DALAM MAHKAMAH RAYUAN MALAYSIA

(BIDANG KUASA RAYUAN)

RAYUAN SIVIL NO.: J-01(A)-714-12/2018

ANTARA

TEONG TECK LIAN ½ BHG.
(NO. K/P: 601014-08-5679)

WANG HERNG TSUEY ½ BHG. … PERAYU-PERAYU
(NO. K/P: 630130-08-5636)

DAN

PENTADBIR TANAH, JOHOR BAHRU … RESPONDEN

[Dalam Mahkamah Tinggi Malaya Di Johor Bahru
Dalam Negeri Johor Darul Takzim Malaysia
Guaman Sivil No.: JA-15-7-02/2018

Dalam Akta Pengambilan Balik Tanah 1960

Antara

Teong Teck Lian ½ Bhg.
(No. K/P: 601014-08-5679)

Wang Herng Tsuey ½ Bhg. … Pemohon
(No. K/P: 630130-08-5636)

Dan

Pentadbir Tanah, Johor Bahru ... Responden]

CORAM:
HANIPAH FARIKULLAH, JCA
LEE SWEE SENG, JCA
SUPANG LIAN, JCA

JUDGMENT OF THE COURT

[1] The appellants were aggrieved by the compensation awarded by the Johor Bahru Land Administrator for a piece of industrial land measuring 8,094m^2 that the State Government had compulsorily acquired from them. They had bought the subject land, a leasehold property of 60 years, for the purpose of constructing a warehouse on it. The location was ideal, being at the heart of a prime and established industrial park in the Larkin industrial area, not far from the Johor Bahru city centre.

[2] At the point of purchasing the subject land, they were conscious that the lease had about 9 years left, expiring on 13.12.2021. However, they were confident that the Johor State would renew the leasehold with the usual imposition of a premium. After all this was what had been done before for lands in that place and they had the comfort and confidence from past precedent that the same practice would continue into the future.

[3] So the appellants proceeded to purchase the subject land on 2.2.2012 for RM3,990,000.00 in the hope that the lease would be extended for another 60 years.

[4] But alas, the State Government decided to acquire the subject land because it had earmarked the area for relocation of some residents and so that area would be transformed into a housing estate under the State's Affordable Home Ownership Scheme. In fact, on 12.6.2013, the State Government in its State Council meeting made a decision to freeze all applications pertaining to the renewal of land lease in the Larkin industrial area.

[5] The appellants said that it was only around 2015, that they came to know about the freezing of the applications for further extension of lease by the State Government when through their architect, building plans were prepared and submitted only to be refused and rejected by the authorities.

[6] Their worst fears were confirmed when some two years later, during the pendency of the freeze, the whole of the subject land was acquired by

the State Government vide Gazette Notification No. 3451, Warta Kerajaan Negeri Johor dated 22.6.2017.

[7] The appellants felt that such a decision should not have been made without their being heard or being informed about it. The said decision was made after the subject land was bought by the appellants and before the notice of acquisition for the public purpose of relocating the residents and building affordable homes for them.

[8] As it is difficult to challenge the decision of the State with respect to compulsory acquisition for a public purpose, they thought at the very least they should be fairly compensated for their land which they had bought to construct a warehouse.

[9] They had paid RM3,990,000.00 for the purchase of the subject land at arm's length transaction and they thought that they should get the value of the land with appreciation as more than 5 years had passed from the time of their purchase. Moreover, going by lands in Johor Bahru, it could only appreciate with the passage of time.

Before the Land Administrator

[10] They were in for a rude shock when they got much less than what they had paid for the subject land in the compensation awarded by the Land Administrator. It was a mere RM2,357,800.00 when their own valuer had stated the market price to be about RM7,380,000.00.

[11] It transpired that the Land Administrator was not impressed with the valuation report of the private valuer as the private valuer had proceeded on the assumption that the lease over the subject land would be renewed with the payment of a premium upon its expiry.

[12] The Government valuer had valued the land based on the fact and reality that the subject land would not be renewed when its lease was due to expire in 4.5 years' time. A comparable disposal of a similar land near to the subject land was taken into account for calculating the market value.

[13] The material date of valuation was 22.6.2017, the date of the Gazette Notification when the remaining period of lease was only 4.5 years. The respondent following an enquiry awarded a total of RM2,357,800.00 for the whole of the subject land to the appellants made up as follows:

Market Value of subject land @ RM250m^2	RM2,023,500.00
Value of factory on subject land	RM 334,300.00
Total Compensation:	RM2,357,800.00

At the Land Reference before the High Court

[14] Aggrieved by the decision of the Land Administrator the appellants applied to the High Court by way of a Land Reference. They thought they would stand a better chance of succeeding when the Government assessor in his report expressed his view that the valuation should take into consideration the price at which the appellants had bought the subject land, there being no evidence of any speculation when in fact they had intended

it, as was permitted in the express condition of land use, for a factory to be erected on it. They did engage an architect to submit their building plans but the local authority had rejected them.

[15] The private assessor was of a diametrically different view from the Government assessor. They took the view that there being no approval of the renewal of the lease and based on the fact of acquisition for a public housing purpose, the lease would not be renewed anyway, they valued the subject land against the reality of the lease expiry in 4 years as stated in the title.

[16] They further took into consideration a disposal of a comparative piece of industrial land nearby and which disposal was within 2 years before the present acquisition of the subject land and factored in the relevant elements of the lease expiry, the location and accessibility and arrived at a slightly higher valuation of the market price of RM320m^2.

[17] The learned High Court Judge did not agree with the Government assessor as it was plainly wrong for the Government assessor to proceed on the assumption of the leasehold subject land being renewed upon its expiry when the evidence was that the State had made its decision to convert that area where the subject land is into a public housing estate in relocating some residents.

[18] The High Court also could not ignore the purpose of the acquisition as stated in the Notice of Acquisition. There was no question that the State has the prerogative and power not to renew the lease and there was no

evidence that the State had acted improperly or in bad faith when making that decision. The High Court said what was obvious, which is that there is no legal right that a leasehold owner of a land can enforce if his lease over the land is not renewed by the State upon its expiry.

[19] This being a case where both the assessors disagreed with each other, the High Court was free to come to its own conclusion on which of the two valuation reports to follow and even not to follow either.

[20] The learned High Court Judge, whilst agreeing with the valuation approach taken by the private assessor, was however not satisfied with the +15% factor that he had factored into the valuation of the subject land where the location was concerned as he felt that it should be zero instead, taking into consideration what the learned Judge referred to as “accessibility”. However, the private valuer had given a +5% where accessibility is concerned.

[21] Proceeding on the learned High Court Judge’s view that the +15% should not have been factored into the location element, the learned High Court Judge had on 15.11.2018 arrived at a valuation that is less than that awarded by the Land Administrator and so he deferred to the higher award of the Land Administrator and affirmed the said award and dismissed the landowners’ application.

On appeal to the Court of Appeal

[22] With tenacity and dogged determination, the appellants as landowners appealed to this Court. The arguments canvassed and issues raised can be stated as follows:

(i) Whether the learned High Court Judge was right in law to reject the Government assessor's valuation report not based on a valuation of the subject land with a remaining 4.5 years to the expiry of the lease but rather based on a reference to the purchase price paid for the subject land made more than 5 years ago;

(ii) Whether the learned High Court Judge was at liberty to come to his own assessment on the market value of the subject land in that while agreeing with the private assessor in all other aspects, had nevertheless rejected the private assessor's percentage adjustment on "location" using the comparable land method of arriving at his valuation.

Principles

[23] There are certain clear provisions in the Act that allow an objection from a decision of the Land Administrator to be made to the High Court and those that exclude an appeal from the High Court.

[24] Section 37 of the Land Acquisition Act 1960 ("Act") provides an avenue for an application to the High Court against an award of the Land Administrator where the amount awarded in compensation exceeds RM5,000.00 on the grounds stated in s. 37(1)(a) to (d) of the Act and that includes the contentious ground of (b) which is the amount of compensation. It reads as follows:

> "37. Application to Court.
>
> (1) Any person interested in any scheduled land who, pursuant to any notice under section 10 or 11 or any person interested pursuant to any compensation made under section 35 or Part VII who, has made a claim to the land Administrator in due time and who has not accepted the Land Administrator's award thereon, or has accepted payment of the amount of such award under protest as to the sufficiency thereof, may, subject to this section, make objection to-
>
> [Am. by act A1517/2016]
>
> (a) the measurement of the land;
>
> **(b) the amount of the compensation**;
>
> (c) the persons to whom it is payable;
>
> (d) the apportionment of the compensation.
>
> (2) Where the total amount awarded in **compensation does not exceed five thousand ringgit,** the written award of the land Administrator shall be final with regard to both the measurement of the land and the amount of compensation awarded, and no objection may be made under subsection (1) in respect thereof. [Am. by Act A1517/2016]

(3) Where the **total amount of any award exceeds thirty thousand ringgit**, any Government or any person or corporation on whose behalf such land was acquired or being occupied or used pursuant to Part VII, shall be deemed to be a person interested and may make objections on any of the grounds specified in subsection (1)." (emphasis added)

[25] Further appeal from a decision of the High Court to the Court of Appeal is subject to certain restrictions. There are the provisions of s 40D(3) and s 49(1) of the Act. Section 40D of the Act reads as follows:

"40D. Decision of the Court on compensation.

(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 by that assessor.

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

[26] However s.49(1) of the Act appears to provide an exception to no further appeal from the High Court in that an appeal would still lie to the Court of Appeal and to the Federal Court other than from a decision of the High Court on an award of compensation. Section 49 of the Act reads as follows:

"49. Appeal from decision as to compensation.

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

[Am. by Act A1517/2016]

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

(2) Every appeal under this section shall be presented within the time and in the manner provided for appeals in suits in the High Court:

Provided that the time within which an appeal may be presented shall only be capable of enlargement by order of a Court in such special circumstances as the Court may think fit." (emphasis added)

[27] Parliament must be presumed not to have contradicted itself in providing for no further appeal from an award of compensation by the High Court in s. 40D(3) and an appeal being allowed from the decision of the High Court to the Court of Appeal and thereafter to the Federal Court. In fact, there is no contradiction because of the proviso to s.49(1) itself which states clearly that "where the decision comprises an award of compensation there should be no appeal therefrom."

[28] Thus in **Calamas Sdn Bhd v Pentadbir Tanah Batang Padang** [2011] CLJ 125 the Federal Court opined as follows:

"... Coming back to s. 40D(3) of the Act, I am of the view that the said section clearly stipulates that 'Any **decision made under this section is final and there**

shall be no further appeal to a higher court on the matter. " It is trite law that **courts must give effect to the clear provisions of the law**. In the instant appeal I do not see anything ambiguous in ss. 40D(3) and 49(1) of the Act. In view of this, I am of the view that the **appellant is precluded from appealing against the order of compensation** issued by the learned trial judge.. "

[29] In **Syed Hussain Syed Junid & Ors v Pentadbir Tanah Negeri Perlis** [2013] 9 CLJ 152 the Federal Court further affirmed 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, section 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 award 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.

[18] Historically speaking, s 40D is a new section introduced by the Land Acquisition (Amendment) Act 1997 (Amendment Act 1997). The Amendment Act 1997 had also, inter alia, amended the proviso of s 49(1) of the LAA. Before amendment the proviso of s 49(1) read:

> Provided that where the decision comprises an award of compensation there shall be no appeal therefrom unless the amount awarded by the Court exceeds five thousand ringgit.

[19] Thus, even before the Amendment Act 1997 there was already an existing bar on the right of appeal by an aggrieved party on the award of compensation. The right of appeal against the amount awarded only arose when the amount exceeds five thousand ringgit.

[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. The effect of the introduction of s 40D and the amendment to the provision of s 49(1) of the LAA was discussed by this court in *Calamas Sdn Bhd v Pentadbir Tanah Batang Padang* [2011] 5 CLJ 125.

.....

[24] .....it is clear that the appeal herein is against the amount of compensation awarded. In our considered view, the appeal herein is nothing more than an attempt to circumvent the salient provisions of s 40D and 49(1) of the LAA which precludes any party from appealing against the award of compensation.".

[30] To place the whole issue beyond a pale of doubt the Federal Court in the landmark case of **Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat & Another case** [2017] 5 CLJ 526; [2017] 3 MLJ 561 clarified and reiterated as follows:

"**[151]** We have perused the facts and the decisions of this court in *Calamas* (supra) and *Syed Hussain* (supra). The cases do not represent a bar to appeal against any decision of the High Court on compensation. Even if *Calamas* (supra) and *Syed Hussain* (supra) represent a bar to appeal against any decision which comprises compensation the Federal Court in these two cases were not invited to consider issues of constitutionality or the restrictive dimension of sub-s. 49(1) in the face of art 13 of the Federal Constitution since it was never raised there. Instead, the issues in these two cases merely revolved around the construction of sub-s. 40D(3) and sub-s. 49(1) of the Act.

.....

[155] To sum up, the proviso to sub-s. 49(1) of the Act does not represent a complete bar on all appeals to the Court of Appeal from the High Court on all questions of compensation. Instead, the bar to appeal in sub-s. 49(1) of the Act is limited to issues of fact on ground of quantum of compensation. Therefore**, an aggrieved party has the right to appeal against the decision of the High Court on questions of law.**" (emphasis added)

[31] Post-**Semenyih Jaya** we have the following elucidation by the Federal Court in **Amitabha Guha (sebagai wasi bagi harta pusaka Madhabendra Mohan Guha) v Pentadbir Tanah Daerah Hulu Langat** [2021] MLJU 51 as to what is a question of law as follows:

"What is a Question of Law?

[46] It follows from the preceding paragraph that appeals to the Court of Appeal and to the Federal Court may only be mounted on questions of law. In a general sense, a question of law is an issue involving the interpretation of law (statutes or legal principles) and the application of the law to the facts of each individual case. What is a question of law has also been discussed and formulated in a line of cases:

> Questions of law are questions about what the correct legal test is. Questions of mixed law and fact are questions about whether the facts satisfy the legal tests: *Canada (Director of Investigation and Research) v Southam Inc.,* [1997] 1 SCR 748);
>
> A question of law is a question concerning the legal effect to be given to a set of undisputed facts. This includes an issue which involves the application or interpretation of a law (*Carrier Lumber Ltd. v Joe Martin & Sons Ltd.* [2003] BCJ No. 1602);

> The question of whether a decision-maker has jurisdiction to determine a particular matter is usually considered a question of law reviewable by a court on a standard or correctness (*Premium Brands Operating GP Inc. v Turner Distribution Systems Limited* [2010] BCJ No. 349);
>
> Questions of law involve errors of law committed by a decision- maker. Errors of law includes the application of the wrong law, or a finding of fact in complete absence of any evidence (*Southam, supra at [39]; I-Ntelink Inc. v Broadband Communications North Inc.* [2017] MBQB 146);
>
> Questions where there is real doubt as to the law on a particular point (*Datuk Syed Kechik Syed Mohamed & Anor v The Board of Trustees of the Sabah Foundation & Ors* [1999] 1 CLJ 325 (FC);
>
> Questions of law includes the correctness of (a) pure statements of law (e.g., as to correct interpretation of a statutory provision), and (b) the inferring of a conclusion from the primary facts (where the process of inference involves assumptions as to the legal effect of consequences of the primary facts) (*D-G of Inland Revenue v Rakyat Berjaya Sdn Bhd* [1984] 1 MLJ 248, 252 (FC)"

[32] Hence the Court of Appeal in an appeal from a decision of the High Court on an award of compensation for compulsory land acquisition would invariably ask what is the question of law that is being raised. The appeal cannot be merely because of dissatisfaction of a party with the amount of compensation awarded, be it too high or too low.

[33] The appeal must be on a question of law and for so long as it is a genuine question of law, it does not matter if in answering it, the effect would naturally be that the amount of the compensation would be disturbed accordingly.

[34] Realistically speaking, it would be a pure academic exercise if an appeal on a question of law does not result in increasing or decreasing the amount of compensation. The appeal has to be on a question of law and in practice, it may have the effect of altering the amount of the compensation.

[35] Thus if an appeal is primarily on a question of law, it does not matter if incidentally, by answering the question of law, that would impinge on the amount of compensation awarded as a result.

[36] It is different from merely expressing one's dissatisfaction with the amount of compensation either because both assessors had concurred on the compensation to be awarded or that whilst the two assessors had disagreed, the High Court had given its reasons as to why it had accepted one and rejected the other. In other words, the error in the award of compensation has to arise from a misapprehension or misapplication of the law to the facts of the case.

[37] We are satisfied that the questions of law raised by the landowners as appellants are genuine questions of law as follows:

(i) whether the Learned High Court Judge was permitted to assume the role of the assessors in the determination of the percentage adjustments and/or other technical determinations within the purview of land valuation; and

(ii) whether the Learned High Court Judge misapplied the fundamental principle of the law as propounded in the case of

Er Boon Yan & Ors v. The Collector Of Land Revenue, Port Dickson [1995] 1 MLRH 528, which provides that "...it could never be a correct procedure to compensate persons, whose lands have been compulsorily acquired, by offering them substantially less than what they have paid for the lands, particularly in this present case where the land had been bought by the applicants so shortly before the acquisition took place ...", in the present case.

[38] We shall deal with Question (ii) first as that is the more substantial issue as compared to Question (i), at least where its bearing on the compensation award is concerned.

Whether the learned High Court Judge was right to reject the Government assessor's valuation report not based on a valuation of the subject land with a remaining 4.5 years to the expiry of the lease but rather based on a reference to the purchase price paid for the subject land made more than 5 years ago

[39] The subject land comprises a corner plot of industrial leasehold land with a detached factory erected there on. It is held under Title No. H.S.(D) 10030, Lot No. T.L.O 700, Bandar and District of Johor Bahru, State of Johor Darul Takzim with the category of use of the land stated as "Industrial". It measures 8,094 m^2 with the express condition of land use being "light industrial." Its lease was to expire on 13.12.2021.

[40] Back to basics, the reason for Parliament to have 2 assessors, one from the private sector and one from the Government, is so that the High Court Judge in a Land Reference matter may be in a better position to arrive at what is a fair market value based on the input and professional opinion of the two assessors. It is also to dispel any notion that the Government valuer may have a tendency to undervalue and if that be so then perhaps the private assessor's valuation may help to correct such a tendency. Of course, that is not always the case for as can be seen here, it is the Government assessor that had valued the subject land much higher.

[41] Judges are not expert valuers though they may themselves have a rough idea of the market value of properties in the area where they are familiar with. However, they are in no position to take judicial notice of the value of land except for the fact that generally, land in a city or town would appreciate with the passage of time.

[42] Where the two assessors agree with each other, it would be very rare for a Judge to reject the concurrent opinions expressed by the two valuers unless it could be shown that they are plainly wrong for having misconstrued the law and in applying the law to the facts. This is more so when their opinion on which is a comparable land to be taken for arriving at a fair market value and the adjustments to be made based on elements like location, accessibility, unexpired period of the lease, date of disposal, the shape of land and size are all matters which the experts in a qualified valuer are better placed to proffer their professional opinion.

[43] However, where the two assessors cannot agree the Judge in a Land Reference matter is free to decide on which part of the assessors' opinions and reports he is able to agree and accept and correspondingly which he cannot agree and accept and the reasons there for.

[44] At all times he would generally defer to the opinions of the assessors who are experts in the field of land valuation especially when they have concurred with each other. Whilst the Federal Court in **Semenyih Jaya's** case (supra) had stated that the Court is not bound by the opinion of the assessors, it nevertheless stressed that the Court must always give due deference to them and it would be only in cases where the assessors had been plainly wrong and mistakenly construed the law as applied to the facts that the Judge may disregard the opinion of the assessors and come to his own opinion. In doing so the Judge must clearly and categorically state his reasons for rejecting the assessors' opinions.

[45] Here both the opinions of the two assessors cannot be correct as they are quite diametrically opposite to each other. The learned High Court Judge had given his reasons for rejecting the expert opinion of the Government assessor who had valued the subject land by taking into consideration the amount paid more than 5 years ago at RM3,990,000.00 when there was no prospect whatever of the lease of the subject land being renewed in the light of the Notice of Acquisition which purpose of the acquisition was stated as follows in its original language:

> "Project Penempatan Semula Penduduk Dan Pembinaan Rumah Mampu Milik Johor (RMMJ) Di Mukim Bandar Bahru, Daerah Johor Bahru untuk Perbadanan Setiausaha Kerajaan Johor (SSI) di bawah seksyen 3(1)(a) Akta Pengambilan Tanah 1960."

[46] The appellants may be naturally hopeful relying on past precedents that the State would renew the lease upon its expiry. However, hope must not be confused with reality and the present reality was that the State had decided to convert the land for use for building houses for its residents in a public project of the State in providing affordable homes for qualified residents in Johor Bahru.

[47] There is of course no denying that disappointment would set in when the hope is dashed and the expectation is not fulfilled. However, where the law is concerned one has to look at whether the hope and expectation has a legal basis for it to be enforceable.

[48] Past actions of the State in renewing the leases of lands in the area is no legal justification that it must always do so in the future. After all, by a lease interest is meant after the lease has expired the land reverts back to the State and the owner ceases to be the owner of the leasehold land.

[49] We are not talking here of any representations made by the State to the appellants and the latter are also not arguing that. Everyone buying a leasehold land must have realised that hopeful as he may be of the lease being renewed based on past precedents, there is no legitimate expectation on the State to renew it, much less a statutory and legal obligation to.

[50] If the leasehold owners think the State has acted unreasonably and capriciously in disregarding how much the purchaser had paid for the land, in this case, some 9 years before the lease expires, then their remedy must lie in a judicial review if they are aggrieved by the decision of the State in not renewing the lease.

[51] They cannot in the Land Reference challenge that decision of the State for ostensibly the acquisition is for a clear public purpose in setting aside land for housing development in relocating the residents in the State.

[52] The Federal Court's case of **Er Boon Yan & Ors v The Collector of Land Revenue, Port Dickson** [1995] 1 MLRH 528 had been cited as authority for the fact that the Land Administrator must take into account what the landowner had paid for the land acquired when there is nothing to show that the landowner had speculated in the purchase. It was held as follows:

> "It could never be a sound proposition that a man dispossessed of his property could be required to make a financial sacrifice except he was willing to do so. In our view the proper amount to be awarded is the amount which each applicant paid. **The applicants may have paid more than other people would have paid for the land- they may even have paid more than the land was worth to a cautious purchaser but, even so, the principle remains the same**. Different considerations might apply in any case where it could be shown that a purchaser speculated in the purchase of land on the chance that it would be acquired by the Government. No suggestion of such speculation arises in this case." (emphasis added)

[53] The context in which the above principle of compensation was enunciated must be taken into consideration. The case of **Er Boon Yan** (supra) was not dealing with a leasehold property with some 9 years before the lease expires but rather with a freehold property. Thus, the observations of the Federal Court there must not by extension be applied to an acquisition of a leasehold land with hardly 4.5 years left before the lease expires.

[54] Granted that here the valuation by the Government valuer for the purpose of adjudication of ad valorem stamp duty for the subject land when it was purchased by the appellants, had also been RM3,990,000.00. The appellants in advancing that evidence were buttressing their position that there was no speculation when they bought the land some 9 years ago.

[55] We heard the Government assessor stating that when the appellants bought the subject land they could not have speculated on the chance that it would be acquired by the State. With all due respect no one is asking anyone to speculate on a possible acquisition when a piece of land is bought but rather to be realistic that a leasehold land means what is stated in its title which is that the lease expires on its expiry date as so stated unless renewed by the State.

[56] Any challenge on the State having acted mala fide in not renewing the lease would have to be brought by way of a judicial review and it is not a proper subject and not relevant in a Land Reference before the Court. The learned High Court Judge was spot on when he remarked as follows:

> "[25] The applicants' counsel's submission on the applicant's protest against the local state authority's decision to **freeze all applications pertaining to the renewal of the leases in the area of Larkin industry was, in the opinion of this Court, out of place."** (emphasis added)

[57] Even accepting that the appellants as purchasers had not speculated when they bought the subject land, we cannot ignore the statutory provisions discussed below where the Act is concerned.

[58] There is an important distinction as highlighted by the learned Senior Federal Counsel for the respondent. It is this: the acquisition was before the current First Schedule to the Act where the Court must now take into consideration the matters stated in the First Schedule and in the context of this case to paragraph 1(1D) which reads:

> "Where the scheduled land to be acquired is held under a title for a period of years, in assessing the market value, **regard may be had to the date of expiry of the lease as shown in the document of title**, but regard shall not be had to the likelihood of a subsequent alienation to the person or body who is the proprietor thereof immediately before the expiry of the lease." (emphasis added)

[59] Paragraph 1(1D) was introduced via s.33 of the Land Acquisition (Amendment) Act 1977 (Act A999) with effect from 1.2.1998. It was not there when the acquisition was made in **Er Boon Yan's** case (supra).

[60] The rights of the landowner of a leasehold land come to an end upon the expiry of the lease. It is an objective fact that cannot be gainsaid. He would have no more interest in the land irrespective of his improvement done

to the land and much less his sentimental attachment to the land even if he had toiled on it his whole life and had lived there with his forebears and now his progeny.

[61] Anticipating what most landowners would say for their leasehold properties and the likelihood of the lease being extended, paragraph 1(1D) of the First Schedule emphatically excludes the taking into consideration of the likelihood of a subsequent alienation to the current owner of the leasehold land immediately after the expiry of the lease.

[62] We agree with the learned SFC that there is yet another obstacle to using the price at which the appellants had paid for the subject land. It is that we have paragraph 1(1A) of the First Schedule of the Act staring at us as follows:

> "In assessing the market value of any scheduled land, the valuer may use any suitable method of valuation to arrive at the market value provided that regard may be had to the prices paid for the recent sales of lands with similar characteristics as the scheduled land which are situated within the vicinity of the scheduled land and **with particular consideration being given to the last transaction on the scheduled land within two years** from the date with reference to which the scheduled land is to be assessed under subparagraph (1)." (emphasis added)

[63] It was also introduced by s. 33 of the Land Acquisition (Amendment) Act 1977 (Act A999) with effect from 1.2.1998. It was also not there when the acquisition was made in **Er Boon Yan's** case (supra).

[64] Moreover in **Er Boon Tan's** case (supra), the acquisition was made within 2 years of the purchase of the land whereas in the instant case the purchase was in 2012 and the acquisition some more than 5 years later in 2017.

[65] The purchase price having been made more than 5 years ago before the current acquisition of the subject land is not relevant for the purpose of determining the market value of the land with an unexpired lease of 4.5 years. The harsh reality of the lease not being renewed has kicked in and hard as it is for the appellants owners to accept, the Court cannot bend backward for the owners who had purchased the subject land some 9 years ago and paid a sum of RM3,990,000.00 with the hope that the lease would be renewed.

[66] To make the State pay for such a valuation that has no legal basis would be wrong. It would spawn speculation in leasehold lands such that even if the State has not renewed the lease but instead had acquired it for a public purpose, it would be required to compensate the leasehold owner on the basis as if the lease has been renewed.

[67] It would curb and curtail the free hand of the State in its discretion to decide what would be best for the public interest where land use is concerned where private interest would have to yield to the State's public interest upon payment of reasonable compensation.

[68] The discretion of the State not to renew the lease cannot be taken over by hopeful expectation based on previous conduct of the State. To do that would be to put a different meaning to a registered "lease" to now mean an interest in the land expiring at the end of the lease with the expectation of it being renewed by the State with the payment of the premium!

[69] That would be doing violence to the language and definition of a "lease" under the National Land Code 1965 ("NLC") and completely change the character of a leasehold land to that of having the status of a freehold land upon the payment of a premium for its renewal upon its expiry.

[70] The proposition has only to be stated for it to be dismissed as being ridiculous and repugnant to the whole scheme of differentiating between a lease and a freehold land under the NLC.

[71] The State Authority is vested with powers of disposal of land within the State for the orderly development of the State. Section 42(1) of the NLC declares as follows:

> "(1) Subject to sub-section (2), the State Authority shall have power under this Act-
>
> (a) **to alienate State land** in accordance with the provisions of section 76;
>
> (b) to reserve State land, and **grant leases of reserved land,** in accordance with the provisions of Chapter 1 of Part Four;

(c) to permit the occupation of State land, reserved land and mining land under temporary occupation licences issued in accordance with the provisions of Chapter 3 of Part Four;

(d) to permit the extraction and removal of rock material from any land, other than reserved forest, in accordance with the provisions of Chapter 3 of Part Four:

(e) to permit the use of air space on or above State land or reserved land in accordance with the provisions of Chapter 4 of Part Four provided that such air space shall be within the confines of a structure of any description erected thereon.

[72] Section 76 of the NLC further delineates the power of the State Authority as follows:

"The **alienation** of State land under this Act shall consist of its **disposal** by the State Authority-

(a) for a term **not exceeding ninety-nine years**; (aa) in **perpetuity**-
[Ins. by Act A587: s.23]

(i) where the Federal Government requires the State Authority to cause a grant in perpetuity to be made to the Federal Government or to a public authority or where the Federal Government and the Government of the state agree to make a grant in perpetuity to the Federal Government;

[Am. by Act A832: s.19]

(ii) where the State Authority is satisfied that the land is to be used for a public purpose; or

(iii) where the State Authority is satisfied that there are special circumstances which render it appropriate to do so;

(b) in consideration of the payment of an annual rent;

(c) in consideration, unless the State Authority thinks fit to exempt therefrom in any particular case, of the payment of a premium;

(d) subject, unless the State Authority otherwise directs pursuant to sub-section (5) of section 52, to a category of land use determined in accordance with sub-sections (2) and (3) of that section; and

(e) subject to such conditions and restrictions in interest as may be imposed by the State Authority under, or are applicable thereto by virtue of, any provision of this Act.

Provided that nothing in paragraph (aa) shall enable the State Authority to dispose of any part of the foreshore or sea-bed for a period exceeding ninety-nine years; and paragraph (d) shall not apply to the alienation of land under this Act in pursuance of an approval given by the State Authority before the commencement thereof." (emphasis added)

[73] The State Authority then has the broad discretion with respect to whether or not to renew a lease upon its expiry as follows in s.90A(1)-(5) of the NLC:

"90A. Extension of land alienated for a term of years.

(1) The proprietor of any land alienated for a term of years may **apply to the State Authority for the term to be extended.**

(2) The application shall be made before the expiry of the term specified in the document of title.

(3) Upon receiving any application referred to in subsection (1), the land Administrator shall endorse, or cause to be endorsed, a note on the register document of title to the land to which the note relates.

(4) The State Authority shall not entertain any such application unless the State Authority is satisfied with respect to every person or body having a registered interest in the land, either that he has consented to the application or that his consent ought in the circumstances of the case to be dispensed with.

(5) **The approval or rejection** of an application under subsection (1) shall be at the **discretion of the State Authority**, and such approval if given, may be subject to-

(a) payment of premium as may be determined by the State Authority; and

(b) other charges as may be prescribed." (emphasis added)

[74] It does not matter and it makes no difference even if the appellants had bought the subject land with the genuine intention to construct a factory or a warehouse on it. Hopeful expectation does not have the miraculous power of converting hope to reality in as much as in the investing world, past performance is no indication of future returns.

[75] It was a risk that the appellants must have been prepared to take and depending on their appetite for risk, the appellants were prepared to pay a hefty sum of RM3,990,000.00 for a piece of industrial land with 9 years left to the lease. The appellants cannot be heard to complain that they are now being compensated for less than what they had paid for the subject land.

What they had paid for, being more than 5 years ago, cannot be taken into consideration by virtue of paragraph 1(1A) to the First Schedule to the Act.

[76] For the sake of argument, there is yet another reason why the purchase price of the subject land some 9 years ago cannot be accepted as a fair compensation for invariably a premium would be imposed which have to be costed into the costs of acquisition and hence deducted for the purpose of valuation of the subject land, even assuming for a moment that it would be renewed or extended. See the case of **Koh Yean Bay & Anor v Land Administrator Federal Territory, Kuala Lumpur** [2017] 1 LNS 1591 where the premium that a purchaser had to pay for the renewal of the lease was to be taken into account to determine the real market value of the subject land as reasoned by the Court there.

[77] The nature of the risk may be appreciated by looking at what a banker would do if a leasehold land is being put up as security for a loan with a charge being created over the leasehold land. The bank would be throwing caution to the wind if it allows a loan based on a valuation of the land without considering that the remainding years of the lease before its expiry.

[78] The power of the State to decide on matters of land alienation after the expiry of the lease and the conditions and restrictions to be imposed on the land alienated is a prerogative of the State preserved in s.120 of the NLC as follows:

"(1) Subject to the provisions of this section the State Authority may alienate land under this Act subject to such express conditions and restrictions in interest conformable to law as it may think fit.

(2) The conditions and restrictions in interest to be imposed under this section in the case of any land shall be determined by the State Authority at the time when the land is approved for alienation.

(3) Every condition or restriction in interest imposed under this section shall be endorsed on or referred to in the document of title to the land; and in complying with this sub-section the State Authority shall, in any case where it imposes both conditions and restrictions in interest, distinguish between the two.

(4) No condition shall be imposed under this section which is inconsistent with any implied condition to which the land becomes subject on alienation by virtue of section 114."

[79] The express condition of land use of the subject land was as follows at the time of compulsory acquisition of the land:

"'"Tanah ini hendaklah digunakan sebagai kawasan lndustri ringan untuk bangunan kilang dan kegunaan lain yang berkaitan dengannya, dibina mengikut pelan yang diluluskan oleh Pihak Berkuasa Tempatan yang berkenaan"

[80] Upon the expiry of the lease, the subject land would revert back to the State. Even before the expiry of the lease, the State is at liberty to acquire it for a public purpose as was in this case. For that matter, the State may even wait for the lease to expire before carrying out its public purpose to acquire the subject land as part of its affordable public housing scheme project if time

was not against it. The landowners in the appellants would also not be able to complain.

[81] The State, as part of its development plans, is at liberty to decide on the issue of land use and in this case, the State Authority had on 12.6.2013 decided to convert that part of the Larkin Industrial area including the subject land into a housing estate. See generally the prerogative of the State as held by the Federal Court in **North East Plantation Sdn Bhd v Pentadbir Tanah Daerah Dungun & Anor** [2011] 4 CLJ 729.

[82] Assuming that the State had not acquired the subject land but waited for the lease to expire and upon which it would revert to the State, it would also be difficult if not impossible to challenge the decision of the State not to renew the lease when it had already decided to put the land to a public use by converting it into a housing estate for the dislocated residents in the State.

[83] We are more than satisfied that the learned High Court Judge had given his cogent reasons for rejecting the professional opinion of the Government assessor and instead preferring that of the private assessor who had valued the subject land based on the fact of the lease expiring upon the expiry of the remaining period of the lease of about 4.5 years as at the date of the acquisition by the State.

Whether the High Court was at liberty to come to its own assessment on the market value of the subject land in that while agreeing with the private assessor in all other aspects, had nevertheless rejected the private assessor's percentage adjustment on "location" using the comparable land method of arriving at his valuation.

[84] At the outset, it must be stated that resulting from the Federal Court's decision in **Semenyih Jaya's** case (supra) the High Court is not bound by the opinions of the two assessors even if they should concur with each other.

[85] Likewise in a case where the two assessors disagree with each other on the amount of compensation to be awarded, the High Court Judge may consider which of the two opinions find favour with him and he may even disagree with both the diverging opinions of the two assessors. The Federal Court explained as follows when deciding on the fact that s.40D of the Act is void and inconsistent with the Federal Constitution where its ramifications are concerned as follows:

> "[123] ..... It is reiterated that the opinion of the assessors is not binding on the judge. In the event the assessors disagree (as between themselves regarding the amount of compensation to be awarded in a particular case), the judge may, after considering both opinions, **elect to consider which of the two opinions in his view is appropriate in the circumstances of the case. However, he is not bound by either one of the opinions. Should the judge finds himself in disagreement with the opinion of both the assessors. he is at liberty to decide the matter, giving his reasons for so doing**. These, then are to be made clear in place in the proposed new s. 40D.

[124] It would in no small way, emphasise the punctilious nature of the assessors' advice and the value their role represents.

[125] At the end of it, the sanctity of judicial power is preserved. The judge and the judge alone determines the outcome of the objections as to the amount of compensation after affording the person or persons interested ample opportunity to ventilate his or their concern ..." (emphasis added)

[86] Thus it was concluded as follows by the Federal Court:

".....(d) the provisions of sub-s 36(4) of the Act are to be given full effect. The judge shall not be bound to conform to the opinions of the assessors. In the event of any disagreement between the assessors with regard to the amount of compensation, the judge may elect to consider which of the two opinions in his view is appropriate in the circumstances of the case. **The judge is also at liberty to depart from the opinion of either of the assessors and decide on the reasonable amount of compensation to be awarded to the appellant by giving reasons for so doing.**" (emphasis added)

[87] Here in the instant case, the two assessors could not agree with each other and the High Court considered the valuation of the private assessor to be more appropriate and reasonable in the circumstances of the case.

[88] Whilst the learned High Court Judge had accepted the approach taken by the private assessor in that the subject land is valued based on the fact that the lease would expire in 4.5 years as at the date of the acquisition, the learned Judge had nevertheless decided not to follow the private assessor's valuation on the market value as he disagreed with the private assessor in one of his percentage adjustments when making a comparative

reference to another piece of land nearby in Lot 4042 which disposable was within 2 years of the acquisition.

[89] The piece of comparable land held under Lot 4042 had been disposed of on 24.1.2017 and being a freehold land, relevant adjustments would have to be made to factors such as location, accessibility, shape and size of land, unexpired period of lease, length of time that has expired before the acquisition and the like to arrive at what is a fair market value of the subject land.

[90] The learned High Court Judge opined as follows:

> "[28] Lot 4042 has the most recent transacted value at RM710.42m2. It was transacted on 24.1.2017 which is five months before the date of valuation for the scheduled land. It also has the same characteristics as the scheduled land, and it is located within the vicinity of the scheduled land.
>
> [29] The private assessor proposed the following adjustments as depicted below:

Transacted value		**RM710.42 m^2**
(Lot 4042)		
Adjustments	%	
Time	0 %	
Location	15 %	

Accessibility	5 %	
Tenure	-70%	
Size	-5%	
Total Adjustment		-55%
Adjusted value		RM319.619m^2
Round up value		RM320m^2

[91] The learned High Court Judge appeared to have conflated “location” with “accessibility” for in rejecting the adjustment made to the location of “+15%” he had said that it should be zero for where “accessibility” is concerned it is not more accessible compared with the comparable land.

[92] The relevant paragraph [30] of the Grounds of Judgment of the learned High Court Judge is reproduced below at paragraph 30 of the Judgment (see page 29 of the Record of Appeal):

> "[30] This Court, after having carefully analysed the private assessor's proposal and recommendation of market value for the scheduled land, **made one adjustment which is the item of 'location'. This Court could not agree with the proposed adjustment of +15% on 'location'**. After having carefully studied the locality of the scheduled land as compared to Lot 4042, the Court observed that Lot 4042 is situated right next to the Pasir Gudang highway, whereas, the scheduled land is not situated next to any major highway but is **accessible** from Tebrau Highway via Jalan Tampoi. For this reason, **this Court is of the opinion that the adjustment on location should not be a plus point, rather it should**

be zero adjustment. On this score, the total adjustment, after taken into consideration the zero adjustment for location and all else remain the same, is -70%. Hence, the adjusted value would be RM213.13 m^2 (RM710.42 less 70% = RM213.126 m^2)." (emphasis added)

[93] However, where "accessibility" is concerned the private assessor had given an adjustment of only "+5%". There is of course a difference between "location" and "accessibility" in the language of property valuers.

[94] Location would generally refer to where the subject land is situated strategically in relation to the city for example where amenities and distance of travel would be relevant. Location in a particular area would refer also to whether it is in the heart of the industrial estate as example or whether it is more to the fringe; whether it is nearer the hive and heart of development or further away.

[95] "Accessibility" would refer more to whether it has just one or more access to the main roads for instance or the ease of getting into and out of the subject land. The subject land is accessible via Jalan Bakti and Jalan Petaling.

[96] Generally, a court would defer to the opinion of an expert where such an adjustment of factors for and against are concerned in a methodology to arrive at what is a reasonable fair market value with reference to a comparable disposal at arm's length.

[97] It is pertinent to note that the Private Valuer before the Land Administrator at the Land Enquiry had arrived at the adjustment of "+20%" where location is concerned for the subject land as compared with the same comparable in Lot 4042. Granted some adjustments are more objective than others for example the remaining period of lease remaining as opposed to the original period of the lease.

[98] Be that as it may, there would be some element of subjective assessment where factors like location are concerned when a comparable land is put and pitted against a subject land. Thus, it would be fair to look at the location from the perspective of how far the comparable land is compared to the subject land in terms of the following:

(1) Distance from the city centre and its proximity to amenities and facilities;

(2) Distance from adjacent developments;

(3) Whether the location is at the epicentre or at the peripheral of the city centre or the intersection of two or more developments.

[99] Whilst the element of "accessibility" may straddle that of "location", here the private assessor had separated it into 2 distinct elements.

[100] The learned High Court Judge had not given any reasons why he disagreed with the private assessor save to say that the comparable land is also well served by a main road and is no less easily accessible. In so doing

the learned Judge appeared to have conflated the concept of “accessibility” with that of “location”.

[101] It can be seen above that whilst discussing “location” the learned High Court Judge was venturing into “accessibility” which the private assessor had discussed separately from “location” and assigned a factor of “+5%” for accessibility of the subject land when compared to a comparable land in Lot 4042.

[102] If it is the difference in “accessibility” the private assessor had given a “+5%” to the subject land as it is not just a corner lot with high visibility but that there are 2 main roads servicing it and thus making it slightly more accessible compared to the comparable land which is not a corner lot and served only by one main road.

[103] The 5% difference is hardly a reason for the learned High Judge to have interfered with. What then is left is the “location” element which he had given a positive “+15%” in terms of its proximity and nearer distance to the city centre and thus nearer where the pulse of the development is compared to the comparable land which is further away.

[104] Whilst we acknowledge that in the light of **Semenyih Jaya’s** case (supra) the learned High Court Judge is at liberty to disagree with the assessors, he must nevertheless be slow to disturb the findings of the assessor that he is more inclined to follow unless there are clear and compelling reasons for him to disagree with the said assessor.

[105] The learned SFC argued on behalf of the respondent that as both the assessors had signed on the decision in writing of the High Court Judge pursuant to s. 47(1) of the Act together with the Judge, then it must mean that both the assessors must have agreed with the Judge's valuation where the requisite adjustment on "location" from "+15%" to zero is concerned.

[106] Nothing could be further from the truth as it was clear that both the Government assessor and private assessor had not agreed on the "+15%" factor of adjustment where location is concerned; the factor of adjustment being of no relevance to the Government assessor as he had proceeded based on the purchase price paid by the appellants when they bought the subject land some 9 years ago.

[107] Even under s.40D of the Act under the old regime, now held to be unconstitutional by the Federal Court in **Semenyih Jaya's** case (supra), where the assessors had 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 by that assessor.

[108] Under that old regime, it cannot be that by the assessors signing with the Judge on the written decision, the assessor with whom the Judge disagreed, had now changed his position and had come to agree with the Judge agreeing with the other assessor!

[109] More so post-**Semenyih Jaya** where even when both assessors agreed with each other, the Judge is still at liberty to disagree with both and to arrive at his own valuation for cogent and compelling reasons. The mere signing on the written decision could not possibly be interpreted to mean that both the assessors had changed their mind and now had agreed with the High Court Judge.

[110] The signing of both the assessors with the High Judge on the written decision merely means that all have applied their mind to the process and exercise of determining the market value of the subject land and that it is the decision of the High Court Judge in the compensation amount. That is the High Court's decision irrespective of whether both the assessors had also agreed or that they had both disagreed with each other and with the Judge.

[111] On the facts of this case, we are of the considered view that there is no good reason for the learned High Court Judge to have interfered with the adjustment that the private assessor had made when comparing the location of the subject land to the comparable land as it cannot be said that the private assessor had been plainly wrong.

[112] Like all expert opinions given in a Court of law, a Judge cannot be bound to accept all of it in toto or even some of it, and more so when they are in conflict with each other. Be that as it may and with the greatest of respect, the Judge being not an expert, should not venture to express an opinion of his own not supported by any scientific or professionally accepted and verifiable evidence.

[113] The Federal Court in **Semenyih Jaya's** case (supra) was careful to caution as follows:

> "**[120]** It is then for the judge and the judge alone to deliberate on the issue of quantum before him, after taking into account all the issues.
>
> **[121]** In so doing, it is not uncommon for the judge to give weight to the opinion of the assessors, **for as experts in valuation of property, their opinion stand persuasively to be considered by the judge**.
>
> .....
>
> **[172]** Under this new regime, the appointment of the assessors in a land reference court proceeding serves a vital role in assisting the High Court judge to decide on issues of compensation and what is appropriate in the circumstances of the particular case. **The assessors 'expertise is of great probative value**. In this the Act demands transparency in the decision-making process." (emphasis added)

[114] Liberty to depart from the opinion of the two assessors is no license to disregard them unless the opinion of the assessors is plainly wrong or perverse. The personal preference of the learned High Court Judge cannot be a substitute for the professional judgment and assessment of an expert valuer in the private assessor in this case.

[115] The learned High Court Judge in preferring zero adjustment to "location" for what he had agreed with the private assessor as being the correct comparable in Lot 4042, had arrived at a lower valuation than that awarded by the Land Administrator. Nonetheless, out of deference to the

Land Administrator's valuation, the learned Judge had decided to maintain the compensation awarded as his own valuation had been lower.

[116] This is what the learned High Court Judge said with respect to settling for the Land Administrator's valuation which was higher than his own valuation, so to speak:

> "[31] Based on the above, the fair market value for the scheduled land, in the opinion of this Court, is RM213m^2 (round down 0.126). The Land Administrator has awarded RM250m^2 for the scheduled land which is higher than the finding of this Court. Therefore, the award compensated is in excess of RM299,478.00 based on the market value of the scheduled land (RM2,023,500.00 - RM1,724,022.00 [RM213.00. X 8094m^2]). Hence this Court decides to maintain the compensation award awarded by the Land Administrator.

[117] We agree with learned counsel for the appellants that the adjustment on "location" is a technical issue and not a legal issue and is best left to the expert assessor and more so when the learned Judge had agreed with the approach taken as well as the percentage adjustment to all the factors taken into consideration when using the comparable land disposal method.

[118] The temptation to tinker with the percentage of adjustment using the comparable land disposal method may at times be difficult to resist but we all have to remind ourselves that to do so would be entering and encroaching into the professional domain of the experts, trained in their specialised field of land valuation.

[119] The opinion expressed in **Jitender Singh a/l Pagar Singh & Ors v Pentadbir Tanah Wilayah Persekutuan and another appeal** [2012] 1 MLJ 56, though pre-**Semenyih Jaya**, is still very relevant where the assistance provided by an assessor is given due weight on a subject where the High Court Judge is not an expert, dealing as it is with land valuation where even expert valuers may not always agree:

> "[26] .....In our considered opinion the limitation requiring him to be guided by such an opinion is warranted as a High judge is no expert in determining the value of land. **Valuation of land clearly is not a mathematical process.** In particular, potential development value is not often easy to determine in the absence of an abundance of evidence from recent transactions in respect of comparable properties. **Almost invariably there emerges from the consideration of all of the facts a fairly well-defined range, sometimes blurred at either end within which the answer must lie. The opinion of those of equal competence and experience may well tend to indicate different point within that range**. Ultimately, it is a matter of opinion and experience. Thus, the requirement that the amount of compensation to be awarded is to be based on an opinion given by the experts in this particular field (ie a valuer), in determining the market value of the land that had been acquired and the amount of compensation to be awarded in our view is well founded." (emphasis added)

[120] It cannot be said that the private assessor had been plainly wrong here and due deference should be accorded to the professional judgment of the private assessor on this factor of adjustment of "location" in the absence of a clear and compelling reason to interfere.

Pronouncement

[121] The appeal was allowed in part. The learned High Court Judge had failed to judicially appreciate the opinion of the private assessor with respect to the adjustment made to the "location" factor of the subject land in arriving at its valuation which warranted appellate intervention.

[122] This Court had thus awarded the additional amount of the RM566,580.00 (RM320m^2 - RM250m^2 = 70m^2 X 8,094m^2) based on the adjustment on the location as made by the private assessor. Interest on the additional award shall be at 5% per annum from the due date to realisation.

[123] We also awarded costs of this appeal of RM20,000.00 to the appellants subject to allocatur.

Dated: 8 May 2021.

Sgd.
LEE SWEE SENG
Judge
Court of Appeal
Malaysia

<u>For the Appellant:</u>
Rajashree Suppiah
Kuan Kai Tat
Messrs Rajashree

For the Respondent:

Madihah Zainol

Pejabat Penasihat Undang-Undang Negeri Johor

Date of Decision: 11 November 2020.