

TR 1:11:62

SPEECH BY THE DEPUTY PRIME MINISTER
IN MOVING THE SECOND READING OF
NATIONAL LAND CODE (PENANG AND
MALACCA TITLES) BILL AT DEWAN RAKYAT
ON 28TH NOVEMBER, 1962

Mr Speaker, Sir,

I beg to move that a Bill intituled the National Land Code (Penang and Malacca Titles) Act be read a second time.

Sir, this morning this House had the opportunity of listening to the Honourable Prime Minister on a very serious and grave matter of vital international importance and this afternoon the House will be able to listen to the Honourable Minister of Finance on a very important domestic matter. But the matter that I propose to introduce to this House, though of not such vital importance and such urgency, but nevertheless is one that affects the lives of our people and one of great importance to the people now living in Penang and Malacca.

This Bill applies to the States of Penang and Malacca alone and at first sight it might be considered to deal with domestic matters which could quite well be left to the Legislatures of the States concerned. Indeed, even though it may be enacted Federally this Bill will still need to be approved by those Legislatures before it can come into operation. However, the Governments of both the States of Penang and Malacca have agreed to the introduction of the Bill into this House not merely because it is a measure which will promote uniformity in the land law of those two States but also because ultimately it is designed to enable that law to be assimilated into a single system applicable to all eleven States in the Federation of Malaya.

This is the end and clearly an end of the greatest moment to this House. It is the declared policy of this Government to enact a National Land Code and it is only reasonable that it should accept the responsibility for this earlied measure which—even if it cannot properly be termed as a first instalment of a National Code—is nevertheless an essential preliminary to its introduction.

Honourable Members will no doubt have observed that this Bill is of considerable length and complexity. This complexity results from the intricacies of the existing land laws in this country and for the assistance of this House I propose to give a very brief summary of the present position as regards land laws in this country.

Within the Federation of Malaya there are at present two separate land systems entirely different in form and conflicting in effect. These I trust I may be allowed, for simplicity of reference, to all the Federated Malay States or "F.M.S. System" and the Straits Settlements or "S.S. System" as these are the terms commonly used in the Land Offices. As Honourable Members are aware, these two political units have now disappeared from our scene.

A majority of members will, I expect, have some acquaintance with the F.M.S. system since substantially it is followed in all the nine Malay States. The F.M.S. Land Code is a clear and concise statement, in a convenient form, of the entire law relating to land, that is:

the law relating to land tenure—the conditions on which title is held from Government;

the law relating to dealing in land—the transactions which can be effected, leases, charges, etc.; and finally the law relating to registration—both of the title and of the dealings. The last item from the public standpoint is perhaps the most important of the three; it provides—

- (i) that a document of title clearly defining the land is filed in the Registry, and
- (ii) that upon that title all subsequent sales and other transactions in the land are registered.

At any moment therefore inspection in the Registry shows not only every detail of the terms and conditions of the original title but the names of the present proprietor and of all other persons who have interests in the land such as leases or charges.

Now by contrast the S.S. System—still current in Penang and Malacca—is lacking in clarity and definition and is not embodied in any single statute nor indeed completely embodied even in the

existing series of statutes. It derives partly from the English common law—and to that extent, as Honourable and learned Members of this House are aware, is unwritten—and partly also from statutes and practices which have been enacted or have grown up over the centuries in England.

Admittedly the "Straits Settlements" have never copied the latest English statutes of the year 1926 by which the law there was radically revised but the advantage of doing so would in any case have been doubtful. The fact remains that, whether amended or not, the peculiarities of the English Law of Property do not make it a body of law at all suitable for application to Malayan conditions.

Its weaknesses—and correspondingly the weaknesses of the Straits Settlements system—are particularly marked in the very fields in which F.M.S. system is strong, viz, simplicity of dealing and clarity of record.

A clear running record of title and of interests in land, such as exists in the F.M.S. may seem so obvious a requirement that Honourable Members may be surprised to learn that there is absolutely no corresponding method of registration in Penang and Malacca.

Although, in the S.S. as in the former F.M.S. the basis of land title is a grant by the State, in the S.S. the document of title has ever been used as a register of subsequent dealings and the only information to be obtained from it is the name of the original owner—who may, by now, have been dead for a century and-a-half.

Further, in the S.S. system, the process of conveyancing, by which change of ownership—or other dealing in land—is effected, is, to my mind, the reverse of simple.

At the time of a sale the purchaser receives from the vendor a deed of conveyance, which is in fact the only record that a sale has taken place and the only proof that the new purchaser is now the owner. For every subsequent sale the same process is repeated so that, after a number of transactions, there will be a whole chain of such conveyances—or title deeds as they are

called—by which successive owners have received title from their immediate predecessors. To be sure that a current owner of land has a good title every link in this chain must be checked; a search back from vendor to vendor—which in law must be taken back thirty years or more—requires the services of a qualified conveyancing lawyer but only after it is done is there satisfactory proof that any owner has a good title.

In short, in Penang and Malacca, all connection between present ownership and the original title issued by the State has been completely obscured and, currently, proof of title rests, neither in a document of title issued by the State nor in an official register of dealings but solely on the evidence of a series of private documents.

Further, before any purchaser can be satisfied that he is buying a good title, this series of private documents requires expert scrutiny, and since this scrutiny must be repeated for each successive transaction the practice of conveyancing entails a formidable expenditure of time, labour and money. Therefore, the whole S.S. system must be regarded as cumbersome and outmoded.

Therefore, Mr Speaker, Sir, having agreed that these defects did exist in the S.S. system of law, what should be done to put right these defects? The remedy is to convert the S.S. system to one of the F.M.S. type, and to do this we need to do two things:

- (1) To restore the basic value of the State document of title.
- (2) To use that document as a register for subsequent transactions.

To restore the value of the original documents of title in Penang and Malacca is however not a simple matter. In the past two centuries the forms of title issued have been many and varied—in Dutch and in English, printed and manuscript, legible and illegible. Many of the oldest titles are lost, many more are badly preserved, stained and decayed, many more, again, do not correspond with any present-day boundaries. As I have already said, the original State documents bear little relation to present-day realities.

Since we are faced with the position that (i) it is impossible to adopt the original State documents of title as the basic of a Register, and (ii) that the true legal title is proved not by such

State document but by a packet of private conveyances—the title deeds, it has been decided that the only reasonable way to proceed now is to extinguish the original State documents of title and to replace them by new documents embodying the legal title as proved by those title deeds.

These new documents will confirm not only the legal title of the landowner but also all other rights or interests, e.g. leases, charges, etc., appearing in the deeds. The title deeds themselves will thus become redundant in their turn and they also will be extinguished.

Sir, I would add that the new replacement documents of title will not relate to the original land-boundaries but will be issued with respect to the parcels as now surveyed, since it is according to these parcels or holdings that dealings in lands have been effected by conveyance over the last thirty years or more. Subsequent dealings, according to normal F.M.S. practice, will be registered on the replacement titles.

This then is the guiding principle of the Bill. All that is old or dubious or redundant is extinguished and, in replacement, new, clear and simple documents and procedures are brought into being. This double process will take place automatically by operation of the provisions of the Bill on the day that they are brought into force.

Accordingly, on that appointed day, new "replacement" titles will come into existence confirming to present landowners the rights they enjoyed under their title deeds immediately before that day, and from the appointed day onwards all further transactions in such land will be done not by conveyance but by memoranda of dealings substantially in the former F.M.S. form.

Mr Speaker, Sir,

I hope I have not unduly tried the patience of this House by giving this somewhat technical description of the basic defects of the present system, of the difficulties which have to be overcome, and of the solutions we propose.

I have tried to deal with all these matters in the very broadest terms and Honourable Members will no doubt be relieved to

hear that I do not intend to take them step by step through the Bill to study the detailed provisions which give effect to these broad principles. These actual provisions are, as I have said, highly complex and the method of conversion from one system to another is not always easy to follow.

However, every effort has been made to explain these complexities in the very full Explanatory Statement which has been added to the Bill, and those Members who have a special interest on this subject will, I know, have already made a study of that Statement.

In one respect only do I wish to enlarge upon a specific provision of the Bill and that because it relates to an entirely original measure for which I consider it only right that we should claim credit. This measure is the actual procedure by which the problem of introducing a system of registration of title has been solved.

Registration of title in some form has been introduced into almost all countries in which the land system, as in Penang and Malacca, is derived from the English law—for example, the Australian States, New Zealand and other Commonwealth countries. In all these countries however, conversion to the system of registration of title has been on a piecemeal basis—that is, title by title—and lands which the Registrar has not yet investigated remain unregistered and continue to be conveyed according to the old system. Such a method of conversion has two great disadvantages:

- (i) It is extremely slow—in some countries even after seventy years' work conversion is still far from being completed, and
- (ii) It is necessary to retain two entirely different land systems side by side; this is a cause of inconvenience, confusion and expense.

For these reasons we have, in this Bill, ignored all precedent and, instead, have devised a method of conversion which is entirely new and original.

In discussing the guiding principle of the Bill I made it clear that replacement titles will come into operation on the appointed

day and that from then on all dealings will be registered upon these titles.

The new and original feature of this conversion lies in the form which the replacement titles will take. Obviously, it is not possible to issue overnight new documents of title for a hundred thousand holdings, but it is possible to compile instead as we are doing now a special register of known "title" to land.

This special register, created by the Bill, is to be known as the Interim Register, and in it, folio by folio, there will be entered details of the ownership of every piece of land and all known interests therein as these appeared in official records and in title deeds immediately prior to the appointed day. Each folio of the Interim Register will be the statutory replacement title to the piece of land entered thereon and on it will be registered all dealings with the land after the appointed day.

This Interim Register is indeed the cardinal feature of the whole Bill. Not only will it provide a permanent record of the state of title on the appointed day—a photograph, as it were, of the situation established by the old system of conveyancing immediately before that system was extinguished—and a record of subsequent dealings, but it will also be the foundation on which the new documents of titles will ultimately be issued.

The initial entries in the Interim Register will evidence a title no better and no worse than that appearing in the title deeds but the final documents, issued after investigation, will be guaranteed by Government and will be indefeasible to the same extent as are all National Land Code titles.

Now, Sir, since investigation of title requires meticulous care, and may well prove a slow process, we have further made the novel provision that entries in the Interim Register, if not investigated earlier, become indefeasible by operation of this Bill on the expiration of twelve years—the period after which the making of adverse claims is barred by the Limitations Ordinance. In other words, the conversion from the old title to new will be completed in twelve years—and I think Honourable Members will agree that this is a most notable reduction of the period of seventy or eighty years found necessary elsewhere.

However, in one case investigation is to be mandatory. Where sub-division is proposed, it is considered desirable in the public interest that title should be proved before, for example, a developer sub-divides into a hundred small parcels. Prior investigation is required not only to reduce administrative work—it is clearly easier to examine one original title than hundreds of sub-divisional titles arising from it—but also to facilitate the whole process of sale and purchase. It is considered that the "small man" making his first entry into land-ownership in order, probably, to build a small family house should from the first receive a guaranteed title.

Now, Sir, above I have given the merest outline of the novel system of conversion embodied in the Bill, and Honourable Members who require greater elaboration must, I am afraid, turn to the Explanatory Statement. Because I have not detailed all the circumstances for which provision has been made, I do not wish it to be thought that the Bill ignores difficulties or fails to provide every proper safeguard for the rights of land-owners and other interested parties. Here, I can only sum up by saying that the method to be adopted is not only original and without precedent but it is, I claim, imaginative and simple. It is also most convenient for the land-owners affected, since it calls for no action on their part unless they themselves conceive that their titles are dubious. No man will need to make any formal application for a new title and no man will need to postpone even for a day the normal processes of purchase and sale, leasing and mortgaging.

To this general rule there is only one exception—that of mandatory investigation of title in cases of sub-division. I have already explained that the reason for this provision is to facilitate development, not obstruct it, and I assure this House that in implementing that provision we shall hold firmly to the spirit and to the intention.

Mr Speaker, Sir,

Before I move to my conclusion, I should like to refer again to the remarks I made at the beginning, because in them I stressed our desire for uniformity, and I had better make it clear that this does not proceed from any mere doctrinaire preference. Uniformity as secured by this Bill will bring many solid advantages to everyone owning or dealing in land in Penang and Malacca.

First, once the work of conversion to the new system is completed, every man owning land will hold a single clear document of title, guaranteed by Government, setting out both for his information and for the information of all people concerned all the conditions and other interests affecting the land.

Secondly, every person will be able to deal in land by a simple registration of stereotyped memoranda without the need for complicated and expensive search through prior documents.

Thirdly, the title to the land the rights of all persons holding leases or charges will be indefeasible.

Finally, and this is a matter of major importance, registration and all administration with regard to rural small-holdings will ultimately be decentralised to the districts and the people will no longer require to travel to the State Capital and engage legal assistance before they can effect any dealing.

However, lest Honourable Members and members of the public obtain too optimistic a view of the immediate advantages of this Bill, I must stress that these full benefits cannot be achieved in a day. To convert, after approximately a century-and-a-half of separate life, the tides and the system of tenure and of dealing found in Penang and Malacca to those current in the remainder of the Federation is clearly a formidable task and the introduction of the Interim Register takes us only half of the way to the final goal.

However, immediately upon the appointed day, notable advances are made. Although prior title will still need to be examined before dealings are effected, the method of dealing will henceforth be by simple registration of memoranda. Further, although a final guaranteed document of title cannot be issued at once, nevertheless, every land-owner by being recorded in the Interim Register will from the appointed day be protected against the loss of his land by adverse possession.

Finally, the ultimate goal of complete conversion must inevitably be reached in twelve years and no more.

Now, Mr Speaker, Sir, there is one final matter which I touched on in my opening remarks and which I feel I should elaborate. This Bill, as its title implies, anticipates the enacting of a National

Land Code and, indeed, in the whole form of its drafting it is implicit that its provisions need to be complemented by those of such a Code: Honourable Members will have noted the various references made to the National Code in the text of the Bill. Nevertheless, if necessary, it would still be possible to implement this Bill independently by means of the special provisions that if the National Land Code has not been enacted, then the F.M.S. Land Code, modified as may be necessary, may be substituted for it.

Such a device is somewhat inelegant and cumbersome and will be avoided, if it is at all possible to enact a National Land Code early. Work upon a preliminary draft is already well advanced, but since a Code affects all the eleven States of the Federation, and since land is essentially a State matter, and not a Federal matter, it is necessary to have prior consultations with all the States before a Bill is introduced into this House. However, I can assure Honourable Members that I will do my best to ensure the early completion of such a Code, for the Government regards such a measure as essential to the orderly development of the country. Indeed, without a uniform land law and a vigorous land administration, plans for rural and urban development cannot be vigorously implemented. In collaboration with the State Government, we have already done much but, with a uniform land law, administration and policy, we can do even more for the benefit of the people. This measure, therefore, represents an important step toward such uniformity and to the promulgation of a common code of land law for the Federation as a whole.

Sir, now in conclusion, I wish to thank the Bar Committee of the two States of Penang and Malacca and, in particular, their respective Chairman Mr Lim Huck Aik and Mr Goh Tiow Wan, for their assistance in the preparation of this Bill. As I have explained, this measure makes radical changes in the existing law, and also deals with the problem posed by the introduction of the system of registration of title in a novel and original manner. In so complex a measure, exactly how all the changes proposed will operate cannot necessarily be foreseen at this stage, and I would therefore like to assure the Bar that full weight will be accorded to their views in the detailed transitional arrangements contemplated by the Bill and that, if found necessary, this Bill will be amended in the light of experience gained in its administration.

As Honourable Members will observe, clauses 117 and 119 of the Bill enable the Minister, in consultation with the Governor, to make orders dealing with these transitional provisions, and I would now like to give an assurance to this House that I shall certainly not exercise these powers except after consultation with the respective Bar Committees. That so many of the members of these Committees have been prepared to study and to accept the principles of this Bill, and shown their willingness to carry its principles into practice is, I think, a tribute to the vitality and public spirit of the Bar.

Last but not least, I wish to pay a tribute to certain residents in the neighbouring State of Singapore—I refer to the Registrar of Titles and to the Members of the University Faculty of Law of that State. Their comments and suggestions on the draft Bill have been most helpful and stimulating—a fitting demonstration of the close and increasingly co-operative relations which exist between our two States.

Sir, as I have said, this Bill is introduced after considerable consultation with all the interested persons and I, therefore, commend this Bill to the House as a novel and important means for the improvement of our land law and our land administration for the benefit and convenience of our people.

Sir, I beg to move.