

DALAM MAHKAMAH TINGGI MALAYA DI PULAU PINANG
DI DALAM NEGERI PULAU PINANG
RUJUKAN PENGAMBILAN TANAH NO. PA-15-54-01/2021

ANTARA

KHOR KHENG LONG

(No. K/P: 640723-07-5483)

....

PEMOHON

DAN

PENTADBIR TANAH DAERAH SEBERANG

PERAI SELATAN

.....

RESPONDEN

ALASAN PENGHAKIMAN

[1] The applicant is dissatisfied with the Land Administrator's award for the acquisition of his land Lot 10059, GRN 158668, Mukim 8, Daerah Seberang Perai Selatan ("scheduled land"). *Vide* Form N dated 21.12.2020 he raised his objection in respect of the compensation for the land value and the failure on the part of the Land Administrator to compensate the loss of 20 units of residential buildings ("buildings"). The date of the gazette under ss.4 and 8 of the Land Acquisition Act 1960 ("Act 486") is on 5.11.2020 ("material date").



[2] The Land Administrator having conducted the inquiry awarded the applicant a sum of RM4,500,000.00 at RM180.83 per m² or RM16.80 psf for the whole scheduled land and no compensation for the buildings. The Jabatan Penilaian dan Perkhidmatan Harta (JPPH) recommends RM6,715,710.00 at RM270 per m² or RM25.08 psf for the scheduled land only. No compensation was given for the buildings. While the applicant's valuer A-Plus Property Consultant ("APPC") recommends RM8,620,982.00 at RM346.60 per m² or RM32.20 psf for the scheduled land and a sum of RM1,868,329.00 for the buildings.

[3] The scheduled land measuring 24,873 m² is zoned for agriculture for the rear portion and development for the front portion, first layer and non-first grade land. It is flat and is of road level and with no restriction in interest. The buildings found thereon are five detached single storey houses and fifteen single storey link houses. Besides these there are three shrines, a garage, a badminton court, a chicken and a cow shed. The scheduled land is squarish in shape.

[4] The learned counsel for the applicant points out that the Land Administrator failed to make a full inquiry instead he relied on the minutes of meeting dated 23.10.2020 when he handed down the award. He cites the case of ***Pemungut Hasil Tanah, Daerah Barat Daya (Balik Pulau), Pulu Pinang v. Kam Gin Paik & Ors [1983] 2 MLJ 390*** and submits that section 12(2) of Act 486 had not been complied with and the said award should be revised.



[5] He further points out that there is no common comparable. However, he submits that Comparable No.3 Lot 7706 appears to be the best comparable based on the date of transaction. Lot 7706 was transacted in August 2019. Referring to APPC's report (Lampiran F Enclosure 6) the adjustments made are as follows:

- 5.1 Transaction date: +10% (transactions slightly more than a year);
- 5.2 Access: +20% (Lot 7706 is an interior land);
- 5.3 Land use: +25% (Lot 7706 – oil palm without infrastructure); and
- 5.4 Terrain: +5% (Lot 7706 is undulated and slightly below road level).

[6] The learned Senior Federal Counsel appearing for the respondent relies on JPPH's Comparable No. 1 Lot 681 which was transacted on 15.9.2020 and zoned for development. Lot 681 is the nearest lot to the scheduled land and is flat and of road level. It is squarish in shape. She refers to ***Ng Tiou Hong v. Collector of Land Revenue, Gombak [1984] 1 CLJ 350*** and submits that Lot 681 should be the best comparable as it has similar features to the scheduled land. JPPH gives the following adjustments:

- 6.1 Location: +15% (nearest to the scheduled land);
- 6.2 Size: -10% (Lot 681 is 4,932.098 m²); and
- 6.3 Zoning: -5% (Lot 681 is wholly zoned for development); and



6.4 Others: +10% (Lot 681 is subject to the Land Conservation Act 1960).

[7] The Government Assessor opines that no adjustment should be given for location as the comparables preferred by both valuers are within the locality of the scheduled land. She agrees with having Lot 681 as the most suitable comparable owing to the similarity of the land features and the transaction date was more recent than Lot 7706. She is of the view that the following adjustments should be made:

7.1 Access: +10%;

7.2 Size: -10% (Lot 681 is much smaller than the scheduled land);

7.3 Zoning: -5%; and

7.4 Others: +10% (Lot 681 is subject to the Land Conservation Act 1960).

Considering the adjustments suggested, she is of the opinion that the scheduled land should be valued at RM260.00 per m² or RM24.15 psf.

[8] The Private Assessor opines that the recommended land value is 202.58 per m². She has considered 4 comparable lots namely Lot 681 from JPPH and Lots 680, 7706 and 6276 from AAPC and makes the necessary adjustments. Having done so, she is of the view that the scheduled land should be valued at RM202.58 per m² or RM18.82 psf.



Findings

[9] It is not disputed that there was a meeting held on 23.10.2020 where both parties attempted to come to a settlement. The applicant offered RM18.00 psf or RM193.75 per m² which comes up to RM4,800,000.00 and he was prepared to accept RM4,500,000.00. However, the applicant was informed that he would still be at liberty to file Form N. The Land Administrator did not deny that the outcome of the said meeting did influence the him in handing down the award.

[10] Having considered the affidavits filed by both parties, I am of the view that there was no agreement as far as the amount of compensation is concerned simply because it was still open for the applicant to challenge the said amount. Hence, I proceed to consider the reports prepared by both JPPH and AAPC as well as the Assessors 'opinions besides the submissions advanced by both parties.

[11] There is no common comparable lot. I have considered the features in all comparable lots picked by both the valuers and the assessors. Both the JPPH and the Government Assessor prefer Lot 681. After making the allowances JPPH suggests RM270.00 per m² or RM25.08 psf while the Government Assessor suggest RM260.00 per m² or RM24.25 psf. I cannot accept taking Lot 681 alone as comparable. Granted Lot 681 was transacted on 15.9.2020 and it is the most recent among all available comparables but its size is too small i.e. 4,932.098 m² while the scheduled land is 24,873.000 m². Land of substantial difference in size according to the Federal Court in ***Superintendent of Lands and Surveys, Sarawak v. Aik Hoe & Co. Ltd [1966] 1 MLJ 243*** and ***Ng Tiou Hong (supra)*** was



not suitable to use as comparable. Further the whole of Lot 681 is zoned for development.

[12] I cannot accept Lot 7706 alone as suggested by the applicant as it is an interior land, undulated and below road level. All the comparables carry plus and minus points therefore to my mind preferring a single lot as comparable is not appropriate more so when all have different features except their location.

[13] Turning to the Private Assessor's assessment, I am of the view that her opinion is more realistic. She takes Lots 681, 680, 7706 and 6276 as comparables in making her assessment. Lot 680 was transacted on 25.7.2017, Lots 7706 and 6276 were both transacted in 2019. Lot 680 measures 20,386.0069 m² and Lot 7706 measures 20,430.00 m² while Lot 6276 is 11,280.00 m² hence, only slight adjustments need to be given. I am mindful of the fact that Lot 680 was transacted more than 3 years from the material date. Subparagraph 1(1A) of the First Schedule of Act 486 provides:

“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).”.



However, it does not mean that Lot 680 cannot be considered at all. Further it is a first layer land similar to the scheduled land and abuts Lot 681. Lot 680 is of first layer while Lots 7706 and 6276 are interior land.

[14] Although I agree that the three comparables offered by APPC are suitable, I find that the adjustments or allowances made are unreasonable. They are undulated and below road level and only Lot 7706 is squarish. I cannot agree with the huge adjustments given by APPC. For instance, he gives a +30% adjustment for the time factor for Lot 680 without providing any reasons.

[15] Having given the necessary adjustments to the four comparables, the Private Assessor obtains an average price of RM18.82 psf or RM202.58 per m². I find that the adjustments she gives are more sensible this figure is more sensible thus, I agree that RM18.82 psf or RM202.58 per m² is a fair and reasonable market value for the scheduled land.

[16] As regards the buildings, the following facts are undisputed namely,

- 16.1 the applicant is not the owner of the buildings;
- 16.2 the buildings were constructed and/or owned by squatters;
- 16.3 they existed before the applicant purchased the said land;

Therefore, the applicant is not a “person interested” in the buildings found thereon (see ***Cahaya Baru Development Bhd v. Lembaga Lebuhraya Malaysia [2010] 8 CLJ 761***). Further the buildings were constructed and occupied by squatters and hence illegal and no compensation ought to be given (see ***Pentadbir Tanah Daerah Petaling v. Swee Lin Sdn Bhd***



[1999] 3 CLJ 577 and subparagraph 1(3A) of the First Schedule of Act 486).

Decision

[17] Based on the reasons discussed, I increase the land value from RM180.83 per m² or RM16.80 psf to RM202.58 per m² or RM18.82 psf. However I maintain the decision of the Land Administrator in not giving any compensation for the buildings.



(TUN ABD MAJID BIN TUN HAMZAH)

Hakim

Mahkamah Tinggi Malaya, Pulau Pinang

Tarikh: 8 Disember 2022

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