IN THE COURT OF APPEAL MALAYSIA
(APPELLATE JURISDICTION)

CIVIL APPEAL No. B-01(A)-670-12/2020

CIVIL APPEAL No. B-01(IM)-2-01/2021

BETWEEN

TEGAS SEJATI SDN. BHD **APPELLANT**

AND

1.PENTADBIR TANAH DAERAH HULU LANGAT
2.LEMBAGA LEBUHRAYA MALAYSIA **RESPONDENTS**

(In the High Court of Malaya in Shah Alam
In the State of Selangor Darul Ehsan
Land Reference No. BA-15-173-06/2018)

Between

Tegas Sejati Sdn. Bhd **Applicant**

And

Pentadbir Tanah Daerah Hulu Langat **Respondent**

(which has been ordered to be consolidated by Court Order dated 22-4-2019)

(In the High Court of Malaya in Shah Alam
In the State of Selangor Darul Ehsan
Land Reference No. BA-15-486-06/2018)

Between

Lembaga Lebuhraya Malaysia **Applicant**

And

Pentadbir Tanah Daerah Hulu Langat **Respondent**

CORAM

YAACOB HAJI MD SAM, JCA

S NANTHA BALAN, JCA

MOHD NAZLAN MOHD GHAZALI, JCA

JUDGMENT

Introduction

[1] These two appeals, heard together before us arose from a consolidated land reference proceedings. The first concerned the appellant's appeal against the decision of the High Court refusing to strike out the inclusion of the second respondent as a party to the land reference proceeding, and the second related to the appellant's substantive appeal against part of the judgment of the High Court - which allowed the second respondent's land reference and dismissed the appellant's land reference claims. There was also a cross appeal by the second respondent seeking the refund of the excess sum already paid to the appellant after the inquiry in light of the reduction of the compensation sum ordered by the High Court.

[2] At the conclusion of the hearing which was conducted by way of a remote communication technology via *Zoom* we found for the respondents and dismissed both appeals, allowed the cross appeal of the second respondent, and highlighted the main grounds for our decisions. These grounds of judgment contain the full reasons for the same.

Key Background Facts

[3] The facts are fairly straightforward. This litigation arose from the first respondent land administrator's acquisition of land belonging to the appellant - Lots 35126, Lot 35127 and Lot 35129 in Bandar Ampang, Seksyen 15, Daerah Hulu Langat, Negeri Selangor, where the subject land sits on Lot 35129 ("the Land") which led to the former granting its award and offer of compensation in accordance with the Form H issued under the Land Acquisition Act 1960 ("the LAA") dated 16 May 2017, amounting to RM59,706,236.85.

[4] Dissatisfied, the appellant landowner on 21 June 2017 filed the requisite Form N under Section 38 (1) of the LAA to object to the compensation awarded by the first respondent in order to invoke a land reference proceeding at the High Court. Only two days earlier, on 19 June 2017, the second respondent (Lembaga Lebuhraya Malaysia - LLM) had also filed its Form N against the same award of the High Court. The second respondent was incorporated under the Highway Authority Malaysia (Incorporation) Act 1980 and has a statutory obligation under Section 11 of the Act to design, construct and maintain highways as determined by the Government of Malaysia.

[5] Both references, concerning the two Forms N, were ordered to be consolidated and heard together by the High Court.

[6] On 22 September 2020 the appellant moved under Order 18 r 19 (1) of the Rules of Court 2012 ("the RC 2012") to strike out the second respondent's land reference proceedings.

[7] This interlocutory application as well as the consolidated substantive land reference proceedings were heard together by the learned Judicial Commissioner of the High Court ("the learned JC") and on 14 December 2020 the High Court decided to dismiss the appellant's striking out application, and to dismiss the appellant's substantive land reference proceedings, where, other than for the market value of the Land, the compensation for the costs of preliminary construction works, costs for termination of contractor and consultant agreements, costs of site replacement and loss of profits, were all rejected despite having been earlier awarded by the first respondent in the inquiry. In other words, the High Court awarded compensation for the Land - of RM13,617,500.00 for the market value of the Land only, and dismissed all the other claims of the appellant.

[8] As such, the High Court allowed the second respondent's objection to the compensation sum in the consolidated land reference proceedings.

[9] The appellant appealed against these decisions of the High Court. Hence the instant appeals before us.

Principles on appellate intervention

[10] We should first emphasise that the law is well-established in that an appellate court will not interfere unless the trial court is shown to be plainly wrong. The Federal Court in *Dream Property Sdn Bhd v Atlas Housing Sdn Bhd* [2015] 2 MLJ 441, in the judgment written by Azahar Mohamed FCJ (later CJM) reaffirmed the principle to be followed by an appellate court when reversing findings of fact by a trial court:

"[60] It is now established that the principle on which an appellate court could interfere with findings of fact by the trial court is 'the plainly wrong test' principle; see the Federal Court in *Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors* [2005] 2 MLJ 1 (at p 10) per Steve Shim CJ (Sabah & Sarawak). More recently, this principle of appellate intervention was affirmed by the Federal Court in *UEM Group Bhd v Genisys Intergrated Engineers Pte Ltd & Anor* [2010] 9 CLJ 785 where it was held at p 800:

> It is well settled law that an appellate court will not generally speaking, intervene with the decision of a trial court unless the trial court is shown to be plainly wrong in arriving at its decision. A plainly wrong decision happens when the trial court is guilty of no or insufficient judicial appreciation of evidence (see *Chow Yee Wah & Anor v Choo Ah Pat* [1978] 1 LNS 32; *Watt v Thomas* [1947] AC 484; and *Gan Yook Chin & Anor v Lee Ing Chin & Ors* [2004] 4 CLJ 309)".

[11] This Court in *Nor Azlina Abdul Aziz v Expert Project Management Sdn Bhd* [2017] 5 CLJ 58 in the judgment delivered by Harmindar Singh JCA (now FCJ) held thus:

"[20] Nevertheless there are occasions when appellate interference is warranted and these occasions have been well set out in numerous cases. Some of these occasions are:

> (a) where the trial judge took into account irrelevant considerations and failed to give due weight to relevant considerations (see *Director of Forestry, Sabah & Anor v. Mau Kam Tong & Ors And Another Appeal [2010] 3 CLJ 377*; [2010] 3 MLJ 509);

(b) where there was no proper evaluation of the evidence by the trial judge (see *Lee Nyan Hon & Brothers Sdn Bhd v. Metro Charm Sdn Bhd [2009] 6 CLJ 626*; [2009] 6 MLJ 1);

(c) where the decision arrived at by the trial court was without judicial appreciation of the evidence (see *Gan Yook Chin & Anor v. Lee Ing Chin & Ors [2004] 4 CLJ 309*; [2005] 2 MLJ 1);

(d) where a trial court has so fundamentally misdirected itself, that no reasonable court which had properly directed itself and asked the correct questions, would have arrived at the same conclusion (see *Raja Lob Sharuddin Raja Ahmad Terzali & Ors v. Sri Seltra Sdn Bhd [2008] 2 CLJ 284*; [2008] 2 MLJ 87);

(e) where the trial judge was plainly wrong in arriving at his decision (see *Lee Ing Chin & Ors v. Gan Yook Chin & Anor [2003] 2 CLJ 19*; [2003] 2 MLJ 97);

(f) where a trial judge had so manifestly failed to derive proper benefit from the undoubted advantage of seeing and hearing witnesses at the trial, and in reaching his conclusion, has not properly analysed the entirety of the evidence which was given before him (see *First Count Sdn Bhd v. Wang Yew Logging & Plantation Sdn Bhd [2013] 1 LNS 625*; [2013] 4 MLJ 693 which followed the Privy Council case of *Choo Kok Beng v. Choo Kok Hoe & Ors [1984] 1 LNS 40*; [1984] 2 MLJ 165); and

(g) where the judgment is based upon a wrong premise of fact or of law (see *Perembun (M) Sdn Bhd v. Conlay Construction Sdn Bhd [2012] 1 LNS 1416*; [2012] 4 MLJ 149)".

[12] In the leading and more recent case of *Ng Hoo Kui & Anor v Wendy Tan Lee Peng, Administrator Of The Estates Of Tan Ewe Kwang, Deceased & Ors* [2020] 10 CLJ 1 the Federal Court affirmed with unmistakable clarity that 'the plainly wrong test' is the principle on which an appellate court could interfere with findings of fact by the trial court.

[13] This important principle involves a number of circumstances, but must necessarily extend to situations where it can be shown that the impugned decision is vitiated with plain material errors, or where crucial evidence had been misconstrued, or where the trial judge had so manifestly not taken proper advantage of having seen and heard the witnesses or not properly analysed the entirety of the evidence before him, or where a decision was arrived at without adequate judicial appreciation of the evidence such as to make it rationally unsupportable.

[14] In the context of an appeal vis-à-vis a land reference proceeding however, one further important consideration is warranted. This is because the High Court's findings of fact on the evidence and/or the compensation at the said proceeding are not questions of law and are therefore not appealable. In this respect, Section 49 (1) of the LAA provides as follows:

> **49. Appeal from decision as to compensation**
>
> (1) Any person interested, including the Land Administrator and any person or corporation on whose behalf the proceedings were instituted may appeal from a decision of the Court to the Court of Appeal and to the Federal Court:
>
> Provided that where the decision comprises an award of compensation there shall be no appeal therefrom.

[15] This position has been further clarified in cases such as a recent Federal Court decision in *Pentadbir Tanah Daerah Johor v Nusantara Daya Sdn Bhd* [2021] 4 MLJ 570. In that case, the Court of Appeal allowed the landowner's appeal and adjusted the High Court's award thereby resulting in the compensation award being increased further. The Court of Appeal did not agree with the land administrator's argument that the 'questions of law' raised by the landowner were actually factual questions affecting the quantum of compensation and that therefore the entire appeal was barred by the proviso to Section 49 (1) of the LAA, as we set out above. On further appeal, the Federal Court set aside the decision of the Court of Appeal and reinstated that of the High Court.

[16] The following passages from the judgment of Mary Lim FCJ, delivering the judgment of the Court, are especially instructive:

> "[51] As a starting point, we would adopt the general proposition as set down in *Amitabha Guha No 2,* that 'In a general sense, a question of law is an issue involving the interpretation of law (statutes or legal principles) and the application of the law to the facts of each individual case', but with a strong rider and only to that extent. This general proposition must be appreciated, understood and applied in the context of the proviso to s 49(1), ruled by this court in *Semenyih Jaya* to be a valid provision of law, that s 49(1) limiting the right of appeal does not violate arts 13 and 121(1B) of the Federal Constitution — see paras [165]–[173].
>
> [52] This general proposition also is not to be taken as suggesting, even for the slightest moment, that s 49(1) is to be given a liberal reading so as to render nugatory the clear intent of precluding appeals from decisions of the High Court on compensation. <u>This proposition is not to be read as allowing in</u>

any way, what in pith and substance, are appeals on compensation……..……

[78] The issue thus before us is whether the ten questions posed in the memorandum of appeal or the three main points finally argued before and decided by the Court of Appeal are really questions of law, as envisaged in *Semenyih Jaya,* or are they, as suggested by the appellant, disguised attempts to circumvent the statutory bars in s 40D(3) and the proviso to s 49(1) of Act 486.

[79] Having examined all the questions posed, whether we take the ten questions as posed or as grouped into the 'three issues', these questions or issues are all about the award of compensation that was made by the High Court, how the final amount was arrived at and how that amount was wrong. At the end of the day, the High Court, assisted by the assessors, made various deductions in order to arrive at the market value. The High Court, as a Land Reference Court was entitled to make those deductions for the reasons stated, as those deductions are very much fact-based decisions, based on evidence adduced, the analysis of such evidence involving the court's appreciation and impression of such evidence when applying principles of valuation to the facts. Room must be given for a divergence of opinion on the evaluation of such evidence; more so when the appeal is statutorily limited.

[80] The 10% deduction to the market value; double counting due to three separate deductions; and the failure to make an upward adjustment to Comparable 1, are all complaints against the award of compensation, what the learned judge did, what the learned judge should not have done, and what the learned judge ought to have done in order to arrive at the award that the High Court finally did. And, it is really because the respondent was dissatisfied with the amount so awarded that the respondent appealed to the Court of Appeal. The complaints formed the basis

or grounds upon which the Court of Appeal was invited to intervene. None of the questions posed is, in any sense, and certainly not in the limited sense of *Semenyih Jaya*, questions of law.

[81] The allegations of acting without evidence or acting against the evidence of a particular witness or report; or how a particular piece of evidence is to be treated, as raised in the questions posed, are actually complaints generally made in order to meet the general principles for appellate intervention. The views expressed by Michael Barnes in *The Law of Compulsory Purchase and Compensation* and by Lord Denning MR in *Ashbridge Investments Ltd v Minister of Housing and Local Government* [1965] 1 WLR 1320, that such complaints are points of law which may be raised on appeal and for which reasons the appellate court may interfere in the trial court's findings, is generally correct in the context and in relation to appeals sans the proviso to s 49(1). But for the clear terms of the proviso, such appeals on points of law may be entertained even if the appeal is on compensation or the amount of compensation. However, in the presence of the plain terms of the proviso, and the restrictive reading which we must give to the meaning of question of law as allowed in *Semenyih Jaya*, such complaints or grounds do not render or make the questions posed, questions of law.

[82] We are of the firm view that the complaints of the respondent essentially concerned issues of fact and/or application of valuation principles when computing the amount of compensation to be awarded for the acquisition. Such issues of fact as well as the application of valuation principles as we have said repeatedly, are not questions of law; certainly not within the narrow and limited remit of what or how such a question of law may be properly and validly taken on appeal under the amended s 49(1)".

[Emphasis added]

[17] Furthermore, the above case referred to a slightly earlier decision in *Amitabha Guha (as beneficiary for the estate of Madhabendra Mohan Guha) v Pentadbir Tanah Daerah Hulu Langat* [2021] 4 MLJ 1 where Vernon Ong FCJ held clearly as follows:

> "[76] To recap, we decline to answer question 1 on the comparable acquisition issue and question 3 on the injurious affection issue as they are not question of law. Firstly, the weight to be given to the acquisition and sale comparables by the learned judge and on the other evidence relating to the claim for injurious affection were essentially findings of fact on the evidence. Secondly, the questions relate to a decision of the High Court on compensation which decision is final and non-appealable under ss 40D and 49(1) respectively".

Analysis & Findings of this Court

[18] We have examined the appeal record and considered the submissions of parties, both written and oral and our key findings on the main grounds of appeal are as follows. We should first add though that, as emphasised by the appellant, the grounds of appeal in both appeals - against the striking out and the substantive decision - are largely similar, as evidenced in the memorandum of appeal, as amended. These will thus be examined together.

[19] We were also mindful that one of the two appeals concerned a decision refusing a striking out of the land reference proceeding under Order 18 r 19 (1) of the RC 2012. This involved the application of the well-settled principle that a striking out is only granted under plain and obvious circumstances or that the case is 'obviously unsustainable' as stated in leading cases such as the decision

of the Supreme Court in *Bandar Builder Sdn Bhd v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36, and more relatively recently, that of the Federal Court in *Seruan Gemilang Makmur Sdn Bhd v Kerajaan Negeri Pahang Darul Makmur & Anor* [2016] 2 MLRA 263

Whether the second respondent has the locus standi to object and/or appeal against the award of compensation made by the first respondent to the appellant

[20] This is the principal argument of the appellant in these appeals. The appellant submitted that the second respondent has no locus standi to object or appeal against the award of compensation handed down by the first respondent to the appellant. This, according to the appellant is because the second respondent is not an interested person within the meaning of Section 37 of LAA given that the second respondent - LLM - is merely a paymaster in the present factual matrix and proceedings, and is not, in law and/or in fact, a party aggrieved by the award of compensation handed down by the first respondent by way of Form H.

[21] The appellant argued that this is so since firstly notwithstanding the fact that the second respondent was present at the inquiry proceedings before the land administrator, the second respondent had failed to take an active step to object to the value of the compensation and/or the various claims by the appellant at the material time, such that it ought to now be estopped from contending otherwise. Its belated objection by way of the second respondent's land reference proceedings, so the appellant submitted, is simply an afterthought and should be disregarded.

[22] The second respondent took a different, contrary position. It asserted that nowhere in the LAA does it expressly provide that an objection must have been made or a valuation report must have been filed during the inquiry, in order to cloak an interested person with the locus standi to file a Form N under Section 37(1) of the LAA. Thus, the appellant's apparent insistence that such requirements be read into the LAA when none was intended, is clearly misconceived. At the same time, the second respondent's Form N cannot in any way be deemed a belated objection or an afterthought to defeat the award of compensation, since it was clearly filed within time and was in full compliance with Sections 37 and 38 the LAA.

[23] This stance of the second respondent is consonant with the decision of the learned JC who in his grounds of judgment stated that:

> "18. On 14 December 2020 this Court held inter a!ia that…(3) omission or neglect on the part of LLM to file a valuation report at the inquiry did not bar LLM from filing valuation report or additional evidence in these Land References.
>
> ……
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> 20. As regards the consequence of the omission or neglect of LLM to file a valuation report referred to in item (3) of the immediately foregoing paragraph, this Court's details for the ground of that item of decision are as follows:
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> > (a) In *Collector of Land Revenue v. Alagappa Chettiar* [1971] 1 MLJ 43 the Privy Council's decision held that a land reference is an original hearing or originating process at the High Court and additional evidence can be produced by parties at the land reference;

……

(c) Additional evidence by way of affidavits (in addition to valuer's reports), and cross-examination of deponents of affidavits are expressly permitted by paragraph 5 of the Third Schedule (Evidence and Procedure in Land Reference Cases) of the Land Acquisition Act 1960.

(d) Reference can also be made to the Court of Appeal's decision in *Sistem Penyuraian Trafik KL Barat Sdn Bhd v. Kenny Heights Development Sdn Bhd* [2009] 3 MLJ 809 and High Court's decision in *Universiti Malaya & Anor v. Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur* [2003] 2 MLJ 185 regarding the filing of valuation report and affidavits in the High Court in land reference cases."

[24] We should first deal with the issue of the absence of any objection and of the valuation report at the stage of the inquiry before the land administrator. The law on this is fairly settled as stated in the authorities referred to by the learned JC. We needed only to emphasise that the proceeding before the land reference court at the High Court is a rehearing which does not therefore prevent an objection be made for the first time and a valuation report be first tendered in that stage of the proceeding, and not done at the earlier inquiry proceeding despite being present thereat.

[25] This Court in *Sistem Penyuraian Trafik KL Barat Sdn Bhd v Kenny Heights Development Sdn Bhd & Anor* [2009] 3 MLJ 809 referred with approval the decision of the High Court in *Universiti Malaya & Anor v Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur* [2003] 2 CLJ 605 which also involved the same second respondent only introducing a

valuation report and making an objection to the award at the land reference court, and not at the inquiry proceeding before the land administrator. The High Court in *Universiti Malaya* held that firstly, any objection under Section 38(1) of the LAA is a reference by a written application in Form N to the land administrator requiring that he refers the matter to the Court for its determination. Hence, the hearing before the High Court is an original hearing.

[26] Secondly it was also in that case held that the land reference court shall consider the interests of all persons interested who have not accepted the award, whether those persons have themselves made an objection or not, such that the interested person could be considered even though that person has not made an objection at the inquiry. In fact we observed that this is plainly stated in Section 44 (2) of the LAA which reads:

> (2) The Court shall consider the interests of all persons interested who have not accepted the award, whether those persons have themselves made an objection or not.

[27] Thirdly, for the same reasons, the complaint that the reference ought to be struck out since the second respondent did not produce a valuation report was also rejected.

[28] We observed that in this principal ground of appeal advanced by the appellant in its challenge to the legal standing of the second respondent to file Form N to object to an award of compensation and initiate a land reference proceeding under Section 37 of the LAA, the appellant placed significant reliance on a relatively recent decision of the Federal Court in *Tenaga Nasional*

Berhad v Unggul Tangkas Sdn Bhd & Anor and other appeals [2020] 2 MLJ 721 which held that a paymaster has no legal interest in land reference proceedings. A paymaster only possesses a pecuniary interest which according to the appellant does not entitle it to file Form N under the said statutory provision.

[29] The appellant argued that the High Court was wrong in not applying but instead distinguishing *Unggul Tangkas* despite the status of the second respondent as a paymaster, and even though the principle of law involved in the instant case and in *Unggul Tangkas* is argued to be identical, namely, that a paymaster has no legal interest in land reference proceedings.

[30] It was submitted that whilst *Unggul Tangkas* ruled that the paymaster is not a *"person interested"* and at most has only a pecuniary interest, an earlier decision of the Federal Court in *Cahaya Baru Development Bhd v Lembaga Lebuhraya Malaysia* [2011] 2 MLJ 729 has held to the opposite effect - in that the paymaster is a *"person interested"* within the meaning of Section 37 of the LAA, conferring on the paymaster the requisite *locus standi* to object to the compensation awarded in the acquisition of land.

[31] It was thus argued by the appellant that the learned JC of the High Court had misdirected himself because he was clearly bound by the decision of the Federal Court in *Unggul Tangkas.* This, the appellant attributed to two points. First, by the doctrine of stare decisis and secondly *Unggul Tangkas* being the more recent Federal Court decision to *Cahaya Baru* in light of the Supreme Court decision in *Dalip Bhagwan Singh v Public Prosecutor* [1998] 1 MLJ 1 which

established that the Court of Appeal is bound by its earlier decision unless one of the exceptions identified in *Young v Bristol Aeroplane Co Ltd* [1944] KB 718 applied.

[32] We should first refer to the more substantive issue where it is clear that Section 37 of the LAA provides that any person interested in any scheduled land may object to among others, the amount of the compensation. The provision in its entirety reads as follows:

> **37. Application to Court**
>
> (1) Any person interested in any scheduled land who, pursuant to any notice under section 10 or 11 or any person interested pursuant to any compensation made under section 35 or Part VII who, has made a claim to the Land Administrator in due time and who has not accepted the Land Administrator's award thereon, or has accepted payment of the amount of such award under protest as to the sufficiency thereof, may, subject to this section, make objection to-
>
> *(a)* the measurement of the land;
>
> *(b)* the amount of the compensation;
>
> *(c)* the persons to whom it is payable;
>
> *(d)* the apportionment of the compensation.
>
> (2) Where the total amount awarded in compensation does not exceed five thousand ringgit, the written award of the Land Administrator shall be final with regard to both the measurement of the land and the amount of compensation awarded, and no objection may be made under subsection (1) in respect thereof.

> (3) Where the total amount of any award exceeds thirty thousand ringgit, any Government or any person or corporation on whose behalf such land was acquired or being occupied or used pursuant to Part VII, shall be deemed to be a person interested and may make objections on any of the grounds specified in subsection (1).

[33] Section 2 of the same Act defines *"person interested*" to include every person claiming an interest in compensation to be made on account of the acquisition of land under the LAA.

[34] In *Unggul Tangkas*, the respondent as the registered owner was awarded compensation for the acquisition of its scheduled land, payable by the appellant. The former filed an objection in Form N to the land administrator and initiated two land reference proceedings before the High Court whereas the appellant - Tenaga Nasional Berhad (TNB) - filed applications under Order 15 r 6 of the RC 2012 for leave to intervene in the land reference proceedings and to file the valuer's report and the relevant rebuttal reports. The Court of Appeal subsequently held that the appellant should not be allowed to intervene such that the issue of adducing the valuation and the rebuttal reports must fail.

[35] Three questions of law were formulated to be determined by the Federal Court on further appeal. These were:

> (a) whether the filing of an objection vide Form N pursuant to s 37 of the Act was the only mode available for a paymaster to be a party in a land reference proceeding before the High Court ('question 1');

(b) whether the paymaster had a right to be made a party in a land reference proceeding before the High Court to safeguard its legal interest where the award of compensation made by the land administrator was being subject to challenge at the High Court ('question 2'); and

(c) whether the paymaster upon being given leave to intervene in the land reference could be denied the right to participate and file a valuer's report if necessary under the Third Schedule to the Act ('question 3').

[36] After a thorough analysis of the issues, the Federal Court, in the judgment written by Zulkefli PCA concluded thus:

> "[43] For the reasons above-stated, we would answer question 1 posed in these appeals in the affirmative. Other than the land administrator, only a person who has properly objected to an award under s 37 of the Act is entitled to be a party to the land reference proceedings with all the rights that entails. Question 2 should be answered in the negative. A paymaster is not so entitled as a matter of course. Question 3 ultimately hinges on TNB succeeding in these appeals in respect of questions 1 and 2. Therefore, there is no necessity for us to answer question 3. In any event, the question of valuer's report is a matter that ultimately concerns the second respondent (the land administrator) in defending the award.

[37] Given the answer to the first question of law, it is manifest that a paymaster is therefore entitled to file Form N pursuant to Section 37(1)

of the LAA and be made a party to the land reference, which is also the only mode by which a paymaster can be made a party to a land reference proceeding before the High Court. Moreover, the Federal Court upheld the decision of the Court of Appeal in that same case which had held that TNB, being the paymaster, ought to have filed a Form N, if it was desirous of being heard in a land reference. Thus the Federal Court stated:

> "[28] We noted that the undisputed facts in the present case showed that during the land acquisition hearing before the land administrator, the landowner, Unggul Tangkas, was present. TNB was also present. It was also not disputed that during the course of the acquisition hearing, TNB was not named as a party thereto. Neither was it present there as an intervener. Neither did it present any valuation report pertaining to the scheduled land that was the subject matter of the acquisition exercise.
>
> [29] We are of the view the provisions of the Act made it clear that the lodging of Form N is essential if a party seeks to object to an award in land reference proceedings as it is aimed at an expeditious resolution of the objection to the award".

[38] In *Unggul Tangkas*, the authority relied on by the appellant, the paymaster, TNB was present before the land administrator at the acquisition hearing although TNB was not a party. Neither was it present as an intervener nor did it present any valuation report pertaining to the scheduled land in question. The Federal Court ruled that TNB had no legal interest in the land reference proceedings. As the paymaster, it had at the highest only a pecuniary interest. Its interest was also taken care of by the legal team representing the land administrator at the land reference proceedings.

[39] We agreed that in the instant case it is essentially not disputed that the second respondent (LLM) is a statutory agency tasked with the responsibility to supervise and execute the design, construction and maintenance of highways, and that it is the acquiring authority and the paymaster in respect of the appellant's land reference proceedings.

[40] The critical question for determination is whether the second respondent as the paymaster has no legal interest in the subject land such that its Form N is defective, and that whether it was for the first respondent and not the second respondent to defend the award given to the appellant in a land reference proceeding.

[41] In our view, it must be appreciated that in the first place, the Federal Court in *Unggul Tangkas* answered the first question of law affirmatively in that the filing of an objection by way of Form N pursuant to Section 37 of the Act was the only mode available for a paymaster to be a party in a land reference proceeding before the High Court. As such, even on the authority of *Unggul Tangkas*, and despite its ruling that a paymaster is not a person interested in any scheduled land, a paymaster is entitled to file Form N and therefore could be made a party to the land reference.

[42] In *Cahaya Baru Development Bhd v Lembaga Lebuhraya Malaysia* [2011] 2 MLJ 729, pursuant to a *Gazette* notification by the Johor State Authority under Section 8 of the LAA a portion of the land of the landowner was acquired for the construction of Senai-Pasir Gudang-Desaru Expressway. The acquisition was made under Section 3 (1) (a) and acquired for the Ministry of Public Works, Malaysia. The land

administrator, Johor Bahru served a notice in Form E under the Act on the landowner and LLM giving notice for the inquiry proceedings to determine the compensation to be awarded.

[43] Upon the conclusion of the inquiry the land administrator made the award of compensation and served on both parties a Form G under Section 14. The award was accepted by the landowner, but the amount of compensation under the award was objected to by LLM who filed Form N which stated that LLM was a person interested pursuant to Section 37(3) of the LAA for the objection to be referred to the High Court under Section 38(5).

[44] By way of originating summons for declarations, the landowner submitted that LLM had no locus and was not an interested person under Section 37(3) of the Act and thus not entitled to lodge an objection in Form N with the land administrator against the award. The High Court allowed the application which was subsequently overturned by the Court of Appeal. The Federal Court was asked to determine two questions whether LLM was first, a 'person interested' within the meaning of Section 37(3) of the LAA Act; and secondly, eligible to object to the compensation awarded to the landowner.

[45] The Federal Court in *Cahaya Baru*, in a judgment also written by Zulkefli FCJ (later PCA) dismissed the appeal, answered the two questions in the affirmative and held:

> "[11] We would like also to refer to s 2 of the Act which defines the term 'person interested' to include every person claiming an interest in compensation to be made on account of the acquisition

> of land under this Act. On this point we agree with the view taken by the Court of Appeal that the defendant as the 'paymaster' should be construed as a 'person interested' within the meaning of s 37(1) read with s 37(3) of the Act".

[46] Thus, clearly, LLM as the 'paymaster' is construed as a 'person interested' within the meaning of Section 37(1) read with Section 37(3) of the LAA. And just like in *Cahaya Baru*, in the instant case, LLM or the second respondent herein too had attended the inquiry before the first respondent land administrator and had also subsequently filed the requisite Form N to object to the amount in the award of compensation.

[47] In contrast it should also be noted that the Federal Court in *Unggul Tangkas* did not address the definition of 'any person interested' under Section 37 of the LAA. And the Federal Court also did not expressly pronounce that the paymaster is not a 'person interested' to lodge an objection to the award within the meaning of Section 37 of the LAA.

[48] We therefore agreed with the submission of the second respondent that there is no ratio decidendi in *Unggul Tangkas* which contradicts *Cahaya Baru*. We emphasise that in *Unggul Tangkas*, the paymaster was making an intervener application and had not filed any Form N to challenge the award, very much unlike the situation in the instant case before us, such that given the facts, the Federal Court in *Unggul Tangkas* ruled that TNB (being the paymaster) had at the highest, only a pecuniary interest in the land reference proceedings brought by the landowner, and thus had no right to intervene in the said proceedings.

[49] It bears repetition that in the instant case before us, LLM, as the second respondent did file its Form N to register its objection. It was to us very clear that the Federal Court in *Unggul Tangkas* however merely made a determination that TNB, being the paymaster, had at the highest, only a pecuniary interest in the land reference proceedings brought through an objection raised by the landowner, and therefore had no right to intervene in the said proceedings, in which TNB at the same time chose not to file a Form N pursuant to Section 37 of the LAA. And the Federal Court did state, as mentioned above in answer to the first question of law referred to it, that a paymaster can be made a party to a land reference by filing an objection vide Form N pursuant to Section 37 of the LAA.

[50] In this respect, even more recently, the Federal Court in *Spicon Products Sdn Bhd v Tenaga Nasional Berhad & Anor* [2022] 4 AMR 228 instructively explained the requirements to be satisfied for the lodging of Form N, in the following terms:

> "[63] One of the constants that has however remained unchanged is the matter of who may file an objection to an award, the objection being the trigger for a land reference. Not everyone can file the written objection that is referred to the High Court. Although s 37(1) prefaces with the words "any person interested in any scheduled land", such person has to fall within ss 10, 11, 35 or Part VII, have made a claim to the Land Administrator in due time and, do either of two things. Such person has to either not have accepted the Land Administrator's award or, has accepted payment of the amount of such award but has done so under protest as to the sufficiency thereof. We add that s 37(1) must be read with s 37(3), where the Government, person or corporation on whose behalf land has been acquired "shall be

deemed to be a person interested and make objections on any of the grounds" in s 37(1).

[64] It may be readily inferred from the terms of s 37(1) that the persons who are entitled to file an objection are actually more restricted than those who may attend an enquiry. Even if the person interested meets the qualifications in s 37(1), such person may only object on any of the grounds prescribed in s 37(1) - measurement of the land, amount of compensation, persons to whom compensation is payable, and the apportionment of compensation. Once the grounds are identified, no other grounds "shall be given in argument" at the reference proceedings, except with leave of the Court - see s 38(2).

[65] Assuming the person objecting meets the conditions of s 37(1) or (3), s 38(1) further requires all objections to be in writing using the statutorily provided Form N lodged with the Land Administrator within the time period prescribed in s 38(3)".

[Emphasis added]

[51] We were therefore of the view that the decision of the Federal Court in *Cahaya Baru* represents the ratio decidendi which is binding on the High Court in the instant case. This includes the finding that LLM has the locus standi to file a Form N, it being the paymaster, is a 'person interested' within the meaning of Section 37(1) read with section 37(3) of the LAA and by virtue of the definition of 'person interested' under Section 2 of the LAA, and that LLM, being a statutory agency of the Ministry of Public Works has the locus standi to file a Form N.

[52] In other words, the Federal Court also upheld the decision of the Court of Appeal in *Cahaya Baru* which had ruled that the requirements of Section 37(3) of the LAA pre-amendment was satisfied and that LLM is deemed to be a person interested within the meaning of section 37(1) of

the LAA pre-amendment by reason of the fact that the work that LLM does is for public utility.

[53] The one other related and important consideration is that the second respondent's Form N was lodged under Section 37(3) of the LAA prior to the effective date of the amendment to the LAA, which was on 1 December 2017 under Section 43 of the Land Acquisition (Amendment) Act 2016. The gazette date for the acquisition was 23 July 2017. The LAA pre-amendment therefore applied to the instant case.

[54] Section 37(3) of the LAA pre-amendment read as follows:

> (3) Where the total amount of any award in respect of any scheduled land exceeds fifteen thousand ringgit any Government or any person or corporation undertaking a work which in the opinion of the State Authority is of public utility, and on whose behalf such land was acquired pursuant to section 3, shall be deemed to be a person interested in any scheduled land under subsection (1), and may make objections on any of the grounds specified in subsection (1).

[55] The present Section 37(3) states as follows:

> (3) Where the total amount of any award exceeds thirty thousand ringgit, any Government or any person or corporation on whose behalf such land was acquired or being occupied or used pursuant to Part VII, shall be deemed to be a person interested and may make objections on any of the grounds specified in subsection (1).

[56] Given this provision in Section 37(3) of the LAA pre-amendment, it cannot be denied that the second respondent, being a corporation incorporated under the Highway Authority Malaysia (Incorporation) Act 1980 to undertake works of public utility and on whose behalf such land was acquired should be deemed to be a *'person interested in any scheduled land'* under Section 37(1) of the LAA pre-amendment and thus may make objections on any of the grounds specified therein.

[57] We would also say that even if the LAA post-amendment provision is to be applied, the second respondent, being a *"corporation on whose behalf such land was acquired"* should still be correctly deemed to be a person interested under the present Section 37(1) and would also therefore be entitled to make objections thereunder. We were thus in agreement with the learned JC who determined that under Section 37(3) of the LAA - whether pre-amendment or presently - LLM as a corporation who undertakes work of public utility has the requisite locus standi to make objection to an award of compensation by filing Form N with the High Court.

[58] And as discussed earlier, another justification for finding the second respondent, being the paymaster ought to be construed as a 'person interested' under Section 37(1) of the LAA is enunciated by the Federal Court in *Cahaya Baru* which had read the said Section 37 (1) not only with Section 37(3), but also by applying Section 2 of the LAA, as set out earlier, and repeated as follows:

> "[11] We would like also to refer to s 2 of the Act which defines the term 'person interested' to include every person claiming an interest in compensation to be made on account of the acquisition

> of land under this Act. On this point we agree with the view taken by the Court of Appeal that the defendant as the 'paymaster' should be construed as a 'person interested' within the meaning of s 37(1) read with s 37(3) of the Act".

[59] In other words, the second respondent (LLM), being the paymaster with an interest in compensation, also fell within the category a 'person interested' under Section 2 of the LAA. We should mention that in a judgment of this Court in *Siaw Swee Mie v Lembaga Lebuh Raya* Malaysia [2019] 4 MLJ 406 which is post the *Unggul Tangkas* decision (at Federal Court) it was accepted that LLM, being a paymaster, has the locus standi to institute a land reference proceeding. The applicable law was in that case also like in the instant case before us, the LAA pre-amendment. As such the second respondent is clearly an interested person within the meaning of Section 37 of the LAA which means that it is vested with the locus standi to file a Form N to object to the award.

Whether there was non-observance of stare decisis

[60] It again bears emphasis that the facts of the instant case exhibit a greater degree of similarity with those of *Cahaya Baru* instead of *Unggul Tangkas,* especially in light of the filing of Form N in the former, as was also done in the instant case, by LLM, the second respondent herein, being the paymaster and the responsible statutory agency. On top of that, like in *Cahaya Baru*, in the instant case, the Form N by LLM or the second respondent was filed prior to the coming into force of the amendment to the LAA on 1 December 2017, such that the applicable law is the LAA pre-amendment.

[61] The second respondent therefore had all the rights to participate in the said proceedings, and the ruling of the Federal Court in *Cahaya Baru* that paymasters were entitled as 'persons interested' to lodge Form N was also recently adopted by the Federal Court in *Spicon Products* which held that a landowner who had accepted an award and thus not entitled to lodge any objection as it did not fulfil the requirements of Section 37(1) for lodging an objection is not obliged to lodge Form N in order to participate in the reference proceedings at the High Court. The Federal Court went on to hold that a landowner whose land stands acquired and whose interests are undeniably affected by an objection referred to the High Court, is entitled to invoke Order 15 r 6 of the RC 2012 and may apply to intervene and participate in the reference proceedings in order to protect its rights and interests. We also note with significance that in *Spicon Products,* given the facts, the Federal Court decided not to follow the earlier Federal Court decision in *Unggul Tangkas,* such as stated in the following passage:

> "[118] With these clear terms as to how evidence is to be tendered and received by the High Court and what the procedure is in reference proceedings, it is difficult to agree with the view held by the Court of Appeal and to also maintain the position adopted in *Unggul Tangkas*. We also find reliance on the Privy Council decision in *Collector of Land Revenue v Alagappa Chettiar* [supra], misplaced. It is incorrect to say that the land administrator is present at the reference proceedings to defend the award as he is "fully entitled to lead such evidence as he considered necessary to do so" equates to a landowner's lack of a right to attend and participate in reference proceedings initiated by some other person interested. Since reference proceedings are original proceedings with parties cast in the respective roles, as explained in *Collector of Land Revenue v Alagappa Chettiar*,

> and as envisaged under the Third Schedule, the land administrator does not really defend the award for anyone. The land administrator merely explains its award and provide further justification if he chooses".

[62] We accordingly failed to see how the appellant could have contended that the more recent decision of *Unggul Tangkas* should prevail over that of *Cahaya Baru* since there was really no conflict on this very issue in the first place. As such, in adhering to the decision of the Federal Court in *Cahaya Baru*, we found that, contrary to the submission of the appellant, the learned JC in the instant case had indeed abided by the principle of stare decisis. After all, the doctrine of stare decisis or judicial precedent means the process whereby judges follow previously decided cases where the facts are of sufficient similarity.

[63] It is in this respect apposite that we make reference to the Federal Court decision in *Kerajaan Malaysia & Ors v Tay Chai Huat* [2012] 3 MLJ 149) which observed that by the doctrine of *stare decisis*, the High Court must follow the binding precedent created by these decisions of the Federal Court. It was thus provided:

> "[29] We are a country governed by the rule of law and thus finality of the judgment is absolutely imperative and great sanctity is attached to the finality of the judgment ...
>
> > [50] A precedent can be defined as a judicial decision which serves as a rule for future determinations in similar or analogous cases. A precedent or authority is a legal case establishing a principle or rule that a court or other judicial body adopts when deciding in subsequent cases with similar issues or facts. A precedent that must be

> applied or followed is known as a binding precedent. I would think that this court must follow its own proclamations of law made earlier on other cases and honour these rulings. After all, this court is the highest court in the country. The doctrine of precedent, a fundamental principle of English law, is a form of reasoning and decision-making formed by case law. Precedents not only have persuasive authority but also must be followed when similar circumstances arise. Any principle announced by a higher court must be followed in later cases. In short, the courts are bound within prescribed limits by prior decisions of superior courts. Judges are also obliged to obey the set-up precedents established by prior decisions. This legal principle is called *stare decisis*. Adherence to precedent helps to maintain a system of stable laws. Judicial precedent means the process whereby judges follow previously decided cases where the facts are of sufficient similarity. The doctrine of judicial precedent involves an application of the principle of *stare decisis*, ie, to stand by the decided. In practice, this means that inferior courts are bound to apply the legal principles set down by superior courts in earlier cases. This provides consistency and predictability in the law". [Emphasis added]

[64] In our judgment, the learned JC had correctly distinguished the key facts in *Unggul Tangkas* from those in the instant case. We reiterate that TNB in *Unggul Tangkas* did not file any Form N against the award by the land administrator. TNB could not therefore be said to challenge the award and it sought to intervene only subsequently in the land reference. In clear contrast, LLM or the second respondent herein did not have to intervene in the land reference initiated by the appellant because the second respondent had filed its own Form N for its land

reference proceeding. Unlike TNB in *Unggul Tangkas*, LLM in the instant case (and in *Cahaya Baru*) had properly objected to the award, filed the requisite Form N and as a result became a party to the land reference.

[65] We are therefore in agreement with the decision of the learned JC that the second respondent has the locus standi to object and/or appeal against the award of compensation made by the first respondent, such that the former is a proper party to the land reference proceeding at the High Court and is permitted to put forward its valuation report thereat. The appellant's stance that the valuation report must have first been submitted at the Inquiry before it can be relied on during the Land Reference therefore ought to apply only to a proposed intervener seeking to be made a party to and participate in an existing land reference, like TNB in *Unggul Tangkas*, and has no application to the second respondent who in the case before us had filed the requisite Form N.

[66] We were as such satisfied that the High Court did not err in deciding that the second respondent had the requisite locus under Section 37 of the LAA to file Form N and challenge the award of compensation by the first respondent to the appellant in the land reference proceeding at the High Court.

[67] We should state that the LAA does not in any event mention any requirement that leave of Court must be made by the second respondent before the filing of its valuation report in the land reference if the same was not earlier produced at the inquiry before the land administrator. At the same time there are also no constraints in the LAA for the second respondent to only rely on the evidence or valuation report adduced at the inquiry in a land reference. And we observed that neither

did the land administrator (the first respondent) at any material time raise any objection to the filing of the second respondent's valuation report in the land reference proceeding.

[68] This Court in *Kejuruteraan Bintai Kindenko Sdn Bhd v Fong Soon Leong* [2021] 2 MLJ 234130 reaffirms the rule that the Court of Appeal is bound by its earlier decision unless one of the exceptions identified in *Young v Bristol Aeroplane Co Ltd* [1944] KB 718 can be shown. This is how it was explained in *Kejuruteraan Bintai*:

> "[65] The 'passage above' referred to by His Lordship Augustine Paul FCJ was a passage from the judgment of Peh Swee Chin FCJ in the earlier decision of the Federal Court in *Dalip Bhagwan Singh v Public Prosecutor* [1998] 1 MLJ 1 at pp 12–13, where Peh Swee Chin FCJ stated:
>
> > The doctrine of stare decisis or the rule of judicial precedent dictates that a court other than the highest court is obliged generally to follow the decisions of the courts at a higher or the same level in the court structure subject to certain exceptions affecting especially the Court of Appeal.
> >
> > The said exceptions are as decided in *Young v Bristol Aeroplane Co Ltd* [1944] KB 718. The part of the decision in *Young v Bristol Aeroplane* in regard to the said exceptions to the rule of judicial precedent ought to be accepted by us as part of the common law applicable by virtue of Civil Law Act 1956 vide its s 3.
> >
> > *To recap, the relevant ratio decidendi in Young v Bristol Aeroplane is that there are three exceptions to the general rule that the Court of Appeal is bound by its own decisions* or by decision of courts of co-ordinate

jurisdiction such as the Court of Exchequer Chamber. The three exceptions are first, a decision of Court of Appeal given per incuriam need not be followed; secondly, when faced with a conflict of past decisions of Court of Appeal, or a court of coordinate jurisdiction, it may choose which to follow irrespective of whether either of the conflicting decisions is an earlier case or a later one; thirdly it ought not to follow its own previous decision when it is expressly or by necessary implication, overruled by the House of Lords, or it cannot stand with a decision of the House of Lords. There are of course further possible exceptions in addition to the three exceptions in *Young v Bristol Aeroplane* when there may be cases the circumstances of which cry out for such new exceptions so long as they are not inconsistent with the three exceptions in *Young v Bristol Aeroplane*.

A few words need be said about a decision of Court of Appeal made per incuriam as mentioned above. *The words 'per incuriam' are to be interpreted narrowly to mean as per Sir Raymond Evershed MR in Morelle v Wakeling* [1955] 2 QB 379 at p 406 *as a 'decision given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding in the court concerned so that in such cases, some part of the decision or some step in the reasoning on which it is based, is found on that account to be demonstrably wrong'*. It should be borne in mind that the year of *Morelle*'s case is 1955 whereas our s. 3 of the Civil Law Act was enacted in 1956. The ratio in *Morelle*'s case is also part of the common law applicable to us.

> In our local context, the Federal Court is to be substituted for the House of Lords with regard to the matter under discussion.
>
> See also the decision of the Federal Court to similar effect in *Kesatuan Pekerja-Pekerja Bukan Eksekutif Maybank Bhd v Kesatuan Kebangsaan Pekerja-Pekerja Bank & Anor* [2018] 2 MLJ 590.
>
> [66] Therefore, the Court of Appeal may not depart from its earlier decision unless one of the exceptions identified by Lord Greene MR in *Young v Bristol Aeroplane* exists. This is unlike the situation in respect of decisions of the High Court where the general rule is that a judge at first instance will abide by the decision of another of the High Court at first instance as a matter of judicial comity unless he is convinced that the prior decision was wrong (see for example *Huddersfield Police Authority v Watson* [1947] KB 842 at p 848)".

[69] We observed that none of the said exceptions applied in the instant case. On the contrary this Court is bound by not only its previous decisions in cases such as *Cahaya Baru,* but also the decision of the Apex Court in *Cahaya Baru* and *Spicon Products,* all of which with facts similar to those in the instant case, which clearly held that the second respondent (LLM) as the paymaster has the locus standi to file a Form N under Section 37 of the LAA, and that as has been shown above, do not conflict with the decision of the Federal Court in *Unggul Tangkas*. On a true application of the doctrine of stare decisis, these cases are binding on the learned JC, as the learned JC had accurately recognised.

Whether there were two grounds of decision, the latter of which is void

[70] We next examine the contention of the appellant that the High Court had delivered two written grounds of judgment - the first on 14 December 2020 and the second on 4 February 2021 - which renders the second null and void, with the allegation that the latter was to supplement and to rectify some of the errors or omissions in the former. It was thus submitted that the first grounds of Judgment constitutes the final grounds of judgment and the second grounds of judgment should be disregarded for the purpose of the present appeal.

[71] We were of the view that there is no merit in this ground of appeal. It is quite clear from a review of these two documents that the first is the decision of the High Court whilst the second are the grounds of judgment for the decision of the Court.

[72] The key point here is that the learned JC had in fact expressly qualified the first document as being a summary of the decision of the Land Reference Court in respect of the consolidated land references, and specifically stated, not unusually we should add, that the detailed grounds of judgment would be furnished in the event of an appeal. The first document contains the following words:

> "Keputusan yang ditandatangani oleh Pesuruhjaya YA Kehakiman dan kedua-dua pengapit adalah ringkasan keputusan yang diberi oleh Mahkamah Tinggi pada tarikh keputusan ini, dan alasan-alasan penghakiman yang terperinci akan dibekalkan sekiranya diarahkan oleh Mahkamah Rayuan jika terdapat apa-apa Rayuan."

[73] The position could not have been clearer. And on top of that, in the second document - the grounds of judgment, it is stated by the learned JC that they would not duplicate the summarised points stated in the earlier document on the decision but instead provide more details of the grounds of decisions, as follows:

> "Being dissatisfied with this Court's decision dated 14 December 2020, TSSB has appealed against the said decision. As the Keputusan Mahkamah dated 14 December 2020 has contained a summary of the grounds of decision, the Grounds of Judgment herein will…provide more details of the grounds of decisions."

[74] We found it necessary to quote only the following passage from the judgment of this Court, albeit a criminal case, in *Dato' Sri Mohd Najib bin Hj Abd Razak v Public Prosecutor* [2022] 1 MLJ 137, a case referred to by the second respondent, where the reasons pronounced in open court in the ruling which called for the accused to enter his defence was expressed to be a summary:

> "[81] In the present case, though the learned trial judge gave some reasons for his findings, he had specifically caveated that by stating that his pronouncement was just a summary of the key findings. This clearly indicates that if required at the end of the defence case, he would give a more comprehensive account of his findings on the prima facie case. See: *Public Prosecutor v Dato' Rahmat bin Asri & Anor* [1992] MLJU 7. The learned trial judge did not supplement nor close any gap in his earlier oral ruling. He had merely given a comprehensive and more detail reasoning for his finding that the prosecution had proved a prima facie case for all seven charges".

[75] We need only mention that the cases cited by the appellant do not in our view assist the appellant. And as correctly highlighted by the second respondent, the grounds of judgment were also in fact only prepared subsequent to the filing of the appellant's notice of appeal.

[76] It must be emphasised that the said decision (the first document) includes references to the amounts awarded or deducted, with reasons, and was signed by the learned JC and both assessors. This decision may thus be construed as a 'decree' or 'judgment' by virtue of Section 47(3) of the LAA, which reads:

> **47. Award to be in writing**
>
> (1) Every decision made under this Part shall be in writing signed by the Judge and the assessors.
>
> (2) Where such decision comprises an award of compensation it shall specify-
>
> > *(a)* the amount awarded on account of the market value of the land under paragraph 2*(a)* of the First Schedule;
> >
> > *(b)* the amount, if any, deducted under paragraph 2*(b)* of the First Schedule;
> >
> > *(c)* the amounts, if any, respectively awarded under paragraphs 2*(c), (d)* and *(e)* of the First Schedule; and
> >
> > *(d)* in respect of each such amount, the grounds for awarding or deducting the said amounts.
>
> (3) Every such written decision or award shall be deemed to be a decree and the statement of the grounds of any such award a

judgment within the meaning of the law for the time being in force relating to civil procedure.

[77] And it should be further emphasised that the appellant's notice of appeal itself is against the said decision of the High Court dated 14 December 2020.

[78] Moreover it is never in doubt that a decision or judgment *per se* is separate and distinct from the **grounds** of judgment. Rule 18(4) of the Rules of the Court of Appeal 1994 on documents to be made available to the Court of Appeal for the purposes of an appeal, recognises this distinction, where Rule 18(4) (d) mentions a copy of the judgment, decree or order appealed from and in contrast Rule 18 (4) (e) refers to a copy of the written judgment or grounds of decision.

[79] The decision and the grounds are distinct - the issue of two written judgments simply does not arise. As such, the question posed by the appellant as to which of the two written grounds of judgment prevail or whether both are a nullity is bereft of merit to begin with.

Whether there was non-compliance with Section 40C of the Land Acquisition Act 1960

[80] We take cognisant of the appellant's further submission in support of the above contention in that the first decision is itself improper and ought to be rendered a nullity because the learned JC failed to adhere to the requirements of Section 40C of the LAA, and this was allegedly a principal reason for a need for the second written judgment to rectify errors and omissions such as the same.

[81] We do not disagree that Section 40C of the LAA makes it mandatory that the opinion of the assessors on the heads of compensation be given in writing and recorded by the Judge such that any non-compliance with the statutory safeguard set out therein, amounts to a misdirection which merits appellate intervention. It simply states:

> **40C. Opinion of Assessors**
> The opinion of each assessor on the various heads of compensation claimed by all persons interested shall be given in writing and shall be recorded by the Judge.

[82] The appellant pointed out that this was also highlighted by the Federal Court in *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case* [2017] 3 MLJ 561, particularly in the following paragraphs of the judgment:

> "[178] We are of the view that non-compliance with s 40C of the Act amounts to a misdirection which merits appellate intervention. In the present case, the court's decision appears to be incomplete in that although it was attested to by the assessors, it contains no opinion in relation to the decision, as envisaged by s 40C of the Act. The appellant's constitutional right to a fair and reasonable compensation arising from compulsory acquisition has been violated because the statutory safeguards to determine the amount of compensation awarded as stated in s 40C of the Act was not complied with.
>
> ……
>
> [182] Thus, in cases where there is failure to observe the procedure as set out in the Act as in the instant appeal, there is a breach of the safeguards provided for in art 13(1) of the Federal

Constitution, of the principle couched therein, which is 'save in accordance with law'. Can appeals be limited if there is non-compliance with s 40C of the Act? The answer must be in the negative. The bar to appeal in sub-s 49(1) does not operate when there is non-compliance with the statutory provisions of the Act.

[183] It has to be reiterated that s 40C of the Act is mandatory. What then is the significance of s 40C? Section 40C reflects the vital role and duties of assessors who sit with a High Court judge in a land reference proceeding.

[184] The law in s 40C of the Act imposes on the assessors a duty to consider the various heads of compensation claimed by the interested persons and form their expert opinion. It is a statutory safeguard to protect the landowners and interested persons in matters comprising compensations.

[185] Section 40C of the Act also makes it mandatory that the opinion of the assessors on the heads of compensation be given in writing. It has to be remembered that the valuation of the land and assessment of compensation arising out of the acquisition are not a mathematical process. The requisites of valuation and assessment are pertinent, to show that the opinion given on the amount of compensation is well founded.

[186] Another important requirement imposed by s 40C of the Act is that the written opinion of assessors is to be recorded by the judge. In the circumstance the judge has to be satisfied that the assessors had, in forming their opinions, considered all matters that ought to be considered under the Act. This is another statutory safeguard under art 13 of the Federal Constitution.

……

> [188] The written opinion of the assessors also serves to facilitate the appellate courts in the event an appeal is filed. The advice given by the assessors in the High Court must be made available to the appellate courts.
>
> [189] In conclusion, s 40C of the Act forms an important component of the decision making process in land reference proceedings. It sets out the requirements to be observed by the assessors and the judge before decision is arrived at. Therefore non-observance of s 40C of the Act amounts to a misdirection of the court which renders the decision invalid. Suffice to say that for this reason alone, this appeal must be allowed".

[83] It is also to be reiterated, as set out above, that under Section 47(1) of the LAA every decision made on the award shall be in writing and signed by the judge and the assessors. In the instant case, the decision of the High Court was indeed also signed by the two assessors.

[84] Now, it must be emphasised that in the case of *Semenyih Jaya* however, although the decision of the High Court was also signed by both assessors, it made no reference whatsoever to any ***opinion*** of the assessors, in that case, for not allowing certain claims. Neither the decision (signed by the assessors) nor the grounds of judgment made any reference to any opinion of the assessors in dismissing the pertinent claims.

[85] But that in sharp contrast is not the case here before us. The learned JC in the instant case had in fact included and referred to the opinions of the assessors in the decision dated 14 December 2020 (the

first document). There can therefore be no non-compliance with Section 40C of the LAA, and as clarified in *Semenyih Jaya.*

[86] In fact in the instant case, the appellant argued that the opinions in writing by the assessors were not included or recorded in the decision of the High Court of 14 December 2020 but was only later included in the subsequent grounds of judgment dated 4 February 2021 to seek to remedy the alleged error. This contention is plainly untenable.

[87] It is not in dispute that at the end of the proceedings, the assessors are required to give their opinions as to the appropriate amount of compensation to be awarded in a particular case. It is imperative that under Section 40C the assessors reduce their said opinion in writing which are then to be recorded by the judge.

[88] We were satisfied that in this case the assessors did in fact produce their respective written opinions and these had been referred to in not only the grounds of judgment but also more relevantly in the earlier decision of 14 December 2020 issued by the High Court.

[89] In the grounds of judgment of 4 February 2021 - from paragraph [56] to paragraph [115] in respect of each item of compensation therein - the learned JC made reference to the opinion of the assessors when deciding with reasons to reject the claims. Similarly, more importantly in the earlier decision of 14 December 2020, references had also been made to the opinions of the assessors. This may be seen in paragraph [4.1] of the decision, where the learned JC indicated the opinion of the assessors in respect of the value of the Land before

concluding that the fair and reasonable market value of the Land should be at the rate of RM2,500 per square meter equivalent to a total value of RM13,617,500.00. Further, in paragraph [4.2] to paragraph [6], the opinion of the assessors pertaining to the preliminary works at the project, termination of contractor/consultant agreement, costs for site replacement, loss of profit and valuation fee were also specified by the learned JC in considering his findings on each such item of compensation.

[90] We were mindful of the fact that the appellant appeared to suggest that the actual written opinions of the assessors must be attached to the decision of the Court. We did not think this is the requirement of Section 40C which plainly states that the Judge is to record the same. There is no reference to any necessity to attach the written opinions to the decision itself.

[91] It is therefore sufficient in order to ensure compliance with Section 40C of the LAA for the Judge of the Land Reference Court to firstly, acknowledge in his decision that the two assessors have furnished their respective opinions in writing, and secondly, to record the same by stating or making reference to the opinion of the assessors when considering each item of award being challenged in the land reference. In this way, the advice given by the assessors in the High Court which is referred to by the Judge in his written decision and grounds of judgment would be made available to the appellate courts in the event of an appeal.

[92] As such, in our view, the learned JC in this case had fully complied with the requirements of Section 40C of the LAA.

Whether the appellant's Form N was in compliance with the law & whether additional claims proven

[93] The other ground of appeal is the contention that the High Court had erroneously failed to appreciate that the appellant's Form N was worded in a manner which was wide enough to encompass the additional claims in respect of the costs of preliminary works, the costs of termination of the contractor and consultant agreements, the costs of site replacement, and the loss of profit. Further, the appellant complained that even though the High Court found that the appellant had in its Form N merely objected to the market value of the Land and not the additional claims, the learned JC did not give effect to his own finding by requiring the appellant to prove the additional claims.

[94] The law on Form N is clear. Section 38(2) of the LAA states that every application for objection under Form N shall state fully the grounds on which objection to the award is taken.

[95] This has been also clarified by the Court of Appeal in *Pentadbir Tanah Seremban v Inisiatif Jaya Sdn Bhd & Another Appeal* [2017] 9 CLJ 1 which affirmed that Section 83(2) requires that the grounds of objection in respect of each of the heads of claims must be specifically and expressly stated in the appellant's Form N. In plain terms, it was held thus:

> "[59] It is clear that the requirement stipulated in s. 38(2) abovementioned is mandatory by the usage of the word "shall" which precedes the requirement to "state fully". The word "fully", being a non-technical term must be understood in its natural and ordinary meaning. The *Concise Oxford English*

> *Dictionary* interprets the word "fully" to mean "completely or entirely, to the fullest extent".
>
> [60] Thus, we are of the opinion that s. 38(2) of Act 486 requires that the grounds of any objection to an award must be stated expressly and in specific terms in Form N in order to comply with the abovementioned requirement".

[96] As such the learned JC was not wrong in finding that since the appellant had not specifically pleaded the heads of compensation for the said additional claims under the 'grounds of objection' in its Form N, the appellant's objection to the award in respect of the said additional claims should be dismissed on this ground alone.

[97] We further observed that the appellant's Form N did not even make specific reference to any particular paragraph of the First Schedule to the LAA. Additionally, despite the appellant's assertion, none of the heads of the said additional claims fall within paragraph 2 of the First Schedule to the LAA. It cannot thus be said that the heads of the additional claims fell within the scope of the appellant's Form N.

[98] On the issue of the learned JC instead requiring the appellant to prove the additional claims, despite the finding that the appellant only objected to the land value in its Form N, we agreed with the determination by the learned JC on the position taken by the second respondent that this involved a finding of fact on the evidence or the amount of adequate compensation in respect of the said additional claims, which were all the issues raised in the arguments of the parties in the land reference.

[99] This is especially so given that the land reference proceedings were consolidated in nature which included the land reference on the

objection of the second respondent in its Form N against the compensation awarded by the first respondent to the appellant which had also comprised the said additional claims, which it claimed to be excessive and baseless, which the second respondent must prove and for the appellant to rebut. This land reference must still be and was indeed considered by the learned JC in the land reference court.

[100] We further observed that many of the appellant's complaints on the learned JC's treatment of the evidence are for all intents and purposes disagreement with the award of compensation and are not questions of law. To such extent, the matter is thus in any event also not appealable under Section 49(1) of the LAA.

[101] We therefore were in agreement that the appellant's complaints pertained to the findings of fact on the evidence relating to the additional claims, and the assertion that the learned JC determined the same without evidence or against the evidence or mis-appreciation of evidence, as well as contentions on how certain evidence ought to be treated, computation of the award, deductions made as assisted by the assessors in the course of the evaluation exercise, are not questions of law.

[102] It is clear as day that these are fact-based decisions based on the learned JC's appreciation and impression of the evidence adduced. It must be reiterated that the said finding of fact, including the analysis made by the learned JC on the evidential issues is not a question of law, and as such is, in the context of a decision made by the land reference court, not appealable, in consonance with the ruling of the Federal Court in *Nusantara Daya*, as referred to above.

[103] Detailed and substantiated findings of fact had been arrived at by the learned JC on adequate compensation which amply covered the subjects of Bored Piling Works, Show House and Sales Office, Certificates and Invoices, and Loss of Profits.

[104] More specifically a re-hearing of the four additional claims on Preliminary Construction Cost, Termination Cost of Contractor and Consultant Agreement, Site Replacement Cost, and Loss of Profit - which in the first place had been extensively canvassed in the land reference already - would necessitate this Court, as correctly submitted by the second respondent, to review the inferences and conclusions of the High Court and draw its own inferences and conclusions in relation to valuation.

[105] This we must say is manifestly not countenanced by the clear terms of the proviso to Section 49(1) of the LAA.

The Cross Appeal

[106] In respect of the cross appeal by the second respondent, we agreed that the learned JC had erred in not making a consequential order to direct that the amount reduced by the High Court in the land reference (by RM46,088,736.85), as against the award of RM59,706,236.85 originally made by the first respondent (which exceeds the sum withheld under Section 29A of the LAA), amounting to RM31,162,177.64 and interest thereon should rightfully be refunded by the appellant to the second respondent.

[107] Otherwise the appellant would be allowed to keep a sum which is far more than what has been adjudged as adequate

compensation to the appellant pursuant to the compulsory acquisition, contrary to the principle of equivalence and to Article 13(2) of the Federal Constitution. The decision of the High Court which reduced the compensation should as such entitle the second respondent to the remedy of restitution and at the same time not permit the appellant to be unjustly enriched as a result.

Conclusion

[108] Accordingly, for the foregoing reasons, we found there were no appealable errors in the judgment of the learned JC in dismissing the land reference of the appellant and its striking out application (as the case was far from being obviously unsustainable), as well as in allowing the land reference of the second respondent. We therefore affirmed the decisions of the High Court and dismissed the appeals of the appellant.

[109] In addition, for the reasons stated above we allowed the cross appeal of the second respondent for the refund and set aside the decision of the High Court on the same.

[110] We also made order of costs to both respondents for both appeals.

DATED: 14 APRIL 2023

Sgd
Mohd Nazlan Mohd Ghazali
Judge
Court of Appeal

For the Appellant

[TEGAS SEJATI SDN BHD]

Cecil Abraham, Sunil Abraham and Noor Muzalifah

Messrs Cecil Abraham & Partners

For the First Respondent:

[PENTADBIR TANAH DAERAH HULU LANGAT]

Nur Irmawatie binti Daud, Etty Eliany binti Tesno

and Muhammad Hashim bin Haziq

Pejabat Penasihat Undang-Undang Negeri Selangor

For the Second Respondent:

[LEMBAGA LEBUHRAYA MALAYSIA]

Kok Su Ann, Isabella Cheah Chooi Mun,

Efa Sakinah binti Razak and Nur Afiqah binti Zainol

Messrs Hisham Sobri & Kadir