

**IN THE MATTER OF THE HIGH COURT OF MALAYA AT JOHOR BAHRU  
IN THE STATE OF JOHOR DARUL TA'ZIM  
JUDICIAL REVIEW APPLICATION NO.: JA-22-17-06/2022**

**BETWEEN**

**PENGERANG INDEPENDENT TERMINALS SDN BHD ... APPLICANT  
[Company No.: 937387-K]**

**AND**

**MAJLIS PERBANDARAN PENGERANG ... RESPONDENT**



## JUDGMENT

### APPLICATION FOR LEAVE TO COMMENCE JUDICIAL REVIEW

#### INTRODUCTION

[1] The Applicant filed this application for leave to commence judicial review proceedings against the Putative Respondent for the following reliefs:

(1.1) A declaration that the Respondent was not and is not entitled to impose the annual rate applicable for its administrative area (mukim of Pengerang) on the Applicant in respect of the Applicant's properties in the said area, namely the holdings described briefly below and explained further in Annexure A, until and unless the Respondent assesses the improved values of the said holdings based on applicable/acceptable standards of valuation and incorporates the assessed improved values into a valid valuation list under the Local Government Act 1976 ("Act 171") in accordance with the procedure prescribed by the said Act. In this regard, the relevant holdings are:

- i) The lands held under PN 64232, Lot No. 11083 (formerly known as PTD No. 4837), Mukim Pengerang, Kota Tinggi District, Johor (hereinafter referred to as "**PTD 4837**", where appropriate) and the developments thereon, referred to as "Phases 1A, 1B and 1C" (further details of **Phases 1A, 1B and 1C** are set out in Annexure A to Enclosure 1); and
- ii) The lands held under HSD 36621, PTD No. 4995, Mukim Pengerang, Kota Tinggi District, Johor (hereinafter referred to as "**PTD 4995**") (further details of PTD 4995 are set out in Annexure A to Enclosure 1).

(1.2) A prohibition against the Respondent imposing the annual rate for mukim of Pengerang upon the Applicant in respect of the holdings defined hereinbefore as Phases 1A, 1B and 1C and PTD 4995, until and unless the Respondent assesses the improved values of the said holdings based on applicable/acceptable standards of valuation and incorporates the assessed improved values into a valid valuation list



under Act 171, in accordance with the procedure prescribed by the said Act.

**(1.3)** An order of certiorari to move/remove to this Honourable Court the relevant records and proceedings (of the Respondent) and to quash amendments relating to the Applicant's holdings defined hereinbefore as Phases 1A, 1B and 1C and PTD 4995 that were made by the Respondent to the valuation list or lists said to be applicable for its administrative area (mukim of Pengerang).

**(1.4)** An order of mandamus that the Respondent does within fourteen (14) days (from the date of the said order of mandamus or such period as this Honourable Court deems fair and just) refund in full to the Applicant all sums of money that the Respondent billed/charged as rates in respect of Phases 1A, 1B and 1C and PTD 4995 and that were paid by the Applicant to the Respondent as a result.

The Applicant has complied with the provisions of Order 53 rule (3) of the Rules of Court 2012. This application was served on the Attorney General's Chambers (AGC) and the AGC has issued a letter of no objection addressed to the Applicant.

## BACKGROUND FACTS

The facts herein are reproduced from the Applicant's Affidavit in Support ("AIS") and speaking notes for the ex-parte application for leave.

- [2]** The Applicant operates within the oil & gas industry. Its holdings (defined as lands and buildings) for its business are in Pengerang, within the Respondent's administrative area.
- [3]** The Respondent imposed annual rates upon the Applicant in respect of the said holdings. The annual rates are a form of tax. The gazetted percentage applicable in respect of the Applicant's holdings in Pengerang is 0.40% of the said holdings' improved value (which equates approximately to the said holdings' market value).



- [4] The Applicant's holdings are not typical commercial buildings but structures that are used within the oil & gas industry, like tanks, pipelines, pipe racks, buildings, and other structures.
- [5] Under the Local Government Act 1976 (Act 171), the Respondent is required to undertake a valuation of the Applicant's holdings to arrive at their values before it can apply the gazetted percentage of 0.40% to derive the annual rate which can be imposed on the Applicant. Such valuation must also be undertaken every five (5) years and the resulting values must be set out in a list known as the Valuation List, unless the State Authority extends the period for doing so.
- [6] The Applicant avers that, based on, inter alia, searches of gazettes undertaken on the Applicant's behalf, it appears that the Valuation List(s) relied on by the Respondent had been prepared between the period 2002-2004, and has expired.
- [7] The Applicant further avers that the Respondent has unilaterally designated a valuation date for the Applicant's holdings that does not correspond to the date of the Adopted Valuation List. The valuation date used is 01.01.2013 (hereinafter referred to as the "**Designated Valuation Date**").
- [8] The Applicant also avers that the Respondent failed to comply with the requirements of Act 171 by reason of its omission to undertake a valuation exercise and prepare a Valuation List every five (5) years. The Applicant has, therefore, been prejudiced by not having its holdings revalued lower over time due to depreciation.
- [9] The Applicant contends as follows:
- 9.1 The Adopted Valuation List had expired by the time the Respondent began to impose the annual rates upon the Applicant;
- 9.2 The purported amendments to the Adopted Valuation List were ineffective in as much as there had been no Valuation List in existence that could have been amended;
- 9.3 The notice-requirements under s.144 of Act 171 were not complied with when the Respondent purported to amend the Adopted Valuation List;



- 9.4 The improved values were arbitrarily assigned by the Respondent and not based on any valuation exercise, in breach of ss.130 and 140 of Act 171, and accordingly, there was no base/principal sum upon which the gazetted rate of 0.40% could operate upon to permit the Respondent to derive the annual rates it charged the Applicant;
- 9.5 The Applicant is entitled to a refund of the rates wrongly charged, and which it paid due to the mistaken assumption that the Respondent had complied with law and procedure (although the Applicant is willing to settle for a refund of just the excess payments, if the Adopted Valuation List is valid, as explained in its Statement);

## THE LAW — ADVERSELY AFFECTED

- [10] Order 53, rule 2(4) of the Rules of Court 2012 (“ROC”) provides that any person **adversely affected** by a decision of any public authority shall be entitled to make an application for judicial review. The Federal Court case of **Malaysian Trade Union Congress & Ors v Menteri Tenaga, Air dan Komunikasi & Anor [2014] 3 MLJ 145** held that this had to do with a person’s *“real and genuine interest in the subject matter”*.
- [11] The cases, amongst others, of **QSR Brands Bhd v Suruhanjaya Sekuriti & Anor [2006] 2 CLJ 532** and **Flextronics Shah Alam Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri [2018] 7 CLJ 487** affirmed that the courts had to adopt a flexible approach when deciding if and when an Applicant was indeed *“adversely affected”*.

## THRESHOLD FOR LEAVE

- [12] It is trite law that the threshold for leave **is low**, with the sole question to be asked **at the leave stage** being whether or not the application is **frivolous**. The court in **QSR Brands Bhd v Suruhanjaya Sekuriti & Anor [2006] 2 CLJ 532** held:



*“[3] The very first point that we would make is that arguments such as the availability of an alternative remedy go to the merits of the substantive application for judicial review and ought never to be dealt with at the leave stage. The **sole question at the leave stage is whether the application is frivolous.**”*

See also **Mohamed Nordin bin Johan v Attorney-General, Malaysia [1983] CLJ (Rep) 271** and **JP Berthelsen v Director General of Immigration, Malaysia & Ors [1986] CLJ (Rep) 160**.

[13] In **WRP Asia Pacific Sdn Bhd v Tenaga Nasional Bhd (2012) 4 MLJ 296**, the Federal Court held as follows:

*“Leave may be granted if the application is not thought of as frivolous. The threshold at the leave stage **is extremely low.**”*

## THIS COURT’S FINDINGS

- [14] (i) Upon perusal of the Applicant’s statement under Order 53 rule 3(2) and its AIS, this Court finds that this application has surpassed the low threshold for the application for leave. The factual averments by the Applicant, if found to be true, inter alia, show that the Respondent’s failure to undertake a revaluation every five (5) years has prejudiced and **adversely affected** the Applicant since the likely depreciation of the Applicant’s assets were not taken into account in arriving at the rates chargeable to the Applicant.
- (ii) Additionally, the Applicant’s averments in paragraph 9 above, if proven to be correct and true, would indicate that the Respondent had acted ultra-vires the provisions of Act 171, thus entitling the Applicant to the orders prayed for.
- [15] As enunciated in the cases cited above, at the leave stage, this Court is not required to delve into the merits of this application, suffice for the Applicant to show that its application is not frivolous. This Court finds that the Applicant has shown that it has an arguable case.



[16] For the foregoing reasons, leave is granted for Judicial Review in Enclosure 1.

**Dated 29th December 2022**

.....  
Ahmad Murad Bin Abdul Aziz  
Judicial Commissioner  
High Court of Malaya  
Johor Bahru  
Johor Darul Ta'zim

**Solicitors:**

**For the Plaintiff** : **Tan Hui Wen**  
**Tetuan Skrine**  
Peguambela dan Peguamcara  
Level 8, Wisma UDA Damansara  
50, Jalan Dungun  
Damansara Heights  
50490 Kuala Lumpur  
(Ruj. Kami: VJR/THW/21925467)

**For the Respondent:** **Jabatan Peguam Negara**  
Bahagian Guaman  
Aras 6, No. 45, Persiaran Perdana  
Presint 4  
62100 Putrajaya  
(PN(S) 30/12/1 Johor)



**Cases Referred to:**

- Malaysian Trade Union Congress & Ors v Menteri Tenaga, Air dan Komunikasi & Anor [2014] 3 MLJ 145
- QSR Brands Bhd v Suruhanjaya Sekuriti & Anor [2006] 2 CLJ 532
- Flextronics Shah Alam Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri [2018] 7 CLJ 487
- Mohamed Nordin bin Johan v Attorney-General, Malaysia [1983] CLJ (Rep) 271
- JP Berthelsen v Director General of Immigration, Malaysia & Ors [1986] CLJ (Rep) 160
- WRP Asia Pacific Sdn Bhd v Tenaga Nasional Bhd (2012) 4 MLJ 296

**Legislation Referred to:**

- s.130 and s.140 Local Government Act 1976
- s.144 Local Government Act 1976
- Local Government Act 1976
- Order 53 rule 2(4) of the Rules of Court 2012
- Rules of Court 2012

**Hearing Date** : 25.08.2022

**Decision Date** : 25.08.2022

