

NATIONAL LAND CODE

[CONTRIBUTED]

On September 18, 1965 His Majesty the Yang di-Pertuan Agong of the Federation of Malaysia assented to a historic law, the National Land Code, 1965, (not yet brought into force), the brain-child of Tun Abdul Razak, the Malaysian Deputy Prime Minister who in his energetic execution of the country's Rural Development programme has reason to be familiar with the frustrations caused to experienced administrators by the complex state of the land laws. The first five paragraphs of the explanatory statement to the Bill state:

"Under the present law of the States of Malaya two quite different systems of land tenure exist side by side—

- (a) The States of Penang and Malacca retain a system peculiar to the pre-war 'Straits Settlements' (modelled on the English laws of property and conveyancing) whereby privately-executed deeds are the basis of title to land;
- (b) The nine Malay States, by contrast, employ a system based on the principle that private rights in land can derive only from express grant by the State or secondarily from State registration of subsequent statutory dealings.

2. The nine States in (b), notwithstanding their adoption of a common system, do not enjoy a common law. The four States of Negeri Sembilan, Pahang, Perak and Selangor do indeed share the 'F.M.S. Land Code' but the remaining five States have each their own separate land enactment. However, these six different land laws all derive from a single source, viz. the 1911 land legislation of the 'Federated Malay States', which established a complete code of tenure and dealing appropriate to Malayan needs at that time,

3. Because of this common origin all six laws are substantially the same in general principle and content. They are however of unequal merit and show considerable differences in detail: much of the value of their general similarity is therefore lost. The local variations — particularly in procedures — are inconvenient and the cause of unnecessary confusion.

Further, none of these laws reflects the social and economic changes of the last half-century: even where amendments have been introduced — and all amendments are of pre-war date — they have concerned matters of minor importance only.

4. The purpose of the present Bill is to remedy this state of affairs — to replace the complex of seven separate and out-moded laws by a single statute of general application throughout all eleven States and so establish a uniform system of land tenure and dealing appropriate to the present day.

For such a unified system there can be only model — that already in existence in the majority of the States as described in (b) above. In itself it is entirely acceptable; it is efficient, well tried and familiar and can without difficulty be modified to suit modern requirements. In nine States its introduction will mean no break in continuity and in Penang and Malacca the way for its introduction has already been prepared by the National Land Code (Penang and Malacca Titles) Act, 1963 which, when brought into force, will abolish the system described in (a).

5. The most complete and up-to-date expression of the chosen system is supplied by the 'F.M.S. Land Code 1962' and it is this statute therefore which is used as the basis of this new National Code, and to which

references are alone made in this Explanatory Note. Direct comparison shows that there has been a great increase in bulk (from 259 sections in the F.M.S. Code to 444 clauses in this Bill). This increase is not a direct measure of the new provision required to 'modernise' the Code. A large part of the increase is due to the fact that the opportunity has been taken to re-write and supplement existing provisions in order to remove ambiguities, to remedy omissions, or to express in statutory form what was previously only implicit or supplied by subsidiary legislation of varying structure in different States."

Some features of the Code are noticed below.

Qualified Title

Provision is now made for title to be of two kinds, final and qualified. Final title corresponds with "title" as understood in the F.M.S. Land Code but qualified title is an entirely new concept. Essentially it replaces "approved occupation in expectation of title" and its primary purpose is to permit an applicant to go into occupation of State land, the alienation of which has been approved, prior to its survey. It is also issued in respect of land, the sub-division of which has been approved prior to survey.

It is as fully indefeasible and as capable of being charged, leased or otherwise dealt with as is final title. It is inferior to final title in two respects only: (a) the boundaries of the land shown on a qualified title are provisional only and (b) the land itself cannot be sub-divided, partitioned or amalgamated nor may any building on it be sub-divided (section 176).

Delay in survey and in the preparation of final sub-divisional titles may be severe especially where a large area of land is being fragmented to a great many small lots, for instance for a housing estate. The use of qualified titles in such cases will be a great convenience both to developers and purchasers.

A person to whom the alienation of any State land has been approved under any previous land law may apply for the issue to him of qualified title (sections 180-182).

Titles in Mid-Air

Flats erected on freehold land in Singapore and Hong Kong may be sold separately on very long such as 999-year leases. This explains the popularity of flats and the tremendous housing development in the two territories. In Kuala Lumpur, however, that was not possible because under the old law there was no provision for the registration of a freehold title to property in mid-air and no lease could be granted exceeding 30 years and there was doubt as to the effect of options granted to the lessee to renew the lease beyond 30 years. The National Land Code has removed this doubt by section 228.

But a greater encouragement to housing development in Kuala Lumpur is the creation of subsidiary titles to flats. A block of flats stands on alienated land held by Registry title, say, in perpetuity. Title to the land is held by, say, a developer company. The company propose to sell the flats separately. The company apply for sub-division of the block, constituting each flat a parcel (section 151). If each flat is to be held for the full term of the company's title (Form 10 C), then if other conditions are also satisfied, the application is granted. The Land Office opens what is called a Subsidiary Register in which every flat is separately registered. There then springs into being in place of the vendor-company a statutory corporation called the management corporation (section 357). Every registered proprietor of a flat is automatically a member of this corporation each in accordance with his share (section 157). The corporation becomes proprietor of the land together with so much of the building as is excluded from the parcels (e.g. roof, common staircase), is custodian of the title of the land and of the sub-divided building (section 358) and has all the powers and duties of management set out in section 360. (Buildings on land held on Land Office title may not be sub-divided).

Two important things are: (1) the proprietor of each flat holds a separate document of title and his title is registered and he can dispose of it in any way he likes (section 363(5)); (2) if he wants the outside walls, common staircase etc. redecorated from time to time, he deals not with a recalcitrant and powerful company determined only to make money for itself but with his own management corporation which may expend money on this sort of work and recover the proportionate costs from each subsidiary proprietor.

Leases and Tenancies

The proprietor of alienated land may now grant leases of up to 99 years if it relates to the whole land, and 30 years if it relates to part only (section 221). (The old limit was 30 years in either case). Such a lease must be registered. A lease granted for terms not exceeding 3 years is called a "tenancy" and may be granted either by word of mouth or by a written instrument in in any form whatsoever and is exempt from registration (section 223). A tenant, although unable to register a tenancy, may nevertheless apply to the Registrar to make an endorsement on the registered document of title to the land of his claim to such tenancy (section 316). The Registrar is under no duty to enquire into the truth or otherwise of any claim, but, unless prevented by a caveat or a prohibitory order or by the operation of the circumstances specified in sub-sections (2) and (3) of section 317, will forthwith make the appropriate endorsement.

This gives notice of the alleged existence of the tenancy to a prospective purchaser, lessee or chargee whose interests would be adversely affected by it.

Sub-division, Partition and Amalgamation of Lands

Proprietors no longer enjoy a prescriptive right to sub-divide, partition or amalgamate their lands at will. All such action is now made subject to State control. Sections 136, 141 and 147 specify new and stringent conditions which must be satisfied. The power of approval normally rests with the State Commissioner or the Collector but the State Authority may by direction reserve that power to itself in any case or class of cases.

Quit Rent

Non-payment of quit rent is now treated as a breach of the basic consideration on which any alienation is made and sale by auction in default of payment has been abandoned. Instead the State may take action to enforce payment in the same way as it may take action to enforce any other condition. Failure to pay after service of a notice of demand results in the automatic forfeiture of the land to the State (sections 97 and 100). An aggrieved proprietor may apply to the State for the re-alienation of the land to him, without being involved in the rights of third parties who have successfully bid for the land at a public auction as hitherto.

Provision is made by section 98 to safeguard the rights of innocent parties adversely affected by a proprietor's failure to pay rent. Notice of demand is to be served not only on the proprietor but also on every chargee, lessee or tenant so that, should the proprietor default, any of these latter may preserve their interest by paying the rent themselves and later recovering from the proprietor.

Easements

Easements are for the first time recognised and may be registered. An easement is defined (section 282) as meaning any right granted by one proprietor to another, in his capacity as such and for the beneficial enjoyment of his land. The rights capable of being granted as easements are (a) any right to do something in, over or upon the servient land (the land of the proprietor by whom it is granted); and (b) any right that something should not be so done. But easements may not confer any right to take anything from the servient land nor any right to the exclusive possession of any part of it (section 283). An easement cannot be acquired by prescription (section 284). No easement may be granted in contravention of any law or of any restriction in interest to which the servient land is subject. Where there is any

lease, tenancy or charge affecting the servient land, the consent of the person entitled to the benefit thereof must be obtained before the grant of an easement (section 285). Grants must be in statutory form and may be either in perpetuity or for any term of years and every grant implies the grant of all such ancillary rights as may be reasonably necessary for the full and effective enjoyment thereof (section 286). The benefit of any easement passes to any lessee or tenant of the dominant land (the land for the benefit of which the easement was granted) and also to any chargee in occupation and such

persons may take in their own names proceedings necessary for its enforcement (section 287). Any easement may be released by the proprietor of the dominant land executing an instrument in statutory form with the consent of any lessee, tenant or chargee entitled to its benefit. It is extinguished by operation of law in the circumstances set out in section 290 and may be cancelled by the Registrar on the grounds set out in section 291.
