

**DALAM MAHKAMAH RAYUAN MALAYSIA**  
**(BIDANG KUASA RAYUAN)**  
**RAYUAN SIVIL NO. S-02-233-2002**

ANTARA

LAW PANG CHING & 64 LAGI

... PERAYU-  
PERAYU

DAN

TAWAU MUNICIPAL COUNCIL

... RESPONDEN

(Dalam Perkara Mengenai Permohonan Kajian Semula  
Kehakiman No. T-1 Tahun 2001  
Di Mahkamah Tinggi di Sabah & Sarawak di Tawau

Antara

Law Pang Ching & 67 Lagi

... Perayu-Perayu

Dan

Tawau Minicipal Council

... Responden)

Coram: Gopal Sri Ram, J.C.A.  
Raus Sharif, J.C.A.  
Abu Samah Nordin, J.C.A.

## **JUDGMENT OF RAUS SHARIF, J.C.A.**

1. The appellants are stallholders of Fuji Market (“the Market”). The Market stands on two pieces of land situated at Jalan Sin Onn, Tawau, owned by Hongkong & Canton Food Industries Sdn Bhd. The land owner built the Market after obtaining an approval from Tawau Municipal Council (“the respondent”). The Market started its operation in 1992.
  
2. Subsequently, the land in which the Market was situated was transferred to ATS Land Sdn Bhd (“ATS”). Hence, ATS became the operator of the Market. As the operator, ATS, like the previous land owner, had to pay the respondent certain sum of money representing the fees payable for the license of operating the stalls. ATS in turn, collected from the stallholders RM30.00 per month per stall.
  
3. By letters dated 30 April 2001, 6 July 2001 and 16 July 2001 to ATS, the respondent indicated its decision to terminate the operation of the Market. The stallholders appealed to the respondent to reconsider its decision vide their letter dated 28 May 2001. However, in a letter dated 19 October 2001 issued to the stallholders, including the appellants, the respondent requested them to move out. Hence, this application by the appellants.

4. The applicants sought for several reliefs. Basically they were seeking for an order of certiorari to quash the decision by the respondent contained in its letters dated 30 April 2001, 6 July 2001 and 16 July 2001 to ATS, to terminate or revoke the approval granted to ATS to operate or manage the Market. In effect, they wanted ATS to continue operating the Market.
5. The learned High Court Judge dismissed the appellants' application with costs. Before us, a number of grounds were raised. But the real issue is whether there was a failure of the respondent to adhere to the principle of natural justice and fairness in making its decision to terminate the Market. The instances of such failure were the absence of reasons for the termination and not giving the appellants any real opportunity to make representation before the termination was made.
6. The learned High Court Judge dealt with the issue in the following manner:

“As regards the arguments that there was no reason given for the decision to terminate the Market and that the applicants were not given any or adequate opportunity to make representation before the termination was made, I think such contentions were misconceived. There was no denial that the Market affair was between the respondent and ATS. The letters of approval (LPC-6, LPC-11 and LPC-12

of Enclosure 3) and subsequently the termination (LPC-7 of Enclosure 3) were addressed to ATS. It was ATS that was expected to make the payment for the stall – license fees. Receipts for the payment of such fees were in the name of ATS. Yet ATS was not before the Court as an applicant for such order as prayed for by the applicants in this case. And although the applicants asserted that they were in fact the parties that paid for the fees through ATS that could not be said to have earned them the same position as ATS. As between the applicants and ATS their relationship at best would be contractual in which the respondent was not a party.”

7. I am in complete agreement with the reasoning of the learned High Court Judge. As rightly pointed out by the learned High Court Judge, the affairs of the Market was between ATS and the respondent. The letters of approval and subsequently the termination of the Market were addressed to ATS. Thus, any complaint that the respondent did not adhere to the principal of natural justice in making its decision to terminate the operations of the Market rightly should come from ATS, not the appellants. But ATS did not complain. ATS did not even file any affidavit in support of the allegations as alleged by the appellants. Presumably, it had accepted the decision of the respondent to terminate the market.

8. Furthermore, the facts of this case clearly revealed that the appellants had no contractual relationship with the respondent. The appellants were strangers to the arrangement between ATS and the respondent. Hence, they could not step into the shoe of ATS; to complain that they had been deprived by the respondent of the right to be heard and the due process. They have no locus standi to do so.
  
9. It was strongly argued by the appellants that the President of the respondent had sometime in 1998, at a function, announced that the stallholders including the appellants could carry on business at the Market and this had created a legitimate expectation on the part of the appellants of procedural fairness in the decision making of the respondent in terminating the Market.
  
10. With respect, I am not persuaded with the said argument. The argument would have been valid, if, the land where the Market stands belongs to the respondent. But this is not the case. The land does not belong to the respondent. The Market stands on a privately owned land. The registered owner is ATS. It is for this reason that the cases of **Berthelsen v Director of Immigration [1998] 1 MLJ 134**, **Shamsuri bin Hj. Abdullah v Sandakan Municipal Council [1998] 1 CLJ 581**, **President of Batu Pahat v Lo Hong Tan [1983] 1 MLJ 299**, and **Majlis Perbandaran Pulau Pinang v Syarikat Berkerjasama sama**

**Serbaguna Sungai Gelugor dengan Tanggongan [1998] 3 MLJ 1** cited in support are of no assistance to the appellants.

11. For the above said reasons, the appeal must be dismissed with costs. The deposit in this court shall be paid to the respondent to account of its taxed costs.

Dated this 4<sup>th</sup> day of February 2009.

Raus Sharif  
Judge  
Court of Appeal Malaysia

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<u>Solicitors for the respondent:</u>	Tetuan Amin Jaafar & Co.