Section 53 of the NLC as follows therefore applies :- 30

- (1) "This section applies to all land alienated before the commencement of this Act other than land which, immediately before that commencement, is subject to an express condition requiring its use for a particular purpose.
- (2) All land to which this section applies which is at the commencement of this Act -
 - (a) country land, or
 - (b) town or village land held under Land Office title, shall become subject at that commencement to an implied condition that it shall be used for agricultural purposes only : 40

Provided that this condition -

- (i) shall not prevent -
 - (a) the use of any part of the land for any purpose

for which it could (under section 115) be lawfully used if it were subject instead to the category "agriculture", or

(b) the continued use of any part thereof for any industrial purpose for which it was lawfully used immediately before the commencement of this Act; and

(ii) shall not apply to any part of the land which is occupied by or in conjunction with -

(a) any building lawfully erected before that commencement, or

(b) any building erected after that commencement, the erection of which would (under section 115) be lawful if the land were subject instead to the category "agriculture".

(3) All other land to which this section applies shall become subject at the commencement of this Act to an implied condition that it shall be used neither for agricultural nor for industrial purposes :-

Provided that this condition -

(i) shall not prevent the continued use of any part of the land for any agricultural or industrial purpose for which it was lawfully used immediately before the commencement of this Act; and

(ii) shall not apply to any part of the land which is occupied by or in conjunction with -

(a) any building lawfully erected before that commencement, or

(b) any building erected after that commencement, the erection of which would (under section 116) be lawful if the land were subject instead to the category "building".

(4) Land shall not be liable to forfeiture under this Act by reason of any breach of any condition to which it is subject by virtue of this section except upon payment of such compensation as may be agreed or determined under section 434."

(11) The land is not subject to any expressed condition requiring its use for a particular purpose and therefore section 53(1) applies. It is neither country land nor town land held under Land Office Title and therefore section 53(2) does not apply. The land comes within section 53(3) and therefore is subject to the implied condition that it shall be used neither for agricultural nor for industrial purposes. The land is not presently used for agricultural nor for industrial purposes and there is therefore no breach of the implied condition set out in section 53(3).

(12) The question is: what can the land be now used for? It is the Appellant's submission that the land may be used, except for agricultural and industrial purposes, for any other purposes including building purposes

p. 49 (13) However his lordship in the Federal Court held that lands caught under section 53(3) are "in a sort of limbo". The Appellant respectfully disagrees with his lordship on his interpretation of section 53(3) for the following reasons:-

(a) His lordship had failed to appreciate the difference between the old land system and the new land system under the NLC, and the gradual process by which the legislature sought to convert the old land system to the new; and 10

(b) the difference between the two concepts "purpose" and "category".

In converting the old land system to the new the legislature recognised the need to deal with the lands already alienated before the commencement of the NLC in a different manner from lands alienated after the NLC so as to ensure that the conversion of the old land system to the new land system is effected in a just and fair manner. Thus for lands alienated under the NLC, under section 52, a category of land use would be immediately imposed thereon and the respective implied conditions relating to the different categories of land use will apply. It is important to note that in the case of "agricultural" and "building" land the implied conditions impose positive obligations on the registered proprietors to develop the land according to its category of use. Thus where the category of land use is "agricultural", under Section 115(1)(b) of the NLC the registered proprietor must commence cultivation of the land within twelve months of the relevant date. Where the land is subject to the category "building", under Section 116(1)(a) of the NLC a building suitable for one of the purposes stated in sub-section (4) thereof must be erected on the land within two years of the relevant dates. The Legislature recognised that to impose a category of land use immediately on lands alienated before the commencement of the NLC could impose hardship and injustice to the registered proprietors of such lands. The NLC therefore by section 53 sought to deal with such lands in a different manner by merely regulating the purpose of land use and not by imposing a category of land use. For example under Section 53(2)(b) the lands caught thereunder are not subjected to the category "agriculture" but to the implied conditions that such lands could only be used for agricultural purposes. The implied conditions relating to the category of land use "agriculture" under Section 115 would therefore not apply. Section 53 does not impose any positive obligations on the registered proprietors to develop the lands but is merely negative in nature seeking to ensure that the lands will not be used in a manner inconsistent with that which they would eventually have to be used when subjected to a category. Further under Section 53(4) such land could only be subject to forfeiture for breach of condition on payment of compensation. Under Section 54 by notification in the Gazette the State Authority may specify any area in the State to be subjected to 20 30 40 50

10 a particular category of land use but protection is provided thereunder in that at least a year must lapse before any notification in the Gazette by a State Authority declaring a certain area to be subjected to a particular category takes effect and the provisions of Section 54 apply. It is totally inconsistent with all this for his lordship to conclude that the land in question is in a sort of "limbo" and cannot therefore be used for anything until a category be imposed thereon. By section 53(3) the land cannot be used for agricultural nor industrial purposes. This means that the land can be used for any purposes including building purposes. Section 53(3) was merely ensuring that the land is not used for any purpose inconsistent with that for which it would eventually be used when subjected to a category i.e. under Section 54(2)(b) - "building".

20 (b) His lordship stated that had section 53(3) intended that the land be used for building purposes it would have read as follows - "it shall be used for building purposes only". However, the Appellant submits that the subsection was so written because the legislature did not intend the use of the land to be restricted to building purposes only but to any purposes other than agricultural or industrial. Such other purposes could include purposes such as a golf course, an air-field or a horse racing stable. p. 46

30 (c) The Appellant's submission that lands falling under section 53(3) can be used for building purposes is reinforced by section 54(2)(b) where land previously subject to the implied condition specified in section 53(3) is to be subject to the category "building".

(d) His lordship's conclusion would inevitably lead to the unjust result that the land which could before the NLC be used for the erection of any building could not now, with the commencement of the NLC, be used for building purposes.

40 (e) His lordship supported his conclusion that the land was in a sort of limbo by the proviso (ii) (b) to section 53(3). His lordship probably relied on the words "if the land were subject instead to the category "building" "and concluded from them that the land was therefore not subject to the category "building" and could not therefore be used for building purposes. However his lordship failed to appreciate the difference earlier pointed out between the concepts "purpose" and "category". Although the land is not subject to the category "building" it does not mean that it cannot be used for building purposes. p. 47

50 (f) Further his lordship did not comment on what the word "building" in the said proviso means. Does it apply to the Wisma Central? Justice Harun in the High Court applied the word "building" in the proviso to Wisma Central and held that since Wisma Central was erected after the commencement of the NLC "and as it is a building within the meaning of section 116(4) of the NLC and could have been lawfully erected if the land was subject to the building category, the proviso to sub-section (3) applies." p. 47
p. 17

With respect the Appellant disagrees that the word "building" in the proviso applies to Wisma Central. The Appellant submits that it applies to a building used for agricultural or industrial purposes which could be allowed under section 116(4)(f) or (g) of the NLC but which would have been in contravention of section 53(3), if not for the proviso. For the provisor to refer to Wisma Central would be to render the proviso redundant since, the Appellant submits, under section 53(3) the land could be used for building purposes and the erection of Wisma Central would therefore have been lawful without the application of the proviso. His lordship in the Federal Court interpreted section 53(3) to mean that the land cannot be used for building purposes. If this is so, the Appellant would submit that to interpret the word "building" in the proviso to apply to Wisma Central would not then render the proviso redundant and there would be no reason why the word "building" therein should not be read to apply to Wisma Central. The proviso would then be applicable and there would be no breach of condition on the Appellant's part in erecting Wisma Central.

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(14) Although Harun J. in the High Court gave judgment in the Appellant's favour, it is unclear whether his lordship is in support of the Appellant's submission that section 53(3) means that the land can be used for any other purposes including building, except for agricultural or industrial purposes. His lordship merely held that since the land was not to be used for agricultural or industrial purposes "there is therefore no breach of the implied condition under sub-section 53(3)".

17 Line
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(15) Further Harun J. held that the Appellant was entitled to the approval of its application for the imposition of category of land use "Building - Commercial" to be endorsed on the Certificate of Title under section 124(1)(a) of the NLC. This seems to indicate that his lordship did not fully appreciate the Appellant's contention that the land save for the restrictions imposed by section 53(3), is not subject to any other restrictions on use and there is therefore no necessity for an application under section 124(1)(a).

18 Lines
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(16) Finally, the Appellant points out that his lordship in the Federal Court wrongly thought that S.124(1) of the NLC imposed a duty on the land owner to apply for the imposition of a category of land use. The Appellant submits that S.124(1) on use is permissive.

49 Lines
34 and 42

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21. THE APPELLANT'S SECOND SUBMISSION

(1) On the question of the amount of premium payable on the land, the legislation dealing with the payment of premium is the Federal Territory Land Rules 1975 ("the FLTR").

(2) The rules dealing with the amount of premium payable are Rules 8, 10 and 13.

(3) Under the aforesaid rules no premium is payable by the Appellant on the land for the following reasons :-

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(a) Rule 8(1) deals only with lands alienated after the coming into force of the FLTR and is therefore not applicable to the Appellant's land;

(b) Rule 10 is not applicable as it deals with land alienated

by public auction;

10 (c) Rule 13 deals with the payment of further premium on the variation of categories or conditions under section 124 of the NLC. Under this rule payment of premium is calculated by way of a percentage on the value of the land. The rationale behind the payment of the further premium is, the Appellant submits, the fact that on variation of the category the land value is enhanced. However in the Appellant's case the land is not subject to any category and it is only by virtue of section 54(2)(1) or section 124(1) of the NLC that the land will be made subject to the category "building". Meanwhile it can be used, save for agricultural or industrial purposes, for any other purposes including building purposes. The imposition of the category "building" does not therefore in any way enhance the value of the land. Based on the rationale aforesaid, no further premium should therefore be payable. In any case rule 20 13 deals with variation of categories or conditions and not with imposition of categories. On the other hand Rule 8(i) deals with imposition but applies only to lands alienated after the coming into force of the FTLR.

(d) Further, even if the land is in a sort of "limbo" and cannot be used for anything until action is taken under section 54 or section 124 of the NLC, as was held by the Federal Court, there is no basis from which premium payable is to be calculated.

30 (4) The Appellant points out that it is open to the State Authority under section 101 and 102 of the NLC to revise the quit rent payable on the land.

22. THE APPELLANT'S THIRD SUBMISSION

40 Assuming that there is a breach, the notice under S.128 of the NLC is bad because the land is not liable to forfeiture, as required by S.128(1). Under Section 54 of the NLC on a breach of condition the land is not liable to forfeiture except upon payment of such compensation as may be agreed or determined under section 434 of the NLC. There has been no offer of compensation in this case, let alone agreement or determination thereof.

23. THE APPELLANT'S FOURTH SUBMISSION

50 The "decision" of the Director of Lands & Mines, Federal Territory, made on either 14th February 1975 or 17th February 1976, if it were a decision within the meaning of Sec. 418 of the National Land Code was not a decision which is the subject matter of this Originating Motion. The letter of 17th February 1976 referred to the letter of 14th February 1975 and that conveyed to the Appellant the results of the Land Exco's deliberations, namely, that the Appellant's applications for conversion and subdivision would not be considered as submitted but approval would be given if certain conditions were complied with. That "decision" was very different from the subject matter of Form 7A which was a notice requiring the Appellant to remedy

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what was a "failure to alter condition of land use from Agriculture to Commercial". The decision appealed against in the Originating Motion 96/76 was the decision in Form 7A communicated to the Appellant. Form 7A was dated 12th July 1976 and the Originating Motion was filed on 11th October 1976 (not 14th October 1976 as stated by Chang Min Tat, F.J., (Record p. 39 line 37)) and as was decided by Harun J. when the Notice of Motion dated 6th January 1976 was heard on 20th January 1977 the Appellant was still within the 3 month period provided under Sec. 418(1). It was and has been the Appellant's contention in the Federal Court that the matter was res judicata. The said Notice of Motion was dismissed with no order as to costs. Further this matter was not raised as a ground of appeal in the Respondent's Memorandum of Appeal dated 7th July 1978.

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24. The Appellant humbly prays the Privy Council to allow the appeal with costs here and below and to grant such further or other ruling as may be just for the following (amongst other).

R E A S O N S

- (1) BECAUSE the decision of the High Court in Malaya was right and that of the Federal Court of Malaysia was wrong.
- (2) BECAUSE the Respondent's Notice dated 12th July 1976 was bad in law and invalid.
- (3) BECAUSE the Appellant was not in breach of any condition in respect of the said land, either as alleged or at all.
- (4) BECAUSE in any event no premium is payable in respect of an application under S.124 of the NLC in respect of this land.
- (5) BECAUSE the Respondent's Notice dated 12th July 1976 failed to comply with S.128(1) of the NLC in that the land was not liable to forfeiture in the absence of compensation.
- (6) BECAUSE the appeal in this case was not out of time.

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DAVID WIDDICOMBE QC

KOK WEE KIAT

IN THE PRIVY COUNCIL

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

B E T W E E N:

GARDEN CITY DEVELOPMENT BERHAD

Appellant

- and -

COLLECTOR OF LAND REVENUE FEDERAL TERRITORY

Respondent

CASE FOR THE APPELLANT

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