

**DALAM MAHKAMAH TINGGI MALAYA DI SHAH ALAM
DALAM NEGERI SELANGOR DARUL EHSAN, MALAYSIA
RUJUKAN TANAH NO.: BA-15-10-03/2021**

ANTARA

**SHAH ALAM CITY CENTRE SDN BHD
(No. Syarikat: 221568-X)**

...PERAYU

DAN

PENTADBIR TANAH DAERAH KLANG

...RESPONDEN

Di dengar bersama

**DALAM MAHKAMAH TINGGI MALAYA DI SHAH ALAM
DALAM NEGERI SELANGOR DARUL EHSAN, MALAYSIA
RUJUKAN TANAH NO.: BA-15-75-11/2020**

ANTARA

**PRASARANA MALAYSIA BERHAD
(No. Syarikat: 467220-U)**

...PERAYU

DAN

PENTADBIR TANAH DAERAH KLANG

...RESPONDEN

JUDGEMENT

[1] This is an application by Prasarana Malaysia Bhd (“Prasarana”) to reinstate a land reference pursuant to Order 34 Rule 6(2) of the Rules of Court, 2012 (“ROC 2012”) read together with Section 45(2) of the Land Acquisition Act, 1960 (“LAA 1960”).



Factual Background

[2] The factual background as attained from the submissions of parties are that SACC is the registered proprietor of a piece of land held under Lot No. PT 2562, Section 13, HSD 298847, Mukim Bandar Shah Alam, Daerah Petaling (“Land”).

[3] The temporary occupation or use of the Land was procured by the Land Administrator (“the Respondent”) for the construction of the Project of Light Rail Transit 3 (LRT) from Bandar Utama to Johan Setia, Klang (“Project”) for a term of three (3) years (1.11.2017 until 31.10.2020).

[4] On 11.10.2017, the Respondent made a compensation award for inter alia rental in the sum of RM7,946,637.60 payable every six months for a three-year term of temporary occupation of the Land from 1.11.2017 to 31.10.2020.

[5] In November 2018, after having paid the rental for one year, an early termination of the temporary occupation was made. The rental for the unexpired period of the temporary occupation (of two years) totalling RM31,786,550.40 under the 1st Award remained unpaid.

[6] On 19.5.2020, which is about five months before the expiry of the three-year term of temporary occupation), the Respondent herein made a compensation award of RM31,786,550.40 (being the outstanding rental payment/ compensation/damage done to the Land/restoration of the Land).

[7] Prasarana then filed a Form N dated 24.6.2020 (“Prasarana’s Form N”) to object the quantum of the Award for Restoration on the ground that the total compensation awarded by the Respondent in the sum of RM31,786,550.40 was too high given that the acquisition of the Land had been withdrawn pursuant to Section 35 of the LAA 1960.

[8] Following the filing of Prasarana’s Form N by Prasarana, SACC had applied an extension of time to file Form N dated 12.1.2021 (“SACC’s Form N”) and a declaration that SACC has the right to be heard and/or participate any proceedings in relation to/challenging the compensation or award by the Respondent.

[9] On 23.9.2021, during the case management of Prasarana’s Land Reference which was held together with SACC’s Land Reference, this Honourable Court on the application by the parties had ordered to strike out Prasarana’s Land Reference on the ground that Prasarana had failed,



refused and/or neglected to take any action, comply with the Court's directions and/or attend the case management.

[10] On 22.10.2021, Prasarana filed an application seeking to set aside the Striking Out Order and to reinstate Prasarana's Land Reference.

The Law

[11] Order 34 rule 6 of the ROC 2012 and Section 45(2) of LAA 1960 is the basis of Prasarana's application to reinstate Prasarana's land reference.

[12] Reference is made to Order 34 rule 6 of the ROC 2012 which provides:

"Failure to attend

(1) If, at the time appointed for the pre-trial case management, any party fails to attend, the Court may dismiss the action or proceedings or strike out the defence or counterclaim or enter judgment or make such other order as the Court thinks fit.

(2) An order made by the Court in the absence of a party concerned or affected by the order may be set aside by the Court, on the application of that party, on such terms as it thinks just.

(3) Without prejudice to the preceding paragraphs of this rule, where any party to the action or proceedings fails to attend the pre-trial case management, the Court may, if it thinks fit, adjourn the case management."

[Emphasis added]

[13] Section 45(2) of LAA 1960 is reproduced below:

"(2) Save in so far as they may be inconsistent with anything contained in this Act, the law for the time being in force relating to civil procedure shall apply to all proceedings before the Court under this Act."

[14] In this regard, Section 45(2) of the Land Acquisition Act 1960 expressly recognises the application of the Rules of Court 2012. See: *Spicon Products Sdn Bhd v. Tenaga Nasional Bhd* [2022] 2 MLJ 72.



[15] The facts in this case disclose that at the case management on 23.9.2021, the federal counsel for the respondent applied to strike out this land reference due to the absence of Prasarana's learned counsel. The court then struck out this land reference.

[16] According to the Grounds of Judgement of the then presiding judge, Prasarana had failed to be present at four case management sessions. The dates are 9.12.2020; 8.6.2021; 27.7.2021; and 24.8.2021. Prasarana or legal counsel was not present on 23.9.2021 when the land reference was struck off.

[17] According to Prasarana, they were not aware of the case management dates before the court. It was also submitted that Prasarana at all material times did not receive any letter or notice or notification from the Court informing of the present land reference and the relevant Court dates and/or case management dates.

[18] The Federal Counsel for the Respondent had informed the court then he would not inform Prasarana of the case management date for the land reference. "Responden tidak mempunyai duty untuk memaklumkan Pemohon ini dan tidak akan undertake untuk memaklumkan memndangkan permohonan untuk memfailkan Borang N adalah permohonan Pemohon."

[19] This court observes the Respondent has not objected to this application. There is before this court, no affidavit in reply filed by the respondent nor any written submissions filed. In the case of the non-filing of an affidavit to oppose Prasarana's application, this would mean the respondent admits the contents of Prasarana's affidavit in support of this application to reinstate. See *Abdul Razak Ahmad v Majlis Bandaraya Johor Bahru* [1995] 2 MLJ 287 and *Ng Hee Thoong v Public Bank Bhd* [1995] 1 MLJ 281.

[20] Nonetheless, SACC had filed affidavits to rebut Prasarana's affidavits.

[21] According to Prasarana, Prasarana did not attend Court on the relevant dates (including the case management on 23.9.2021) as Prasarana was unaware of the Court dates. Reference was made to section 43 of the Land Acquisition Act 1960 which provides:

"On receiving a reference from the Land Administrator pursuant to subsection 38(5), the Court shall cause a notice in writing, specifying the day on which the Court will proceed to hear and determine the objection



contained in such reference, to be served on the following persons, and directing their appearance before the Court at that hearing-

(a) the applicant;...

[22] The land reference is made by the Land Administrator to the High Court vide Form O (in respect of the objection vide Form N lodged by Prasarana with the Land Administrator). As such, Prasarana is not directly involved in this process. Prasarana maintains that Prasarana was not informed by the court of the court dates as provided in section 43 of the LAA.

[23] In Federal Court case of *Spicon Products Sdn Bhd v. Tenaga Nasional Bhd* [2022] 2 MLJ 721 the court held:

“[75] With this amendment, while the courts are still mandatorily required to ‘cause a notice in writing specifying the day’ of hearing and serve the reference and direct appearance at the hearing, the notification is no longer according to a statutory Form but guided by ss 43, 53 and 55. Regardless the position, we make this observation — whether under the original Act 486 or as amended, **the notification of the hearing to and directing of persons interested to attend reference proceedings is always very much part of the obligations of the court.**”

[76] ... On the other hand, the respondent TNB as **paymaster is obviously a party that must be notified since it is the applicant.**”

[Emphasis added]

[24] SACC in objecting to this reinstatement application submitted that case management notice to Prasarana on 10.11.2020 and Jabatan Ketua Pengarah Tanah dan Galian Persekutuan Negeri Selangor had also, via its letter dated 15.10.2020, informed Prasarana that Form O was made for land reference to the Court. This court observes this objection regarding Form O was not earlier raised in the affidavits. If the objection was not raised in the affidavits, this court is not to accept this argument as per the case of *Ng Hee Thoong v Public Bank Bhd* [1995] 1 MLJ 281.

[25] SACC argued that Prasarana did not dispute the service/receipt of the letter dated 11.11.2020 which was served at the address of Prasarana. Nonetheless, Prasarana admitted that they have oversights the Letter dated 11.11.2020



[26] In striking out the land reference, the learned judge had stated in his grounds of judgement that Prasarana had failed to attend the case management on 9.12.2020; 8.6.2021; 27.7.2021; and 24.8.2021. In his grounds of judgement, the learned judge had suggested that Prasarana withdraw its appeal to the Court of Appeal and instead file an application to reinstate the land reference which the learned judge had struck out.

[27] Prasarana has since withdrawn the appeal. Prasarana took steps to file this application for reinstatement within the time prescribed. Prasarana's application was filed on 22.10.2021 (Enclosure 10), which is within 30 days from the date of the order of this court made on 23.9.2021 to strike out the present land reference. Hence, there is no delay in the filing of Prasarana's Application herein.

[28] According to SACC, the fact that the application for reinstatement was made in time is irrelevant. It was argued that the fact remains that Prasarana had failed to satisfy the requisite test for reinstatement, namely to provide cogent reason that Prasarana did not intend to ignore or flout the present land reference and that such failure to attend Court was due to extraneous circumstances beyond its control.

Conclusion

[29] Having carefully considered all the documents and submissions before this court, this court is satisfied that Prasarana was not aware of the case management dates before this court. This is further supported by learned Federal Counsel who stated that the Land Administrator would not inform Prasarana of the case management date. Therefore, this court allows Prasarana's application to reinstate the land reference in Enclosure 10 with no order as to costs.

Date: 20 December 2022

(SHAHNAZ BINTI SULAIMAN)

Judge

High Court of Malaya,
Shah Alam



Counsel:

For The Shah Alam City Centre Sdn Bhd:

Lum Kok Kiong
Tetuan Lum Kok Kiong & Co,
Peguambela dan Peguamcara
L-7-16, Level 7, Office Suite
Brem Mall, Jalan Kepong
52000 Kuala Lumpur.
+6 03 6242 9768
general@lkkco.com.my

For The Prasarana Malaysia Berhad:

Heng Yee Keat
Tetuan Christopher & Lee Ong,
Peguambela dan Peguamcara
Level 22, Axiata Tower,
No. 9, Jalan Stesen Sentral 5,
50470 Kuala Lumpur.
+6 03 2273 1919
ye.keat.heng@christopherleeong.com

For the Respondent:

Mohd Abdul Hakim bin Mohd Ali
Kamar Penasihat Undang-Undang
Negeri Selangor Darul Ehsan,
Tingkat 4, Podium Utara,
Bangunan Sultan Salahuddin Abdul Aziz Shah
40512 Shah Alam, Selangor.
+6 03 5544 7183
abdhakim@selangor.gov.my

