A LESSEE AND A REGISTERED PROPRIETOR UNDER THE NATIONAL LAND CODE

Lee Chuan Tuan v. *Commissioner of Lands and Mines, Johore Bahru*[1]

The registered proprietor of a piece of land, in excess of twenty-nine acres in area, granted a lease to the applicant for seventy-five years. The lease in the statutory form was registered at the Land Office. The lessee was entitled to subdivide the land for the purposes of developing it into a residential area. He applied to the Collector of Land Revenue for approval to subdivide the land. This application was refused as was a subsequent one by the Commissioner of Lands and Mines. The two questions for determination in this originating summons were firstly, whether a lessee in the circumstances of this case is a registered proprietor within the meaning of the National Land Code. The Court answered this in the negative. Secondly, if he is not, whether the lease gives power to the lessee to apply to the Commissioner of Lands and Mines for subdivision of the leased land. This too, the Court answered in the negative.

In support of the first ground, the applicant relied on the definition of "proprietor" in Francis *Torrens Title in Australia* (Vol. 1 at pages 49 and 50) as being "any person seized or possessed of any estate or interest in land, at law or in equity, in possession or expectancy." On the lessee's view this definition was persuasive authority in Malaysia because of its connection with Australia — the cradle of the Torrens system. He claimed it extended the meaning of "proprietor" to include a lessee. Syed Othman J. quite rightly rejected this contention, noting that the "provisions of Australian laws have no force in this country. . . unless Parliament so enacts." (p. 189). In the alternative the lessee claimed the wording of section 227, which reads:

> "(1) The interest of any lessee, . . . shall, whether or not it takes effect in possession, vest in him on the registration of the lease. . .
>
> (2) The said interest shall include the benefit of all registered interests then enjoyed with the land to which it relates,"

entitled him on registration of the lease to claim the rights of the proprietor of the land. His argument was that the registration which created his interest as proprietor of the lease extended this proprietorship to that of ownership of land. This contention was also rejected: "the

[1] [1973] 2 M.L.J. 188.

'registered interests' here can only refer to those interests which are registered in accordance with the Code or any previous land law. The expression here does not mean powers of the proprietor conferred by law." (p. 189).

On the second question for decision the applicant had relied on the terms of the lease as authorizing him to take over the rights and powers of the proprietor in applying for approval to subdivide. He argued that the terms of the lease read in conjunction with section 135(1) – ". . . the proprietor . . .may . . .with the approval . . .of the State Commissioner or Collector. . . subdivide the land. . . ," authorized him to apply for approval if the proprietor himself did not do so. Syed Othman J. expressed the view that:

> "When Parliament enacts that a particular person may do a thing it means that only that person may do the thing and no one else and that the word 'may' in the ordinary usage and in the context of section 135(1) is permissive in the sense that it gives a personal discretion to the proprietor; it is a matter for him whether or not he wishes to subdivide the land. I can find no way in which the word 'may' in this section may be construed as enabling other persons to apply for sub-division if the proprietor does not do so."

Why one may reasonably inquire, does this case merit comment? Why indeed did this case ever come to court? The Code states unambiguously that a proprietor of land is the owner and proprietor; no one else is able to be so designated. Yet this was precisely the issue queried here. The National Land Code, 1965 (Act No. 56) is a codifying enactment promulgating a uniform "Torrens type" system of conveyancing throughout West Malaysia. Torrens, in introducing the system in 1858, had presented it as one removing "involvement, uncertainties and expenses" (R.R. Torrens, "*A Handy Book on the Real Property Act of South Australia* p. 3) from the Australian land law then in force – the general law transported from England to the Colonies. The Torrens system, he argued, would enable the "man in the street" to do his own conveyancing; to read and understand the meaning of the statute; to follow the procedures laid down therein. So what then has gone wrong? Here we find a lessee seeking to claim inclusion within the definition of a proprietor, defined by section 5 of the Code as – "any person or body for the time being registered as the proprietor of any alienated land." Although a man who takes over the land of another with exclusive possession thereof for a substantial fixed term can compare himself to an owner for certain reasons because he is probably paying the quit rent to the State Authority and all outgoings connected therewith, and because within his lifetime he will – if the lease is not forfeited or otherwise determined – be entitled to the exclusive possession of that land, yet he cannot be said to be the proprietor of that land within the unequivocal meaning of section 5. The only way he may become the

proprietor is by purchasing the reversion.

The Torrens system has, since its introduction in 1858, been described as a simple, effective method of conveyancing, meant "to simplify the title to land and to facilitate dealings therewith. . . " (South Australian, Real Property Act, Section 10). These are times of specialization, of advanced technology. Yet when we seek simplicity and clarity in a Torrens-type enactment, to escape the growing complexities of life requiring expertise in all pursuits, its meaning is confused and misinterpreted. Whether or not such an exercise is possible in Malaysia today, it is of no value for us to seek explanation of the Malaysian National Land Code by reference to Australian sources. There the original Torrens concept authorizes the use of equitable principles which serve only to clutter up a system of legal rights by registration. Nay more, this original concept is now being replaced by an "up-grading" in the importance of equitable interests, even for those obtained in breach of the traditional equitable doctrines (see *J.H. Just (Holdings) Pty. Ltd.* v. *Bank of New South Wales Ors.* (1971) 45 ALJR 625). The modern surge of equitable interests is replacing legality and any similarities between the two systems are fast disappearing. Technically there is no place for equitable interests in the Malaysian Torrens system. Equitable interests are not maintained yet they receive a grudging protection of sorts. Australia's development and evolution of Torrens enactments is not appropriate for the legalistic aura of our Torrens system. But are we now being bogged down by the very things that the Torrens system sought to eliminate? Does "the man in the street" understand "equitable" estates or "legal" interests? How can he rely on the face of the title in situations where equitable concepts prevail. At least up to now in the Malaysian scheme equitable concepts are subordinate – but for how long?

Torrens said every man should be his own conveyancer and proceeded to adapt the concepts and legislation of the Merchant Shipping Acts to land. Simplicity in land dealings is essential in any nation no matter what its stage of development. But have the Torrens principles moved with the times? One hundred and fifteen years after Torrens, we are still seeking complex interpretations of the simple terms of the Code. Dealings with land may still be easier than under general law conveyancing – but easier for whom? For the farmer buying or leasing his padi? For the citizen buying his land and home for the first time? For the practitioner acting for his client? In these times the inappropriateness of the original Torrens enactments is strikingly brought home to us by the necessity for a lessee to seek Court guidance on whether or not he can be classified as a "proprietor".

Judith Gleeson.

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NATURAL JUSTICE IN SCHOOLS

Mahadevan v. *Anandarajan*[1]

This decision of the Judicial Committee of the Privy Council brings to a close yet another of the numerous cases on the application of the principles of natural justice to quasi-judicial hearings. What would be of special interest to many is the fact that this particular decision concerns the discretionary power of the headmaster of a school to suspend or expel a pupil by virtue of Regulation 8 of the Education (School Discipline) Regulation, 1959, of Malaysia which provides:

> "Whenever it appears to the satisfaction of the head teacher of any school —
>
> (a) to be necessary or desirable for the purpose of maintaining discipline or order in any school that any pupil should be suspended or expelled. . . he may by order expel him from such school."

There was no controversy over the proposition that a head teacher is thereby invested with a quasi-judicial function. What was in contention was the implementation of Regulation 8 which prescribes no special form of procedure for exercising the function.

The appellant, then a minor, was expelled from his school, the King George V School, Seremban, for alleged misbehaviour at a talentime show held in the school on 1st April, 1968. The respondent, headmaster of the school, interviewed the appellant the following day and after consulting members of the teaching staff, made up his mind about the expulsion on 10th April. However he did not convey this decision to the appellant until 4th May, 1968, his reason being that the school was about to close for the first term holidays and he, the respondent, had to leave for Johore Bahru on official business.

These findings of fact were accepted by the trial judge in the judgement of the High Court ([1970] 1 M.L.J. 50). He held that the language used in Regulation 8 supported the view that the order of a head teacher is quasi-judicial and not merely administrative, thus the making of the order required the observance of the rules of natural justice. These rules, as enumerated by Lord Hodson in *Ridge v. Baldwin* ([1964] A.C. 40, 132), are: ". . . (1) the right to be heard by an unbiased tribunal; (2) the right to have notice of charges of misconduct; (3) the right to be heard in answer to these charges." As to the first requirement, both the trial judge and the

[1] [1974] 1 M.L.J. 1.