Universiti Malaya & Anor v Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur

HIGH COURT (KUALA LUMPUR) — APPLICATION NO S2-15-05 OF 2000
ABDUL HAMID SAID J
14 OCTOBER 2002

Land Law *— Acquisition of land — Reference to court — Application to strike out reference to court under O 18 r 19, O 15 r 6(2)(a) and/or O 92 r 4 of the Rules of High Court 1980 — Whether reference to court should be struck out — Rules of High Court 1980 O 15 r 6(2)(a), O 18 r 19 and O 92 r 4*

Words and Phrases *— 'Enquiry' — Land Acquisition Act 1960 s 12*

The first applicant ('UM') was the owner of two pieces of land described as Lot 5270 Grant 6768 and Lot 10476 Grant 6767 both in Mukim Kuala Lumpur ('the said lands'). The said lands were acquired for a road project. An enquiry under s 12 of the Land Acquisition Act 1960 ('LAA') was held on 10 December 1998 in the presence of among others, the representatives from UM and the representatives from the agency applying for the acquisition, namely, Lembaga Lebuhraya Malaysia ('LLM'). LLM was the second applicant in this case. On the date of this first enquiry, the Wilayah Persekutuan Land Administrator informed the said representatives that the award would be made in the absence of UM and LLM and that the party who was dissatisfied with the award and offer of compensation could object to the same by filing Form N in accordance with s 38 of the LAA. The valuation report put up by UM was considered, in the absence of representatives from UM and LLM on 9 January 1999. The valuation report from the Government was considered only on 19 June 1999. It was at these separate 'hearings' some five months apart that the land administrator decided that the proposed value stipulated by the government was reasonable and accordingly accepted the valuation by the government's valuer. LLM filed Form N on 27 July 1999 as it objected to the amount of compensation awarded by the land administrator. UM objected to the Form N filed by LLM. This was the application by UM that the reference to the High Court be struck off or dismissed under O 18 r 19, O 15 r 6(2)(a) and/or O 92 r 4 of the Rules of High Court 1980 ('the RHC'). The reason given by UM in support of its application was that LLM was precluded or estopped from filing Form N under s 37 of the LAA because it failed to submit their valuation at the inquiry.

Held, dismissing the application:

(1) Section 12 of the LAA stipulated that the land administrator shall make a full enquiry into the value of all scheduled lands and '...

shall as soon as possible thereafter assess the amount of compensation .... Provided that the land administrator may obtain a written opinion on the value of all scheduled lands from a valuer prior to making an award under section 14'. The word used in the LAA was 'enquiry' and 'enquiry' meant 'the act or an instance of asking or seeking information'. Since the LAA used the word 'enquiry', the proceedings before the land administrator on 10 December 1998 was only to ask, even though the parties representing the parties were required to take oaths to tell the truth and the decision by the land administrator at the enquiry was administrative and not judicial (see p 189F–H).

(2) Any objection under s 38(1) of the LAA was a reference by the land administrator to the High Court. Hence, the hearing before the High Court was an original hearing (see p 190B–C).

(3) The acquisition of the said lands was for LLM and LLM had to pay for the same. LLM was allowed by licence to collect toll on the use of the road built and after some time surrender the completed road to the Government. As the body that had to pay the award and offer of compensation, LLM definitely had a say in the finding of the land administrator. To strike out LLM's application would be to take away its rights as stated in s 44(2) of the LAA. Accordingly, this was not a proper case to use the provisions in the RHC to strike out LLM's reference (see p 191H).

[Bahasa Malaysia summary

Pemohon pertama ('UM') adalah pemilik dua bidang tanah yang dikenali sebagai Lot 5270 Geran 6768 dan Lot 10476 Geran 6767 kedua-duanya dalam Mukim Kuala Lumpur ('tanah-tanah tersebut'). Tanah-tanah tersebut telah diperolehi untuk satu projek jalanraya. Satu siasatan di bawah s 12 Akta Pengambilan Tanah 1960 ('APT') telah diadakan pada 10 Disember 1998 dengan kehadiran antara lain, wakil-wakil dari UM dan wakil-wakil dari agensi yang memohon untuk pengambilan tersebut, iaitu, Lembaga Lebuhraya Malaysia ('LLM'). LLM adalah pemohon kedua dalam kes ini. Pada tarikh siasatan pertama ini, Pentadbir Tanah Wilayah Persekutuan telah memaklumkan wakil-wakil tersebut bahawa award akan dibuat tanpa kehadiran UM dan LLM dan bahawa pihak yang tidak berpuas hati dengan award dan tawaran pampasan boleh membuat bantahan dengan memfailkan Borang N menurut s 38 APT. Laporan penilaian yang dikemukakan oleh UM telah dipertimbangkan, tanpa kehadiran wakil-wakil dari UM dan LLM pada 9 Januari 1999. Laporan penilaian dari Kerajaan hanya dipertimbangkan pada 19 Jun 1999. Adalah dalam 'hearings' yang berasingan ini dalam jarak lima bulan di mana pentadbir tanah telah memaklumkan bahawa nilai yang dicadangkan sebagaimana yang ditetapkan oleh kerajaan adalah

A munasabah dan justeru itu menerima penilaian oleh penilai Kerajaan tersebut. LLM telah memfailkan Borang N pada 27 Julai 1999 kerana ia membantah jumlah pampasan yang telah diawardkan oleh pentadbir tanah. UM telah membantah terhadap Borang N yang telah difailkan oleh LLM. Ini adalah permohonan oleh UM agar rujukan ke Mahkamah Tinggi ini dibatalkan atau ditolak di bawah A 18 k 19, B A 15 k 6(2)(a) dan/atau A 92 k 4 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT'). Sebab yang diberikan oleh UM untuk menyokong permohonannya adalah bahawa LLM dikecualikan atau diestopkan daripada memfailkan Borang N di bawah s 37 APT kerana ia gagal mengemukakan penilaian mereka semasa siasatan tersebut.

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Diputuskan, menolak permohonan tersebut:

(1) Seksyen 12 APT menetapkan bahawa pentadbir tanah hendaklah membuat satu siasatan penuh berkenaan nilai kesemua tanah-D tanah yang dijadualkan dan '... shall as soon as possible thereafter assess the amount of compensation ... . Provided that the land administrator may obtain a written opinion on the value of all scheduled lands from a valuer prior to making an award under section 14'. Perkataan yang digunakan di dalam APT adalah 'enquiry' dan 'enquiry' bermaksud 'the act or an instance of E asking or seeking information'. Memandangkan APT menggunakan perkataan 'enquiry', prosiding di hadapan pentadbir tanah pada 10 Disember 1998 adalah hanya untuk bertanya, walaupun pihak-pihak yang mewakili pihak-pihak tersebut dikehendaki mengangkat sumpah untuk memberitahu F apa yang benar dan keputusan oleh pentadbir tanah semasa siasatan adalah bersifat pentadbiran dan bukan menghakimi (lihat ms 189F–H).

(2) Apa-apa bantahan di bawah s 38(1) APT adalah rujukan pentadbir tanah ke Mahkamah Tinggi. Justeru itu, perbicaraan di G hadapan Mahkamah Tinggi adalah satu perbicaraan asal (lihat ms 190B–C).

(3) Pengambilan tanah-tanah tersebut adalah untuk LLM dan LLM perlu membayar untuk yang sama. LLM telah dibenarkan melalui lesen untuk memungut tol untuk kegunaan jalanraya yang dibina H dan setelah beberapa lama kemudian menyerahkan jalanraya yang sudah siap kepada Kerajaan. Sebagai satu badan yang perlu membayar award dan tawaran pampasan tersebut, LLM sememangnya mempunyai hak dalam penemuan pentadbir tanah tersebut. Untuk membatalkan permohonan LLM akan melenyapkan hak-haknya sebagaimana yang dinyatakan dalam s I 44(2) APT. Oleh yang demikian, ini bukan satu kes yang sesuai untuk menggunakan peruntukan dalam KMT untuk membatalkan rujukan LLM (lihat ms 191H).]

Notes

For cases on reference to court in land acquisitions, see 8 *Mallal's* (4th Ed, 2001 Reissue), paras 1702–1712.

Cases referred to

Ahmat bin Gani & Ors v Superintendent of Lands and Surveys, First Division [1978] 1 MLJ 253 (refd)

Asst Development Officer Bombay v Tayaballi Allibhoy Bohori 1933 AIR Bom 361 (refd)

Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd [1993] 3 MLJ 36 (refd)

Collector of Land Revenue v Alagappa Chettiar; Collector of Land Revenue v Ong Thye Eng and Cross Appeals [1971] 1 MLJ 43 (refd)

Moorgate Mercantile Co Ltd v Twitchings [1976] QB 225 (refd)

Permodalan MBF Sdn Bhd v Tan Sri Datuk Seri Hamzah bin Abu Samah & Ors [1988] 1 MLJ 178 (refd)

Tan Beng Sooi v Penolong Kanan Pendaftar (United Merchant Finance Bhd, Intervener) [1995] 2 MLJ 421 (refd)

Yew Lean Finance Development (M) Sdn Bhd v Director of Lands & Mines, Penang [1977] 2 MLJ 45 (refd)

Legislation referred to

Land Acquisition Act 1960 ss 3(1), 12, 14, 37, (3), 38, (1), 44(2), Rules of the High Court 1980 O 15 r 6(2)(a), O 18 r 19, O 92 r 4

Justin Voon (*Cheah Teh & Su*) for the first applicant.

CM Phang (*CM Phang & Co*) for the second applicant.

Dato' Zainal Adzam bin Abdul Ghani (Peguam Kanan Persekutuan) for the respondent.

Abdul Hamid Said J:The first applicant in this case (UM) is the owner of two pieces of land described as Lot 5270 Grant 6768, Mukim Kuala Lumpur and Lot 10476, Grant 6767, Mukim Kuala Lumpur. These two pieces were acquired for 'Projek Lebuhraya Skim Penyuraian Trafik Kuala Lumpur — Barat (Pakej A & B: peringkat 1)'.

An enquiry under s 12 of the Land Acquisition Act 1960 ('LAA') was held on 10 December 1998 in the presence of, among others, the representatives from UM and the representatives of the agency applying for acquisition, ie Lembaga Lebuhraya Malaysia (LLM), the second applicant in this case.

In his decision on the date of this first enquiry, the Wilayah Persekutuan land administrator said '... Perintah 'awad' akan dibuat tanpa kehadiran pihak-pihak yang terlibat. Prosedur untuk membuat bantahan terutama mengenai had tempoh masa untuk memfailkan Borang N mengikut s 38 Akta Pengambilan Tanah 1960 sekiranya ada pihak yang tidak puashati terhadap pemberian atau tawaran pampasan Pentadbir Tanah, telah dimaklumkan kepada semua pihak yang hadir'.

A From the above it is obvious that there was no order for the parties to put in their valuation report. It is obvious too that the agency applying to acquire the land was a party at the enquiry.

Going through the notes of the land administrator as appended in encl 4 at HA1, I note that the purpose of this first oral enquiry was not to B determine the value of the two pieces of land. The valuation was done much later as will be seen hereinafter. The valuation report put up by UM was 'heard' (tanpa kehadiran pihak-pihak yang terlibat) on 9 January 1999. Whereas the valuation report from the Government was considered only on 19 June 1999. It was at these separate 'hearings' some five months apart that the land administrator decided '... cadangan nilaian yang diberikan C oleh Penilai Kerajaan adalah munasabah dan berpatutan' ie to accept the valuation by the government valuer.

Form N was filed by the second applicant on 27 July 1999 based upon their interest by virtue of s 37(3) of the LAA. The objection by LLM was only on the amount of compensation awarded by the land administrator.

D The first applicant objected to Form N filed by the second applicant. UM therefore applied to this court that the reference to this court should be struck off or dismissed under O 18 r 19 of the Rules of the High Court 1980 and/or under O 15 r 6(2)(a) of the Rules of the High Court 1980, ie misjoinder or non-joinder of the second applicant and/or under O 92 r 4 of the Rules of the High Court 1980, ie under the inherent powers of the court.

E The reason given by the first applicant in the application is that since LLM failed to submit their valuation at the inquiry they are precluded from filing Form N under s 37 of the LAA. The argument put forward is that they are estopped from filing Form N.

F *The 'enquiry' before the land administrator*

Section 12 of the LAA says that the land administrator shall make a full enquiry into the value of all scheduled lands and 'shall as soon as possible thereafter asses the amount of compensation ... Provided that the Land Administrator may obtain a written opinion on the value of all scheduled G lands from a valuer prior to making an award under section 14'.

The word used in the LAA is 'enquiry'. Enquiry which is a noun means 'the act or an instance of asking or seeking information' — see *Concise Oxford Dictionary* (9th Ed). This dictionary differentiates enquiry from inquiry which means a formal investigation. Since the LAA used the word 'enquiry', I would take that the proceedings before the land administrator H on 10 December 1998 was only to ask even though the parties representing the parties were required to take oath to tell the truth.

The first issue posed was whether the decision by the land administrator was judicial or administrative.

At the end of the enquiry on 10 December 1998, the land administrator I made the decision that if any party was not satisfied with the award and offer of compensation by the land administrator (sekiranya ada pihak yang tidak berpuashati terhadap pemberian dan tawaran pampasan Pentadbir Tanah)

can file Form N in accordance with s 38 of the LAA which is the form used for objecting to the award made by the land administrator.

The Privy Council in *Collector of Land Revenue v Alagappa Chettiar; Collector of Land Revenue v Ong Thye Eng and Cross Appeals* [1971] 1 MLJ 43 (*Alagappa*) held that '... the reference to the High Court is not in the nature of an appeal from the collector's award. It is in the nature of an original hearing ...'. This decision was followed by the Federal Court in *Ahmat bin Gani & Ors v Superintendent of Lands and Surveys, First Division* [1978] 1 MLJ 253 (*Ahmat Gani*) — see p 255.

I remind myself that any objection under s 38(1) of the LAA is a reference. This sub-section is clear when it says 'Any objection made under section 37 shall be made by a written application in Form N to the Land Administrator requiring that he refer the matter to the Court for its determination ... .' To emphasize it is a reference by the land administrator to the court. Hence, the hearing before the High Court is an original hearing.

The Indian High Court in *Asst Development Officer Bombay v Tayaballi Allibhoy Bohori* 1933 AIR Bom 361 (*Bombay*) held that the proceedings before the acquiring officer are '... administrative rather than judicial'. The said High Court went on to say that the '... acquiring officer's award is, of course, strictly speaking not an award at all, but an offer. It is based on an inquiry and inspection ...'. I would prefer to use the word enquiry even though at times enquiry and inquiry are used interchangeably — see the *Concise Oxford Dictionary*. If the enquiry is taken to mean to ask and the proceedings administrative and the hearing in the High Court is an original hearing, the award made is not a 'final judgment or decision, especially by an arbitrator or by a jury or to grant by formal process or by judicial decree' — see *Black's Law Dictionary*.

The enquiry held on 10 December 1998 was an enquiry within the strict sense of the word. At the end of the enquiry, the land administrator made it clear that it was an award and offer of compensation. In *Bombay* the award was '... not an award but an offer'. The framers of the LAA must have in mind that the award was an offer and left it to the court to decide judicially on the objections (s 38(1)) of the LAA. The court then shall consider the interests of all persons interested who have not accepted the award, whether those persons have themselves made an objection or not' — see s 44(2) of the LAA. The interested person could, to my understanding, be considered even though that person has not made an objection at the enquiry.

Taking into consideration the three cases cited above it is concluded that the decision made by the land administrator is an administrative decision. Hence the right to file Form N to object to the award made by the land administrator. My decision is further strengthened by s 44(2) of the LAA which reads:

> 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.

A The objection is through the use of Form N. A plain reading of the said section would envisage a situation where no Form N has been filed the court would still be obliged to consider the interest of all persons interested who have not accepted the award.

In *Moorgate Mercantile Co Ltd v Twitchings* [1976] QB 225, Lord
B Denning is reported to have said that estoppel is not a rule of evidence, not a cause of action but a principle of justice and equity. 'It comes to this: when a man, by his words or conduct, has led another to believe in a particular state of affairs, he will not be allowed to go back on it when it would be unjust or inequitable for him to do so'.

C The second applicant did not put in the valuation report for reasons not known to the court but has the first applicant been led 'to believe in a particular Universiti Malaya v Pentadbir Tanah Wilayah e first applicant to believe Persekutuan Kuala Lumpur (Abdul Hamid Said J) econd applicant did not put the valuation report?

D In the case before me I ask myself further whether it would be unjust or inequitable to let the second applicant file Form N when the enquiry was only an enquiry and that the decision by the land administrator was administrative. It is my finding that a great injustice would be done to strike out the second applicant from being heard in the High Court as the award and compensation was only an offer and not final. It is for the parties to
E accept the offer.

In this case, the second applicant was present at the enquiry on 10 December 1998. In his decision, the land administrator decided that any party (jika ada pihak) who is dissatisfied on the award and offer of compensation can file Form N under s 38 of the LAA.

F I am accepting the fact that the construction of the highway is of public interest and the 'Government could not be questioned by a civil court' — see *Yew Lean Finance Development (M) Sdn Bhd v Director of Lands & Mines, Penang* [1977] 2 MLJ 45.

Section 3(1) of the LAA states that the State Authority 'may acquire
G any land which is needed —

> (b) by any person or corporation for any purpose which ... is beneficial to the economic development of Malaysia ...'

It is a matter of fact that our Government has privatized many projects to private bodies. The acquisition of the two lots of land was for the LLM.
H Hence LLM's presence at the enquiry. In fact LLM had to pay for the land acquired by the Government. The second applicant is allowed by licence to collect toll on the use of the road built and after some time surrender the completed road to the Government. As the body that has to meet the award and offer of compensation, LLM would definitely have a say in the finding
I of the land administrator.

The Federal Court in *Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36 held at holding (1):

(1) The principles upon which the court acts in exercising its power under any of the four limbs of O 18 r 19(1) of the Rules of the High Court 1980 are well settled. It is only in plain and obvious cases that recourse should be had to the summary process under this rule and the summary procedure can only be adopted when it can clearly be seen that a claim or answer is on the face of it 'obviously unsustainable'. It cannot be exercised by a minute examination of the documents and facts of the case in order to see whether the party has a cause of action or a defence.

On the question of O 92 r 4 of the Rules of High Court 1980, the Federal Court in *Permodalan MBF Sdn Bhd v Tan Sri Datuk Seri Hamzah bin Abu Samah & Ors* [1988] 1 MLJ 178 held at p 181:

> We read this to mean that the rules cannot interfere with the exercise of the inherent powers by the court so long as it deems it necessary to prevent any injustice or any abuse of its own process. It follows that where the rules contain provisions making available sufficient remedies, the court will not invoke its inherent powers.

In *Tan Beng Sooi v Penolong Kanan Pendaftar (United Merchant Finance Bhd, Intervener)* [1995] 2 MLJ 421, the High Court held that:

> Held (5): The inherent jurisdiction of the court under O 92 r 4 [Rules of the High Court 1980] was a procedural rule and was not intended to alter substantive rights. It must be applied to do justice to the parties and to secure fairness in a trial between them but not for any other purpose such as taking away the substantive rights of the plaintiff in this case.

To strike out the second applicant's application would be to take away his rights as stated in s 44(2) of the LAA. It is my finding that this is not a proper case to use the provisions in the Rules of High Court 1980 to strike out the second applicant's reference.

It is for the reason stated above I dismiss the first applicant's case with costs. The costs to be taxed forthwith and paid forthwith too.

Application dismissed.

Reported by Lim Lee Na