

**DALAM MAHKAMAH PERSEKUTUAN MALAYSIA  
(BIDANGKUASA RAYUAN)  
RAYUAN SIVIL NO. 01 – 6 – 2006 (W)**

**ANTARA**

**TENAGA NASIONAL BERHAD**

**... PERAYU**

**DAN**

**MAJLIS DAERAH DUNGUN**

**... RESPONDEN**

[Dalam Perkara Rayuan Sivil No. 01-101-2004  
Dalam Mahkamah Rayuan Malaysia Di Putrajaya

Antara

Majlis Daerah Dungun

... Perayu

Dan

Tenaga Nasional Berhad

... Responden]

**Coram:** Alauddin Bin Dato' Mohd. Sheriff, PCA  
Arifin Bin Zakaria, CJM  
Nik Hashim Bin Nik Ab. Rahman, FCJ  
Abdul Aziz Bin Mohamad, FCJ  
Hashim Bin Dato' Hj Yusoff, FCJ

**GROUNDS OF JUDGMENT OF  
 HASHIM BIN DATO' HJ. YUSOFF, FEDERAL COURT JUDGE**

1. We heard this appeal and reserved our judgment to be given at a later date. We do so now.
2. 11 questions were originally posed before us for determination in this appeal as follows:-

- “1. Whether the failure by the Applicant (hereafter referred to as “the ratepayer”) to invoke the objection and appeal procedure under the Local Government Act, 1976 (hereinafter referred to as “the Act”) is fatal, where the ratepayers’s complaint is that the new rates and assessments and the amended assessments are ultra vires the Act?*
- 2. Whether the ratepayer is precluded from raising the defence that the new rates and assessment are ultra vires the Act (and therefore of the arrears) as a defence to a suit by the rating authority under Section 156 of the Act to recover the so-called arrears of rates as a debt?*
- 3. Whether the ratepayer is precluded from exercising the right of collateral challenges to the vires or legality of the new amended valuation and rates in proceedings brought to enforce the new rates?*

4. *Whether the doctrine of estoppel can be invoked against a local authority as the relevant rating body, arising out of an agreement with the ratepayer to abide by the decision of the Land Tribunal under Article 156 of the Federal Constitution as to the proper rates payable, so that the rating authority would not be entitled to resile from that agreement?*
5. *Whether it would be an act of ultra vires for a rating authority to enter into an agreement with a ratepayer (a public body) to abide by the decision of the Land Tribunal under Article 156 of the Federal Constitution as to the rates payable?*
6. *Whether the doctrine of legitimate expectation applies to preclude the local authority from resiling from its agreement with the ratepayer, being itself a public body, to abide by the decision of the said Land Tribunal and in the interim to withhold enforcement of the new rates and be paid an interim sum as rates?*
7. *Whether, independent of the agreement between the local authority and the ratepayer to abide by the decision of the said Land Tribunal, the local authority is entitled to recover ordinary rates from the ratepayer (given its true legal character and status in law) or is it confined only to recover “contribution-in-aid of rates” under Article 156 of the Federal Constitution to be determined by a Land Tribunal?*

8. *Whether a rating authority could sue under Section 156 of the Act to recover on assessment bills that have been cancelled and/or replaced by amended or replacement bills formally issued by itself?*
  9. *Whether the term “arrear” in Section 156 of the Act on which, a rating authority is entitled to sue and recover as a debt must necessarily mean or refer in law to the current and/or replacement assessment bills remaining unpaid and not any previous cancelled or replaced bills?*
  10. *Whether the rating period of 1991 to 1996 on which the claim was based could be extended to recover rates indefinitely (as done by amendment to the Statement of Claim at the trial) on the same valuation list in spite of the statutory obligation on the part of the rating authority to do a periodic 5 year revision of valuation under Section 137(3) read with Section 137(2) of the Act?*
  11. *Whether a suit under Section 156 of the Act by a rating authority to recover arrears of rates would be caught by the Limitation Act, 1953 to preclude recover outside the six year period under Section 6(d) of the Limitation Act, 1953?*
3. At the outset, learned counsel for the Appellant informed the Court that he did not intend to proceed with Question No. 7.

## **Background Facts**

4. The facts of this case are sufficiently set out in the Grounds of Judgment of the Court of Appeal pages 2 – 4 of the Appeal Record (Ikatan Teras) and I do not propose to reproduce them here.
5. The main dispute between the parties centres around the issue whether “*plant and machinery*” in the Appellant’s power station should be included in the “*annual value*” under section 2 of the Local Government Act 1976 (“the Act”). Besides that there are also several other issues being argued upon.
6. The first issue is regarding the fact that the Respondent did not lodge any objection to the Appellant and did not appeal subsequently to the High Court by way of originating motion pursuant to section 144 (3) and section 145 (1) of the Act, which provide as follows:-

*“Section 144 (3): Any person aggrieved by the amendment of the Valuation List or any of the grounds specified in section 142 may make objection in writing to the local authority not less than ten days before the time fixed in the notice and shall be allowed an opportunity of being heard in person or by an authorised agent.”*

*“Section 145 (1): Any person who having made an objection in the manner prescribed by section 142 and 144 is dissatisfied with the decision of the local authority thereon may appeal to the High Court by way of originating motion:  
.....*

*(2) The originating motion shall be filed by the person dissatisfied with the decision of the local authority within fourteen days of the receipt thereof.*

*(4) Every such appeal shall be heard before the High court whose decision on questions of fact shall be final and conclusive.*

*(5) From the decision of the High Court either party may appeal on questions of law to the Supreme Court whose decision shall be final and conclusive.”*

Section 144 (1) reads:-

*“Where by reason of –*

*(a) ... any rateable holding has been insufficiently or excessively valued ...;*

*the Valuation Officer may at any time amend the Valuation List accordingly and rates shall be payable in*

*respect of the holding in question in accordance with the Valuation List so amended.*

7. The learned counsel for the Appellant submitted that the Appellant's failure to follow the internal procedure of protest and appeal should not be fatal and that the Appellant could still ask for a review of the valuation on the ground that it was not done properly. In other words, he submitted that the Appellant should not be precluded for defending the civil suit filed by the Respondent for the recovery of arrears of rate imposed on the Sultan Ismail Paka Power Station ("the said holding") amounting to RM31,625,000.00 due and owing as at 31.12.1996 and for the annual rate of RM6,150,000.00 for each year from 1.1.1997 until realisation less monies paid by the Appellant in proposed part payments and interest at the rate of 8% per annum.
  
8. To support his argument, learned counsel referred to the case of **Wandsworth London Borough Council v Winder [1984] 3 ALL ER 976** wherein Lord Fraser spoke in terms of the "*right of any individual to defend an action against him on the ground that he is not liable for the whole sum claimed by the Plaintiff.*" It was a case where the local authority had statutorily raised the rental on council flats and brought a claim against the tenant in the county court for arrears of rent. The tenant defended the claim on the basis that he was not in arrears because the local authority exceeded its statutory power in increasing the rentals and the notice of increase was accordingly null and void. The local authority argued that the tenant was precluded from

raising the defence because he had not challenged the statutory increase by judicial review and indeed failed in this attempt because he was out of time. Lord Fraser rejected that argument by saying that *“He did not select the procedure to be adopted. He is merely seeking to defend proceedings brought against him by the appellants, In doing so he is seeking only to exercise the ordinary right of any individual to defend an action against him on the ground that he is not liable for the whole sum claimed by the Plaintiff.”*

9. Learned counsel for the Respondent however submitted that unless the rates are challenged in the specific manner laid down by Parliament in sections 144 and 145, the rates become due and payable by a ratepayer. He submitted that it must follow in law that any legal proceedings by a local authority to recover arrears in rates, the rate-payer has no real or credible defence to the claim and the local authority would be entitled to summary judgment under Order 14 Rules of the High court 1980 (RHC) because there would be no triable issue.
  
10. I am of the view that since there are specific provisions under section 145 (1) and (2) of the Act to enable a dissatisfied ratepayer to appeal in the manner prescribed, any failure to comply with the same would necessarily preclude the ratepayer from resorting to any other method of appeal, like coming to Court. The ratepayer should have exhausted his legal remedy provided by law first before he could come to court to seek his redress. I also do not agree with the argument that the Appellant is only exercising his right to defend proceedings

brought against him by the Respondent. It is simply because of the Appellant's failure in the first place to pay up its arrears of rates that necessitated the Respondent's action to proceed by way of court proceedings to recover its claim. So it would not be fair for the Appellant to say that it is only defending a claim against it where it could have appealed to the Respondent against the said valuation as is provided by the law.

11. If any ratepayer were to act in the same manner as the Appellant then it would lead to the courts being flooded with recovery suits by the various local authorities against their defaulting ratepayers for recovery of arrears. It may then result in the local authorities to not be in a financial position to provide general services like maintenance of hospitals, roads, garbage collection and so forth. That cannot be the intention of Parliament.
  
12. The case of **Stepney Borough v. John Walker & Sons Ltd.** **[1934] AC 365** lends support to my view above. That case was a rating case which involved the interpretation of the Rating and Valuation (Apportionment) Act 1928 of England. A passage from the judgment of Lord Warrington is particularly relevant to our case:-

*“As to question (11). In the Act of 1869 a complete and easily understood code is laid down for the purpose of enabling objections, either by a ratepayer or other specified persons, to acts of the Assessment Committee or the rating authority to be considered and dealt with*

*either by those bodies themselves or, in case of necessity, by judicial authority. In the present case all necessary notices were given so that the respondents were at all times in a position effectually to obtain relief under the statutory provisions. It is difficult to understand why the respondents deliberately, as it is said abstained from resorting to the statutory provisions. They say they did so because until the decision of Quarter Sessions in reference to the Special List under the Act of 1928 had been set aside, an appeal in respect of the Quinquennial List would probably have failed. But, assuming that to be so, it can afford no excuse for having abstained from taking steps which would at least have kept their claims alive. In fact it was not until April, 1932, long after the Quinquennial List had come into force, that they raised their present claim.*

*In my opinion this is one of those cases in which the Legislature has provided suitable means whereby persons aggrieved by the action of the rating authorities can obtain the removal of that grievances, and I am of the opinion that when that is so it must be inferred that those means are intended to be exclusive: see *Rex v. City of London Assessment Committee (1)*. On this point I agree with *Romer L.J.* We were told that it is hard that for the rest of the Quinquennial period the respondents will be deprived of the benefits of the Acts of 1928 and 1929. The answer is that any hardship is the result of their own*

*failure to avail themselves of the procedure open to them under the statute.”*

13. Provisions identical to sections 144 and 145 of the Act found in its predecessor statute, the **Town Board Enactment of FMS (Cap. 137)** were answered by S.M. Yong J. in the case of **Yee Seng Rubber Co. Sdn. Bhd. v. The Commissioner of Kuala Lumpur [1972] 2 MLJ 21.** In that case the ratepayer had appealed to the High Court against the annual value of its holdings but only paid into Court the amount of the rate appealed against some 3½ months after the due date. Justice S.M. Yong observed:-

*“One can well understand why this condition (paying money into Court) was imposed by the legislature. Frivolous appeals are often filed for the purpose of delaying payment of rates which the Town Board needs for running its public services of the towns and its administration. This condition was obviously designed to prevent this mischief. It is also common knowledge that such appeals would not be heard for a considerable period of time, sometimes for months if not years.*

*The question before the Court is: where jurisdiction is given to a Court by statute, upon certain terms or conditions, would non-compliance thereof prevent such jurisdiction from arising? After consulting various authorities, including the following I came to the conclusion that it would.”*

The Court's conclusion was as follows:-

*"I hold that Section 44 (i) is a mandatory provision which goes to the jurisdiction of the Court. It is not directory and cannot be waived.*

*I further hold that the Court's jurisdiction to entertain appeals from the Board of the Federal Capital of Kuala Lumpur now known as the City of Kuala Lumpur was given by statute – Town Board Enactment Cap 137 – upon certain terms and conditions as prescribed by Section 44 (i) and that unless these terms or conditions are complied with the Court's jurisdiction does not arise."*

14. I find that the Court of Appeal was right in holding that the sum specified in the Notice dated 13.3.1991 issued by the Respondent was final and conclusive because the Appellant failed to appeal in the manner expressly provided for in sections 144 and 145 of the Act.
15. The other issue is whether "*plant and machinery*" should be included or not in assessing the "*annual value*" under section 2 of the Act.
16. Learned counsel for the Appellant submitted that under section 2 of the Act, it exempts machinery producing "*articles*". He submitted that electricity is an "*article*". Reference was made to the Factories and Machinery Act 1967 where under section 3, it

defines “articles” to include electricity. (See the case of **Majlis Perbandaran Seberang Perai v. TNB [2005] 1 MLJ FC**). It was submitted that the Respondent’s valuation which took into account the value of machinery would therefore be null and void. That being so, therefore the Appellant could go by way of review under Order 53 of the Rules of the High Court 1980 and not by way of objection under section 144, and then appeal under section 145 of the Act.

17. To counter this argument, learned counsel for the Respondent responded by submitting that it was open to the Appellant to go either by appealing under section 145 of the Act or go by judicial review under Order 53 of the Rules of the High Court. But he submitted, in this case the Appellant did neither. So the Respondent had to take court proceedings to recover the arrears under section 147 of the Act. Therefore the Appellant would have to face the suit. If the Appellant had objected and appealed the Court of Appeal could then have decided on the issue whether the Respondent valuation was ultra vires or not.

**Re: Issue Estoppel**

18. Learned counsel for the Appellant also submitted that there was an agreement between the parties, to resolve the controversy over the “annual value” i.e. whether the power plant machinery was to be included or not in the valuation, by deciding to abide by the decision of the Land Tribunal which was specifically set up by the Government to decide on the rates payable by the Appellant in five local authorities around

the country. Learned counsel therefore submitted the Respondent is estopped because of the continued negotiations between the Appellant and the Respondent over the issue of valuation.

19. Learned counsel for the Respondent then responded by referring to the Grounds of Judgment of the Court of Appeal at page 50 as follows:-

*“The amended bills were issued due to the arrangement and agreement between the parties to follow the decision of the said Tribunal in Case 1/94. I have earlier held that such an arrangement or agreement is prohibited by the doctrine of ultra vires and hence any consequence of that would also be bad in law. To admit estoppel under such circumstances would have the effect of nullifying the statutory provisions of the Act. Further, the evidence showed that although prolonged negotiations did take place between the parties for a substantial period of time, the negotiations did not result in a written agreement duly executed by the parties. Be that as it may, it must be remembered that an estoppel is only a rule of evidence and could not avail to release the respondent from an obligation to obey the Act nor could it enable the respondent to escape from statutory obligation to pay the rate imposed by the appellant. The respondent’s liability as a ratepayer is not a private debt but a public obligation.”*

20. It would appear from the chronology of events, that the various meetings and correspondence between the Appellant and the Respondent did not end up in any agreement being drawn up. At most, what was agreed between the parties was regarding interim payments only to be paid by the Appellant and to leave it to the Land Tribunal to study the matter regarding the “plant and machinery”.
21. Further, according to the Witness Statement of Haji Abdul Aziz Bin Awang at the trial in the Kuala Lumpur High court, he was the Secretary of the Respondent at the relevant time and was handling the file pertaining to this case. According to his statement, he said that the Appellant and the Respondent after two meetings, came to an arrangement whereby both parties essentially agreed to a part payment of the assessment that was due and payable by the Appellant to the Respondent pending the outcome of the said Land Tribunal’s decision. That both parties agreed to review and consider the Land Tribunal’s decision, but certainly did not agree to be bound by it.
22. In **Southend-on-Sea Corporation v. Hodgson (Wickford) Ltd. [1961] 2 All ER 46**, Lord Parker CJ opined at page 48, that:-

*“estoppel cannot operate to prevent or hinder the performance of a statutory duty or the exercise of a statutory discretion which is intended to be performed or exercised for the benefit of the public or a section of the public.”*

23. Thus a corporation on which there is imposed a statutory duty to carry out certain acts in the interest of the public cannot preclude itself by estoppel in pari materia from performing its duty and asserting legal rights accordingly. (See **Maritime Electric Co., Ltd. v. General Dairies, Ltd. [1937] A.C. 610.**) This principle of estoppel as laid down in the **Maritime** case (supra) was referred to with approval by the Federal Court in the case of **Public Textiles Bhd. v. Lembaga Listrik Negara [1976] 2 MLJ 58.**
24. Based on the above I find that Y.A. Mohd. Ghazali JCA in delivering the judgment of the Court of Appeal had not erred when in his judgment at page 32, his Lordship said as follows:-

*“I am of the view that the doctrine of estoppel cannot apply to the fact of the case before him. The rates imposed by the appellant vide the said Notice has become due and payable as from 1 July 1991 under the Act and to admit estoppel against the appellant, it being a public authority, would have the effect of nullifying the provisions of the Act. To admit estoppel against a public authority, the Court must first of all determine the nature of the obligation imposed by the Act on the public authority and then consider whether the admission of an estoppel under the circumstances of the case would nullify the statutory provisions.”*

25. In the case of **Majlis Perbandaran Seberang Perai v. TNB** (supra), the appeal against the judgment of the High Court directly to the Federal Court was by virtue of section 145 (5) of the Local Government Act which provides that either party may appeal but only on questions of law. In that case the Federal Court allowed the application for leave to appeal on the following questions of law:-

*“(a) whether ‘electricity’ is an article for the purpose of determining the annual value of a power station in accordance with the definition of ‘annual value’ in s 2 of the Local Government Act 1976 (‘the LGA’);*

*(b) whether the machinery referred to in the proviso at (b) to the definition of ‘annual value’ in s 2 of the LGA refers to machinery that is not integrated with the ‘land’ and/or ‘building’ as defined in s 2 of the LGA; and*

*(c) whether the generating plant and machinery present in a power station are structure within the definition of ‘building’ in s 2 of the LGA and accordingly, are to be taken into account in determining the annual value of the said power station.”*

26. The issue of failure to comply with the express statutory provisions of sections 144 (3) and 145 (1) of the Act was not

touched upon by this Court in that case. Nor was the issue of estoppel or judicial review discussed therein.

27. For the above reasons, I would therefore answer Questions 1, 2 and 3 in the affirmative. In view of that I feel the need to answer the remaining questions becomes irrelevant. I would therefore dismiss the appeal with costs.

Date: 21<sup>st</sup> May, 2009

Signed.

**(DATO' HJ. HASHIM BIN DATO' HJ. YUSOFF)**

Judge

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