IN THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)
CIVIL APPEAL NO. 01(f)-24-12/2021(P)

BETWEEN

PERBADANAN PENGURUSAN SUNRISE GARDEN KONDOMINIUM ... APPELLANT

AND

1. **SUNWAY CITY (PENANG) SDN BHD (NO. SYARIKAT : 141336 – U)**
2. **MAJLIS BANDARAYA PULAU PINANG**
3. **LEMBAGA RAYUAN NEGERI PULAU PINANG ... RESPONDENTS**

heard together with

IN THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)
CIVIL APPEAL NO. 01(f)-25-12/2021

BETWEEN

SIM KHOO TNEAH SENG & GOON SWEE KENG ... APPELLANT

AND

1. **SUNWAY CITY (PENANG) SDN BHD (NO. SYARIKAT : 141336 – U)**
2. **MAJLIS BANDARAYA PULAU PINANG**
3. **LEMBAGA RAYUAN NEGERI PULAU PINANG ... RESPONDENTS**

QUORAM

NALLINI PATHMANATHAN, FCJ
RHODZARIAH BINTI BUJANG, FCJ
MOHAMAD ZABIDIN BIN MOHD DIAH, FCJ

SUMMARY OF JUDGMENT

[1] These 2 appeals concern the law relating to planning approvals, more particularly, in relation to development on hill land and steep slopes in the state of Penang. This is a matter of significance because development on hillslopes is intrinsically related to sustainable development in the context of environmental law. It brings to the fore the need for a holistic approach in decision making in relation to property development, particularly on hill land and steep slopes as, notwithstanding legislation in this regard, sustainability of development has not necessarily been ensured. The governance of property development requires constant vigilance and a holistic approach in decision making by the relevant authorities.

[2] In these appeals, we consider the validity of planning approval granted by the Majlis Bandaraya Pulau Pinang (‘the local authority’) in relation to housing development on hillside land.

BACKGROUND FACTS

[3] Sunway, the registered owner of the subject land, is also the developer for the construction of a housing development project of 600 units of housing. The proposed development envisages 13 blocks of condominiums, 3 storey bungalows as well as other structures over a total area of 80.89 acres, forty-three per cent of which comprises hill land. Planning permission was granted on 21.02.2012 by the local authority.

[4] The Appeal Board, vide a decision dated 20.11.2015, set aside the planning permission granted by the local authority on the application of the Appellants.

[5] Sunway then filed judicial review proceedings in the High Court at Penang, seeking to quash the decision of the Appeal Board and succeeded in doing so.

[6] The Appellants appealed to the Court of Appeal, which affirmed the High Court decision.

[7] The Appellants then appealed against the decision of the Court of Appeal. Hence the present appeals.

THE SUBJECT LAND

[8] The subject land falls under the category of “First Grade title land” with no restriction of land use under the National Land Code.

[9] As we said earlier approximately 43% of the subject land on which the project is to be developed:

(a) enjoys an elevation in excess of 76 metres above sea level; and
(b) has a gradient exceeding 25 degrees.

[10] The said land was also declared as “hill land” under section 3 of the Land Conservation Act 1960 as of 9.8.1940.

THE PELAN DASAR

[11] In 1996, a zoning implementation plan known as the ‘Pelan Dasar Perancangan dan Kawalan Pemajuan MPPP/PN-020(PL/PP)’ (‘Pelan Dasar’) was approved by the State Planning Committee for utilization by the local authority for zoning purposes.

[12] In the Pelan Dasar, a part of the subject land is zoned as '*Perumahan Am*' or residential/housing zone, while the other part of the subject land is zoned as '*Perumahan Ketumpatan Rendah*' or low density housing.

[13] The Pelan Dasar was to be used by the local authority to determine land use until a local plan was produced. However, no local plan was ever drawn up by the local authority despite the Penang Structure Plan 2020 being gazetted in June 2007 and the express provision of section 12 of the TCPA, which envisaged that work on the local plan ought to commence before or soon after the Penang Structure Plan comes into effect.

THE PENANG STRUCTURE PLAN 2020

[14] Paragraph 4.5.2 of the Structure Plan contains policies relating to 'Hill Land' in Penang. It defines 'Hill Land' as land situated 76 metres or 250 feet above sea level. That describes 43% of the subject land.

[15] Dasar Khusus 3 Langkah 1 (DK3 L1) of the Structural Plan finetunes the general preservation of hill lands as follows:

> *"Maintain the area exceeding level 76 metres (250 feet) and above as hill land/natural area including lands which is gazetted under the Land Conservation Act 1960 (hill land gazette)."*

[16] Dasar Khusus 3 Langkah 2 (DK3 L2) in the Structure Plan contains a general prohibition against any form of development including housing development.

[17] Dasar Khusus 3 Langkah 3 (DK3 L3) requires land that has been given approval by authorities to be excised from its status as 'hill land'

in the gazette, to be subject to planning requirements and the guidelines for risky or sensitive areas used by the State.

[18] Dasar Khusus 3 Langkah 4 (DK3 L4) which provides the sole exception to "Hill Land" cutting activity, states that:

> *"Limited development for 'Projek Istimewa' in areas where the elevation is above 76 meters (250 feet) or exceeding that requires strict control by complying with "Guidelines on Development of Hill Land Area" and any guidelines which are determined by the Government; and obtain EIA approval and obtain State Planning Committee approval."*

THE SPECIAL PROJECTS GUIDELINES

[19] The creation of the Special Projects Guidelines came about in 2009, that is some two years after the Structure Plan had been gazetted.

[20] This was done by the State Director of JPBD (the planning division) presenting a Working Paper varying or expanding the Structure Plan by introducing a definition for "Special Projects" as set out in the Structure Plan itself.

[21] The salient part of the Special Project Guidelines setting out the exceptions provides as follows. Under Category 1 infrastructure projects for the Government for public use are specified as exceptions in sub-paragraph (a). In sub-paragraph (b) are examples of what is meant by infrastructure projects for the Government, such as a cable car project; a hill rail project and such other infrastructural projects necessary for public use that cannot be avoided and have therefore to be constructed there. Sunway's development project clearly does not fall within Category 1.

[22] Category 3 deals with exceptions in relation to special projects involving soil works such as quarry works, rock extraction and agricultural activities on hill land which is not relevant here.

[23] The exceptions under Category 2 are as follows:

> *"2.Kategori 2*
>
> *(a) Pembangunan perumahan terdahulu di mana permohonan tukar syarat tapak Kawasan berkenaan telah di luluskan di bawah perundangan Negeri bagi tujuan perumahan dan kelulusan tersebut telah disahkan sebelum kelulusan dan penerimapakaian RSNPP 2020;*
>
> *(b) Antaranya termasuk projek pembangunan yang pernah dapat kebenaran merancang atau;*
>
> *(c) Tapak yang di tunjukkan sebagai kawasan perumahan mengikut Pelan Dasar Perancangan dan Kawalan Pemajuan MPPP (sehingga RT di wartakan)."*

[24] The parties are in dispute as to whether sub-paragraph (c) of Category 2 is to be read disjunctively or whether it is to be read conjunctively with (a) and (b).

[25] The local authority relied on the Special Projects Guidelines to approve Sunway's application. It interpreted sub-paragraph (c) of Category 2 disjunctively and as a stand-alone condition. In effect the local authority deemed that there was no requirement for the proposed development to have its rights vested prior to the implementation of the Structure Plan 2020 in June 2007 and, consequently, that it was sufficient for the proposed development to merely satisfy the condition

that it was located within the areas for housing development under the Interim Zoning Plan or Pelan Dasar.

ISSUE

[26] In the present appeal the crux of the case relates to whether the decision maker namely the local authority went outside the four corners of its prescribed authority under section 22 of the TPCA, which deals with the grant or refusal of planning approval.

AMENABILITY TO JUDICIAL REVIEW

[27] The validity of the directives given by the State Planning Committee in the instant case, i.e. the Special Projects Guidelines was simply not considered in the courts below. The High Court in dealing with this challenge to the validity of these guidelines held that the legality or otherwise of the Guidelines does not affect or is not the decision of the local authority that is amenable to appeal. Instead the Special Projects Guidelines was assumed to be legally valid and simply construed on that basis.

[28] The subject matter of the judicial review here is a decision by the local authority to grant planning approval to Sunway, that is appealable under section 23 TCPA.

[29] The question before us is whether, in deciding whether the local authority exercised its powers within the purview of the TCPA, the court is only permitted to look at that decision in isolation or whether the court is permitted to consider the entirety of the approval process leading up to the final decision.

[30] In the instant appeals, the entirety of the approval process means the directions given by the State Planning Committee to the local

authority which was the basis for the local authority to reach its decision to approve Sunway's application.

[31] In contrast, if the local authority's decision is looked at in vacuo, meaning that the initial parts of the approval process involving the State Planning Committee is not looked at, the consequence is that the earlier part of the process is effectively immunized from judicial review. However, in our view the earlier part of the approval process cannot be severed from the latter part of the approval process. The entire process becomes relevant in adjudicating the matter.

[32] We have come to this conclusion because where there is a failure to adhere to the law, or where a decision has been taken on the direction of a related supervisory body which in itself has no authority to issue such a directive, it follows that that particular stage or step in the planning approval process is flawed. That flaw then taints the planning approval process, and consequently the final decision. For that reason, it **is** within this court's jurisdiction in these appeals to consider the legality of the directives or guidelines issued by the State Planning Committee, as they comprise a part of the process of granting approval for the development of the subject land.

[33] Relating to the Pelan Dasar, the stance taken by the local authority, as submitted by its learned counsel, was that the use of the Pelan Dasar was valid and perfectly in order, as it was used pursuant to a directive issued by the State Planning Committee, for the purposes of granting planning permission. We differ with that interpretation of the law, because that would tantamount to a fetter on its discretion, which discretion is statutorily provided for in section 22.

[34] It is evident from the facts that the State Planning Committee had deliberately excluded itself from the planning approval process, vide its direction to the local authority that no further reference to the Committee is needed where the local authority decides that an application falls

under ‘special projects’. This led to an approval process that excluded the Committee, and, in effect, excluded the role of the National Physical Planning Council (NPPC). If indeed the local authority had taken on the responsibilities of the Committee, it would have had the onus of showing that it met the requirement to consult the NPPC pursuant to section 22(2A)(c).

[35] Where there is a reference to the State Authority, the NPPC or the State Planning Authority in the TCPA, which reference contributes towards, or underlies the decision-making process of the local authority in granting approval under section 22, it is not necessary for all these entities to be made parties separately in a judicial review application.

[36] It is therefore untenable to suggest, as submitted by the respondents, that a contravention of the TCPA on the part of the local authority in arriving at a decision ought to be ignored simply because it is premised on a directive from another body within the planning procedure statute, but was issued without statutory basis. It is equally incorrect to suggest that such a lacuna must be ignored because the entity issuing the directive is not a party to the proceedings and must be heard. On the contrary, it is incumbent upon the court to establish if:-

(i) an infringement is *prima facie* made out by the challenging party; and
(ii) that the entire process culminating in the local authority’s final decision, was validly undertaken on the basis of the express provisions of the TCPA.

[37] It goes without saying that any such procedure or guideline, including directives and guidelines issued by other third parties, must comply with the provisions of the TCPA. Otherwise, it would be open to the planning authorities to simply ignore various provisions of the TCPA and for the local authority to maintain that its decision is unimpeachable,

as any contraventions are attributable to higher authorities such as the State Planning Committee or the State Authority.

[38] This would leave any party seeking to challenge the decision of the local authority in an invidious position, as they would be unable to point to contraventions of the TCPA as vitiating factors in relation to the planning approval.

THE TOWN AND COUNTRY PLANNING ACT 1976

[39] The fundamental aspects of the TCPA can be distilled from the statute itself, not by merely reading discrete provisions on their own but by considering the statute as a whole and, hence, giving full meaning and effect to what was intended by the collective will of Parliament.

[40] In the context of development, regulation under the TCPA is achieved by ensuring that development is in accordance with the development plans for that particular State or area. Such regulation is evident from sections 20 and 22 of the TCPA.

[41] Another fundamental aspect of the TCPA is the inclusion of the element of public participation in the land planning process. This aspect is statutorily provided for in, *inter alia*, sections 9, 10, 12, 12A and 13 which require public participation in the drawing up of both the structure plans and local plans.

[42] The Town and Country Planning (Amendment) Act 2001 ('Amendment Act') introduced new provisions which substantially directed the TCPA towards the aims of ensuring integration of Federal and State Government policies, and 'ensuring uniformity of law and policy' in Peninsular Malaysia.

[43] It is worth highlighting that section 10 TCPA was also amended to include the role of the NPPC in the decision-making process as to the

approval or rejection of a draft Structure Plan. Section 10(4) provides that, in its consideration of the draft Structure Plan, the State Planning Committee has a duty to consult with the NPPC for its direction and advice.

[44] Under Section 22(2A)(c) TCPA, in its consideration of an application for planning permission, the State Planning Committee is under a duty to request for advice from the NPPC where the application involves “development affecting hill tops or hill slopes, in an area designated as environmentally sensitive in a development plan”.

[45] With respect to the inclusion of section 22(2A), development affecting hill tops or hill slopes are no longer merely an issue of local or state governance. It is also a federal level and national issue. The inclusion of the role of the Federal Government in town and country planning would promote coordination between the local authority, State-level authorities, and the Federal Government, thus ensuring development takes place in a well-balanced manner and accords with the sharing of responsibilities and the principle that the public interest precedes private interest in the use and development of land. This much was made evident by the Minister in the Hansard debates that took place on 30.7.2001 and 31.07.2001.

[46] The fact that such amendments were introduced throughout the TCPA demonstrates the legislative intent in amending the TCPA was so that the statute would play a more prominent and effective role in environmental protection.

[47] It is therefore of primary importance in interpreting any of the provisions of the TCPA that regard is had to the object and purpose of legislation as statutorily required under section 17A Interpretation Acts 1948 and 1967 (Act 388).

[48] It is not tenable to excise a section or sub-section within the TCPA and seek to interpret the same within the confines of that section. Less so is it acceptable to construe various provisions within the TCPA in a grammarian fashion with greater emphasis on the placement of punctuation marks, rather than with a view to comprehending the relevant provision within the context of the TCPA as a whole.

[49] It is not in dispute between the parties that the Structure Plan enjoys statutory force, in that the Structure Plan has legal status and legal effects. The Structure Plan must be complied with, and where the approval process fails to comply with the Structure Plan, the process is tainted and in contravention of the TCPA.

[50] Issuing or relying on secret, unpublished guidelines to make decisions on granting or rejecting planning permission would be antithetical to the TCPA and its object given as we have said earlier the importance of the inclusion of public participation in the land planning process through the Structure Plan and the local plan.

[51] Once the draft Structure Plan has been gazetted, the Structure Plan and its provisions attain statutory force. Its statutory force stems from not merely its gazettement, but also its source and the requirement of compliance in the approval process. The source of the Structure Plan, or its starting point is a statutory provision *requiring* the State Director to prepare a draft Structure Plan. This is unlike normal policy documents, the drafting of which is within the discretion of the relevant public authority. Further, section 22(4) TCPA provides that where the approval of planning permission contravenes any provision of the development plan, this would have the effect of invalidating that approval. It is thus evident that the Structure Plan has legal status and legal effects under the TCPA, and that it is not a mere statement of policy that has no legally binding force.

[52] As such, both the Courts below committed an error of law in failing to appreciate the true significance of the Structure Plan as has been explained fully above.

[53] It is evident from the provisions in the Structure Plan, in particular DK3 L2 and L3, that there is a clear prohibition against the use of hill land as specified for any development including housing, hotel, resort, commercial and industry, even agricultural activity. This is consonant with the overarching objective of the Structure Plan. Exceptions to that prohibition must be interpreted purposively and restrictively so as not to depart from the Structure Plan and its objective of conserving hill land, preventing its further degradation, and maintaining ecological balance.

INTERPRETATION OF SECTION 4(5) TCPA

[54] It is apparent that section 4(5) TCPA grants the State Planning Committee power to issue directions to the local authority, and the provision clearly stipulates that such directions are to be consistent with the TCPA. It is trite law that when Parliament confers powers on a public body, such powers are to be exercised in a way that would promote the policy and object of the TCPA. The courts are entitled to intervene where an exercise of such power by the relevant authority frustrates the policy and object of statute.

[55] It is evident from the series of events described by the local authority itself that there was a deliberate decision made not to follow the requisite statutory procedure for altering a Structure Plan pursuant to sections 11, 11A and 11B of the TCPA. In particular, instead of using its power to trigger the alteration procedure under section 11(2), the State Planning Committee elected to issue guidelines purportedly pursuant to section 4(5) to define the term ‘special projects’ used in the Structure Plan. This was because it would take too long to comply and the guidelines were required expeditiously to allow for the numerous planning applications which were piling up to be processed.

[56] The Structure Plan essentially prohibits development, including housing development, on hill lands save for public interest purposes and in other exceptional circumstances.

[57] The purported effect of the Special Projects Guidelines was to provide for substantive provisions which deviated from the Structure Plan, not to mention the NPPC's blueprint.

[58] It was an expeditious manner of resolving the mounting planning applications. However, this 'expeditious' means of dealing with applications is not supported by the statutory provisions of the TCPA, and in effect falls foul of the same.

[59] Pursuant to section 22 read together with section 4(5), the local authority has a duty to consider the factors listed under section 22(2) including directions given by the State Planning Committee. However, this cannot be understood to mean that it has a duty to consider directions which contravene the TCPA and which are thus unlawful.

[60] Section 4(5) cannot be exercised to bypass the power expressly provided in section 11(2) TCPA for the Committee to 'trigger' the alteration procedure by directing the State Director to submit proposals for alterations to the plan. Such special project guidelines cannot themselves contain matters varying the existing Structure Plan relating to the control of development on hill lands or slopes.

[62] The public has a right to know and object to the special projects guidelines under the TCPA. The drafting, approval and issuance of the 'Special Projects Guidelines' is in contravention of the express provisions of the TCPA. The issuance of these guidelines amounted in substance to a variation or alteration of the Structure Plan in material aspects and so contravened sections 11, 11A and 11B which collectively require that any such variation to a gazetted Structure Plan must go

through the process of ensuring public participation and public awareness of the proposed amendment. As such the guidelines themselves, i.e. the 'Special Projects Guidelines' themselves are invalid and devoid of any effect because they are not premised on any statutory basis and are in effect contrary to the express provisions of the TCPA, in light of sections 11, 11A and 11B.

[63] While the State Planning Committee is statutorily empowered to issue directives to the local authority in relation to matters pertaining, *inter alia*, to the grant of planning permission in relation to hill lands, it is equally clear that any such directives must be in compliance with the TCPA. Any attempt to deviate, revise, expand, alter or amend the substance of the Structure Plan through directions or guidelines would be outside the purview of that statutory power conferred on the State Planning Committee pursuant to section 4(5).

<u>1996 DIRECTIVE AND PELAN DASAR VIS-A-VIS LOCAL PLAN UNDER TCPA</u>

[64] Pursuant to the State Planning Committee's 1996 directive the local authority was operating on the basis of the Pelan Dasar, an interim zoning plan which was intended to substitute the 1973 Interim Zoning Plan which, in turn, was in use during the tenure of prior repealed legislation.

Pelan Dasar cannot be treated as a local plan

[65] The first point is that the Pelan Dasar cannot be a substitute for the local plan. This is because unlike the preparation of a local plan, there is no element of public participation in the drafting of the Pelan Dasar. The issuance of the 1996 directive essentially ousts the role of the public in being heard and influencing the way in which development takes place in their area. The 1996 directive obstructs a lynchpin of the TCPA, that is the role of public participation in controlling development.

[66] The Structure Plan stipulates a general prohibition against development on hill land or slope, which would apply to the subject land. However, part of the subject land was zoned for 'housing' or 'low density housing' under the Pelan Dasar. This is in direct conflict with the provisions of the Structure Plan.

[67] If a local plan had been drafted and approved, it would have to conform to the Structure Plan pursuant to section 15(5) TCPA and if there was any inconsistency between a local plan and Structure Plan, there is a specific statutory procedure in the TCPA to deal with such an inconsistency. In contrast, the Pelan Dasar is not governed by such provisions, and there is no such procedure governing the determination of any inconsistency.

[68] In summary, the Pelan Dasar was not, in any way, equivalent in nature, substance or effect to a local plan under the TCPA. We thus find that the 1996 directive issued by the State Planning Committee was *ultra vires* its power under section 4(5) TCPA.

Delegation and section 22(2A)(c) TCPA

[69] As mentioned earlier, the Structure Plan has statutory force and requires compliance. On the whole this in effect limits the scope of the Committee's power under section 4(5). Directives cannot be issued where it would contravene the Structure Plan.

[70] The Structure Plan provides that, even where a proposed development constitutes a 'special project', there are still conditions that need to be met. After the local authority decided that the application falls under 'special projects', the application is to be referred to the State Planning Committee for their approval. It is then that the State Planning Committee is under a duty pursuant to section 22(2A) TCPA to request from the NPPC its advice on the application submitted.

[71] Yet, by virtue of the Special Projects Guidelines, the three-tiered process provided by the TCPA and Structure Plan was effectively negated and replaced with a one-step process.

[72] By directing that a local authority can decide that a proposed development constitutes a 'special project' and not make any further reference to the Committee, the Committee had effectively delegated its discretion under DK3 L4 of the Structure Plan to decide whether or not to grant its approval for a special project on hill slopes.

[73] We are in agreement with the finding and reasoning of the Appeal Board that this exercise of discretion was non-delegable and the purported delegation was invalid and devoid of any effect.

[74] It was put to us by counsel for the respondents that we could not consider the foregoing issue as it was not expressly pleaded and the state authority and state planning committee were not parties to the application. As we have stated earlier, the adjudication of approval requires the entire process to be looked at rather than isolating certain steps in the approval process.

[75] There is no question of several other entities being joined as a party as ultimately the challenge here is to planning approval granted by the local authority. What is of importance is that the substance of the Act is complied with and that obligation falls upon the local authority, in relation to the approval or rejection of planning permission.

RELATIONSHIP BETWEEN TCPA, NATIONAL LAND CODE, AND LAND CONSERVATION ACT 1960

[76] Sunway cannot shield itself from the application of the TCPA and Land Conservation Act (LCA) for the reason that the subject land was a first grade freehold title without any restriction of land use. Possession

of land title does not give the owner of the land a blank cheque to do whatever he or she pleases with the land. This would have the potential of allowing for unsustainable development outside the purview of the TPCA and the LCA. This in turn would defeat the very object and purpose of both the TCPA and LCA, and hence negate the intent of Parliament in enacting those statutes.

[77] Where there is an inconsistency between the category of land use under the National Land Code and planning control under the TCPA, the TCPA prevails **for the purpose of development**.

[78] The timing of when other laws were passed is not the sole or determinative factor in deciding whether unrestricted land use in a title document is subject to other applicable statutes. In the instant appeal, the fact that the National Land Code was passed subsequent to the LCA does not *ipso facto* negate the reservation of the subject land as 'hill land' under the LCA from having any effect.

[79] The express condition on the issue document of title must be read subject to the relevant regulatory laws in place. The right provided under the issue document of title is not absolute **in relation to development**.

[80] The absence of an endorsement on the land title stating that the subject land was reserved as 'hill land' under the LCA, does not equate to a legitimate expectation that there would be no restrictions to the proposed development of the subject land.

[81] The High Court and Court of Appeal, with respect, erred in law when those courts found that Sunway had a legitimate expectation, and that land use stipulated in the title document superseded the application of the TCPA or the LCA.

CONCLUSION

[82] After due deliberation, the conclusion we reach is that:

(a) The validity or invalidity of a directive issued by the State Planning Committee to be utilized by the local authority in deciding on planning approval, is a crucial underlying matter which affects the ultimate decision of the local authority. A directive is issued by reason of and under the purview of the Act, here the TCPA. It follows that the entity issuing such a directive must be empowered by statute to do so, and significantly that any such directive is in compliance with the relevant statute, here the TCPA. If a directive is issued without statutory basis, or is issued in contravention of the TCPA, then its validity is doubtful if not invalid;

(b) There is no provision empowering the State Planning Committee, express or implied, to utilize repealed zoning plans as the basis for planning approval, at the behest of the local authority. It is not within the State Planning Committee's power under section 4(5) to issue directions providing that the Pelan Dasar is to be treated as a local plan. The local authority is similarly not empowered to exercise its decision-making authority under the TCPA, on the basis of plans produced under repealed legislation and to treat such plans as being equivalent to a local plan. To that extent, it follows that any planning approval granted pursuant to, or premised on the Pelan Dasar is invalid. It also follows that section 4(5) cannot afford an answer to, nor withstand a challenge as to the validity of the use of repealed zoning plans by the local authority to determine planning approval. The root or basis for the grant of approval is tainted;

(c) If section 22(2)(aa) is read in vacuo, as we are invited to by the local authority, what it means is that any directive issued by the State Planning Committee without regard whatsoever to the rest of the section or the TCPA as a whole will require compliance. It would require sub-section (aa) to be read without any regard for sub-section (2), and all the other limbs comprising a part of sub-section (2). In short, we are invited to read (aa) not only disjunctively, but disjunctively even from subsection (2). That is not a rational legal construction to be adopted in the field of statutory construction. By way of example, should a higher authority issue a directive to the local authority to use the Sanitary Boards Enactment instead of the TCPA, can it be said that the local authority has to comply? The answer would be a vehement no, as that statute has been repealed. Similarly, if a directive has been issued to comply and utilize a zoning plan issued under repealed legislation, is compliance required? Again, the answer must be no. It would be perverse to construe section 22(2)(aa) as having been drafted with the specific purpose of it being read literally and in vacuo. As stated at the outset, a grammarian approach should not be adopted in statutory interpretation, as the function of the Courts is not to read the Malay or English language in a statute and give its literal and grammatical meaning per se. Instead, the duty of the Courts is to construe the purpose and function of the statute for the ultimate benefit of the public as a whole. That requires an objective and contextual approach to be adopted;

(d) The local authority, as the entity responsible for the issuance of planning approval, has a duty to comply with the provisions of the TCPA, both in terms of specific sections, as well as the purpose and context of the Act as a whole. As stated elsewhere,

> it is statutorily provided in section 17A of the Interpretation Acts that in construing a provision in a statute, it is incumbent upon the Court to consider the express words used in the context of the object and purpose of the statute read as a whole. In other words, it is essential that the sub-section is read contextually. When section 22(2)(a) is read contextually it follows that it refers to 'the' direction given by the Committee if any, within the context of the material factors to be taken into account in deciding on planning approval. It envisages a directive that is in complete compliance with, and within the scope of the TCPA, taken as a whole.

[83] For the foregoing reasons, we conclude that the local authority's approval of Sunway's application for planning permission is *ultra vires* and void.

[84] The High Court and Court of Appeal erred in law in upholding the decision of the local authority to grant planning approval. For the reasons set out in the judgment, these appeals are allowed with costs.

Dated: 20 January 2023

NALLINI PATHMANATHAN
Judge
Federal Court of Malaysia

Note: This is only a summary of the final grounds of judgment. The authoritative text is the final grounds of judgment.