

**DALAM MAHKAMAH TINGGI MALAYA DI SHAH ALAM  
DALAM NEGERI SELANGOR DARUL EHSAN, MALAYSIA  
SAMAN PEMULA NO.: BA-24NCVC-52-01/2019**

**ANTARA**

**WEST COAST EXPRESSWAY SDN BHD**

**...PLAINTIF**

**DAN**

**PENTADBIR TANAH DAERAH KLANG**

**...DEFENDAN**

1] The plaintiff is the concession company of the West Coast Expressway filed this Originating Summons seeking an extension of time to file an objection (Form N) in respect of a land enquiry. Having heard the application, I allowed the same. The defendant Pentadbir Tanah Daerah Klang has filed an appeal against the said decision.

2] An enquiry was held by the Land Administrator to determine the compensation to be paid for Lot 913 Mukim Klang which had been acquired for the construction of the expressway. The plaintiff claims that being the paymaster it has the right to lodge the objection via Form N. Undisputedly there is delay in filing Form N. The date of award was on 25.9.2017 whereas this application was filed on 11.1.2019.

3] The learned counsel for the plaintiff contended that the award by the Land Administrator was wrong because it took into account the illegal structures built thereon. The land which by virtue of section 53(2) of the National Land Code (“NLC”) is to be used for agricultural, hence the building found therein being illegal, ought not to be compensated. By including the illegal structure and compensation to the tenants of the illegal building, the award was wrong. And this fact was admitted in a meeting convened by the Ministry of Works on 28.4.2016 to discuss the issue of compensation pertaining to the acquisition of lands (including the subject land) that would have issues with subparagraph 1(3A) of the First Schedule of the Land Acquisition Act 1960 (“Act”).

4] In addition to that, the learned counsel for the plaintiff also pointed out that award was also given in respect of the valuer’s fee. The other reason given by the learned counsel was that plaintiff was having financial constraints. He submitted that all these would amount to special circumstances under subsection 38(4) of the Act and the court should consider to enlarge the time to enable the plaintiff to file Form N.

5] The learned Federal Counsel submitted that numerous factors had to be considered in awarding the compensation e.g. objection from the occupiers, political interference, refusal of the occupiers to vacate, loss of employment, to name a few. During the meeting held by the Ministry of Works these factors were taken into account and that the building had been there for quite sometime and no notice had been issued pertaining to its illegality, thus far.

6] In addition, he submitted that the occupiers/tenants had paid all the necessary taxes and they should rightly be compensated. The amount of compensation was in fact below the market value. It was further submitted that it would be contrary to Article 13 of the Federal Constitution if no compensation was given for the building and that the tenants were also “person interested” under section 2 of the Act. With respect to the valuation fee, the learned Federal Counsel pointed out that this was permissible under subsection 14(5) of the Act. It was further contended that the fact that the plaintiff was not present during the land enquiry was not in issue as the plaintiff was represented by Lembaga Lebuhraya Malaysia (“LLM”). He concluded that there were no special circumstances in this application.

### **Analysis and decision**

7] It is not disputed that the acquisition of Lot 913 was for public purpose under subsection 3(1)(a) of the Act and acquired by LLM. Section 2 of the Act defines person interested as:

“person interested includes every person claiming an interest in compensation to be made on account of the acquisition of land under this Act, but does not include a tenant at will.”.

8] Section 37(3) of the Act provides:

“Where the total amount of any award in respect of any scheduled land exceeds fifteen thousand ringgit any Government or any person or corporation

**undertaking a work** which in the opinion of the State Authority is of public utility, and on whose behalf such land was acquired pursuant to section 3, shall be deemed to be a person interested in any scheduled land under subsection (1), and may make objections on any of the grounds specified in subsection (1).”.

(emphasis added)

9] In **Cahaya Baru Development Berhad v. Lembaga Lebuhraya Malaysia [2011] 2 MLJ 729**, Zulkefli FCJ (as he then was) speaking for the Federal Court referred to and agreed with the Indian Supreme Court in *Himalayan Tiles & Marble (P) Ltd v Francis Victor Coutinho (dead) by LRS & Ors* AIR 1980 SC 1118 p 474at p 1121, which held as follows

“Thus, the preponderance of judicial opinion seems to favour the view that the definition of 'person interested' must be liberally construed so as to include a body, local authority, or a company for whose benefit the land is acquired and who is bound under an agreement to pay the compensation. In our opinion, this view accords with the principles of equity, justice and good conscience. How can it be said that a person for whose benefit the land is acquired and who is to pay the compensation is not a person interested even though its stake may be extremely vital?”.

10] Hence, the plaintiff is a person interested by virtue of being the paymaster.

11] It was not stated in the affidavits filed by both parties whether Form E was served on the plaintiff. Be that as it may it is quite clear the representative of the plaintiff was absent during the enquiry and the

defendant did not refute the averment of the plaintiff that the latter was not informed of the enquiry. It is to be noted that the plaintiff did not complain about this in its affidavits however, it did aver that it was not present during the meeting on 28.4.2016. The award was handed down by the Land Administrator on 25.9.2017. As said above the authorities were aware of the illegal structures and that the 17 lots in Package 3 were in contravention of the conditions under section 125 of the NLC. The meeting concluded to leave the issue of compensation to the discretion of the Land Administrator.

12] To my mind this meeting was crucial in that being the paymaster, the plaintiff ought to have been invited and its views ought to have been considered particularly so in view of subparagraph 1(3A) of the First Schedule of the Act which provides:

“The value of any building on any land to be acquired shall be disregarded if that building is not permitted by virtue of –

- (a) the category of land use; or
- (b) an express or implied condition or restriction,

to which the land is subject or deemed to be subject under the State land law.”.

13] The land search (exhibit DNSH-2) in enclosure 2 reveals that the category of land use is “*tiada*” dan express condition is “*tanaman*”. I have doubts whether section 53 of the NLC is applicable nevertheless the

express condition is clear. I do not think it can be anything else except agriculture. And the authorities too recognised that the subject land was in breach of its condition. Thus, based on this fact the illegal structures should not have been included in determining the compensation.

14] That being said, the next issue is the delay, which I would say inordinate, in filing Form N. Section 38 of the Act reads as follows:

“(1) Any objection made under section 37 shall be made by a written application in Form N to the Land Administrator requiring that he refer the matter to the Court for its determination, and a copy thereof shall be forwarded by the Land Administrator to the Registrar of the Court.

(2) ...

(3) Every application under subsection (1) shall be made –

(a) if the person making it was present or represented before the Land Administrator at the time when the Land Administrator made his award, within six weeks from the date of the Land Administrator’s award under section 14;

(b) in other cases, within six weeks of the receipt of the notice from the Land Administrator under section 16 or within six months from the date of the Land Administrator’s award under section 14 whichever period shall first expire.

(4) The period of six weeks prescribed by paragraph (3)(a) and the periods of six weeks and six months prescribed by paragraph (3)(b) shall not be capable of enlargement by any Court, except in such special circumstances as the Court may think fit.

(5) ...

(6) ...

(7) ...”.

15] The plaintiff here has to bring its case within subsection (4) and the Court must be satisfied that there are special circumstances to enable the plaintiff to file Form N. In **Singapore Para Rubber Estate Ltd v. Pentadbir Tanah Daerah Rembau, Negeri Sembilan** [2009] 1 CLJ 13 the appellant cited contravention of subparagraphs 1(1)(b) and 2(d) of the First Schedule of the Act in giving the award as special circumstances in that the JPPH report stated the wrong date for the purposes of determining the market value of the scheduled land. The Federal Court held that the Land Administrator was not bound by the said report in determining the market value of the scheduled land and the award was made after a full enquiry. It was also held that even if there was non-compliance it did not cause serious injustice or prejudice and that injustice, if any, was caused by the appellant’s own conduct in delaying the filing of Form N.

16] The statutory provision of subsection 12(1) of the Act in **Singapore Para Rubber Estate Ltd** (*supra*) operates against the appellant. However, in this application I could not find any provision in the Act which could neutralise paragraph 1(3A) of the First Schedule of the Act. I am of the view that the plaintiff has successfully brought himself within section 38(4) of the Act notwithstanding its conduct leaves much to be desired. In **Lau Cher**

**Hian v. Collector of Land Revenue, Muar [1971] 1 MLJ 96**, Ong CJ (Malaya) at p.98 said:

““Special grounds” were not defined and rightly so. Was not hardship a special ground, when the party was not in the least at fault?”.

Hardship in the present application was the inclusion of the illegal structures in the compensation which was a clear infringement of subparagraph 1(3A) of the First Schedule of the Act.

17] In addition, being person interested the plaintiff should have been invited to participate in the meeting on 28.4.2016. The defendant did not deny that the said meeting decided to proceed to acquire those controversial lands and it was left to the Land Administrator to exercise his discretion in deciding the compensation. In fact, the discussion focused on the illegal factories and illegal subdivision and sale to individuals who were not registered and all the inputs would be discussed with the other five Land Administrators conducting the enquiries for Package 3 for purposes of coordination. In this regard the absence of the plaintiff during the enquiry was a disadvantage.

18] Granted the two LLM’s representative were present but as they were aware of the position taken during the said meeting, I do not think that LLM could make an effective representation for the plaintiff during the land enquiry. In this regard I would think that the case of **Tenaga Nasional Bhd v. Unggul Tangkas Sdn Bhd & Anor And Other Appeals [2018] 4 CLJ**



**285** is distinguishable as TNB was present during the land enquiry. Notwithstanding TNB was the paymaster, the Federal Court held that TNB only had a pecuniary interest as the evidence showed that TNB was merely concerned with the possibility of the compensation being increased. Hence, TNB's appeal against the decision of the Court of Appeal in not allowing it to intervene was dismissed.

19] The position of the plaintiff here is different. The plaintiff was not a party in the land enquiry as it was not notified. Although this is not an application to intervene the plaintiff has a valid legal interest to object to the compensation in view of the contravention of subparagraph 1(3A) of the First Schedule of the Act.

20] Based on the reasons discussed I allowed this application.

**(TUN ABD MAJID BIN DATO' HAJI TUN HAMZAH)**  
**Pesuruhjaya Kehakiman**  
**Mahkamah Tinggi Malaya, Shah Alam**

**Tarikh: 13 Ogos 2019**

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