

**DALAM MAHKAMAH TINGGI MALAYA DI JOHOR BAHRU
DI NEGERI JOHOR DARUL TAKZIM, MALAYSIA
SEMAKAN KEHAKIMAN NO.: JA-25-12-04/2020**

Dalam perkara permohonan untuk
semakan kehakiman

Dan

Dalam perkara permohonan untuk
Perintah Certiorari dan Perintah
Mandamus

Dan

Dalam perkara Perenggan 1, Jadual
dalam Akta Mahkamah Kehakiman
1964 (Akta 91)

Dan

Dalam perkara Aturan 53 Kaedah-
Kaedah Mahkamah 2012

Dan

Dalam perkara Kanun Tanah Negara
1965

Dan

Dalam perkara Kaedah-Kaedah Tanah
Johor 1966

ANTARA

SENAI AIRPORT TERMINAL SERVICES SDN BHD ...PEMOHON

DAN

1. PENTADBIR TANAH DAERAH KULAI

2. PENGARAH TANAH DAN GALIAN, JOHOR DARUL TAKZIM

...RESPONDEN-RESPONDEN



GROUNDS OF JUDGMENT

(Enclosure 26)

Introduction

[1] This is the Applicant's application for judicial review relating to a new rate of quit rent imposed by the Respondents on the Applicant's leased land.

[2] As a background, the Federal Land Commissioner ("**FLC**") is the registered owner of a land held under Title No. HS(D) 23569, PTD 8797 Mukim Senai, Daerah Kulai, Johor Darul Ta'zim ("**Land**") on which the Senai International Airport ("**SIA**") was built. The size of the Land is approximately 514.3555 hectares and held under one title. The Land also has neither express condition nor restriction in interest on it.

[3] In November 2003, the Applicant took over the operation and management of the SIA from Malaysian Airport Holding Berhad pursuant to a Concession Agreement ("**CA**") entered into between the Applicant and the Ministry of Transport on 11.01.2006.

[4] Under the CA, the Applicant was required to enter into a Master Lease Agreement ("**MLA**") with the FLC to lease the Land.

[5] On 11.01.2006, the MLA was executed between the Applicant and the FLC. Pursuant to the MLA, the Applicant became the lessee of the Land and is responsible to pay the annual quit rent in respect of the Land to the Respondents. The annual quit rent payable by the Applicant is based on the rates set out in Table II of the Schedule 6 to the Johore



Land Rules 1966 (“**JLR 1966**”). The JLR 1966 was later amended by the Johor Land (Amendment) (No. 2) Rules 2004 (“**JLR 2004**”).

[6] Between 2008 and 2014, the annual quit rent payable in respect of the Land was RM90,125.00. This was based on the rate designated for “*Airport–Runway*” under paragraph 3(e)(i) of the Table II in the Schedule 6 to the JLR 2004. The provision stated as follows:

(e) *Airport:*

(i) *Runway* 175.00 per hectare or part thereof

[7] Thus, RM175.00 x 515 hectares = RM90,125.00.

[8] Between 2015 and 2019, the quit rent payable in respect of the Land was reduced to RM 77,250.00. According to the Respondents, at that time the State Authority (“**SA**”) chose the calculation based on the rate in paragraph 3(III)(h) in Table II of the Schedule 6 under “*Town Land Category B*” where the rate was RM150.00 per hectare or part thereof. Thus, RM150.00 x 515 hectares = RM77,250.00.

[9] On 5.12.2019, the SA gazetted the Johore Land (Amendment) Rules 2020 (“**JLR 2020**”) which came into effect on 1.1.2020. With the JLR 2020, the SA revised the rates of quit rent.

[10] Accordingly, the new annual quit rent payable for the Land by the Applicant has increased to RM8,589,812.00.

[11] According to the Respondents, the new rate used in this calculation is based on “*Airport – Building*” under paragraph B20.8.1



namely at the rate of RM167.00 per 100 square metre or part thereof.
The provision reads –

20.8 Airport:

20.8.1 Building	167.00 per 100 square metre or part thereof
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[12] On 21.1.2020, the Applicant received the quit rent notice (“**Notice**”) from the 1st Respondent confirming that the amount of quit rent payable in respect of the Land for the year 2020 was RM 8,589,812.00.

[13] Aggrieved by the decision to impose the new rate of quit rent on the Applicant by the Respondents, on 11.6.2020, the Applicant filed this application for judicial review seeking for the following reliefs, *inter alia*:

- (a) *satu Perintah Certiorari untuk membatalkan Notis Peringatan Bayaran Cukai Tanah Tahun 2020 yang dikeluarkan oleh Responden Pertama kepada Pemohon pada 21 Januari 2020 berkenaan dengan Hartanah tersebut;*
- (b) *satu Perintah Certiorari untuk membatalkan pengiraan cukai tanah yang dibuat oleh Responden-Responden bagi Tanah tersebut seperti yang dinyatakan dalam Notis Peringatan berkenaan;*
- (c) *satu Perintah Mandamus untuk memaksa Responden-Responden untuk mengira semula cukai tanah bagi Hartanah tersebut, dengan memakai kadar cukai bagi “Lapangan Terbang – Landasan” di bawah perenggan C7.4.1 Susunan II Jadual 6 Kaedah-Kaedah Tanah Johor 1966 [J.P.U 39/1966] seperti yang dipinda oleh Kaedah-Kaedah Tanah Johor (Pindaan) 2020 [J.P.U. 49/2019] (“Kaedah-Kaedah Tanah Johor”) dan ditambah 40% menurut peruntukan bagi “tanah tiada kategori dan syarat*



NIL” di bawah perenggan E Susunan II Jadual 6 Kaedah-Kaedah Tanah Johor;

- (d) satu Perintah Mandamus untuk memaksa Responden-Responden untuk mengeluarkan semula satu Notis Peringatan Bayaran Cukai Tanah Tahun 2020 yang baru berkenaan dengan Tanah yang mencerminkan pengiraan di permohonan 1(c) di atas (“Notis Baru”);*
- (e) satu Perintah Mandamus untuk memaksa Responden-Responden untuk memberikan satu penangguhan pembayaran cukai tanah bagi Tanah tersebut sehingga 6 bulan dari tarikh pengeluaran Notis Baru; dan*
- (f) satu Perintah Mandamus untuk memaksa Responden Responden untuk memulangkan jumlah wang yang telah dibayar oleh Pemohon sebagai cukai tanah bagi Tanah untuk tahun 2020.*

Law on judicial review

[13] It is trite that an administrative decision may be reviewed on the grounds of procedural impropriety, illegality, irrationality and possibly proportionality (see *Telekom Malaysia Bhd v. Tribunal Pengguna & Anor* [2007] 1 CLJ 300, *R Rama Chandran v. Industrial Court of Malaysia & Anor* [1997] 1 CLJ 147, *ABT Construction Sdn Bhd & Anor v. Tribunal Tuntutan Pembeli Rumah & Ors* [2013] 8 CLJ 1020 and *Majlis Perbandaran Subang Jaya v. Visamaya Sdn Bhd & Anor* [2015] 7 CLJ 27)

[14] It is incumbent for the court to consider whether the impugned decision made by the Respondents had contravened the above-mentioned principles.



Issues of procedural impropriety and illegality

[15] In [*Holiday Villages of Malaysia Sdn Bhd v. Menteri Sumber Manusia & Anor \[2010\] 7 CLJ 683*](#) Ramly Ali JCA (as he then was) explained the procedural impropriety and illegality as follows:

[11] "Illegality" refers to a situation where the authority concerned has been guilty of an error of law in its action i.e., purporting to exercise a power it does not have. "Irrationality" refers to a situation where the authority exercises a power in so unreasonable a manner ("Wednesbury unreasonableness"). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Lastly, "procedural impropriety" refers to a situation where there is a failure on the part of the authority to observe procedural rules that are expressly laid down in the legislature instruments by which its jurisdiction is conferred even where such failure does not involve any denial of natural justice."

[16] Based on the above authority, it is pertinent to the court to scrutinize the law which empowers the SA to impose the quit rent.

[17] Item (2)(e) of the State List in the 9th Schedule to the Federal Constitution authorizes the SA to impose any charge in respect of land. The provision reads –

“except with respect to the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, land including –

- (a) ...*
- (b) ...*
- (c) ...*
- (d) ...*



- (e) *transfer of land, mortgages, leases and charges in respect of land; easement*"

[18] At the same time, s. 101 of the National Land Code (“**NLC**”) empowers the SA to revise the rates in the quit rent every ten years after the preceding revision. The relevant provisions in the section say –

Power of State Authority to revise rents periodically

101. (1) *Subject to subsection (5), the State Authority may from time to time revise in accordance with the following provisions of this section the rents payable in respect of alienated lands within the State.*

(2) ...

(3) ...

(4) ...

(5) *Revisions of rent under this section shall be made at such times as the State Authority may, with the approval of the National and Council, determine, but —*

(a) *in the case of the first such revision, not so as to have effect earlier than the beginning of the year 1970; and*

(b) *in the case of any subsequent revision, not so as to have effect before the expiry of a period of ten years beginning with the most recent date as from which any rents in the State were revised under this section.*

[19] As alluded to, the preceding revision of the quit rent was made in 2004 vide the JLR 2004 while the recent prevision was done 15 years thereafter vide the JLR 2020. Besides that, the NLC does not require any additional procedure or condition except the revision must be done



not less than 10 years after the preceding revision. Since the SA is duly authorised to make the revision and all procedures have been complied with, I find there is no illegality on the gazette of the JLR 2020 and as such the rates in the quit rent are also valid.

Issue of irrationality

[20] In *CCSU v. Minister for the Civil Service* (1984) 3 All ER 935, Lord Diplock explained the concept of "irrationality" as follows:

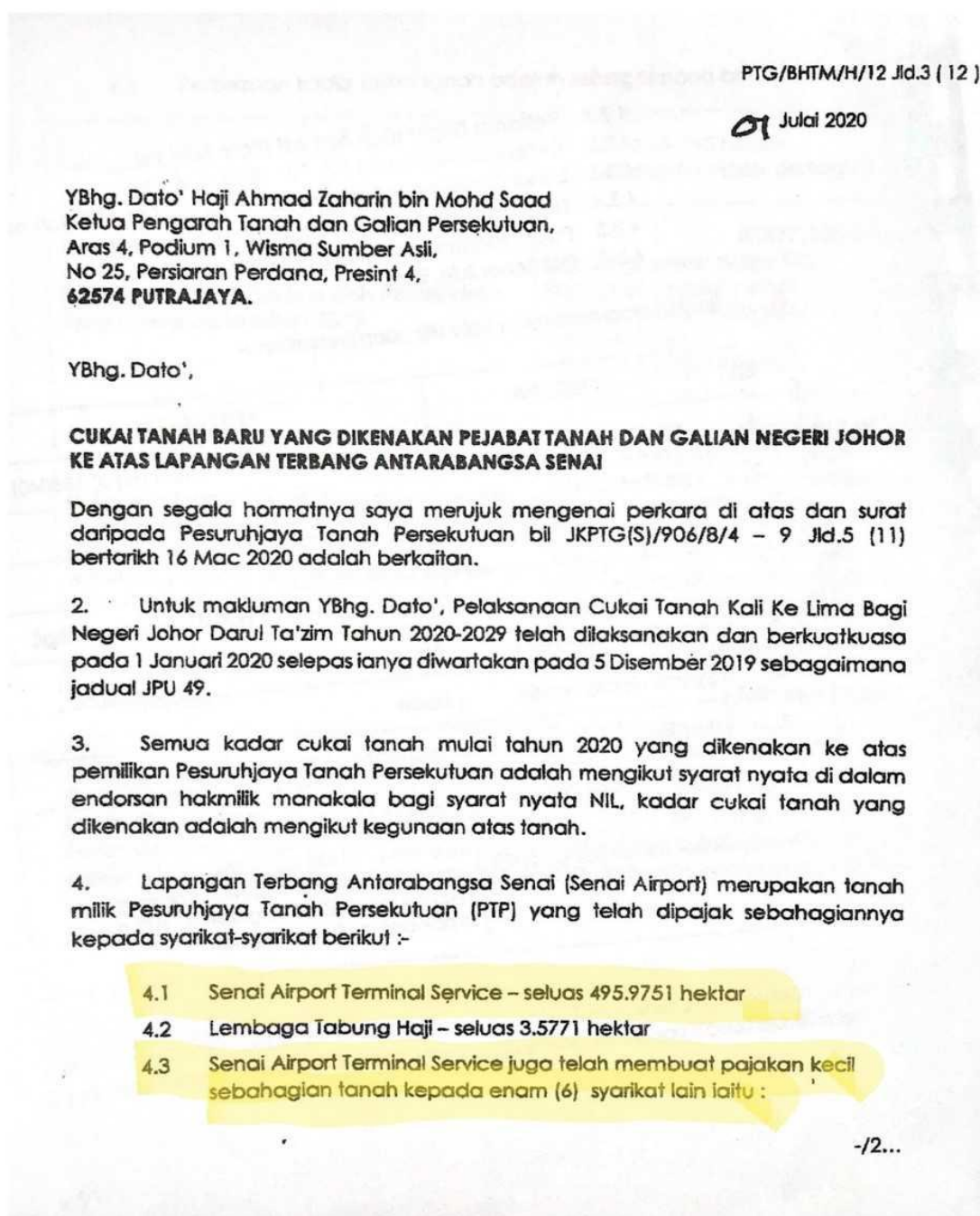
"By 'irrationality' I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness' (see Associated Provincial Picture Houses Ltd v. Wednesbury Corp (1974) 2 All ER 680; (1948) 1 KB 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the court's exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's ingenious explanation in Edwards (Inspector of Taxes) v. Bairstow (1955) 3 All ER 48; (1956) AC 14 of irrationality as a ground for a court's reversal of a decision by ascribing it to an inferred though unidentifiable mistake of law by the decision-maker. 'Irrationality' by now can stand on its own feet as an accepted ground on which a decision may be attacked by judicial review.

[21] In the present case, the Respondents chose the rate based on the rate designated for "Airport – Building" under paragraph B20.8.1 which imposes the rate at RM167.00 per 100 square metre or part thereof.

[22] In explaining the rationale in choosing this calculation, the Respondents narrated the historical background on how the previous



quit rent was imposed. The Respondents admitted that there was a mistake in imposing the rate on the Land before. This led the rate imposed was very low. This can be seen in a letter dated 1.7.2020 sent by the 2nd Respondent to the Director General of Land and Mines as the owner of the Land explaining the mistake. I reproduce the letter for ease of reference –



-2-

- 4.3.1 Petronas Dagangan Berhad (Pam Minyak)
- 4.3.2 Celestica Electronics (M) Sdn. Bhd. (Industri)
- 4.3.3 Senai Centerpoint Sdn. Bhd. (Bangunan Komersil dan Hotel)
- 4.3.4 Executive Jets Asia Sdn. Bhd. (Hanger Persendirian)
- 4.3.5 Pokka Malaysia Sdn. Bhd. (Industri)
- 4.3.6 Pali Senai Sdn. Bhd.

5. Berikut adalah butiran hakmilik yang berkaitan :-

BIL	PERKARA	KENYATAAN
1.	No. Hakmilik	HS(D) 23569 (Hakmilik asal : HS(D) 135040)
2.	No. Lot	PTD 8797
3.	Mukim	Senai
4.	Keluasan	514.3555 hektar (5,143,555 meter persegi)
5.	Kategori Kegunaan	Tiada
6.	Syarat Nyata Tanah	Tiada
7.	Pemilik	Pesuruhjaya Tanah Persekutuan
8.	Cukai Tanah Tahun 2020	RM8,589,812.00 Keluasan : 51436 mp x RM167.00 (mengikut kadar Bangunan Lapangan Terbang RM167.00 bagi setiap 100 mp @ sebahagian daripadanya)

6. Sebelum ini, terdapat kesilapan kadar cukai tanah yang dikenakan ke atas hakmilik berkaitan yang mengakibatkan perbezaan terimaan oleh pentadbiran ini.

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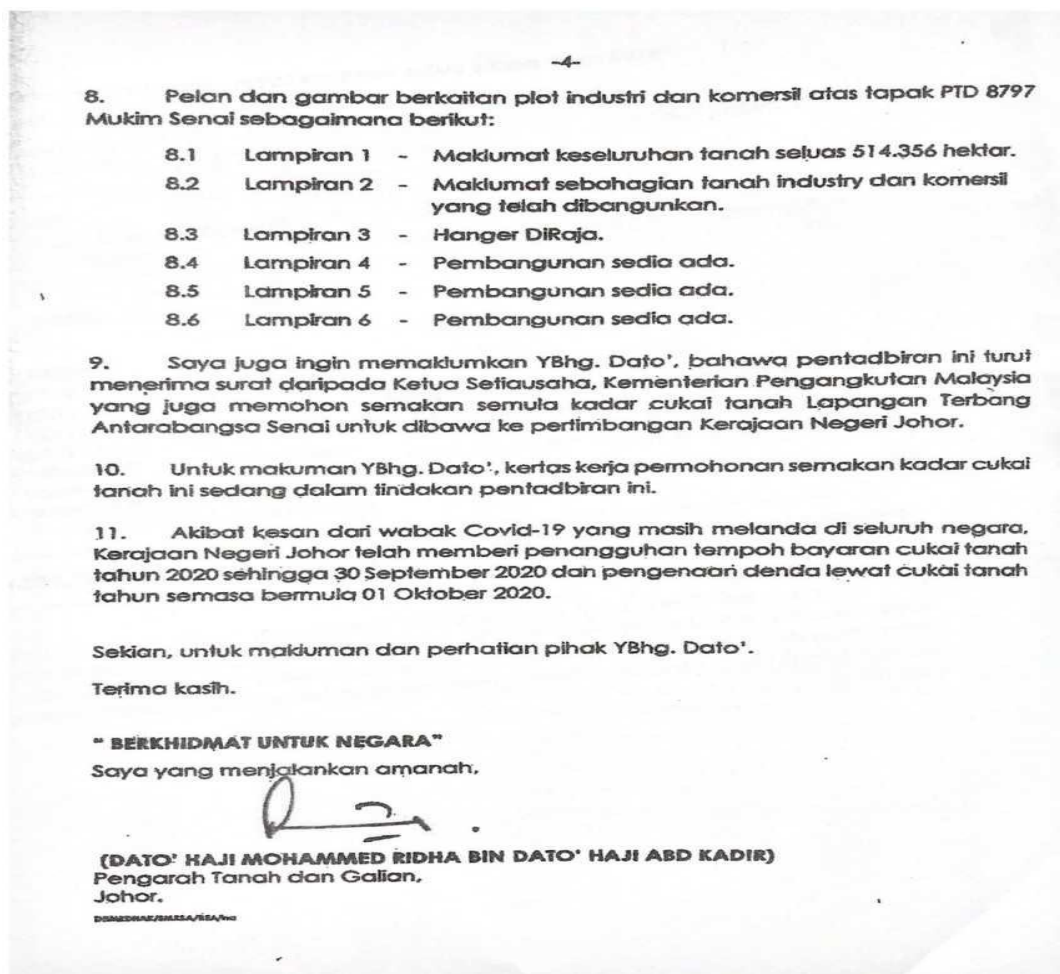
6.1 Perbezaan kadar cukai tanah adalah sebagaimana berikut :-

Keluasan tanah	514,355 hektar (5,143,555.00 meter persegi)
Cukai tanah yang diterima oleh Pentadbiran Tanah Johor pada tahun 2019	RM77,250.00 (mengikut syarat nyata NIL RM150.00 sehektar atau sebahagian daripadanya : 514,355 hek = 515 hek x RM150.00)
Cukai tanah yang sepatutnya diterima oleh Pentadbiran Tanah Johor sebagaimana dijadual JPU95 untuk tahun 2019 dan sepanjang tempoh JPU95 dikuatkuasakan	RM874,412.00 (mengikut syarat nyata Tanah Kerajaan Persekutuan (Jabatan Yang Memungut Hasil) @ RM17.00 bagi setiap 100mp atau sebahagian daripadanya atas Tanah Bandar Kategori B ; 5,143,555.00 meter persegi = 51436 mp x RM17.00)
PERBEZAAN	RM797,162.00

7. Namun demikian, bagi memudahkan pengenalan kadar sebenar cukai tanah atas PTD 8797 Mukim Senai mengikut kegunaan masing-masing, pihak YBhg. Dato' disyorkan untuk membuat permohonan Serahbalik Kurnia Semula (SBKS) supaya kadar yang dikenakan bersesuaian dengan keluasan dan aktiviti sebenar atas tanah.

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[23] Based on the explanation in the letter, it is not surprising that there is a significant difference between the previous rate and that imposed in 2020.

[24] Upon scrutinizing the facts, I find that although there was a mistake done by the Respondents in calculating the rate imposed on the Land which led the SA lost a huge amount of quit rent, the Respondents did not claim the difference in the form of outstanding charge or tax. Instead, it was left to be enjoyed by the Applicant.

[25] Since the Land has the express condition as "NIL" on it, it is trite that the Land can be utilized to the maximum namely as the commercial development on which the SA may impose the maximum rate of quit rent.



Thus, according to the new rate, the rate payable is RM588.00 per 100 square metre or part thereof. If this rate is imposed, the rent would be 51436 square metre x RM588.00 = RM30,244,368.00.

[26] Nonetheless, I find the SA has created a specific category namely “*Land Building – General – Airport – Building*” with the rate is far below that is RM167.00 per 100 square metre or part thereof. Thus, the rate imposed on the Land was 51436 square metre x RM167.00 = RM8,589,812.00. This amount is only 28.4% of the rate payable on the land for commercial development.

[27] Another issue raised by the Applicant is that the application of rate under category of “*Land Building – General – Airport – Building*” by the Respondents is irrational as the airport buildings occupy approximately only 3% of the overall use of the Land.

[28] In this context, Syed Muhammad Khalil bin Syed Ahmad (Chief Assistant Director of Land Revenue) in his Affidavit in Reply in Enclosure 35 explained that the Land comprises of the following activities and components:

	Activity/component	Area in square metre
a.	airport building	142,000
b.	Senai Airport Terminal	59,000
c.	Senai Airport Aviation Park	81,000
d.	Senai Business Aviation Terminal	2,000
e.	runway	2,230,000
f.	undeveloped area	1,705,000
g.	industrial zone	400,000



h.	Commercial zone	47,200
i.	Cargo and warehouse	82,400
g.	undeveloped area	213,100

[29] He also stated that since all the activities and components in the Land are lumped in one title and the Land bears “Nil” conditions, the calculation is based on the category of “*Land Building – General – Airport – Building*”. The calculation would be different if the Land is subdivided according to activities or components.

[30] It has to be noted that the test for irrationality or unreasonableness was pioneered by *Associated Provincial Picture Houses, Ltd v. Wednesbury Corporation* (1948) 1 KB 223; (1947) 2 All ER 680 which succinctly explained it as follows:

Theoretically it is true to say - and in practice it may operate in some cases - that, if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere. That, I think, is right, but that would require overwhelming proof, and in this case the facts do not come anywhere near such a thing.

[31] In light of above, it is clear that the new rate imposed is not irrational or unreasonable taking into consideration of the activities and components on the Land together with the comparison with the rate imposed previously as well as the explanation given by the Respondents.

Issue of proportionality

[32] In explaining the concept of proportionality, the Federal Court in [R Rama Chandran v. Industrial Court \[1997\] 1 CLJ 147](#); [1997] 1 MLJ 145, FC had quoted an Indian case of *Ranjit Thakur v. Union of India* AIR



1987 SC 2386, where the quantum of punishment imposed by a Court Martial was in issue. Venkatchalia J speaking for the Supreme Court said this (at p. 2392):

The doctrine of proportionality, as part of the concept of judicial review would ensure that even on an aspect which is otherwise within the exclusive province of the Court Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence should not be immune from correction.

[33] It is trite that in deciding on the issue of proportionality, the court has to look at the reasonable relation between the objective which is sought to be achieved and the means used to that end. Under this principle, the court has to consider the advantages and disadvantages of the administrative actions and only allow them if the balance tilts to advantages.

[34] In our present case, as alluded to, previously the quit rent for airport buildings was RM119.00 per square metre or part thereof while this time it was increased to RM167.00 per square metre or part thereof. As for the runway, from RM175.00 per hectare, it was increased to RM263.00 per square metre or part thereof. This increase is as much as 28.74% and 33.46% for airport buildings and runways respectively. This amount of increase, in my view, is not excessive.

[35] It has to be noted that the revision of the quit rent does not involve the Land alone but covers all land throughout the state of Johor and majority of the increase is below 50% from the previous rates.



[36] Needless to say, compared to the federal government which is given the powers to collect more and extensive taxes, the powers of the state authorities in this regard are very few and limited as enumerated in Part 3, Tenth Schedule of the Federal Constitution. Revenues from land and land-related transactions are the largest contributors to the state's revenue from which 80% will be used for operating expenses such as salaries, pensions, subsidies, grants and loans as well as for public physical developments. With the costs to fund the developments are increasing every year, the new rates which are below 50% compared to the rate charged 15 years ago, I hold that, are reasonable, logic and proportionate.

[37] Recognizing the importance of quit rents to the states, the Minister of Natural Resources when tabling the amendment to the NLC on 30.7.1974 once said at page 33 of the Hansard for Dewan Rakyat, Third Parliament, Fourth Parliament Term as follows:

“adapun soal hendak meminda cukai tanah atau hendak dikaji semula, saya rasa ini satu kesulitan juga. Soal menentukan cukai tanah ini adalah soal Kerajaan Negeri sendiri. Ada syarat-syarat yang dibenarkan dalam Kanun Tanah Negara mengenai pemindaan atau perubahan cukai itu boleh dibuat dalam tempoh yang tertentu. Katalah umpamanya 10 ataupun 15 tahun sekali. Dalam tahun 1970 Kerajaan-kerajaan Negeri telah mengambil tindakan mengubahsuaikan hasil ataupun cukai-cukai tanah yang dikenakan kepada rakyat. Perkara ini adalah perkara kuasa Kerajaan Negeri seratus peratus dan ada pun dari segi Kanun Tanah Negara hanya menentukan peraturan dan tempoh yang membolehkan Kerajaan Negeri itu mengubahsuaikan cukai tanah sahaja. Soal menentukan berapa, itu adalah hak Kerajaan Negeri itu sendiri.”



[38] In light of the above, I find that there is a reasonable relation between the objective which is sought to be achieved by the SA in reviewing the quit rent and the means used to that end.

Conclusion

[39] In the upshot, based on the aforesaid reasons, and after careful consideration of all the evidence before this Court, and written and oral submissions of the parties, the Applicant failed to satisfy the Court that there is any merit in this application for judicial review. Premised on the discussions alluded to in the above, I dismiss the Applicant's application with costs.

Dated: 13.11. 2022

-SIGNED-
(SHAMSULBAHRI BIN HAJI IBRAHIM)
Judicial Commissioner,
Johor Bahru High Court

Counsels:

*For the Applicant – Rabindra S. Nathan (Thong Chong Yen with him);
Messrs Shearn Delamore & Co*

*For the Respondents – Muhammad Azzam bin Zainal Abidin; Johor
State Legal Adviser's Chambers*

Cases referred to:

- *ABT_Construction_Sdn_Bhd & Anor v. Tribunal Tuntutan Pembeli Rumah & Ors [2013] 8 CLJ 1020*



- *Associated Provincial Picture Houses, Ltd v. Wednesbury Corporation* (1948) 1 KB 223; (1947) 2 All ER 680
- *CCSU v. Minister for the Civil Service* (1984) 3 All ER 935
- *Holiday Villages of Malaysia Sdn Bhd v. Menteri Sumber Manusia & Anor* [2010] 7 CLJ 683
- *Majlis Perbandaran Subang Jaya v. Visamaya Sdn Bhd & Anor* [2015] 7 CLJ 27
- *R Rama Chandran v. Industrial Court* [1997] 1 CLJ 147; [1997] 1 MLJ 145
- *Ranjit Thakur v. Union of India* AIR 1987 SC 2386,
- *Telekom Malaysia Bhd v. Tribunal Pengguna & Anor* [2007] 1 CLJ 300

Legislations referred to:

- *National Land Code – s. 101*
- *Johore Land Rules 1966*
- *Johore Land (Amendment) (No. 2) Rules 2004*
- *Johore Land (Amendment) 2020*

