

THE ECONOMIC TRANSFORMATION OF WAQF LANDS IN MALAYSIA – A STRUCTURE AND AGENCY APPROACH

Ismail Omar
Department of Real Estate,
Faculty of Geoinformation and Real Estate, Universiti Teknologi Malaysia,
81310 Johor Bahru, Johor, Malaysia.
Email: ismailomar62@gmail.com

Aminah Md Yusof
School of Graduate Studies,
Universiti Teknologi Malaysia,
81310 Johor Bahru, Johor, Malaysia.
Email: aminahyusof@utm.my

Faizal A. Manaf
Department of Real Estate,
Faculty of Geoinformation and Real Estate, Universiti Teknologi Malaysia,
81310 Johor Bahru, Johor, Malaysia.
mohdfaizalmanaf@gmail.com

ABSTRACT

The government is already embarked on the transformation program of waqf land for development purpose. In fact, there are a lot of opportunities for improvement of waqf lands in the country. Data reveals that less than half of thousands acreage of waqf lands are having high potential for economic development. Unfortunately, there are constraints that restrict the smooth flow of land supply onto the market for development purposes. Problems with land administration and registration of waqf land, human resources and technical expertise hampered the initiatives to undertake development of potential waqf land for improvement. Using Structure and Agency Approach (Healey, 1992), the study empirically investigates the sources of waqf land supply constraints for development in Kota Bharu District, Kelantan and find ways to unlock the macro and micro factors that constrain the potential economic values of waqf lands. To fulfill these endeavours within the transformation agenda, a concerted effort of all parties related to the formulation of waqf land administration policy need to be initiated as the way forward.

Keywords: Waqf land – supply constraints – structure and agency approach - economic transformation

1.0 INTRODUCTION - SCENARIO OF WAQF PROPERTY DEVELOPMENT

The permanent nature of waqf results in the accumulation of wealth for a healthy Islamic society at large. With these waqf properties that are devoted to provide capital asset that produce an ever increasing flow of revenues/usufructs to serve its objectives in Islamic society. This huge accumulation of waqf plays an important role in the social life of Muslim societies and communities (Monzer, 1995). History has shown that waqf capital has been able to strengthen the society such as in Turkey, Kuwait, Egypt and other countries. In the Western countries, Cambridge University and Harvard University are examples of the oldest and successful higher institutions depending on endowment funds. In Malaysia, there are efforts that have been undertaken by waqf related agencies in construction of waqf hotels, waqf Marts, mosques, hospital and so on.

The beneficiaries of the waqf can be persons and public utilities. The founder can specify which persons are eligible for benefit (such the founder's family, entire community, only the poor, travellers). Public utilities such as mosques, schools, bridges, graveyards and drinking fountains, can be the beneficiaries of a waqf. Waqf signifies the dedication of any property, either in express terms or implication, for any charitable or religious object, or to secure any benefits to refer to human being. Waqf has been a charitable mechanism to education, health, welfare and a host of other activities, waqf plays a vitally important role in the social fabric without burdening the government.

Data reveals that less than half of thousands acreage of waqf lands are having high potential for economic development. Unfortunately, there are constraints that restrict the smooth flow of land supply onto the market for development purposes. Problems with land administration and registration of waqf land, human resources and technical expertise hampered the initiatives to undertake development of potential waqf land for improvement.

2.0 LITERATURE REVIEW - LAND SUPPLY CONSTRAINTS

There are formal (written such as code of practices) and informal (unwritten such as behaviour) rules that affected human activities by way of facilitating and/or constraining land development and management (Ismail Omar and Fauziah Raji, 2014; Ismail Omar, 2014). The way in which these constraining factors affect human decisions and actions in land development can be divided according to structure (rules, resources and ideas) and agency (role, motive, strategies and actions) (Healey, 1992) as follows:

2.1 LEGAL AND ADMINISTRATIVE FRAMEWORKS

Planning rules and administrative controls

Governments commonly have multiple planning objectives, including efficiency, equity and social dimensions. The different approaches of land use by the government reflect many variables, including planning systems, institutional structures, socio-cultural characteristics, population pressures and environmental priorities (Keenlyside *et al.*, 2009). Dowall (1995) mentioned that the frequently mentioned planning variables by the government include zoning, land use regulations and green-belt policies. Land use planning has functions to allocate a certain amount of lands for a particular development, to control the location of development and to justify the types of development in different areas (Popetan in Hui, 2003).

The broad objective of the planning regulations is to guide the development for a specific time period and efficiently fulfill the objectives of government. (Moustafa, 2002) states that Land in Egypt customarily belonged to the state, and only urban land and houses could remain as private property (*mulk*). This tight state control over land was made by the country's dependence on irrigation and the resulting need to strictly regulate land uses. However sometimes planning provisions tend to be static, and fail to consider the consequences of the changing economic demand for development (Sivam, 2002). Whilst Gerald in Hui & Ho (2003) stated that the government planning system restricts land supply in four major ways: (1) restricting the total quantity of housing land made available; (2) restricting the location of land that is made available; (3) restricting the way that the available land is developed; and (4) changing the timing of development.

Physical and infrastructural constraints

Not all vacant land is developable. It may be constrained either partially or absolutely, by a combination of governmental and private industry factors related to environmental conditions. The physical conditions of land for example the type of soil, its drainage, steepness of slope, are all important factors that influence how difficult it is to determine its potential uses are most appropriate, and to the extent that redevelopment is exceedingly costly, the local scarcity of developable land imposes a binding long-term supply constraint on a local land market. As part of institutional initiatives, these physical and infrastructural constraints may be improved by way of ideas, resources and rules from the land development authorities. Allen & Lee (2010) stated that land is a finite resource; it can be changed, developed, or eroded, but only in exceptional circumstances created.

Moreover, the capacity of associated infrastructure is designed according to the target population. In rural areas, development potential is also severely constrained by the lack of infrastructure (Tse, 1998). Thus, it is impossible to increase land supply overnight because the supply of developable land is subject to a high degree of planning control. Therefore, these physical and infrastructural constraints is viewed as a temporary institutional land supply constraints.

Landownership

The ownership of a land is very important when considering reclamation or development. Many idle lands are owned by absentee landlords or held by land speculators for future development and investment. Wightman (1996) in his study recognized several specific aspects of landownership that may affect land supply which include (1) diverse backgrounds, (2) rationales, (3) levels of wealth and interests, ranging from private enjoyment to profit maximization. Shelter (1998) argues that community-based and some non-for-profit landowners will generally be easier to convince of the need for better usage. Ismail Omar (2010) stated that the landownership constraint comes from the landowners who are reluctant to respond uniformly to market mechanisms, who are keeping the lands because they are looking for a better price in the future or who are keeping the lands due to sentimental value towards the lands.

In relation to waqf land, it is a religious voluntary and irrevocable dedication of one's wealth or a portion of it - in the form of tangible or intangible assets, and its disbursement for shariah compliant projects. In general, once a waqf is created, it can never be donated as a gift, inherited, or sold (with some exception in the case of leasehold interests and *istibdal* or land swap which is subjected to strict *fatwa*) (Siti Mashitoh, 2002). Disbursement of its returns is done in accordance with the endower's wishes. Therefore, in a way or another, waqf land development needs to fulfill a strict institutions or rules in the form of *fatwa*. To a certain extend, these strict rules may limit the flow of waqf land onto the market for development purposes. On the other hand, the permanent nature of waqf results in the accumulation of waqf properties that are devoted to provide capital asset that produce an ever increasing flow of revenues/usufructs to serve its objectives. Add to this the diversity of its objectives that provides support for widespread activities. This huge accumulation of waqf plays an important role in the social life of Muslim societies and communities (Monzer, 1995).

Updated land registers and databases are crucial to secure property rights and promote land exchange. In some countries, many current owners cannot be found in the land database. Landownership registration that is poorly maintained, missing or incomplete records, absence of or unclear boundaries, unknown owners, and unsettled inheritance claims within families where there is a large number of co-owners per a plot of land, all raise the cost of land withdrawal thus constraining the land to be able to be marketed. For example, in countries such as Romania and Bulgaria the land ownership is highly fragmented and restitution is incomplete.

Landownership constraints provide direct impacts on the land and property market in terms of increasing land price which subsequently push the price of developable lands higher in the market (Ismail Omar and Fauziah Raji, 2014). Multiple landownership in turn increases the costs of obtaining agreement among the owners and, hence reduces the willingness of individual owners to put effort into development. Although the benefit of the uses of the land is quite valuable, multiple ownership discourages uses since it is more difficult to monitor the inputs and outputs by owners (Guerin in Ismail et al. and Priyono, 2009). The different tenure types and multiple ownership over land, as mentioned above, results in a complex delivery system of urban land onto the market.

Agent's behaviour

Actors (individual, multiple or corporate) in the land market are diverse and have divergent objectives, expectations, and strategies where in some cases, only a few buyers and sellers may participate in particular land markets, and an individual land sellers or buyer can greatly influence market outcomes (Dowall, 1995). The attitudes of landowners are seen by some researchers as influencing the supply of land. Ismail Omar and Fauziah Raji (2014) stated that passive land owner who take no particular steps to develop land is one of the major issues affecting land development process and some are willing to participate but only on restricted terms and conditions, such as by offering leasehold not freehold. While Adams et al (2002) defines active landowners as those who develop their own land, enter into joint venture development or make their land available for others to develop, contends that such owners may well try to overcome site constraints to make land more marketable or suitable for development.

Some landowners were reluctant to make land available for the market until all other sites had been developed (Satsangi *et al.* 2005). Sivam (2002) gives an example that the land problem in cities in the Philippines is not due to scarcity but to the refusal to sell. While much of the potential urban land in cities of the Philippines lies frozen in the hands of owners who have no present intention of developing it. Passive landowners may respond, or fail to respond, to offers from potential developers, but otherwise they retain land without development or left it completely idle (Adams *et al.*, 2002).

Ismail Omar *et al* (2013) states that land value constraint emerges where the landowner and buyer/developer have different estimation prices of the land. Obviously the aim of any developer is to buy a site for less than it is worth for development and it is also speculated that they may hold land as inventory for the purpose of reducing housing supply, as is evident from the sizes of their land banks (Lai & Wang, 1999). Holding land and leaving it virtually idle in a constrained market will also provide greater market power in the future and ability to set prices. This implies that in a general sense, an increase in market power among developer's results in a decrease in the pace of development, and a consequent reduction in aggregate land generates benefits. Land is generally only held idle for two reasons, (1) Land banking typically by large investors seeking long term non-taxable capital gain, or to obtain a long term increase in land value arising from future rezoning and (2) temporary holding of land, that is more common due to market inefficiencies and scarcity of land.

2.2 ECONOMIC AND FINANCIAL FRAMEWORKS

A large segment of the urban population in developing countries does not have access to formal finance. Even with government subsidies, the cost of a plot or a unit is beyond the reach of the target group. If finance is available, the interest rate is too high and only extended to customers working in the formal sector. Most formal sector financing systems require loan security and thus the land tenure system plays a crucial role. Lack of adequate funding for the public sector to develop land also delays the supply of land in the market (Sivam, 2002). Finance in general is a constraint that impacts most seriously on the provision of off-site trunk infrastructure.

2.3 SOCIO-POLITICAL FRAMEWORKS

In most of developing countries, the social-cultural shapes the landownership and land development activities. Ismail Omar Fauziah Raji (2014) asserted that indigenous landowners in Kuala Lumpur tend to protect their landownership by keeping the price higher in the market and, therefore reluctant to sell off their lands in the near future. Some landowners are keeping and hoarding the strategic located land within strategic areas for further bequeathing the land so as to preserve the inheritancy of the Malay land holding within the urban areas. They see landholding as a source of power struggle and Malay survival in the urban areas of Kuala Lumpur (Ismail Omar, 1999). Many commentators who have thoroughly examined the land supply constraints have different ideas about the elements that constrain the land supply which can be concluded as in **Table 2.1** below:

Table 2.1: Land Supply Constraints – Structure and Agency

No.	Components	Elements	Researchers	Findings
1.	Structures	Legal and administrative	Keenlyside (2009)	Constraining variables are (i) planning systems, (ii) institutional structures (iii) socio-cultural characteristics (iv) population pressures (v) environmental priorities
			Dowall (1995)	Planning variables by the government include zoning, land use regulations and green-belt policies.
			Popetan (2002)	Land use planning has functions to allocate a certain amount of lands for particular development, to control the location of development and to justify the types of development in different areas
			Moustafa (2002)	The tight state control over land was made necessary by the country's dependence on irrigation and the resulting need to strictly regulate land uses.
			Sivam (2002)	Planning provisions tend to be static, and fail to consider the consequences of the changing economic demand for development
			Gerald, (2003)	Government planning system restricts land supply in four major ways: (i)restricting the total quantity of housing land made available (ii) restricting the location of land that is made available (iii) restricting the way that the available land is developed (iv) changing the timing of development
		Economic and financial frameworks	Sivam (2002)	Most formal sector financing systems require loan security and thus the land tenure system plays a crucial role. Lack of adequate funding for the public sector to develop land also delays the supply of land in the market.
Socio-political frameworks	IsmailOmar and Fauziah Raji (2014), Ismail Omar <i>et al</i> (2013)	Preserving and protecting landownership for survivorship and political agenda		
2.	Agency	Physical and infrastructural	Allen & Lee (2010)	Land is a finite resource; it can be changed, developed, or eroded, but only in exceptional circumstances created.
			Tse (1998)	The capacity of associated infrastructure is designed according to the target population. In rural areas, development potential is also severely constrained by the lack of infrastructure.
		Landownership	Wightman (1996)	Aspects of landownership that may affect land supply which include (1) diverse backgrounds, (2) rationales, (3) levels of wealth and interests, ranging from private enjoyment to profit maximization.
			Shelter (1998)	Community-based and some non-for-profit landowners will generally be easier to convince of the need for better usage.

			Ismail Omar <i>et al</i> (2013)	Landownership constraint comes from the landowners who are reluctant to respond uniformly to market mechanisms, who are keeping the lands because they are looking for a better price in the future or who are keeping the lands due to sentimental value towards the lands.
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No.	Components	Elements	Researches	Findings
			Guerin in Ismail Omar <i>et al.</i> (2013) and Priyono (2009)	Although the benefit of the uses of the land quite valuable, multiple ownership discourage uses since it is more difficult to monitor the inputs and outputs by owners.
		Agent's behaviour	Dowall (1995), Adam <i>et al.</i> (2002)	Actors in the land market are diverse and have divergent objectives, expectations, and strategies where in some cases, only a few buyers and sellers may participate in particular land markets, and an individual land sellers or buyer can greatly influence market outcomes.
			Ismail Omar <i>et al.</i> (2013) Ismail Omar and Fauziah Raji (2014)	Passive landowner takes no particular step to develop land and some are willing to participate but only on the restricted terms and conditions. Land value constraint emerges where the landowner and buyer/developer have different estimation prices of the land.
			Adams <i>et al.</i> (2002)	Active landowners are those who develop their own land, enter into joint venture development or make their land available for others to develop. Passive landowners may respond, or fail to respond, to offers from potential developers, but otherwise retain land without development or left it idle.
			Satsangi <i>et al.</i> (2005).	Some landowners were reluctant to make land available for the market until all other sites had been developed.
			Sivam (2002)	Land problem in cities in the Philippines is due not to scarcity but to refusal to sell.
			Lai & Wang (1999)	Aim of any developer is to buy a site for less than it is worth for development they may hold land as inventory

The review of literatures on institutional land supply constraints discussed in Section 2.0 indicated some of the elements that restrict the supply of land onto the market for development purposes. Furtherance, this section illustrates in-depth the elements of land supply constraints according to Structure and Agency Approach (Healey, 1992) categorised into structure (rules, resources and ideas) and agency (roles, motivation, strategies and actions) as depicted from the empirical evidents resulted from respondents interviewed on personnels of government linked companies, religious councils, property related industries, financial and banking institutions and personal observation in the field thoroughly. The remarks are shown in **Table 2.2** below:

Table 2.2: The Five (5) Main Institutional Issues on Waqf Land and Its Solutions

No.	Structure (Rules, Resources and Ideas)		Proposed Strategies or Actions
	Components	Elements	
1.	Legal and Administrative Frameworks	Waqf rules and land registration	<ul style="list-style-type: none"> Review, standardise and formulate the state of the art of waqf formal rules including standard SOP at national at state levels MAIN to identify and classify waqf land (categorisation according to waqf am or waqf khas or irsod etc and criteria for potentiality for development) to be registered based on priority and suitability
No.	Structure (Rules, Resources and Ideas)		Proposed Strategies or Actions

	Components	Elements	
		Structure of organization for waqf informal rules on staff training	<ul style="list-style-type: none"> Upgrading, transforming, modernising and empowering waqf related agencies by establishing Corporate Waqf Malaysia at national level and strengthening waqf unit or waqf holding at MAIN Restructuring of MAIN's organization to strengthen waqf with reference to the size and value of waqf land. Further studies on the role of nazir, the need for qualified and academically professional waqf land and property manager, the need to establish or to strengthen waqf holding, staff training etc.
		Strengthening recording system using e-system and its strict rules	<ul style="list-style-type: none"> Developing and establishing e-waqf system at MAIN and linked to e-bayanat or e-waqf at higher level at Yayasan Waqaf Malaysia and JAWHAR to be incorporated with GIS later on Establish electronic rules and guidances systematically
		Land tenure (<i>Leasehold or Freehold</i>)	<ul style="list-style-type: none"> Review and amend related clauses and section of National Land Code 1965 to alienate waqf land or convert the land tenure of waqf land from leasehold to freehold preferably under wakaf am under statutory vesting Section 416C National Land Code 1965 which is subjected to fatwa
		Express and implied condition under NLC 1965	<ul style="list-style-type: none"> Insertion of "Tanah ini hendaklah digunakan untuk tujuan wakaf semata-mata" as an express condition on the title document which shouldn't affect its market value
		Lengthy procedures on transfer of ownership etc	<ul style="list-style-type: none"> Proposed an order or instruction from Inheritance Office or Land and Mine Office or Syariah Court or High Court in dealing with conflicts for transfer of ownership or land dealings or registration purposes
		Payment, charges, tax, quit rent etc.	<ul style="list-style-type: none"> To be reviewed, reduced or even diminished and standardized in the whole country.
		Undivided shares	<ul style="list-style-type: none"> MAIN have to take action on fulfilling the requirements for registration according to NLC 1965 and fatwa
		Rules on physical and Infrastructural requirements	<ul style="list-style-type: none"> Exercise istibdal concept of land swap based on fatwa wherever applicable.
		Planning rules Insertion of waqf land in development plan	<ul style="list-style-type: none"> Create special colour or zoning for waqf land and simplify the procedures. MAIN to play role in the planning approval process wherever applicable
2.	Economic and Financial	Financial Rules	<ul style="list-style-type: none"> Flexible rules for financial sources and loan according to Islamic banking system Undertake smart-partnership with Islamic GLCs, banks and organisation Using and introducing cash waqf
		Rules on rental agreement	<ul style="list-style-type: none"> Review rental level to market rental value wherever possible
3.	Agency (Roles, Motivation, Strategy And Action)	Agents roles, political survival and Malay/Muslims agenda and sensitivity	<ul style="list-style-type: none"> Review the agenda by way of economic and cultural transformation and enhancing the value of waqf land wherever applicable (this might take the above strategies wherever possible and economically and culturally feasible)

Discussion is confined to the 3 categories of legal and administrative, economic and financial and socio-political elements of waqf land supply constraints. First, the legal and administrative frameworks are consisting of lacking in terms of proper registration of waqf land and inadequate database. Additionally, problems in administering land tenure, rental management, planning and difficulty in controlling the charges and payments to the authority further dampened the good governance and state-of-the-art of waqf land management and administration. Secondly, the financial rules in securing fund for development from banks and financial institutions had dampened the initiatives to develop waqf land. In addition, there are cases whereby the rental paid by tenant to the religious council is lower than the rental market due to long term rentals and non-renewable rental agreement. Thirdly, with reference to socio-political agenda, sensitivity of the ownership and survivorship of the Malay/Muslims agenda had adversely affected the way waqf land must be viewed to enhance its highest and best use and the achievement of best and highest price in the open market.

3.0 METHODOLOGY - CONSTRAINED WAQAF LANDS IN KOTA BHARU, KELANTAN

3.1 Empirical Analysis, discussion and findings

There are 510 lots of waqf lands have been recorded or 284.92 hectare in Kelantan (MAIN Kelantan, 2014). Out of these, some lots are severely constrained by various factors. In this case study, only 6 lots of potential lands that have been selected for in-depth investigation as shown in **Table 3.1**.

Table 3.1: Sample of Waqf Land Potential Tanahs for Development in Kota Bahru

No.	Lot	Mukim	Size (Hectare)	Category of Waqf	Existing Land Use
1.	24	Bayang	0.95	General	Vacant Land and Idle
2.	139		0.05	General	Vacant Land and Idle
3.	26	Che Latiff	5.37	Special	Vacant Land and Idle
4.	438	Guntong	0.47	General	Vacant Land and Idle
5.	46	Chekok	1.59	Special	Orchards (rented partly)
6.	14	Kota Bharu	1.61	Special	Building

Source: MAIN Kelantan, 2014

Lots 24 and lot 139 are contiguous. The physical aspect of these lands are flat and lower than the road level. Unfortunately, there is no direct access for Lot 24. MAIN has proposed these contiguous lots for civic hall or futsal court. Lot 26 is located in Kampung Che Latiff with 5.37 hectare. The physical condition of the land is wetland and has no access to main road. The land is vacant and idle with bushes. MAIN has proposed to develop the land for new convert Muslim as training center. Lot 438 is a flat land and no direct access to main road. It is a vacant land and idle with bushes. The land tenure is freehold. MAIN has proposed the land for a homestay. Lot 46 is a flat land but lower than the road level. There is no direct access to the main road. The land is partly vacant and partly rented building. The lot has been proposed by MAIN for a New Covert Muslim training center, the needy and single mother. Lot 14 is flat but lower than road level which is subjected to flooding. The land is located close to the site for housing scheme. There is an illegal building on the land. Currently, there is no proposal from MAIN for development of the land. Please refer **Appendix A** for details of lots of land taken as samples.

No.	Agency	Respondent	Land Supply Constraints
1.	Religious Council and Malay Customary of Kelantan	R1	No documentation of waqf lands, physical characters such as irregular shape and uneconomic size. Almost 75% are less than 1 ac. Inadequate no of staff for waqf. Almost 75% are special category of waqf land.
		R2	Trespassing and illegal use of waqf lands. Physical characteristics and flooding due to improper irrigation system. No or inadequate accessibility. Inadequate development funding.
		R3	Inadequate formal rules on waqf land that allows trespassing, illegal settlements and lack of enforcement of revenue and rental collection of waqf lands. Unfortunately, tax has to be paid. Problem with undivided shares of multiple ownership.
2.	Kota Bharu Municipality	R4	Unparallel and uncompromise planning between Religiuous Council and Town and Country Planning. There is no special zoning for waqf land but it is a reservation land only.
3.	Land Office of Kota Bharu (PTJKB)	R5	Problem with tenure of land – leasehold interests. Waqf land acquired should be disposed and not reserved and istibdal is a better way out. Problems with subdivision and partition of waqf land due to co-proprietorship or multiple ownership.

Table 3.2 : Respondents' Opinions

No.	No. Lot	*Elements of Land Supply Constraints														
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
1.	24						√	√						√		√
2.	139		√				√	√					√	√		√
3.	26	√		√			√	√						√		√
4.	438		√				√	√		√		√		√		√
5.	46			√			√	√	√					√		√
6.	14			√	√	√	√	√			√			√	√	√

Table 3.3 : The Land Supply Constraints

***KEYS:**

1. No written documents	9. Landownership
2. Small size and irregular shape	10. Leasehold land tenure
3. Category of waqf	11. Problems with subdivision and partition
4. Trespassing	12. Planning requirements
5. Physical characteristics	13. Inadequate staffing
6. No accessibility	14. Inadequate formal law
7. Inadequate fund	15. Cost of taxes on waqf lands
8. Low rental payment	

4.0 CONCLUSION

Based on Structure and Agency Approach (Healey, 1992) used in the analysis, it has been shown that there are structural elements of land supply constraints in the initiative to undertake development of waqf land in Kota Bharu District. On one hand, there are inadequate formal rules on documentation of waqf land administration, problems with leasehold land tenure and loose harmonization in legal aspects of land use planning and zoning. On the other hand, there are problems with inadequate professionals staffing in dealing with physical and managerial aspects of waqf lands. The structural constraints requires review and amendment of related policy and laws whilst retraining of staff and upgrading their professionalism may provide further improvement in the form of formulating the waqf land administration policy. Therefore, these solutions may pave the way forward for the transformation agenda of waqf land in the country.

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Appendix A Details of Samples



Lot 24 and Lot 139



Lot 26



Lot 438



Lot 46



Lot 14