

**DALAM MAHKAMAH RAYUAN MALAYSIA
(BIDANGKUASA RAYUAN)
RAYUAN SIVIL NO: J-01-61-2006**

ANTARA

- 1. PENTADBIR TANAH DAERAH, PONTIAN**
- 2. PENGARAH TANAH DAN GALIAN, NEGERI JOHOR**
- 3. KERAJAAN NEGERI JOHOR ... PERAYU-PERAYU**

DAN

OSSONS VENTURES SDN BHD ... RESPONDEN

**(Dalam Perkara Mahkamah Tinggi Malaya Di Johor Bahru
Guaman Sivil No: MT2-22-70-2003**

Ossons Ventures Sdn Bhd. ... Plaintiff

Dan

- 1. Pentadbir Tanah Daerah, Pontian**
- 2. Pengarah Tanah dan Galian, Negeri Johor**
- 3. Kerajaan Negeri Johor ... Defendan-Defendan**

Coram:

**James Foong, JCA (now FCJ)
Zainun Ali, JCA
Ahmad Maarop, JCA**

JUDGMENT OF ZAINUN ALI, JCA

The issue before us was whether the High Court could, in the circumstances of this case, make a Declaratory Order under Order 14A Rules of the High Court, 1980.

The Appellant is the Defendant and the Respondent is the Plaintiff in the Court below.

The Facts

The Plaintiff was the registered proprietor of 2 lots of land PTD 707 HS(D) 3212 and PTD 708 HS(D) 4980 in the Mukim of Serakat, Pontian measuring 300 acres each.

On 28.11.1997, the Plaintiff granted a Power of Attorney to a company called Pedoman Gading. To all intents and purposes Pedoman Gading Sdn Bhd was to act as the Respondent's attorney.

On 22.7.1998, On Pedoman Gading's application, the 3rd Defendant agreed to have the said lands surrendered back to the stake which will then granted on 99 years lease to Pedoman Gading Sdn Bhd for joint development with the Plaintiff.

However Pedoman Gading failed to complete the sale and purchase agreement dated 25.6.1998 and on 30.11.2000 the Respondent terminated the Sale and Purchase Agreement of 25.6.1998 with Pedoman Gading.

Subsequently the Appellants refused to acknowledge the abovementioned approval, through various letters which passed between the Plaintiff and the Appellants. Instead, in 2002 the Appellants acquired both lots of land from the Respondent.

For the acquisition of Plaintiff's lands, the Defendant paid a sum of RM615,528 for the 2 pieces of lands. The breakdown is as follows:-

- (i) Lot 708 HS(D)3212 - RM414,480
 - (ii) Lot 708 HS(D)4980 - RM201,048
- RM615,528

The Plaintiff had his own valuation which was more than twice the amount paid by the Defendant.

Being dissatisfied with the amount of compensation, the Plaintiff then filed his action on 5.2.2003.

In the usual course of things, this matter went through the normal process of case management, etc. In one of those processes, it was recorded that the earlier trial judge had directed that the matter be resolved by having the Plaintiff making an application for an Order 14A Order. (See page 100 Notes of Proceedings).

This was not denied by the State Legal Adviser. The Plaintiff then applied for a declaration under Order 14A. The State Legal Adviser then elected to argue on the substantive merits of the application.

The High Court granted the Plaintiff's application for Declaration on 22.5.2006. The Declaration made by the High Court was in respect of the construction of a letter dated 6th August 1998 issued by the 2nd Appellant who is the Director of Lands and Mines of the State of Johor in the Johor State Government Council meeting on 22.7.1998.

In essence, the subject letter was to convey the approval of the State Council for Land held under PTD 707 HS(D) 3212 and PTD 708 HS(D) 4980 in the Mukim of Serkat, Pontian to be surrendered and re-alienated to a company known as Pedoman Gading Sdn Bhd for a period of 99 years together with 200 acres of a reserve forest in Hutan Simpan Sungai Pulai and 140 acres of some sea land (tanah laut) for

development of a port and industrial area as well as for the development of housing and commercial usage.

The Order 14A Declaration sought by the Plaintiff was purely with regards to the above. Nothing more, nothing less.

As had been stated earlier, the Plaintiff was the registered proprietor of 2 lots of lands i.e. PTD 707 HS(D) 3212 and PTD 708HS(D) 4980 measuring 300 acres each, i.e. the subject land in the declaration sought. Thus the Declaration sought was that the Defendant had approved the Plaintiff's said lands for a extension of 99 years for development.

The Defendant's Case

The Defendant argued that:-

- (i) The declaration sought is totally outside the scope and ambit of the Respondent's pleaded case and not a relief prayed for;

- (ii) that the declaration sought distorts and detracts from the true intent and purport of the Pedoman Gading Approval;
- (iii) there was no full and frank disclosure of material and crucial evidence which had a direct bearing and impact on the Order 14A Application;
- (iv) there was suppression and concealment of material and crucial evidence giving rise to mala fide and
- (v) that had the court been fully appraised of all the correspondences, the court would not have granted the Declarations Order.

The Defendants went on to say that the Declaratory Order of court which declared and extended the lease 99 years in favour of the Plaintiff is contrary to law and a nullity. Since the court lacks jurisdiction to make such an order.

Moreover the Declaratory Order extending the lease to 99 years exceeded the jurisdiction of the court. This means that by the Declaratory Order the court had usurped the power and authority of the State Authority. The Defendant even went on to say that the sole purpose of the said Declaratory Order was to state an illegitimate claim for further compensation.

The Defendant contended further that the said Declaratory Order is likely to cause embarrassment to the Land Reference which is pending in the JB High Court as it also has the affect of contravening the statutory principles relating to the determination of compensation prescribed in the First Schedule to the Act.

Court's Finding

Firstly it was pleaded by the Plaintiff that it had given a Power of Attorney to Pedoman Gading, meaning Pedoman

Gading was to act as the Plaintiff's attorney. (See paragraph 21 Statement of Claim).

It was a fact that the decision of Majlis Mesyuarat Kerajaan Johor on 22.7.1998 was specifically pleaded and clearly at paragraph 31 the subject letter dated 6.8.1998 issued by the 2nd Defendant about the approval was pleaded.

It is critical that on 12.2.2008 the Court of Appeal (different panel of judges) heard and allowed the Plaintiff's motion for leave to adduce the Power of Attorney dated 29.11.1997 as evidence at the hearing of the Plaintiff's appeal. This Power of Attorney was exhibited in the affidavit of Haji Mustazah b Osman dated 22.11.2208. Pursuant to the said order, it now forms part of the Appeal Record and was referred to at the hearing of the appeal on 15.4.2008.

The parties had all agreed to have the matter resolved by way of an Order 14A application. There was consent of parties, including that of the learned High Court judge. No objection was raised by the Defendant as regards this mode of application. Neither was it objected to by the Defendant as it being inappropriate.

For the Plaintiff, it was argued that Order 14A rule 1(2) Rules of the High Court allows the court to make such order or judgment as it thinks fit.

Since an Order 14A application may be made at any stage of the proceedings and even orally during the course of another interlocutory application, this means that it is not necessary to have an Order 14A application formally drafted before the court before a party could invoke Order 14A. Thus, the learned Judicial Commissioner in this case obviously had

the power to hear the order 14A application which sets out the prayers sought by the Respondent.

Further, it appears that directions had been given earlier by his predecessor (Kang Hwee Gee J) for an Order 14A application to be made by the Plaintiff. This was recorded in the Notes of Proceedings (at page 100 of the Record of Appeal) whereby counsel submitted:-

“Dalam kes ini Y.A. Dato’ Kang ada cadangkan A.14A diambil pakai.”

and this was not denied by the learned State Legal Adviser. The learned State Legal Adviser had rightly chosen to argue on the substantive merits of the application.

Though the prayers in the Statement of Claim did not specifically pray for the Declaration as made by the High Court, the High Court had power to make the Declaration because Order 14A rule 2 empowers the court to “*make such*

order or judgment as it thinks just” upon determination of the question of construction of a document arising in the cause or matter. The order which may be made under Order 14A is not restricted to the prayers in the Statement of Claim.

Further, in fairness to the Respondent, prayer (18) in the Statement of Claim did contain a general prayer which had been upheld by the Federal Court to be effective in allowing courts to make such order as may be necessary to serve the ends of justice. Prayer (18) reads:-

“Lain-lain perintah yang difikirkan suai manfaat oleh mahkamah yang mulia ini.”

In **Lim Eng Kay v Jaafar bin Mohamed Said [1982] 2 MLJ 156**, the Plaintiff there had failed to plead pre-trial loss of earnings as Special Damages, However, the Federal Court held that the prayer for such *“other relief which the court deems fit to grant”* was sufficient to enable the court to make

an award of loss of earnings to the Plaintiff. It was held by the Federal Court (at page 160) that:-

“We cannot see how the respondents should be deprived of his right by a purely technical error on the part of his solicitors. In any case prayer (e) in paragraph (7), “Any other relief which this Honourable Court deems fit to grant” must not be treated as a mere ornament to pleadings devoid of any meaning. We think that this prayer should entitle the court to make such an assessment.”

The Declaration made by the High Court pursuant to Order 14A was not out of the blue. As pointed out above, the salient facts relating to the Declaration were pleaded in paragraphs 5, 20, 30 and 31 of the Statement of Claim. It was not something that took the Appellants by surprise.

The whole letter dated 6.8.1998 was reproduced verbatim in the ground of judgment the High Court. However, the relevant portion of the letter issued by the 2nd Appellant bearing reference ‘(16)dIm.PTG.9/97-412’ reads:-

“Adalah dimaklumkan iaitu Majlis Mesyuarat Kerajaan Johor di dalam mesyuaratnya pada 22.7.1998 telah mengambil keputusan sebagaimana berikut:-

Majlis BERSETUJU pada dasarnya tanah-tanah atas PTD 707 HS(D) 3212 dan PTD 708 HS(D) 4980 Mukim Serkat, Pontian diserahkan kepada Kerajaan dan kemudian dikurniakan semula kepada PEDOMAN GADING SDN BHD bagi tempoh 99 tahun untuk dimajukan bersama-sama tanah:

- (a) Sebahagian dari Hutan Simpan Sungai Pulai lebih kurang 200 ekar.
- (b) Tanah laut seluas lebih kurang 140 ekar.”

The Declaration Issued by the High Court reads:-

“Pengisytiharan bahawa surat kelulusan dari Pejabat Tanah dan Galian bertarikh 6 Ogos 1998 yang berujukan ‘(16) dlm. PTD9/97-412’ menunjukkan bahawa tanah plaintiff yang dikenali sebagai PTD 707 HS(D) 3212 dan PTD 708 HS(D) 4980 Mukim Serkat Daerah Pontian adalah tanah seluas 600 ekar yang

ada diluluskan untuk pajakan 99 tahun untuk tujuan pembangunan.”

It is plain that this Declaration was an accurate Declaration based on the facts of the case. It was not denied that as stated in the said letter, the 3rd Appellant did on 22.7.1998 approve the 2 lots of land held under PTD 707 HS(D) 3212 and PTD 708 HS(D) 4980 Mukim Serkat, Pontian measuring 600 acres for a lease of 99 years for development purpose. It merely declared the truth, and did not in any way order or direct the Appellants to alienate land to the Respondent. No doubt the Declaration would assist the Respondent to assert that the 2 lots of land measuring 600 acres should have been valued at more than RM600,000 at the time of acquisition. However, that would be a matter for the professional valuers to assess, and not for this court to speculate and say whether the value should have been as high as RM69 million as was evidently received by Seaport Terminal (Johore) Sdn Bhd when it leased the subject land to SKS Power Sdn Bhd.

The High Court below was right to hold that I cannot avoid asking the question as to who was the registered proprietor of the 2 lots of land at the material time, bearing in mind that our Torrens System as codified in our National land code recognises only registered proprietor. It was rightly held as follows:-

“Undang-undang yang berkuatkuasa berkenaan tanah di dalam Negeri Johor Darul Takzim adalah Kanun Tanah Negara – berbeza dengan tanah-tanah di Pulau Pinang, Melaka, Sabah dan Sarawak yang mempunyai kanun tanah yang berbeza. Kanun Tanah Negara hanya mengenal orang yang didaftar di dalam Surat Hakmilik Daftaran (Register Document of Title) sebagai pemilik mutlak. Ini adalah prinsip asas indefeasibility of title yang menjadi asas utama sistem tanah Torrens dalam Kanun Tanah Negara. Justeru itu, kita tidak dapat mengelak dari bertanya siapakah pemilik berdaftar dua bidang tanah tersebut pada tarikh kelulusan diberikan oleh Kerajaan Negeri Johor pada 22 Julai 1998 dan siapakah pemilik pada tarikh surat PTD tersebut dikeluarkan pada 6 Ogos 1998?.”

The Power of Attorney issued by the Respondent to Pedoman Gading Sdn Bhd was the link to prove that Pedoman Gading Sdn Bhd, who was the addressee in the subject letter dated 6.8.1998 issued by the 2nd Appellant, was in fact acting as the attorney of the Respondent in obtaining approval for development of their 2 lots of land.

On the law on declarations, the High Court was right to rely on the judgment of Raja Azlan Shah Acting LP (as His Majesty then was) in **Dato Menteri Othman bin Baginda v Dato Ombi Syed alwi bin Syed Idris [1981] 1 MLJ 29** and **Ungku Sulaiman bin Abdul Majid & Anor v Director of Lands and Mines & Anor '2001' 6 MLJ 75** to issue the Declaration. The learned judicial commissioner should not be faulted for ruling as follows in his grounds:-

“Saya telah meneliti afidavit-afidavit dan pliding serta ikatan dokumen yang difaikan dalam kes ini dan mendapati memang wujudnya dokumen yang mana plaintif memberi kuasa kepada Pedoman Gading Sdn Bhd untuk membuat permohonan bagi pihaknya. Isu

sama ada pemberian kuasa ini telah ditamatkan atau tidak adalah tidak mustahak kerana sebagaimana yang dijelaskan di atas, Kanun Tanah Negara mengenai pemilik berdaftar, dan di dalam kes ini, pemilik berdaftar dua bidang tanah tersebut pada tarikh 6 Ogos 1998 telah terbukti adalah syarikat plaintif. Isu sama ada sesuatu pengistiharan wajar dibuat oleh mahkamah adalah isu budibicara yang pastinya menurut undang-undang. Di dalam kes **Ungku Sulaiman bin Abdul Majid & Anor v Director of Lands and Mines & Anor [2001] 6 MLJ 75**, YA Hakim Abdul Malik Ishak memutuskan di muka surat 81.”

A declaration is an all purpose remedy and it is applied to “*a wide variety of cases in terms of subject matter*” (per Raja Azlan Shah Acting LP (as His Majesty then was) in **Dato Menteri Othman bin Baginda v Dato Ombi Syed Alwi bin Syed Idrus [1981] 1 MLJ 29 at page 31**).

In essence, declaratory judgments would state the legal rights of the parties and in suitable cases the courts would

supplement it with other remedies. But declaratory judgments merely state some existing legal position; it does not require anyone to do anything. It is germane to mention that declaration is a discretionary remedy and it varies from case to case.

In that connection, Order 15 rule 16 of the Rules of the High Court 1980 also gives a wide power to the court to issue a declaration that order reads as follow:-

“No action or other proceedings shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the court may make binding declarations of right whether or not consequential reliefs is or could be claimed.”

Thus the two lots of Respondent's land given approval to Pedoman Gading for 99 year lease is fine and an undisputed fact, which is the very essence of what the Respondent prayed for in his application for a declaration. That was all. There was not even order as to costs.

Section 41 of the Specific Relief Act 1950 together with Order 15 rule 16 of the Rules of the High Court 1980 make it crystal clear that the court has discretion to make a Declaration of any legal character and the Plaintiff need not in the suit ask for any further relief.

The Federal Court in Tan Sri Haji Othman Saat v Mohamed bin Ismail [1982] 2 MLJ 177 (at page 178) held as follows:-

“Section 41 of the Specific Relief Act gives statutory recognition to a well-recognised type of declaratory relief and subjects it to a limitation but it cannot be deemed to exhaust every kind of declaratory relief or to circumscribe the jurisdiction of the courts to give declarations of rights in appropriate cases falling outside it. The court has power to grant such a decree independently of the requirements of the section, and such a declaration outside the purview of this statutory enactment will be governed by the general provisions of Order 15 rule 16 of the Rules of the High Court, 1980 which will then apply.”

And further at page 179 of the same judgment, the Federal Court held:-

“The sensible approach in the matter of locus standi in injunctions and declarations would be that as a matter of jurisdiction, an assertion of an infringement of a contractual or a proprietary right, the commission of a tort, a statutory right or the breach of a statute which affects the plaintiff’s interests substantially or where the plaintiff has some genuine interest in having his legal position declared, even though he could get no other relief, should suffice.”

In the present appeal, the Respondent was willing to abandon all its other prayers against the Appellants and rest its claim with just the Declaration made under Order 14A; thereby finally determining the entire matter without a full trial of the action – satisfying the requirements of Order 14A rule (1)(a) and (b) as highlighted above.

I find that the High Court had not usurped the power of the State Authority. The High Court made a ruling based on

the letter of approval date 6.8.1998 issued by the State Authority (3rd Defendant) itself. Thus the said letter of appeal is the approval itself. Though these are conditions attached, they are not pre-conditions to the approval.

I find no material contradictions between the application (Enclosure 33) and the ground of judgment as well as the order made therein. The decision of the learned High Court judge is supported by evidence and since there is no error therein, an appellate intervention does not arise.

The Defendant's appeal is dismissed with costs. The Order of the High Court is affirmed and deposit to the Respondent to account for taxed costs.

Dated this 30th day of April 2009

(DATUK ZAINUN BINTI ALI)
Judge
Court of Appeal
Malaysia.

Counsel for the appellant:

Shahrizal Shaari
Penolong Penasihat
Undang-Undang
Negeri Johor

Counsel for the respondent:

Gan Techiong

Solicitors for the respondent:

Messrs. Gan & Lim