DALAM MAHKAMAH RAYUAN MALAYSIA

(BIDANG KUASA RAYUAN)

RAYUAN SIVIL NO: W-01(A)-152-03/2021

ANTARA

LOW OOI HOI … PERAYU
(NO. K/P: 620312-10-6136)
(mewakili kesemua pemilik hartanah berdaftar iaitu Low Tong Fook & Sons Enterprise (No. Syarikat: 73580-U), Ng Ah Yu @ Ng Choon Nam (No. K/P: 400218-07-5009) & Tan Guan Kiang (No. K/P: 450908-71-5135)

DAN

PENTADBIR TANAH WILAYAH PERSEKUTUAN KUALA LUMPUR … RESPONDEN

(Dalam Perkara Mengenai Mahkamah Tinggi Malaya di Kuala Lumpur
(Bahagian Sivil)
Rujukan Ke Mahkamah No: WA-15-15-05/2019

Antara

Low Ooi Hoi ... Pemohon
(No. K/P: 620312-10-6136)
(mewakili kesemua pemilik hartanah berdaftar iaitu Low Tong Fook & Sons Enterprise (No. Syarikat: 73580-U), Ng Ah Yu @ Ng Choon Nam (No. K/P: 400218-07-5009) & Tan Guan Kiang (No. K/P: 450908-71-5135)

Dan

Pentadbir Tanah Wilayah Persekutuan
Kuala Lumpur … Penentang)

CORAM

HAS ZANAH BINTI MEHAT, JCA

CHE MOHD RUZIMA BIN GHAZALI, JCA

SEE MEE CHUN, JCA

JUDGMENT

Introduction

[1] This is an appeal arising out of the Pentadbir Tanah Wilayah Persekutuan (the respondent) acquiring the whole undivided share of Lot 722, PN 46807, Seksyen 9, Bandar Kuala Lumpur (the subject land) having a land area of 3,577 square metres (m^2) belonging to Low Tong Fong & Son Enterprise (1/2 share), Ng Ah Yu @ Ng Choon Nam (1/4 share) and Tan Guan Kiang (1/4 share) on 1.10.2018 for the purpose stated in the Federal Government Gazette Notification dated 27.4.2017 to be for a "Projek Lebuhraya Setiawangsa-Pantai Expressway (SPE) DUKE Fasa 3". All land owners were represented by one Low Ooi Hoi (the applicant/the appellant).

[2] In the full enquiry hearing before the respondent, the appellant asked for a total compensation of RM51,319,219.00 at RM14,347.00 per m^2. The government valuer valued the said land at RM6,000.00 per m^2 which comes up to the total value of RM21,462,000.00. Upon the conclusion of the enquiry, the respondent awarded the sum of RM26,954,460.00 at RM7,000.00 per m^2 to the appellant.

[3] Dissatisfied with the respondent's award, the appellant filed an objection in 'Form N' of the Land Acquisition Act 1960 (LAA 1960). The respondent then referred the appellant's objection to the High Court of Kuala Lumpur.

High Court's Decision

[4] In a very short grounds of decision the learned High Court Judge (LHCJ) made the following decision:

> 13. In this case accepting the advice of both the assessors which the court saw no reason to disregard, the court decided that the compensation awarded by the land administrator was reasonable and should be upheld.

[5] The LHCJ neither elaborated nor gave any reasons for his decision. However, his lordship did refer to the opinion presented by both court assessors on the market value of the subject land as can be seen in his written judgment. Dissatisfied with the LHCJ decision, the appellant appealed.

The Appeal

[6] Before us, learned counsel for the appellant raised up 6 questions of laws as follows:

A. Whether the High Court Judge erred in law and facts when failed to take into consideration that in the sale and purchase of Lot 388, the price paid for sale of land is higher than the value in the same area?

B. Whether the High Court judge erred in law and facts when failed to take into consideration the provision in First Schedule Paragraph 1 (1A) Land Acquisition Act 1960 (repealed) that specify the methods in assessing the market value of any scheduled land?

C. Whether the High Court Judge erred in law and facts when failed to take into consideration that the Notis Taksiran Pindah Milik Harta Tanah Lot 388 stated that the market value of the land is accepted the same as the sale value of the land?

D. Whether in a land acquisition case, when the High Court judge accepts the Assessors value without giving reasons for doing so has the High Court abdicated his judicial function in the light of the Federal Court decision in Semenyih Jaya's case?

E. Whether there are two (2) valuation from the same source during the same period one made for assessing Stamp Duty payable and one made for the Land Acquisition should the Court accept the higher value or lower value?

F. If the Court accepts the lower value does this infringe Article 13 of the Federal Constitution?

Our Decision

[7] The LHCJ took a very simple approach in dealing with the appellants' land reference before him. His lordship only refers to the opinion presented by court assessors on the market value of the subject land and then, made a decision to accept the advice without giving any reasons for doing so. Clearly, the LHCJ had given a non-speaking judgment. Therefore, we are of the opinion that the fourth question posted in paragraph D that is, "**Whether in a land acquisition case, when the High Court judge accepts the Assessors value without giving reasons for doing so has the High Court abdicated his judicial function in the light of the Federal Court decision in Semenyih Jaya's case?**" is a question of law which is not barred by the proviso to s 49(1) of LAA 1960 even though it relates to the value of the subject land decided by the LHCJ.

[8] On this issue, we would like to stress a point that every judge, more so as in this appeal, which involves the decision of a very senior judge, must exercise his judicial function independently on the basis of his assessment of the facts and in accordance with his understanding of the law. Thus, among the basic duty of a judge is to give a reasoned decision. In *Regina v. Knightsbridge Crown Court, Ex Parte International Sporting Club (London) Ltd. And Another* [1982] Q.B. 304 at pp 314-315 , Griffiths LJ had this to say:

> It may be said that the same end can be achieved by the court refusing to give any reasons, as Judge Friend said he was entitled to do in this case. However, it is the function of professional judges to give reasons for their decisions and the decisions to which they are a party. This court would look askance at the refusal by a judge to give his reasons for a decision particularly if requested to do so by one of the parties. It does not fall for decision in this case, but it may well be that if such a case should arise this court would find that it had power to order the judge to give his reasons for his decision.

In *English v Emery Reimbold & Strick Ltd; DJ & C Withers (Farms) Ltd v Ambic Equipment Ltd; Verrechia (trading as Freightmaster Commercials) v Commissioner of Police of the Metropolis* [2002] 3 All ER 385 at pp 389-390, Lord Phillips of Worth Matravers MR made the following observation:

> [6] In giving the judgment of the court, Henry LJ remarked ([2000] 1 All ER 373, [2000] 1 WLR 377) that it was clear that today's professional judge owed a general duty to give reasons for his decision, citing *R v Crown Court at Knightsbridge, ex p International Sporting Club (London) Ltd* [1981] 3 All ER 417, [1982] QB 304 and *R v Crown Court at Harrow, ex p Dave* [1994] 1 All ER 315, [1994] 1 WLR 98. He made the following comments on the general duty to give reasons:
>
> > '(1) The duty is a function of due process, and therefore of justice. Its rationale has two principal aspects. The first is that fairness surely requires that the parties - especially the losing party - should be left in no doubt why they have won or lost. This is especially so since without reasons the losing party will not know (as was said in *Ex p Dave*) whether the court has misdirected itself, and thus whether he may have an available appeal on the substance of the case. The second is that a requirement to give reasons concentrates the mind; if it is fulfilled, the resulting decision is much more likely to be soundly based on the evidence than if it is not. (2) The first of these aspects implies that want of

> reasons may be a good self-standing ground of appeal. Where because no reasons are given, it is impossible to tell whether the judge has gone wrong on the law or the facts, the losing party would be altogether deprived of his chance of an appeal unless the court entertains an appeal based on the lack of reasons itself. (3) The extent of the duty, or rather the reach of what is required to fulfil it, depends on the subject matter. Where there is a straightforward factual dispute, whose resolution depends simply on which witness is telling the truth about events which he claims to recall, it is likely to be enough for the judge (having, no doubt, summarised the evidence) to indicate simply that he believes X rather than Y; indeed, there may be nothing else to say. <u>But where the dispute involves something in the nature of an intellectual exchange, with reasons and analysis advanced on either side, the judge must enter into the issues canvassed before him and explain why he prefers one case over the other. This is likely to apply particularly in litigation whereas here there is disputed expert evidence; but it is not necessarily limited to such cases</u>. (4) This is not to suggest that there is one rule for cases concerning the witnesses' truthfulness or recall of events, and another for cases where the issue depends on reasoning or analysis (with experts or otherwise). The rule is the same: the judge must explain why he has reached his decision. The question is always, what is required of the judge to do so; and that will differ from case to case. Transparency should be the watchword.' (See [2000] 1 All ER 373–378, [2000] 1 WLR 377–382). (emphasis added)

Lord Phillips further stressed the importance of a reasoned judgment when the matter involved conflict of expert evidence at pp 393-394 as follows:

> [20] The first two appeals with which we are concerned involved conflicts of expert evidence. In *Flannery's* case Henry LJ quoted from the judgment of Bingham LJ in *Eckersley v Binnie* (1987) 18 ConLR 1-78 in which he said that 'a coherent reasoned opinion expressed by a suitably qualified expert should be the subject of a coherent reasoned rebuttal'. This does not mean that the judgment should contain a passage which suggests that the judge has applied the same, or even a superior, degree of expertise to that displayed by the witness. He should simply provide an explanation as to why he has accepted the evidence of one expert and rejected that of another. It may be that the evidence of one or the other accorded more satisfactorily with facts found by the judge. It may be that the explanation of one was more inherently credible than that of the other. It may simply be that one was better qualified, or manifestly more objective, than the other. Whatever the explanation may be, it should be apparent from the judgment.
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> [21] When giving reasons a judge will often need to refer to a piece of evidence or to a submission which he has accepted or rejected. Provided that the reference is clear, it may be unnecessary to detail, or even summarise, the

> evidence or submission in question. The essential requirement is that the terms of the judgment should enable the parties and any appellate tribunal readily to analyse the reasoning that was essential to the judge's decision.

[9] Back to our jurisdiction, the Federal Court in *Tan Kim Leng & Anor v Chong Boon Eng & Anor* [1974] 2 MLJ 151, Wan Suleiman FJ analysed the word “judgment” as follows:

> The term "judgment" is sometimes used in different senses. It may mean "a judicial determination; the decision of a court; the decision or sentence of a court on the main question in a proceeding, or in one of the questions, if there are several … The term "judgment" is also used to denote the reasons which the court gives for its decisions; … " (See 'The Dictionary of English Law' by Earl Jowitt).
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> In the context of the Rules 25 and 19(4)(e) it is abundantly clear that the last-mentioned meaning should be given to the term and that a "written judgment" must indeed be synonymous with "grounds of judgment", and must denote the reasons which the court gave for its decision.

In the same case, Raja Azlan Shah FJ (as his Royal Highness then was) further held that a non-reasoned judgment is not a judgment according to law. His Lordship held that:

> In reaching a conclusion the learned judge had to consider the probabilities and the circumstances of the whole case. It was essentially a case in which there should have been a full record of the reasons which persuaded him to reach the conclusion he did. A mere finding of no negligence against both the respondents and that the accident occurred because of the sudden brake failure on account of some latent defect in the braking system, not supported by reasons, is not a judgment according to law.
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> A judicial determination of a dispute where substantial questions of mixed fact and law arise is satisfactorily reached only if it be supported by the most cogent reasons that commend themselves to the learned judge. Recording of reasons in support of a decision of a dispute serves more purposes than one. It is intended to ensure that the decision is not the result of whim or fancy. "It is of course true", said Sir Alfred Denning (as he then was), "that his decision may be correct even though he should give no reason for it or even give a wrong reason: but, in order that a trial should be fair, it is necessary, not only that a correct decision should be reached, but also that it should be seen to be based on reason; and that can only be seen, if the judge himself states his reasons." see The Road to Justice, page 29.

> A party to the dispute is ordinarily entitled to know the grounds on which the learned judge has decided against him, and more so, when the judgment is subject to appeal. An appellate court will then have adequate material on which it may determine whether the facts are properly ascertained, the law has been correctly applied and the resultant decision is just.
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> In my opinion the finding of the learned judge in the instant case is not a judgment according to law.

Likewise, in *Wong Chee Hong v Cathay Organization* [1988] 1 MLJ 92 at p 94, Salleh Abas LP had reminded judges as follows:

> We hope that judges should endeavour to write their grounds of decision and take delight in this aspect of judicial work as a matter of personal pride and satisfaction and not as a burdensome task. Failure on the part of judges to write their grounds of decision will certainly undermine their authority to insist upon magistrates and presidents of sessions courts to write theirs. If the practice of not writing grounds of judgment is widespread, the system of administration of justice will tumble down.

[10] Based on the decided cases above, we are of the opinion that giving reasons in a judgment is an essential requirement of the rule of law. A non-reasoned judgment can be held as a judgment not according to law. The rationale behind the proposition is understandable. Among others, reasons will provide a link between facts and the decision made. More importantly, reasons introduce clarity to satisfy the party against whom the orders were made. Besides that, a reasoned decision will act as a guard against any non-application of the mind and arbitrariness by the judge. Above all, reasons for judgment run parallel with the basic principle that justice must not only be done, it must appear to be done.

[11] Back to the appellant appeal before us, we had to agree with the learned counsel for the appellant's submission that the LHCJ had abdicated his judicial function by failing to provide reasons in rejecting the appellant's objection in the land reference. The question than arises as to, how to deal with the appellant's appeal. In *Hong Leong Equipment*

Sdn Bhd v Liew Fook Chuan and Another Appeal [1996] 1 MLJ 481, this court made the following observation:

> It is now well-settled that a judge should set out his reasons when handing down decisions on facts or law. If he does not do so, his decision may be quashed and remitted for a rehearing. See *Eagil Trust Co & Anor v Pigot-Brown* [1985] 3 All ER 119 at p 122; *R v Harrow Crown Court, ex p Dave* [1994] 1 WLR 98.

However, the Federal Court in *Dr Hari Krishnan & Anor v Megat Noor Ishak bin Megat Ibrahim & Anor and another appeal* [2018] 3 CLJ 427, a medical negligence claim, agreed that the trial judge had indeed given a non-speaking judgment and disapproved of such judgment. It went on to say that:

> [37] The importance of a speaking judgment cannot be over-stressed (see *Balasingham v. Public Prosecutor* [1959] 1 LNS 8; [1959] 1 MLJ 193, *Ganapathy a/l Rengasamy v. Public Prosecutor* [1998] 2 CLJ 1; [1998] 2 MLJ 577). In the instant case, the issue of the non-speaking judgment by the learned JC was addressed by the Court of Appeal in the following manner:
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> > We agree with learned counsel for the defendants that the judgment of the learned JC was indeed a non-speaking judgment. However, there is no law that can allow an appeal simply because the judgment of the lower court was a non-speaking judgment. No doubt we do not condone such practice by the learned JC. We take the view that it is the duty of a trial judge to state clearly in her judgment the facts of the case as adduced by evidence, the legal issues requiring determination as well as the application of the laws to the facts and how the learned trial judge reached a conclusion on the findings of fact and law. Then it is for the appellate court to determine whether or not the learned trial judge had committed any error in the findings and application of laws to those facts.
> >
> > The failure of the trial judge to carefully state her reasons and findings would create enormous difficulties at the appellate stage. It would entail the appellate court to sieve through the appeal records and peruse the notes to see if there are sufficiently supportive of the decision and findings of the trial judge or otherwise.
> >
> > Indeed, the appellate court would not simply interfere with those findings unless they are erroneous. Upon our perusal of the Appeal Records before us, we agree with the findings of the learned JC and her award of damages for the reasons we elaborate below.

> [38] We endorse the view of the Court of Appeal quoted above, and agree that the High Court judgment in the instant case was a non-speaking one. Nevertheless, as will be elaborated below, it does not follow that a retrial or a rehearing should be ordered.

[12] On the same issue, this court in *Tan Ah Tong v Gee Boon Kee & Ors* [2006] 2 MLJ 618 was reluctant to order a re-trial even though the non-reasoned decision is unsafe. It was held that:

> [11] A similar kind of flawed reasoning was also apparent in paras 21 and 22 of the concluding part of the written submission, where it was submitted that because the absence of written reasons makes it 'impossible for an appellate court to determine how the trial judge discharged the vital function of appreciating evidence', his decision is 'unsafe' and because the decision is unsafe it is fitting and proper that a new trial be ordered under s 71(1) of the Courts of Judicature Act 1964. Where a judge does not state his reasons for arriving at his decision, the decision is not necessarily unsafe. He may have properly considered and weighed the evidence and may have arrived at the right conclusions. The decision is only unsafe in the sense that the appellate court is unable to determine, from an assessment of the judge's mental processes, that the decision is correct. But it does not follow that the course opens to the appellate court to decide the appeal while doing justice is to order a new trial. It is still open to the appellate court to assess the evidence and come to a finding whether or not the evidence vindicates the decision of the trial judge.

Previously, this court held that the absence of proper grounds of judgment which the learned judge was duty bound to produce has seriously impeded the appellate court and has resulted that the appellate court has to reconsider the material on record with a view of arriving at a decision upon the appeal. See *Sakapp Commodities (M) Sdn Bhd V Cecil Abraham (Executor of The Estate of Loo Cheng Ghee)* [1998] 4 MLJ 651.

[13] Following the principles of law decided in those cases, we did not consider the option of ordering a retrial even though we answered the appellant's question of law on the issue in paragraph D in the positive. We proceeded to hear the substantive appeal.

[14] Now we go to the rest of the questions put forward by the appellant. In his submission, learned counsel for the appellant focused only on one issue that is related to the questions in paragraph A, C and E, that is, whether the LHCJ erred in law and facts when he failed to take into consideration the sale and purchase of one of the comparable lots for which the price paid for the sale of the land is higher than the value of the other land in the same area. Learned counsel for the appellant refer to the sale and purchase price of Lot 388, PN 38146, Seksyen 92, Bandar dan Daerah Kuala Lumpur (Lot 388).

[15] The first hurdle to be cleared by the appellant is, whether the question posed are the 'question of law' within the meaning and ambit of the proviso to subsection 49(1) of the LAA 1960. The law on this matter is well settled. The Federal Court in *Pentadbir Tanah Daerah Johor v Nusantara Daya Sdn Bhd* [2021] 4 MLJ 570 (*Nusantara Daya*'s case) had taken a strict approach in interpreting the circumstances and meaning of what might amount to a 'question of law' under the proviso to subsection 49(1) of the LAA 1960. The reasons can be seen at pp 589-591 as follows:

> [53] There are several reasons why we advocate for such an approach.
>
> [54] Firstly, in coming to that conclusion, as we mentioned, the Federal Court had clearly affirmed the validity and constitutionality of s 49(1). The Federal Court had examined the due process of adjudication under Act 486 and found that by virtue of s 45 and the Third Schedule of Act 486, there was no violation of art 13 of the Federal Constitution. The Federal Court acknowledged that an award of compensation involves two stages of hearings. First, before the Land Administrator and later, at the High Court. At the enquiry before the land administrator, parties are entitled to produce evidence on the valuation of the scheduled land while at the High Court, each party is allowed to bring experts to court to prove their claim on compensation. Although this is through an exchange of affidavits, deponents may be cross-examined. This due process of hearing and decision making on the assessment of compensation ensured adherence of art 13(2) of the Federal Constitution.

[55] Further, the added feature of inclusion of assessors in Act 486 (which was not outlawed in *Semenyih Jaya*) augments and contributes towards that compliance and safeguard. The provisions on assessors were introduced in the same amendments to Act 486 that brought in the proviso to s 49(1) and excluding appeals on compensation. The Court of Appeal in *Hartawan Development Sdn Bhd v Pentadbir Tanah Daerah Melaka* rightly explained that 'whilst precluding the right of appeal against an order of compensation issued by the High Court, there are four new sections introduced by the Land Acquisition (Amendment) Act 1997 which came into force on 1 March 1998. These sections are intended to provide clearer provisions for assessing the value of lands compulsorily acquired. When an objection in regard to compensation is referred to the court, the judge hearing a land reference shall appoint two assessors to assist and aid the judge who inter alia look into the valuation report and/or any expert evidence before coming to a fair compensation. The requirement for the judge to be guided by assessors is warranted as the judge is not an expert in land valuation. Therefore, the opinion of the assessors is deemed necessary. Assessors are mandatorily provided for in s 40A. See also *Kelana Megah Development Sdn Bhd v Pentadbir Tanah Daerah, Kota Tinggi & Satu Lagi* [2019] 1 MLJ 723.

[56] The Federal Court expressed similar views in *Amitabha Guha No 2* whilst giving its rationale for having two assessors under the amended Act 486; that these assessors are 'trusted to exercise professional integrity in assisting the judge'. The fact that the judge has a choice between the opinions of the government assessor and the private assessor was highlighted to alleviate concerns that the government assessor may give a lower valuation:

> [50] Of course, assessors are not the decision-makers; they only act in an advisory capacity to the judge. As members of the land reference court under the LAA 1960, assessors sit with the judge during and after the hearing, and are required to give non-binding opinions in writing on questions of fact based on the evidence. In land reference proceedings, the provisions of the Third Schedule on Evidence and Procedure in Land Reference Cases shall apply to the proceedings: see s 45(1A) of the LAA 1960. Pursuant thereto, the evidence to be considered by the assessors and the judge includes the applicant's valuer's report, the respondent's valuer's report, including oral evidence by the applicant's valuer and/or the respondent's valuer during cross-examination and re-examination, if any. The Government assessor and the private assessor hear and consider the evidence and arrive at an opinion on the facts, which is then presented to the judge in the form of a written opinion: see s 40C of the LAA 1960. Even though the assessors are sources of information on matters within their own special skill or knowledge, they are not expert witnesses as their advice does not amount to evidence. More pertinently, the assessors and the judge are required to apply the Principles Relating to the Determination of Compensation under the First Schedule of the LAA 1960: see sub-s 47(2) of the LAA 1960.

> [57] A further reason is this - considering that this 'carve-out' exclusion to the express prohibition of appeal is judge-made and is as interpreted by the Federal Court in *Semenyih Jaya* (even then it was really as per the question framed), we would strongly caution against giving the phrase 'question of law' a wide or flexible understanding and construct. See *UKM v Attorney General* [2018] SGHCF 18. This qualifier does not appear at all in the plain and unambiguous terms of s 49(1); neither does it exist in the now invalidated s 40D. A narrow and strict construction of s 49(1) was adopted in order to 'give meaning to the constitutional protection of a person's right to his property' - see para [148].
>
> [58] Consistent with that approach, the circumstances and meaning of what may amount to a 'question of law' under the proviso to s 49(1) must also be 'narrowly and strictly construed'; that the definition must not be extensive as it would undermine the clear intent of the proviso to s 49(1) - that there is no right of appeal in respect of decisions comprising an award on compensation.

[16] Back to the appellant's questions of law argued before us, the questions were crystallised into a single point, that is, the learned judge had erred in law and facts when he failed to take into consideration the sale and purchase price of Lot 388. It was argued that the consideration paid for Lot 388 even though it is higher than the consideration paid to other land in the same vicinity, is still a good comparable to indicate the market value of the subject land. It was further argued that Notis Taksiran Pindah Milik Harta Tanah for assessing Stamp Duty payable for Lot 388 had accepted that the sale value is the market value of the land and therefore, there should not be two valuations from the same source in the same period of time, one made for assessing Stamp Duty payable and one made for the Land Acquisition.

[17] After carefully considering the question posed, we conclude that the question or issue raised is all about the High Court's decision to award compensation. The complaint of the appellant revolves around the issues of fact on how the valuation principles apply when computing the amount of compensation to be awarded for the acquisition, particularly the issue of sale price of the comparable Lot 388. In other words, it was concerned

on how the final amount of the compensation was arrived at and how that amount was wrong. Guided by the principle laid down the Federal Court in *Nusantara Daya*'s case, we are of the opinion that such issues of fact as well as the application of law on the valuation principles are not questions of law within the narrow and limited scope of what or how such a question of law may be properly and validly taken on appeal under the proviso in subsection 49(1) LAA 1960. Thus, the so-called question of law posed before us cannot pass the litmus test of being proper questions of law and ought not to be allowed.

[18] Be that as it may, we had earlier answered the question in paragraph D in the positive, particularly on the reason that the LHCJ failed to give reasons for his decision. In such a situation, even though we find that the appellant had not put forward any proper question of law in compliance with the proviso under subsection 49(1) LAA 1960 for our determination, we at the appellate court would need to sieve through the appeal records and peruse the notes to comprehend the issues raised and then to determine whether there are sufficient evidence to support the decision and findings of the LHCJ in disallowing the appellant's objection against the land administrator's award.

[19] To begin with, both parties agree that the comparison method or approach is a suitable method to value the subject land in the present appeal. This method is often used in determining the value of property in land acquisition proceeding. Applying this method, value is determined by comparing the subject property to other properties with similar characteristics that have been sold recently. The method takes into account the effect that individual property characteristics such as size, location, access, zoning, topography, utilities, development potentiality etc. may have on the overall property value. When necessary, price

adjustments are made to suit any meaningful differences between the subject property and the comparable. See *Ng Tiou Hong v Collector of Land Revenue, Gombak* [1984] 2 MLJ 35 (*Ng Tiou Hong*'s case) ; *Bertam Consolidated Rubber Co Ltd v Collector of Land Revenue Province Wellesley* [1984] 1 MLJ 164 and *Nanyang Manufacturing Co v The Collector of Land Revenue, Johore* [1954] 1 MLJ 69.

[20] As to the comparable sales, appellant's valuer refers to four comparable sales in his valuation report. First, the sale of Lot 388 with the acreage of 4,240 m^2 which was transacted at RM13,042 per m^2 on 26.1.2017. Second, the sale of Lot 523, PN 39196, Seksyen 92, Bandar dan Daerah Kuala Lumpur (Lot 523) with the acreage of 863 m2 which was transacted at RM5,330.24 per m2 on 29.7.2016. Third, the sale of Lot 144, PN 50107, Seksyen 92, Bandar dan Daerah Kuala Lumpur (Lot 144) with the acreage of 1,012 m^2 which was transacted at RM5,903.46 per m^2 on 13.7.2016, and fourth, the sale of Lot 162, Geran 27331, Seksyen 92, Bandar dan Daerah Kuala Lumpur (Lot 162) with the acreage of 16,490.40 m^2 which was transacted at RM5,273.35 per m^2 on 6.4.2015.

[21] Meanwhile, the government valuer in his valuation report also refer to four comparable sales. First Lot 122, PN 35247, Seksyen 92, Bandar dan Daerah Kuala Lumpur (Lot 122) with the acreage of 3,521 m^2 which was transacted at RM5,166.68 per m^2 on 3.4.2017. Second, Lot 1 & PT, Geran 36611, Seksyen 92, Bandar dan Daerah Kuala Lumpur (Lot 1 & PT) with the acreage of 8,929.55 m^2 which was transacted at RM7,534.76 per m^2 on 23.2.2016. Third, Lot 162, a common comparable sale with the only difference in analyse value, valued at RM5,821.57 per m^2 by the government valuer compare to RM5,273.35 per m^2 by the appellant's valuer. Finally, the fourth sale of Lot 673, HSD 118884, Seksyen 92,

Bandar dan Daerah Kuala Lumpur (Lot 673) with the acreage of 2,146.97 m^2 which was transacted at RM4,657.97 per m^2 on 18.11.2015.

[22] The crux of the appellant's contention before us as can be seen from learned counsel for the appellant's submission is that, the LHCJ erred in law and facts when his Lordship failed to take into consideration the sale and purchase price of Lot 388. It was argued that the appellant's valuer's opinion of the market value of the subject land at the material date is more realistic given by the factors mentioned in the valuation report and the comparable he has cited, particularly the sale of Lot 388. It is further argued that the sale of Lot 388 should be considered as the best comparison in tandem with the First Schedule of the LAA 1960 which clearly stipulated that attention shall be given to the price paid for the recent sale of land which has similar characteristic as the subject land in reaching the market value.

[23] Here, we have to place emphasis on the fact that the learned counsel for the appellant is not raising any issue on the price adjustment done by both valuers on the comparable sales used other than Lot 388. In other words, the learned counsel for the appellant just went for broke. Either the High Court has to accept the comparable sale of Lot 388 or else, he has to agree with the land administrator's award. In that situation, we will not analyse any of the adjustment as suggested by the valuers in their valuation reports.

[24] Back to learned counsel for the appellant's contention, it is not disputed that there are six other comparable sales referred to in the valuation reports. One of them is a common comparable sale, and that is Lot 162 which was transacted at RM5,273.35 per m^2. Set aside Lot 388, the other three appellant's valuer comparable sales transacted price ranging from RM5,273.35 per m^2 to RM5,903.46 per m^2. As to the

government valuer's valuation report, four comparable sales transacted price ranging from RM4,657.97 per m^2 to RM7,534.76 per m^2. Of course, all comparable sales are subject to the price adjustment to suit the market price of the subject lot.

[25] From the price pattern of all comparable sales, it shows that only the sale of Lot 388 fetches the price of over RM14,000 per m^2, that is more than double compared to most of the price of the comparable sales in the same vicinity within that period of time. The question is, can the sale price of Lot 388 can be considered as the market value of the subject land?

[26] 'Market value' is statutorily defined under the First Schedule of the LAA 1960. Among others, paragraph 1(1A) to the First Schedule provides as follows:

> 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).

Be that as it may, the meaning of 'market value' has been judicially defined in various ways in a large number of cases. One of the most favoured beings 'the price that an owner willing and not obliged to sell might reasonably expect to obtain from a willing purchaser with whom he was bargaining for the sale and purchase of the land.' The generally recognised methods of ascertaining the market value are first, by considering the purchase price of bona fide transactions of the same land or part of the same land as is acquired or of lands adjoining the land acquired, within a reasonable time in relation to the relevant date of acquisition, and having more or less similar advantages as that of the land

acquired. See *Hoe Guan Investment v Collector of Land Revenue, Batu Pahat* [1978] 2 MLJ 115 at 118 per Ajaib Singh J.

[27] Meanwhile, the Federal Court in *Ng Tiou Hong*'s case had considered the meaning of the 'market value' as follows:

> First, market value means the compensation that must be determined by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser. The elements of unwillingness or sentimental value on the part of the vendor to part with the land and the urgent necessity of the purchaser to buy have to be disregarded and cannot be made a basis for increasing the market value. It must be treated on the willingness of both the vendor to sell and the purchaser to buy at the market price without any element of compulsion. …

In *Gibson v. Norfolk County Council* [1941] 1 K.B. 191, it was held that "Market value" assumes that the thing which is said to have the market value is something which somebody will buy and that there is a market in which it can be sold, and that what the purchaser will pay for it on the average is the market value.

[28] In the land reference proceeding before the LHCJ, the government valuer did not take into consideration the sale price of Lot 388. In his written reply to the appellant's valuer valuation report that can be seen at pp 89-91 of Enclosure 5, the government valuer made the following conclusion:

> Penilai Kerajaan tidak menggunakan lot ini sebagai perbandingan kerana ianya terlalu tinggi dan *outliers* serta di luar lingkungan nilai yang munasabah di kawasan Chan Sow Lin. Balasan yang dinyatakan tersebut adalah tinggi dari nilai pasaran terbuka dan ianya diterima oleh JPPH di bawah Butiran 32(a) Jadual Pertama Akta Setem 1949 untuk maksud duti sahaja. Transaksi berkenaan lebih cenderung kepada spekulasi dengan mengambil kesempatan kesan Projek Bandar Malaysia yang masih dalam perbincangan dan belum dibina serta tiada tempoh siap.
>
> Tambahan pula, merujuk kepada empat (4) perbandingan penilai kerajaan dan tiga (3) perbandingan Penilai Pemohon yang berada di dalam kawasan Chan Sow Lin, kesemua perbandingan yang ditransaksikan adalah diantara

> RM4,657,97 semeter persegi hingga RM7,534.76 semeter persegi sahaja. Oleh yang demikian kadar tanah RM14,346,70 semeter persegi adalah di luar lingkungan harga pasaran terbuka dan terlalu tinggi serta tidak munasabah.
>
> **Oleh itu mohon Perbandingan 1 ini ditolak dan tidak digunakan sebagai asas dalam penentuan nilai pasaran tanah bagi lot subjek**.

[29] Both Court's assessors agreed with the government valuer's approach. The assessor who is a valuation officer employed by the Government (government's assessor) opined that the comparison with Lot 388 is not reasonable as it was transacted above the market value on speculation of the upcoming project. Meanwhile, the assessor who is a registered valuers and appraisers under the Valuers, Appraisers and Estate Agents Act 1981 (private assessor) also discounted the sale of Lot 388 as a proper comparison as it was transacted at least 1 to 2 times above the market value. The LHCJ agreed with the assessor's opinion and rejected the sale price of Lot 388 in his decision to determine the market value for the subject land.

[30] Under subsection 40A(2) of the LAA 1960, it is clear that the Court had to appoint two qualified valuer as assessors for the purpose of aiding the Judge in determining a fair and reasonable amount of compensation. As to the role of the assessors in the land reference proceeding, the Federal Court in *Nusantara Daya*'s case made the following observation:

> [92] This process and mechanism of determining the market value and thereby the amount of compensation was somewhat altered with the amendments to Act 486. Assessments in the years before Act 486 was amended to introduce the role of assessors, judges alone determined the market value of acquired land, unaided save for the documentary, oral and any other evidence adduced at the reference proceedings. On appeal from any such decision of the High Court, the function of the Court of Appeal and the Federal Court has been well-laid down by the Privy Council in Collector of Land *Revenue v Alagappa Chettiar* [1971] 1 MLJ 43 at p 44 and reiterated by the Federal Court in *Bertam*, that the appeals took the form of re-hearings:

> The appeal to the Federal Court under s 49 of the Land Acquisition Act 1960 is like any other civil appeal, by way of re-hearing. The Federal Court is entitled to review the inferences and conclusions of the High Court and to draw its own inferences and conclusions*: Aik Hoe & Co Ltd v Superintendent of Lands and Surveys*. But where the inferences and conclusions of the High Court are based on findings of primary fact which are dependent on the credibility of the oral evidence of witnesses whom the trial judge alone has had the advantage of hearing and seeing, an appellate court ought to accept the High Court's findings of primary fact save in very exceptional cases. Similarly, where expert oral evidence of valuers has been called at the trial and discloses a conflict of opinion between them, the judge's findings as to which he regarded as most reliable is entitled to considerable weight thought it is less sacrosanct than his findings of pure fact which are dependent upon his view of whether or not particular witnesses were telling the truth. Finally, their Lordships observe that land valuation inevitably involves an element of appreciation and impression. There is room for divergence of opinion. As in the case of appeals against assessment of damages or against apportionment of blame actions for negligence an appellate court ought not to reject the judge's assessment and to embark upon a fresh valuation of its own values unless it is satisfied for good reasons that the judge's assessment must be wrong.

> [93] With the introduction of assessors who are professional valuers to ensure that proper determination of adequate compensation under art 13 of the Federal Constitution, and in view of the proviso to s 49(1), we would say that a re-hearing in the terms as described in *Collector of Land Revenue v Alagappa Chettiar* is no longer a necessary feature to appeals on compensation. Allowing questions of law to be posed in appeals on compensation (*Semenyih Jaya*), in our regard, should not mean or entail the same process of re-hearing where the Court of Appeal or the Federal Court 'review the inferences and conclusions of the High Court and to draw its own inferences and conclusions' in relation to valuation; otherwise it would undermine the plain intent of the proviso to s 49(1), render the intent of Parliament meaningless and the courts be accused of rewriting the law.

[31] The Federal Court's observation affirmed that the assessors, including the government assessor, are professional valuers. Thus, it cannot be disputed that in any land reference proceeding, there are four professional valuers giving their expert opinion on the valuation of the subject land, two giving their expert opinion in the form of valuation report for their respective client and another two giving expert advice to the Judge.

[32] Before the LHCJ, three out of four professional valuers were of the opinion and agreed that the sale of Lot 388 should be disregarded from being a comparable sale for the reason that the price transacted is well above the market price. In fact, the other six comparable sales produced either by the appellant's valuer or the government's valuer indicated that the market value of the subject lot cannot fetch the price of the sale of Lot 388. Clearly, the transacted price of Lot 388 is something extra ordinary compared to the normal sale of other lands in the same vicinity. Based on those facts, we are of the considered view that the LHCJ was correct in his decision to reject the evidence of the sale of Lot 388 and in affirming the land administrator's award.

[33] In relation to our finding on the said matter, it is also pertinent to note that the appellant's complaint is not about the proses of the assessment by the land administrator under s 12 of the LAA 1960 or the procedure on how the opinion was given by the assessors under s 40C of the LAA 1960. The complaint is in fact about the amount of the award, that is, the rejection of the evidence of sale of Lot 388 which was said to be erroneously made. Apparently, the question posed as a question of law is only an allegation on the amount of compensation awarded by the LHCJ. The rejection of the evidence made is part and parcel of the evaluation exercise to determine a fair market value for the subject land which is in accordance with paragraph 1(1A) of the First Schedule of The LAA 1960. Thus, we would like to stress again that the complaints posed in the questions before us are not question of law within the meaning and ambit of the proviso to subsection 49(1) of the LAA 1960.

[34] Finally, we address the question posed to us at paragraph E, that is on the issue whether there are two valuations from the same source at the same period of time given by the government valuer, one made for

assessing stamp duty payable Stamp Act 1949 and one made for the purpose of the land acquisition under LAA 1960. This is despite the fact that we have decided that the said question by reference to the other questions posed to us by the appellant are not questions of law within the meaning and ambit of the proviso to subsection 49(1) of the LAA 1960.

[35] To begin with, it is trite that the instrument of sale of any property is chargeable with the stamp duty as provided under s 4 of the Stamp Act 1949 and the charges are specified under paragraph 32(a) in the First Schedule of the said Act. Paragraph 32(a) provide as follows:

> 32 CONVEYANCE, ASSIGNMENT, TRANSFER OR ABSOLUTE BILL OF SALE:
>
> (a) On sale of any property (except stock, shares, marketable securities and accounts receivables or book debts of the kind mentioned in paragraph (c))
>
> For every RM100 or fractional part of RM100 of the amount of the money value of the consideration or the market value of the property, whichever is the greater-
>
> (i) RM1.00 on the first RM100,000;
>
> (ii) RM2.00 on any amount in excess of RM100,000 but not exceeding RM500,000;
>
> (iii) RM3.00 on any amount in excess of RM500,000.

[36] From the said provision, it is clear that stamp duty will be charged based on the amount of the money;

i. for ‘value of the consideration’, or

ii. for ‘the market value’

of the property, whichever is the greater. In simple words, if the value of the consideration is higher than the market value assessed, then the stamp duty charge will be calculated based on that consideration. Vice

versa, if the value of the consideration is less than market value assessed, than the stamp duty charge will be calculated based on that market value.

[37] In such situation, there is only one assessment of the market value of a property for the purpose of stamp duty charges and not two valuations from the same source at the same period of time given by the government valuer as argued by the appellant. The decision by the Director General of Inland Revenue referred to in subsection 134(1) of the Income Tax Act 1967 who is also the Collector of Stamp Duties by virtue of subsection 3(1) of the Stamp Act 1949 to accept the higher consideration of a transacted property does not render the higher transacted value as a market value. The acceptance of the said higher consideration is purely for the purpose of charging stamp duty under Stamp Act 1949. Therefore, we find no merit in the appellant's argument on that point.

Conclusion

[38] Based on the reasons adumbrated above, we find no merits in the appellant's appeal to warrant our appellate intervention. Accordingly, we are unanimous in dismissing this appeal with cost. The appellant is hereby ordered to pay cost of RM5,000.00 to the respondent subject to the allocator.

Dated: 14th March 2023

sgd

CHE MOHD RUZIMA BIN GHAZALI

Judge

Court of Appeal Malaysia

For The Appellant	:	Hazman bin Ahmad [Omar Ismail Hazman & Co.]
For The Respondent	:	Natassa binti Zaini (Norazlin bt. Mohd Yusoff bersamanya [Jabatan Peguam Negara, Wilayah Persekutuan Kuala Lumpur]