

DALAM MAHKAMAH RAYUAN MALAYSIA
(BIDANG KUASA RAYUAN)

RAYUAN SIVIL NO. B – 02 – 402 TAHUN 1998

ANTARA

HOCK HUA BANK BERHAD

... PERAYU

DAN

CHAN SIEW YEN

... RESPONDEN

[Di Dalam Mahkamah Tinggi Malaya Di Shah Alam
Dalam Negeri Selangor Darul Ehsan
Usul Pemula No. MT2 – 21 – 52 – 98]

Dalam perkara Seksyen 33, 34,
36, 260 dan 263 Akta Kanun
Tanah Negara

Dan

Dalam perkara gadaian di bawah
Pegangan Q.T. (M) 504, Lot P.T.
No. 1203, Mukim Ampang

Dan

Dalam perkara Perintah Jualan
Bertarikh 3 Haribulan Mac 1998

Antara

Chan Siew Yen

... Pemohon

Dan

1. Pentadbir Tanah Daerah Ulu Langat
2. Hock Hua Bank Berhad

... Defenden
Defenden]

CORAM: Datuk Richard Malanjum, JCA
Dato' Hashim bin Dato' Hj Yusof, JCA
Tengku Dato' Baharudin Shah bin Tengku Mahmud, JCA

JUDGMENT OF THE COURT

Introduction

1. This is an appeal against the whole of the decision of the High Court at Shah Alam given on the 9.6.1998 which set aside the 4th Order for Sale made by the Land Administrator on 7.5.1996.

Basic facts of the case and chronology of events

2. The Appellant, now amalgamated with Public Bank, gave banking facilities to its customer one Leong Yew Chin (the principal borrower) trading under the name 'West Malaysia

- Frozen Food Company'. As part of the securities for the facilities the Respondent on 15.5.1978 agreed to charge in favour of the Appellant her property, Q.T. (M) 504, Lot P.T. 1203, Mukim Ampang on 3rd Party charge up to a limit of RM 300,000.00.
3. The principal borrower failed to meet the repayments of the facilities hence the Appellant commenced foreclosure proceeding on the charged land.
 4. On 7.5.1996 the 1st Order for Sale in the form of Form 16H was made by the Land Administrator pursuant to an application by the Appellant. However, the sum recoverable stated was RM 11,811,009.28 which was erroneous. It prompted the solicitors for the Appellant to write to the Land Administrator to amend the figure. The Land Administrator thus unilaterally issued a 2nd Order for Sale with an amended sum recoverable of RM5,905,504.64.

5. Dissatisfied with the manner in which the 2nd Order for Sale was issued the Respondent appealed to the High Court which on 17.7.1996 made the following order:

'Pada pendapat saya pindaan yang dibuat oleh Land Administrator terhadap perintah adalah tidak terator. Oleh itu saya memerintahkan supaya Inquiry diadakan semula.'

6. However even before getting a copy of the sealed order of the High Court the Land Administrator went on to conduct another enquiry pursuant to section 263 of the National Land Code 1965 (NLC) and issued a 3rd Order for Sale with the sum recoverable stated as RM 2,491,630.59.
7. Unhappy with the how the 3rd Order for Sale was issued the Respondent once again appealed to the High Court against the granting of the 3rd Order for Sale.

8. On 21.4.1997 the 3rd Order for Sale was set aside for nullity by another High Court Judge on the ground that the Land Administrator at the time of making the 3rd Order for Sale was functus officio since he issued it before being served with the sealed copy of the order of the High Court which set aside the 2nd Order for Sale.
9. The solicitors for the Appellant thus wrote on 25.4.1997 to the High Court Judge who set aside the 2nd Order for Sale on 17.7.1996 seeking for clarification on the order made.
10. The learned High Court Judge replied through his secretary with clarification, inter alia:

'Oleh itu pada pendapat Mahkamah, kedua-dua pihak perlu dipanggil semula oleh Pentadbir Tanah sebelum sesuatu perintah hendak diperbetualkan atau dipinda. Untuk tujuan tersebut tidak perlulah diadakan satu siasatan baru (fresh enquiry). Memadai siasatan dibuka semula dan kedua-dua

pihak deberi perluang untuk mengemukakan hujah mereka sebelum Pentadbir Tanah membuat keputusan.'

11. Guided by the reply the Land Administrator held an enquiry on 3.3.1998 pursuant to section 34 of the NLC in compliance with the order of the High Court dated 17.7.1996. The 4th Order for Sale was thus issued with the sum recoverable stated as RM2, 478,432.01. The Respondent appealed to the High Court.
12. On 9.6.1998 the 4th Order for Sale was set aside by the High Court Judge on the basis that it was irregular since it was not a re-enquiry conducted by the Land Administrator but a fresh enquiry contrary to order of the High Court made on 17.7.1996.
13. Dissatisfied with the decision of the High Court the Appellant appealed to this Court.
14. On 30.5.2005 we allowed the appeal and restored the 4th Order for Sale given on 3.3.1998. The Respondent has applied for

leave to appeal to the Federal Court. As such we now state the reasons for our decision.

Before this Court

15. The primary issues before us are whether the 4th Order for Sale was in fact a re-enquiry pursuant to section 34 of NLC and whether the Land Administrator was functus officio when he issued it.

Findings of the Court

16. At the outset we say that this matter has been unnecessarily dragged far too long. We note that the core of the objection is quite technical in nature. All parties were in fact before the Land Administrator during the enquiry prior to the issuance of the 4th Order for Sale. It was also made clear by the Land Administrator, at least reading from the documents before us, that he was conducting the enquiry under section 34 and in compliance with the order of the High Court made on 17.7.1996. As such we find no basis for the complaint by the

Respondent on the issuance of the 4th Order. We do not find any prejudice arising against any party.

17. It is to be noted that it was never the case of the Respondent that the 1st Order for Sale was regular notwithstanding the erroneous sum stated as recoverable.
18. Indeed section 33 of NLC could have been used by the Land Administrator to correct the error if it was merely accidental defect or omission not affecting the material part of the enquiry.
19. But in this case the erroneous sum given as recoverable in the 1st Order for Sale was obviously material in nature which was discovered after the issuance. As such reliance on section 34 of NLC is in order as suggested by the learned High Court Judge when he set aside the 2nd Order for Sale. We would say that circumstance (a) of subsection (2) of section 34 has been satisfied

20. In view of our foregoing finding we do not think there is any merit to say that the Land Administrator was functus officio when he issued the 4th Order for Sale. He was in fact carrying out a function in compliance with the order of the High Court and under a different section of the NLC which empowered him to act as he did. This present case is distinguishable from Scotch Leasing Sdn Bhd (In receivership) v Chee Pok Choy & Ors [1997] 2 MLJ 105 where the learned Judge set aside the same order for sale given nine months earlier and perfected without considering the applicability of section 34 of NLC.
21. For the above reasons we allowed the appeal and restored the 4th Order for Sale issued by the Land Administrator on 3.3.1998. Costs to be taxed and paid to the Appellant. Deposit to be refunded to the Appellant.

Signed.
(DATUK RICHARD MALANJUM)
Judge
Court Of Appeal Malaysia

Dated: 11th December, 2007

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Kuala Lumpur

Counsel for the Respondent: Mr. Prasad Abraham
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