

GROUND OF JUDGMENT

INTRODUCTION

1. This was an appeal against part of the decision of the Land Reference Court delivered on 30.10.2014.
2. The appeal was premised on the grounds that the Land Reference Court had acted in excess of its jurisdiction when it proceeded to set aside part of the Respondent's/Land Administrator's award for compensation.
3. For ease of reference, the Applicant and the Respondent at the Land Reference Court will be referred to as the Appellant and the Respondent respectively in these grounds of judgment.

BRIEF FACTS

4. The Appellant is the registered proprietor of 158.7436 hectares of land held under Lot 2743, Grant 72467 in Mukim of Linggi, District of Port Dickson, State of Negeri Sembilan Darul Khusus ("the land").
5. Vide the Negeri Sembilan Gazette No. 211 dated 28.3.2013, 6.9223 hectares of the Appellant's land were compulsorily acquired by the State Authority of Negeri Sembilan for the purpose of "Projek bagi Mengatasi Ancaman Keruntuhan Tanah dan Pembesaran Kolej Kemahiran Tinggi, MARA, Daerah Port Dickson, Negeri Sembilan".

6. Pursuant to an enquiry under section 12 of the Land Acquisition Act 1960 ("LAA") on 15.5.2013, the Respondent awarded compensation in accordance with section 14 (1) of the LAA to the Appellant in the amount of RM 3, 002, 791.08 as compensation for land acquired and RM 3, 170, 004.42 as compensation for injurious affection. The total amount of compensation was RM 6, 172, 795.50.

7. The Appellant accepted the Respondent's award under protest and without prejudice to its right to appeal against the quantum of compensation that had been awarded. On 21.12.2013, the Appellant lodged its Form N requesting the Respondent to refer its objection as to the insufficiency of the quantum of compensation awarded to the Land Reference Court.

8. The Respondent then referred the Appellant's objection to the Land Reference Court vide Form O on 2.1.2014 and it was registered at the High Court of Seremban under Land Reference No. 15 – 1 – 01 / 2014 ("the Land Reference").

9. At the hearing of the Land Reference, counsel for the Respondent submitted that the Respondent's award for compensation for injurious affection in the sum of RM 3, 170, 004.42 ought to be reviewed and set aside.

DECISION OF THE LAND REFERENCE COURT/HIGH COURT

10. The Land Reference Court vide Order dated 30.1.2014 (pages 352-353, Supplementary Record of Appeal) had decided as follows:

10.1 the Appellant's claim for increase of compensation for value of land was dismissed and the award of the Respondent was maintained;

10.2 the Appellant's claim for increase of compensation for "injurious affection" was dismissed;

10.3 the Respondent's award dated 14.10.2013 awarding RM 3, 170, 004.42 as "Injurious Compensation" was set aside; and

10.4 the Appellant was ordered to return the compensation for injurious affection to the Respondent.

11. The Appellant being dissatisfied with the decision of the Land Reference Court viz the orders in paragraphs 10.2, 10.3 and 10.4 above filed this appeal.

THE APPEAL

12. If this Court was with the Appellant in this appeal, the Appellant had asked for an order that the Appellant's objection as to the insufficiency of the Respondent's award for injurious affection be remitted back to the Land Reference Court for a rehearing with different assessors in relation to the said objection.

13. The Appellant's first ground of appeal was that the Land Reference Court had acted in excess of its jurisdiction when it proceeded to set aside the Respondent's award for compensation for injurious affection in the absence of Form N objecting to the validity or the excessiveness of that amount of compensation.

14. It was the Appellant's contention that neither the State Government nor the corporation (MARA), on whose behalf the subject land was acquired, had lodged an objection by way of Form N, contending that the Respondent's award for injurious affection was wrong, invalid or excessive. The Appellant argued that in the absence of any "objection" lodged by the said persons interested as to the purported excessive award and its validity, the Land Reference Court had acted in excess of its jurisdiction when it proceeded to hear and decide on the injurious affection matter.

15. The Appellant further argued that the Land Administrator/Respondent could not contend that he is "persons interested" as defined under section 2 as the Land Administrator's role before a Land Reference Court could be perceived as the Defendant where in the event that the Applicant/Appellant succeeded in showing that the Land Administrator's award was inadequate, then the Land

Administrator must support his award by producing evidence. If the Applicant failed to produce evidence to show that the award was inadequate, the only outcome permitted by the LAA is for the Land Reference Court to either dismiss the objection or maintain the Land Administrator's award, but not to set aside the Land Administrator's award.

16. We, however, were of the view that the Land Reference Court had not acted in excess of its jurisdiction by setting aside the award of the Respondent for injurious affection despite the lack of any objection filed in Form N. We were of the view that the High Court, with the assistance of the assessors, as the Land Reference Court, had the jurisdiction and the power to evaluate the award given by the Respondent. This was due to the fact that the award by the Respondent was merely an offer.

17. The word "offer" was clearly used in Form H and also by the Respondent as follows:

" Borang H
(Seksyen 16)

PEMBERITAHU PEMBERIAN DAN **TAWARAN PAMPASAN**

...

2. Pada menurut pemberian ini maka saya dengan ini **menawarkan** tuan/puan wang sebanyak **RM6,172,795.50** iaitu jumlah yang dinyatakan di bawah ini sebagai pampasan penuh bagi kepentingan tuan/puan atas tanah ini."

Reference was made to the case of **Universiti Malaya & Anor v Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur** [2003] 3 MLJ 185, as per Justice Abdul Hamid Said, where the learned Justice in his grounds of judgment, at page 190, made a reference to one Indian High Court case of **Asst Development Officer Bombay v Tayaballi Allibhoy Bohori** 1933 AIR Bom 361 (Bombay) where it was held that the proceedings before the acquiring officer are ‘...administrative rather than judicial’. The said High Court went on to say that the “...acquiring officer’s award is, of course, strictly speaking not an award at all, but an offer. It is based on an inquiry and inspection ...”

18. When the reference was made to the Land Reference Court by the filing of Form O by the Respondent after the objection by the Appellant to the offer made to the Appellant, parties were deemed to have submitted themselves to the jurisdiction of the Land Reference Court and thereafter it was under the purview of the Land Reference Court to hear the Appellant's Application and to determine the appropriate award to be given, if any.

19. The Privy Council in the case of **Collector of Land Revenue v Alagappa Chettiar** [1971] 1 MLJ 43 had, at page 44, left side, affirmed that the hearing at the High Court is the actual forum where the High Court

shall have the adequate and proper jurisdiction to determine the adequate compensation for the Appellant -

“Although upon referring an objection to the High Court for its determination the collector is required to state the grounds on which the amount of compensation was determined, the reference to the High Court is not in the nature of an appeal from the Collector's award. It is in the nature of an original hearing in which the applicant is the plaintiff and the collector the defendant. The onus lies upon the applicant to satisfy the court by evidence that the amount of compensation awarded is inadequate; and the collector is entitled to call evidence in support of the amount awarded. His evidence is not confined to supporting the award upon the grounds stated in the notice of reference. He may amplify them or justify the amount awarded on other grounds. The judge, with the assistance of the advice proffered to him by the assessors, makes his own estimate of the amount of compensation upon the evidence adduced before him...”

20. Thus, guided by the above authorities, we observed that the Land Reference Court had not in any way acted beyond the scope of its powers by setting aside the award for injurious affection.

Section 40D(3) read together with Section 49(1) of the LAA.

21. Despite the Appellant's submission that this present appeal dealt with the question whether the Land Reference Court had acted in excess of its jurisdiction and whether a Land Administrator can review his own award, we must state unequivocally that this whole appeal was premised upon the compensation payable. Therefore, pursuant to the provisions of section 40D(3) read together with section 49(1) of the LAA, this present appeal was barred.

22. We refer to section 40D of the LAA which provides as follows:

“Section 40D Decision of the Court on compensation

40D. (1) In a case before the Court as to the amount of compensation or as to the amount of any of its items the amount of compensation to be awarded shall be the amount decided upon by the two assessors.

(2) Where the assessors have each arrived at a decision which differs from each other then the judge, having regard to the opinion of each assessor, shall elect to concur with the decision of one of the assessors and the amount of compensation to be awarded shall be the amount decided upon the assessor.

(3) Any decision made under this section is final and there shall be no further appeal to a higher Court on the matter.”

23. Reference is further made to the proviso to subsection 49(1) of the LAA where it is stated that –

"Appeal from decision as to compensation

49. (1) Any person interested, including the Land Administrator and any person or corporation on whose behalf the proceedings were instituted pursuant to section 3 may appeal from a decision of the Court to the Court of Appeal and to the Federal Court:

Provided that where the decision comprises an award of compensation there shall be no appeal therefrom.”

24. Meanwhile, the Federal Court in the case of **Syed Hussain Syed Junid & Ors. v Pentadbir Tanah Negeri Perlis** [2013] 9 CLJ 152 discussed the application of section 40D, at pages 158-159, as follows:

“[17] Thus, while s.49(1) of the LAA allows any interested person to appeal against the decision of the High Court to the Court of Appeal, s.40D appears to have restricted the ambit of such an appeal. Section 40D(3) clearly provides that any decision as to the amount of compensation awarded shall be final and there shall be no further appeal to the higher court on the matter. This non-appealable provision of s.40D(3) is further reinforced by the proviso of s.49(1) which reads:

Provided that where the decision comprises an award of compensation there shall be no appeal therefrom.

...
[20] With the introduction of s.40D and the amendment to the proviso of s.49(1), the intention of the Parliament is very clear ie, to preclude any party from appealing against the order of compensation made by the High Court...”

See also Federal Court case of **Calamas Sdn. Bhd. v Pentadbir Tanah Batang Padang** [2011] 5 CLJ 125; Court of Appeal case of **Korih Sudar v Pentadbir Tanah Kuala Langat** [2013] 5 CLJ 571.

25. This Court was of view that the plain reading of the above provisions clearly stipulated that any decision made under this section is final and there shall be no further appeal to a higher court on the matter.

26. We were of the considered view that this Court must give effect to the clear provisions of the law. As such, we were of the view that the Appellant was precluded from appealing against the compensation awarded by the learned High Court Judge. We were also in agreement that this appeal was not maintainable by reason of the express provisions of section 68(1) (d) of the Courts of Judicature Act 1964 which clearly states that no appeal shall be brought to the Court of Appeal, inter alia, where, by any written law for the time being in force, the judgment or order of the High Court is expressly declared to be final. The decision on appeal before us was in fact a final decision. Thus, this appeal could not stand.

CONCLUSION

27. For the reasons given, we were of the unanimous view that the appeal be dismissed with costs of RM15,000.00 and the deposit to be

refunded to the Appellant. The Order of the High Court was hereby affirmed.

sgd

(UMI KALTHUM BINTI ABDUL MAJID)
Judge
Court of Appeal Malaysia
Putrajaya

Dated: 12.10.2017

Counsels/ Solicitors

Solicitors for the Appellant : G. Rajasingam together with Nik Azila Shuhada & R. Aswath from Messrs. Shearn Delamore & Co.

Solicitors for the Respondent : Rozaimah Bt Adnan together with Roziaton Mohd Nordin and Mohd Fairuz Iskandar from State Legal Advisor's Office of Negeri Sembilan.