

DALAM MAHKAMAH PERSEKUTUAN MALAYSIA

PUTRAJAYA

RAYUAN SIVIL NO: 01-6-2007(N)

ANTARA

SINGAPORE PARA RUBBER

ESTATE LIMITED

... PERAYU

DAN

PENTADBIR TANAH DAERAH

DAERAH REMBAU, NEGERI SEMBILAN

... RESPONDEN

KORAM:

ALAUDDIN MOHD. SHERIFF, HBM

HASHIM HAJI YUSOFF, HMP

ZULKIFLI AHMAD MAKINUDDIN, HMP

JUDGMENT OF THE COURT

INTRODUCTION

1. This is an appeal against the decision of the Court of Appeal dated 23 January, 2007.

2. The Court of Appeal dismissed the Appellant's appeal against the decision of the Seremban High Court (in Originating Motion No. 25-2-2003) which refused to grant an enlargement of time under section 38(4) of the Land Acquisition Act 1960 ('the Act') to enable the Appellant to file an objection under Form N pursuant to section 38(1) of the Act.

3. On 16 July, 2007 the Appellant obtained leave to appeal from the Federal Court on the following question –

“Whether the non-compliance of the statutory requirements under the Land Acquisition Act 1960 ('the Act') in particular, paragraph 1(1)(b) and paragraph 2(d) of the First Schedule of the Act and Article 13(1) of the Federal Constitution by the Land Administrator, in making the award under section 14 of the Act, amounts to special circumstances under section 38(4) of the Act.”

BACKGROUND FACTS

4. The Appellant is the registered proprietor of Lot 1322, Mukim Pedas, Daerah Rembau, Negeri Sembilan Darul Khusus held under Certificate of Title No. 428.

5. Lot 1322 constitutes part of the Appellant's land which forms part of the Perhentian Tinggi Estate in Negeri Sembilan.
6. On or about 7.6.2002, the Manager of Perhentian Tinggi Estate had received a Form E (Intended Acquisition: Notice Of Enquiry) dated 6.6.2002 from the Respondent. According to the form E, the proposed acquisition was for 8.094 hectares of the total size of the lot which is 71.530 hectares.
7. As a result of the enquiry held on 3.7.2002, the Respondent had issued Form H – (Notice of Award and Offer of Compensation) dated 4.7.2002 wherein the Appellant was awarded compensation amounting to RM898,500.00.
8. The Appellant received the offer under protest. The Manager of Perhentian Tinggi Estate had also informed the Respondent that the Appellant objected to the compensation offer.
9. Subsequently vide letter dated 6.8.2002, the Respondent had forwarded to the Appellant Form N – (An application for an objection to be referred to Court) to be filled up and returned to the Respondent with a deposit of RM 3,000.00.
10. The Respondent did not at any time inform the Appellant that Form N was to be returned to the Respondent within 6 weeks from the date of the award.

11. The Appellant had appointed Messrs. Khong and Jaafar to prepare a valuation report on part of Lot 1322 which was subject to the acquisition exercise.

12. Based on the valuation report by Messrs. Khong and Jaafar the reasonable compensation award would be RM2,139,302.00.

13. There is a difference of RM1,240,802.00 between the amount of compensation awarded by the Respondent (i.e. RM898,500.00) and the amount valued by Messrs. Khong and Jaafar (i.e. RM2,139,302.00).

14. In mid December 2002, upon consultation with the Appellant's solicitors Messrs. Presgrave and Matthews the Appellant was advised that section 38 of the Act requires Form N to be forwarded to the Respondent within 6 weeks from the date of the Respondent's award together with the deposit of RM3,000.00.

15. Realising they were out of time the Appellant then filed an application (dated 6 January 2003) at the Seremban High Court for an enlargement of time of two weeks from the date of the order to be given for the Appellant to file Form N pursuant to Section 38(1) of the Act.

THE HIGH COURT

16. Before the High Court the grounds proffered by the Appellant supporting the application are simply these:

- (i) The Appellant at the enquiry held by the Land Administrator had already made it known that the offer was unacceptable;
- (ii) The Appellant was not informed by the Respondent of the time frame for them to refer their objection to the Court;
- (iii) The valuation report on the said land was only ready on 18.9.2002; and
- (iv) The delay in filing Form N was inadvertent.

17. Having heard arguments by learned Counsel from both parties and considered the relevant law, the learned Judge concluded thus:

“Reverting back to the present case and the grounds preferred supporting the application, with the principles enunciated in the above-mentioned cases in the fore-front of my mind I am unable to see how those grounds could go through the filtration of conditions and situations for them to be aptly described as “special circumstances”.

18. Further in the judgment the learned Judge observed:

“In Lau Cher Hian case, on the facts of the case, the Federal Court came to a finding of facts that due to certain slip-up by the respondent there was hardship caused to a party who was not in the least at fault. This was not the

situation in our present case. On the facts laid before the court I can find no reason to fault the respondent for the inability of the applicant to file form N on time. It was the applicant themselves who had been guilty of indolence and perhaps indifference too. This conduct of the applicant to my mind had disentitled them to any indulgence that would warrant the court to exercise its discretion to tamper the rigidity of the law.”

19. For the reasons stated above the learned Judge dismissed the application with costs.

THE COURT OF APPEAL

20. Dissatisfied with the decision of the High Court the Appellant took the matter to the Court of Appeal.

21. The same arguments that were canvassed before the High Court were put forward in the appeal by both learned counsel.

22. The appeal heard by the Court of Appeal started off with the acceptance by both parties that an objection to the award of the Land Administrator required the submission of Form N to the respondent within 6 weeks from the date of the award.

23. The Court of Appeal observed that the Court has the discretion to enlarge that period as prescribed by S.38(3)(a) of the Act. It then referred to the cases of **Penang Development Corporation**

v Collector of Land Revenue [1976] 1 MLJ 89 and Senapi bin Long v Pentadbir Tanah Daerah [1994] 1 MLJ 459.

24. The Court of Appeal further observed that for the Appellant to succeed it had to establish that there existed special circumstances to warrant the court to exercise its discretion. In other words the onus was on the Appellant. The discretion to be exercised by the court was not absolute and unqualified and had to be exercised sparingly.

25. In upholding the learned Judge's finding the Court of Appeal had this to say –

“Having sifted the evidence we were satisfied that the trial judge had not erred in holding that the grounds preferred by the appellants could not be described as special circumstances. Before us the same arguments were ventilated e.g. the non-notification of the dateline for appeal by the respondent, a commission of a bona fide mistake on its part/ignorance of law, undue hardship to the appellant, and no fault on the part of the appellant.”

26. To the complaint by the Appellant that it was not informed by the Respondent of the 6 weeks period to submit Form N the Court of Appeal said that upon perusal of s.16 of the Act, it merely legislated that the Land Administrator shall prepare and serve on each person interested in such land a notice in Form H. In it would

be the written award. Nothing was included within the four walls of s.16 or in Form H that the Land Administrator was under a duty to inform the Appellant of the submission of Form N. That being so the Land Administrator was blameless as it had complied with all the statutory requirements.

27. Explaining further the complaint by the Appellant, the Court of Appeal had this to say –

“To appreciate the complaint of the appellant a scrutiny of section 38 and Form N would not be inappropriate. With respect we were unable to identify even a single suggestion in that section that it was incumbent upon the Land Administrator to inform the appellant of the dateline of the impugned Form N. A thorough scrutiny of Form N itself bore the same fruits. The wordings of section 38 and Form N were crystal clear in that the onus was on the appellant to do the needful, and for the Land Administrator to comply with the directions of the appellant, after having received the completed form.”

28. Further down in the judgment the Court of Appeal said –

“A cursory glance of the provision of section 38(1) as printed in the supplied Form N, whether by an employee of the appellant or a more qualified person, would have alerted that reader of the statutory requirements. Instead here, the appellant was nonchalant, and had preferred to wait for the valuation report, which came on 18.9.2002, about a month

after the expiry of the objection date. Either the appellant was just too indolent to read the contents of the form, or after reading it and being overly confident, had ignored it.”

29. Reflecting on some of the main issues submitted by the Appellant the Court of Appeal came to the following findings:-

(i) There was no confusion on their part that it was the bounden responsibility of the Appellant to file the statutory Form N on time i.e. within 6 weeks of the receipt of the Land Administrators’ award;

(ii) Even though in the course of the appeal attempts were made to convince them that the Appellant was unaware of the legal and statutory requirements, that submission was unacceptable. Instead of approaching that ‘ignorance of the law’ concept in an apologetic and refined manner, the Appellant had instead indulged in the blame game;

(iii) The Respondent was under no statutory duty to inform the Appellant of the filing of Form N and its dateline;

(iv) The Respondent was blameless in its conduct, and had in fact undertaken the extra effort of posting the forms to the Appellant, but regrettably had received brickbats in return;

(v) There was nothing in the behaviour of the Respondent that could be construed as 'inequitable', and which had caused the delay in the filing of that impugned form by the Appellant;

(vi) The mere difference of opinion by the Government and the Appellant's private valuer, as regards the value of the land in the circumstances of this case, was not a special circumstance; and

(vii) The undisguised indolence and nonchalance on the part of the Appellant was too overwhelming to deserve even an ounce of the court's sympathy.

30. Having considered the submissions of both parties in their entirety, the Court of Appeal was unconvinced that the Appellant had successfully established a case that deserved the exercise of the Court's discretion.

31. Finally, the appeal was dismissed with costs.

THE APPEAL

32. As stated earlier in the judgment (see para 3 above), the only question posed for our determination in this appeal is "whether the non-compliance of the statutory requirements under the Land Acquisition Act 1960 ('the Act') in particular, paragraph 1(1)(b) and paragraph 2(d) of the First Schedule of the Act and Article 13(1) of the Federal Constitution by the Land Administrator in making the

Award under section 14 of the Act, amounts to special circumstances under section 38(4) of the Act.”

33. Before us, learned counsel for the Appellant submitted that the sum of RM898,500.00, the award stated in Form H dated 4.7.2002 was not correct as it was based on the market value determined as at 19.2.2002 which was the date mentioned in the Government valuation report.

34. According to learned counsel the correct date for the valuation of the said land should be 11.4.2002 i.e. the date mentioned in the Gazette pursuant to s.8 of the Act.

35. That being the case it is contended that the award made by the Respondent in this matter is contrary to and not in accordance with the statutory requirements of the Act in particular section 12 (1) and paragraph 1(1)(b) and 2(d) of the First Schedule of the Act and as such the Respondent is in breach of the duty imposed upon him.

36. The words in section 12(1), paragraph 1(1)(b) and 2(d) of the First Schedule of the Act are clear and unambiguous and therefore effect should be given to them.

37. In support of his submission learned counsel for the Appellant referred to the cases of **Foo Yoke Ling & Anor v Television Broadcasts Ltd & Ors. [1985] 2 MLJ 35; Tan Sung Mooi v Too Miew Kim [1994] 3 MLJ 117; Chor Phick Har v Farlim**

Propertities Sdn Bhd [1994] 3 MLJ 345; Pemungut Hasil Tanah Daerah Barat Daya (Balik Pulau) Pulau Pinang v Kam Gin Paik & Ors [1983] 2 MLJ 390; Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v Ong Gaik Kee [1983] 2 MLJ 35 and Megat Najmuddin Dato' Seri (Dr) Megat Khas v Bank Bumiputra Malaysia Bhd. [2002] 1 MLJ 385.

38. The other issue raised by learned counsel for the Appellant is that as a result of the non-compliance of the Act, the said award would be contrary to Article 13 of the Federal Constitution and under its inherent jurisdiction this Honourable Court can set aside the said award and direct the Respondent to conduct a 'full enquiry' pursuant to section 12 of the Act into all aspects of the claim to determine the proper market value and quantum of compensation for the land acquired.

DECISION

39. The question posed for our determination speaks of "non-compliance of the statutory requirements under the Act".

40. The alleged non-compliance is in respect of the valuation report prepared by the Jabatan Perkhidmatan dan Penilaian (JPPH), the Government valuer, in which the date for determining the market value of the land to be acquired was stated to be 19 February 2002 instead of 11 April 2002 (the date of Gazette under section 8 of the Act).

41. The proviso to subsection 12 (1) of the Act provides 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.

42. The written opinion or report provided under the proviso to subsection 12(1) only acts as a guidance to the Land Administrator. What the Land Administrator is required to do is to make a 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.

43. As a matter of fact, the Land Administrator is not bound to accept the valuation report prepared by the Government valuer which merely acts as a guide in determining the award of compensation.

44. In this case, based on the facts, the award was made on 3 July 2002 and Form H was issued a day later i.e. 4 July 2002.

45. Therefore, in our view, the award made by the Land Administrator was proper and in compliance with paragraph 1(1)(b), and 2(d) of the First Schedule of the Act.

46. It would appear that the Appellant's objection here is indeed in respect of the sufficiency of the award.

47. Objections as to its sufficiency are permitted as section 37 of the Act allows it, and in this case, on the amount of the compensation.

48. What the Appellant had to do further was to notify the Respondent that it had objections and request that the matter be referred to the court. That notifications had to be in a written application and in a particular form i.e. Form N. Thereafter only shall that completed Form N be forwarded to the court by the Land Administrator. This is a requirement under section 38(1).

49. The failure to fill in the form, and to send it within the prescribed period of 6 weeks was a procedural insufficiency which could be rectified conditional upon court's interference vide section 38(4).

50. In order for the Appellant to succeed under section 38(4) it had to establish that there existed special circumstances to warrant the court to exercise that discretion. The onus therefore was on the Appellant.

51. The discretion to be exercised by the court was not absolute and unqualified and had to be exercised sparingly (see **Sungei Bongkah Estate Sdn. Bhd. V. Pentadbir Tanah Daerah Kuala Muda [1995] 1 CLJ 400**).

52. In this case both the High Court and the Court of Appeal agreed that no special circumstances existed and the application for enlargement of time was dismissed.

53. Having read and re-read the records before us, we were satisfied that the trial judge and the Court of Appeal had not erred in holding that the grounds preferred by the appellants could not be described as special circumstances.

54. We are also of the view that this is not a case where Article 13 of the Federal Constitution can be said to be infringed as suggested by the Appellant in the question posed.

55. Article 13 of the Federal Constitution was raised as an issue in the case of **Keck Seng (Malaysia) Berhad v. Pentadbir Tanah, Johor Bahru [1996] 3 CLJ 573.**

56. There the court held (at pages 586 and 587) as follows:

“Within the same context, the plaintiff has also contended that it is contrary to Article 13(2) of the Federal Constitution to award them the market value of Lot 487, as assessed by the defendant, as at the date of the first notification as the value of Lot 487 has substantially increased by virtue of the “zone changes” as mentioned earlier. Article 13(2) of the Federal Constitution reads:

“No law shall provide for the compulsory acquisition or use of property without adequate compensation:

With respect, I cannot see the relevance of raising Article 13(2). This article lays down the constitutional standard of an expropriatory law and has no bearing on the issue before me which is whether the market value of Lot 487 should be assessed as at the date of the first notification or the third notification. The Act itself is not being challenged and this Article is therefore irrelevant for the purpose of this action. I do not think it is necessary for me to delve further into this” (see also **Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v. Ong Craik Kee [1983] 2 MLJ 35**).

57. It follows, therefore, that if all the provisions of the Act have been duly complied with and the compensation due is also offered, the land owners cannot complain of any violation of Article 13 of the Federal Constitution.

58. Even assuming for a moment that there was non-compliance of the statutory requirements under the Act in particular paragraph 1(1)(b) and 2(d) of the First Schedule by the Land Administrator while making the award under section 14, it is our considered opinion that the non-compliance have not resulted in any serious injustice or prejudice to the Appellant. The difference in the date of valuation i.e. from 19 February 2002 to 11 April 2002 is only 52 days. In that short period we do not think that the value of the scheduled land would have increased significantly (see **Lau Kieng**

**Kong & Ors v. Minister for Resources Planning & Anor [1994]
3 MLJ 443.**

59. Any prejudice or injustice, if at all, caused to the Appellant is actually the result of their own attitude.

60. Had the Appellant remained vigilant in making the application for enlargement of time, they would have had the opportunity to ventilate their case before the High Court.

61. But the Appellant had chosen to remain nonchalant and treated their right with apathy.

62. It must be emphasised that this was no ordinary Appellant but a sophisticated globe trotting company with the resources to acquire professional advice at the snap of its hypothetical fingers.

63. What amounts to special circumstances under section 38(4) of the Act have been the subject of various decision of our courts previously. We perceive that this is an area of law that is trite and settled (see **Lau Cher Hiam v. Collector of Land Revenue, Muar [1971] 1 MLJ 96; Lau Tin v. Collector of Land Revenue [1960] 26 MLJ 82**).

CONCLUSION

64. Based on the above reasons we are unanimous that the answer to the above question should be in the negative. In the

result this appeal is dismissed with costs. We would also order the deposit to be paid to the Respondent to account for taxed costs.

65. My learned brothers Hashim Yusoff and Zulkifli Ahmad Makinuddin FCJJ have seen this judgment in draft and had expressed their agreement with it.

Dated: 24 October 2008

(ALAUDDIN MOHD. SHERIFF)
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