

LEE BENG LAI & ORS

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v.

TETUAN TOKOYAKI PROPERTY SDN BHD

COURT OF APPEAL, KUALA LUMPUR

DENIS ONG JCA

b

KC VOHRAH JCA

MOHD NOOR AHMAD JCA

[CIVIL APPEAL NO: A-02-809-98]

10 MAY 2002

CIVIL PROCEDURE: Summary proceedings for possession of land - Appeal against order of possession - Payments of premium, quit rent and survey - Whether appellants were given permission to occupy land by State Authority - Whether appellants had a right in equity against registered owner - Whether land was alienated to appellants by State Authority to entitle them to stay on land - Rules of the High Court 1980, O. 89

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The appellants appealed against the decision of the learned judge who allowed the respondent's application under O. 89 Rules of the High Court 1980, to evict the appellants from a piece of land ('the said land') belonging to the respondent. The appellants claimed that they were given permission to occupy the said land by the State Authority for 99 years by virtue of a new village scheme known as "Rancangan Perkampongan Tersusun Kampong Benggali" subject to payments of premium, quit rent and survey. They also claimed, *inter alia*, to have a right in equity to occupy the said land.

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Held:

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Per KC Vohrah JCA

[1] There was no dispute that the appellants were in fact alienated pieces of land in the location known as "Rancangan Perkampongan Tersusun Kampong Benggali" Perak, each with a registered title lot number. However, from the evidence, these lots although near the respondent's registered lot did not involve the respondent's lot. (p 368 d)

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[2] Although the appellants alleged that they received an offer letter for the alienation of land by the State Authority, there was no evidence that the land alienated referred to the registered said land of the respondent. Further, the explanatory letter by the State Authority confirmed that the alienated land of the appellants were outside the area of the said land. (p 369 a-b)

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- a* [3] It was a logical conclusion drawn by the learned judge from the evidence adduced that the appellants, as early as 1982 occupied the said land which was not alienated to them and that they had been alienated pieces of land not involving the said land. The State Authority did not grant them licenses nor give them permission to stay on the said land. The appellants were trespassers in wrongful occupation of the said land. The learned judge was correct in making the order of possession against them. (p 369 d-e)

[Appeal dismissed.]

c **[Bahasa Malaysia Translation Of Headnotes]**

- d* Perayu-perayu telah merayu terhadap keputusan hakim yang bijaksana yang telah membenarkan permohonan responden di bawah A. 89 Kaedah-Kaedah Mahkamah Tinggi 1980, untuk mengusir perayu-perayu daripada sebidang tanah ('tanah tersebut') kepunyaan responden. Perayu-perayu menuntut bahawa mereka telah diberi kebenaran untuk menduduki tanah tersebut oleh Pihak Berkuasa Negeri selama 99 tahun dalam satu skim perkampungan baru yang dikenali sebagai "Rancangan Perkampungan Tersusun Kampong Benggali", tertakluk kepada bayaran premium, cukai tanah dan tinjauan. Mereka juga menuntut, *inter alia* bahawa mereka mempunyai hak dalam ekuiti untuk menduduki tanah tersebut.

Diputuskan:

Oleh KC Vohrah HMR

- f* [1] Tidak terdapat sebarang pertikaian bahawa perayu-perayu tersebut telah pada hakikatnya diberimilik beberapa bidang tanah dalam lokasi yang dikenali sebagai "Rancangan Perkampungan Tersusun Kampong Benggali" Perak, setiap satunya dengan nombor hakmilik lot berdaftar. Walaubagaimanapun, daripada keterangan, lot-lot ini walaupun berdekatan lot berdaftar responden tidak melibatkan lot responden.
- g* [2] Meskipun perayu-perayu mendakwa bahawa mereka telah menerima surat tawaran untuk pemberimilikan tanah oleh Pihak Berkuasa Negeri, tiada keterangan bahawa tanah yang telah diberimilik merujuk kepada tanah berdaftar tersebut responden. Selanjutnya, surat penerangan Pihak Berkuasa Negeri mengesahkan bahawa tanah perayu-perayu yang telah diberimilik adalah di luar kawasan tanah tersebut.
- h* [3] Ianya adalah suatu kesimpulan logik yang telah dibuat oleh hakim yang bijaksana daripada keterangan yang dikemukakan bahawa perayu-perayu, se awal tahun 1982 telah menduduki tanah tersebut yang telah tidak diberimilik kepada mereka dan bahawa mereka telah diberimilik beberapa
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bidang tanah yang tidak melibatkan tanah tersebut. Pihak Berkuasa Negeri tidak memberikan mereka lesen atau pun memberikan mereka kebenaran untuk menduduki tanah tersebut. Perayu-perayu adalah penceroboh dengan menduduki tanah tersebut secara salah. Hakim yang bijaksana adalah betul dalam membuat perintah milikan terhadap mereka. a

[Rayuan ditolak.] b

Legislation referred to:

Rules of the High Court 1980, O. 89

For the appellants - Awtar Singh; M/s AS Saini & Assocs

For the respondent - Jerald Gomez; Jerald Gomez & Assocs c

[Appeal from High Court, Taiping; Originating Summons No: 24-1-98]

Reported by Usha Thiagarajah

JUDGMENT d

KC Vohrah JCA:

In the High Court, Taiping, Tokoyaki Property Sdn Bhd (the plaintiff) filed an application to evict the six defendants in originating summons 24-1-1998 from a piece of land under O. 89 of the Rules of the High Court 1980 (RHC). The High Court allowed the application and three of the defendants, the 1st, 5th and 6th defendants appealed to the Court of Appeal against that decision. We dismissed the appeal and we now give our reasons. e

The plaintiff had filed an application for the undivided land H.S.(D) LM 8308 No. P.T. 10787, Mukim Asam Kumbang, Daerah Larut dan Matang, Perak to be returned to the plaintiff on the ground that each of the defendants who occupied the land were in occupation without licence or consent under O. 89 of the RHC. f

It is not disputed that the plaintiff became the registered owner of the said land on 22 March 1997 and that the plaintiff had on several occasions demanded that the defendants gave possession of the said land to the plaintiff. It included the last letter of demand dated 15 May 1999. The defendants did not vacate the said land. g

The defendants in their several affidavits attempted to show that they had been given "permission to occupy part of the said land for 99 years" by the Land Office of Larut and Matang in the year 1982 subject to certain conditions in a New Village Scheme (Rancangan Perkampongan Tersusun) known as Kampong Benggali which conditions included the payments of certain sums of money relating to premium, quit rent and survey. There is nothing, however, h

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a in the letter that is exhibited in respect of the 2nd defendant to identify the land (see Appeal Record, letter dated 4 February 1982 at 110) save that it is a piece of land in “Rancangan Perkampongan Kg. Benggali, Mukim Asam Kumbang”. The defendants had all stayed in the said land and had built their houses there. They alleged that they had on several occasions requested the

b said Land Office to issue land titles to them in respect of the land which they occupied but the Land Office had not done so. The Land Office had not consulted them nor taken back their land in accordance with existing procedures and they asserted they had a right to be owners of the land from the point of view of equity and there was no necessity to get the permission of the plaintiff to stay on the land.

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There is, however, no dispute that the defendants were in fact alienated pieces of land in the location known as “Rancangan Perkampongan Tersusun Kg. Benggali Perak” (see for example, Appeal Record, FMH3, copy of land title, at 133) each with a registered title lot number and it is clear from the affidavit

d evidence that these lots although near the plaintiff’s registered lot do not involve the plaintiff’s lot.

In the affidavit of reply the plaintiff pointed out that it had employed a surveyor to survey the said land and there was never at any time a plan by the Government to put a new village known as Kampong Benggali as alleged

e by the occupants on the said land of the plaintiff and that the said Kampong Benggali was near to the said land but did not involve it.

In other affidavits filed on the plaintiff’s behalf it was disclosed that on an enquiry having been made in a letter to the Land Administrator of Daerah

f Larut and Matang, it was found that through a letter in reply that in fact land lots had been approved and alienated (with the respective and registered title numbers) to the defendants in respect of Rancangan Kampong Tersusun Kampong Benggali and that in fact registered titles had been issued in respect of them (see Appeal Record, FMH2, letters at 128, 129 and 131; FMH3, copy of land title in the name of the 1st defendant, 134).

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The learned judge found that on the undisputed facts the plaintiff is the registered owner of the said land and the defendants did not have any proof that they had been given the permission or licence by the plaintiff or the owner of the land (ie, the State) prior to the plaintiff’s occupation of the said property

h and that it was proper and appropriate for the High Court to make the order under O. 89 RHC to evict the defendants as there were no serious issues.

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We entirely agree with view of the High Court. Although as the learned judge observed the defendants had alleged that they had received an offer letter for the alienation of land by the State Authority there was no evidence at all that the lands alienated referred to the land occupied by the defendants, ie, the registered land of the plaintiff. Further, as was observed by the learned judge the explanatory letter by the Larut and Matang District Office (signed on behalf of the Land Administrator (see Appeal Record, FMH2 at 131 as previously noted)) confirmed that the alienated land of the defendants were outside the area of the plaintiff's said land.

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As we had observed earlier the State Authority in their offer letter had not given any definite identification mark of the lots of land to the defendants except that they were to be located in "Rancangan Perkampongan Kg. Benggali, Mukim Asam Kumbang". The letter contained the conditions which the defendants had to comply with to be alienated their lots of land. It is a logical conclusion drawn by the judge, without any need for any further litigation on the point that the defendants in this case had as early as 1982 occupied the land which was not alienated to them and that they had been alienated pieces of land not involving the said land that was alienated to the plaintiff. The State Authority did not grant them licences nor give them permission to stay on that land. The defendants were trespassers in wrongful occupation of the land. The learned judge was correct in making the order of possession against the defendants.

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We therefore dismissed the appeal and the connected appeals in 810 and 811 with one set of costs to the respondent.

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