

**DALAM MAHKAMAH PERSEKUTUAN MALAYSIA DI PUTRAJAYA
(BIDANG KUASA RAYUAN)
RAYUAN SIVIL NO. 01-6-2007 (N)**

ANTARA

SINGAPORE PARA RUBBER ESTATE LIMITED ... PERAYU

DAN

PENTADBIR TANAH DAERAH REMBAU,
NEGERI SEMBILAN ... RESPONDEN

Dalam Mahkamah Rayuan Malaysia Di Putrajaya
(Bidang Kuasa Rayuan)
Rayuan Sivil No. N-01-38-05

Antara

Singapore Para Rubber Estate Limited ... Perayu

Dan

Pentadbir Tanah Daerah Rembau,
Negeri Sembilan ... Responden

Coram: Alauddin bin Dato' Mohd. Sheriff, CJM
Hj. Hashim bin Dato' Hj. Yusoff, FCJ
Zulkefli bin Ahmad Makinudin, FCJ

JUDGMENT OF ZULKEFLI BIN AHMAD MAKINUDIN, FCJ

I have read the judgment in draft of the learned Chief Judge, Malaya ["CJM"] and I agree with the views expressed and the decision reached by his lordship in dismissing the appeal by the appellant. I would like to add in a few words in support of the judgment of the learned CJM as follows:

It is to be noted at the outset that before the High Court and the Court of Appeal the same arguments were ventilated by the appellant in its application for enlargement of time to file objection proceedings under Form N pursuant to section 38(1) of the Land Acquisition Act 1960 ["the Act"]. Amongst others, the grounds relied on in its application are the non-notification of the dateline for appeal by the respondent, a commission of a bona fide mistake on the appellant's part, ignorance of law, undue hardship to the appellant and no fault on the part of the appellant.

At the stage of the appeal before us now, it would appear however, that the appellant has abandoned all the grounds proffered before the High Court and the Court of Appeal. Learned Counsel for the appellant in the appeal before this Court now focused his arguments essentially on the new ground that the award made by the Land Administrator is contrary to the statutory requirements of the Act and Article 13(1) of the Federal Constitution. This is in line with the sole question posed for our determination after the appellant had

obtained leave to appeal from the Federal Court on 16 July, 2007. To the appellant this ground amounts to special circumstances under section 38(4) of the Act. It is the contention of the appellant that the respondent was in breach of the duty imposed upon him as he did not comply with the materials relevant to the assessment and that the amount of compensation was not made in accordance with the provisions of section 12(1) of the Act and paragraph 1(1)(b) and paragraph 2(d) of the First Schedule of the Act. Section 12(1) of the Act provides as follows:

“On the date appointed under section 10(1) the Land Administrator shall make full enquiry into the value of all scheduled lands and shall as soon as possible thereafter assess the amount of compensation which in his opinion is appropriate in each case according to the consideration set out in the First Schedule:

Provided that the Land Administrator may obtain a written opinion on the value of all scheduled lands from a valuer prior to making an award under section 14.”

Paragraph 1(1)(b) of the First Schedule to the Act states as follows:

“1. Market Value

- (1) For the purposes of this Act the term ‘market value’ where applied to any scheduled land shall mean the market value of such land -*

- (a)
- (b) *In any other cases, at that date of the publication in the Gazette of the declaration made under section 8.*

Paragraph 2(d) of the First Schedule to the Act states as follows:

“2. Matters to be considered in determining compensation

- (a)
- (b)
- (c)
- (d) *The damage, if any, sustained or likely to be sustained by the person interested at the time of the Land Administrator taking possession of the land by reasons of the acquisition injuriously affecting his other property whether movable or immovable, in any other manner.”*

It is the appellant’s case that the respondent’s award for the said sum of RM898,500.00 purportedly made under section 12 of the Act is flawed in law. The appellant contended that the said award was wrongly made since it was based on the market value as at 19.02.2002 which was as stated in the Government Valuation Report relied by the respondent. To the appellant in law the market value of the scheduled land should be based on the date under the Notice issued by virtue of the provision of section 8 of the Act as published in

the Negeri Sembilan Government Gazette No. 179 which is dated 11.04.2002.

With respect to the above contention of the appellant I am of the view it cannot be said that there was a non-compliance by the respondent of the statutory requirements under the Act in the making of the award. The so called non-compliance as alleged by the appellant is in relation to the valuation report prepared by the Jabatan Perkhidmatan dan Penilaian Harta, the Government Valuer as relied on by the respondent in which the date in determining the market value of the land to be acquired was given as at 19 February 2002 instead of 11 April 2002, the date of the Gazette under section 8 of the Act. On this issue of reliance by the Land Administrator of the assessment made by the Government valuer it is to be noted that the proviso to subsection 12(1) of the Act states that the respondent as the Land Administrator may obtain a written opinion on the value of all scheduled lands from a valuer prior to making an award under section 14. I am of the view the written opinion or report provided under the proviso to subsection 12(1) only acts as a guidance to the Land Administrator. Under the Act what the Land Administrator is required to do is to make full enquiry into the value of all scheduled lands and shall as soon as possible thereafter assess the amount of compensation which in his opinion is appropriate before he made an award under section 14(1) of the Act. The Land Administrator is not bound to accept the valuation report made by the Government valuer but just as a guide in determining the award of compensation.

It is my view that if at all there has been a non-compliance by the respondent of the statutory requirements under the Act in making the award under section 14 of the Act, this issue should be taken up and argued at the hearing of the objection of the appellant in the reference to the High Court under section 36 of the Act. In fact on this point the appellant as an aggrieved party has a recourse to state his case in challenging the award of the respondent at that stage of the proceedings by producing its own Private Valuation Report before the Court. But this is not the case before us now. The true position in the present case is that the appellant had been out of time in filing its application for objection to the award within six weeks from the date of the Land Administrator's award was made under section 14 of the Act. The appellant in fact has already failed in the first hurdle of satisfying the High Court and the Court of Appeal of the justification to grant enlargement of time to file objection proceedings under Form N.

For the reasons above stated my answer to the question posed should be in the negative. I would therefore dismiss the appeal with costs and an order be made that the deposit is to be paid to the respondent to account for taxed costs.

(DATO' ZULKEFLI BIN AHMAD MAKINUDIN)

Judge
Federal Court

Dated: 24 Oktober 2008.

Counsel for the Appellant:

Dato' Ghazi Ishak.

Solicitors for the Appellant:

Messrs. Balwant Singh & Co.

Counsel for the Respondent:

Encik Ishak Bin Shahari – State Legal Adviser, Negeri Sembilan.