

Compulsory Acquisition of Land in Malaysia - Recent Developments

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Introduction

This article discusses recent case developments relating to land acquisition matters in Malaysia.¹ Some of the salient issues raised during the arguments in court will be highlighted. For the benefit of readers who do not have access to Volume 1, the Land Acquisition Act was first enacted in 1960² and was the subject of a number of amendments. However, one amendment caused much public concern. This was the Land Acquisition (Amendment) Act that came into force on 13 September 1991³. Under this Amendment Act, any person or corporation could acquire land for any purpose which in the opinion of the State Authority was beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public. Although the term "economic development" was not defined in the Amendment, the State Authority was vested with the discretion to determine what "economic development" was. The concern was that this discretion may be abused and landowners may be deprived of property unfairly.

A further cause of concern was the addition of a new section, section 68A⁴ in the Amendment Act. The section provides that any subsequent disposal, or use of, or dealing with the acquired land, by the party on whose behalf it was acquired, shall not invalidate the acquisition. Under this new section, any subsequent disposal of, use of or dealing with

the acquired land, whether or not in compliance with the original purpose for which the land was acquired would not invalidate the acquisition. In one respect, the new section 68A allows the acquiring body to release any acquired land which, for some reason or other, is not or is no longer suitable for the purpose for which it was originally acquired. However, the lack of any substantive or procedural safeguards as to when the acquisition power could be exercised may once again be abused. Land could be acquired and sold to a corporation and the corporation could then use the land for a purpose different from the original purpose of acquisition. This may result in a large difference in the value of the land. Development would enhance the value of the land and there would be a situation where the original landowner would have received far less than what the land was worth after development had taken place. Under the provisions of section 68, the original landowner was prevented from questioning the issue or challenging the matter in court.⁵

This was what happened in the case of **Honan Plantations Sdn Bhd vs. Kerajaan Negeri Johor & Ors**⁶. The State Authority of Johor acquired the plaintiff's land in 1993. According to the plaintiff, it had decided to develop the land in 1990 and had applied to the State Authority for approval of the development. However, there was no reply to the application. Subsequently, the land was acquired and a compensation of approximately 80 sen per square foot was

awarded to the plaintiff. The plaintiff then discovered that the acquired land had been sold to a corporation and the corporation was planning to develop the land in a similar manner as had been earlier proposed by the plaintiff. The said corporation was offering the land for sale to the public at RM17 per square foot.

The plaintiff alleged that the decision to acquire the land was taken in bad faith, especially as the plaintiff had informed the relevant government departments and State Authority of its intention to develop the land. According to the plaintiff, the Menteri Besar had verbally approved the proposal of the plaintiff to develop the land. In disregarding the application of the plaintiff, the State Authority had acted without considering the desire of the landowner to develop his land. During the debate in Parliament when the Amendment Bill was presented, one of the members did raise this issue. The Member of Parliament had suggested that if a landowner had indicated a desire to develop his land, then the State Authority should consider this request and approve the development plans.⁷ However, this point was not considered by the court.

The High Court judge, Mohd Ghazali, in his judgement, agreed that the amendment had indeed widened the powers of the State Authority to acquire any land that was needed for the economic development of the country. The provisions of the Act ostensibly excluded judicial review of the State's action. The only matters that could be litigated by the court were limited to those prescribed in Part V of the Act. The plaintiff's proposal, which had been approved in principle by the Chief Minister (Menteri Besar), could not be relied upon because the plaintiff ought to have applied to the Executive Council (Exco), which had the authority to approve or reject such applications. The Chief Minister only presided over the Exco and any approval given by him whilst acting alone could not bind the Exco.

The learned judge, at p.146, appeared to hold that the amendment made to section 3(b) would allow for acquisition of land for economic development to encompass a host of activities not merely restricted to undertaking of works which are public utilities. As long as the proposed development was in the opinion of the State Authority beneficial to the economic development of the country or to the State concerned or to the public or any class of the public, then the State Authority was authorised to acquire such land.

In this case, the plaintiff's land was acquired for the creation of a new township. This was a purpose that is beneficial to the economic development of that part of the State of Johor. Industries situated within the township would create more jobs and result in more commercial activities. The cumulative effect would enhance the economic development of that part of the State of Johor. There is no problem here. But, the observation of the learned judge needs to be clarified further. It may not be accurate to state that the section allows for acquisition of land for "a host of activities not merely restricted to undertakings of works which are public utilities". It is possible that the land may not be actually used for the provision of public utilities, but whatever development planned on any land that is acquired ought to be for a public purpose.⁸ The said public purpose ought to contribute to the economic development of the nation. The reason for this contention follows.

The underlying purpose of the Act being enacted was to consolidate the law relating to the acquisition of land, the assessment of compensation to be made on account of such acquisition and other matters incidental thereto. The Act was enacted in order to allow the State Authority to acquire a person's land. Under the Federal Constitution, article 13(1), constitutional protection is provided to a landowner as to his property. To acquire land

from a property owner is going against a constitutional provision. But there is a law that provides for such acquisition and that is the Land Acquisition Act 1960. Such an Act must be read in the light of all the surrounding circumstances governing the acquisition.⁹ In the instant case, the Exco did not consider the landowner's application because an individual gave the approval in principle but there was no formal approval.

The plaintiff further alleged that his constitutional right to land had been infringed. The reply to this was that when a State Authority acquires any alienated land, the action no doubt deprives the landowner of his land but then the State was acting in accordance with law, i.e. the provisions of the Act itself. According to the learned judge, there was nothing in the Act imposing any obligation for a pre-acquisition hearing in contrast to the specific provisions of an inquiry and hearing in respect of the quantum of compensation payable. To support this contention, the learned judge relied on **S. Kulasingam & Anor vs. Commissioner of Lands, Federal Territory & Ors**¹⁰. But with all due respect to the learned judge, the case does not abrogate the rights of a landowner to be given a pre-acquisition hearing. The learned Abdooldader J (as he then was) when delivering the judgment of the Federal Court said:

The conclusive evidence clause in s 8(3) which we have mentioned in effect provides that the decision of the State Authority that the land is needed for the purpose specified under s 8(1) is final and conclusive and cannot be questioned (Wijeysekera vs. Festing AIR 1919 PC 155). The Privy Council however held in Syed Omar Alsagoff & Anor vs. Government of the State of Johore [1979] 1 MLJ 49 (at p. 50) that it may be possible to treat a declaration under s.8 as

a nullity if it be shown that the acquiring authority has misconstrued its statutory powers or that the purpose stated therein does not come within s 3 or if bad faith can be established. The purpose of the acquisition can therefore be questioned but only to this extent.

A landowner therefore has a right to question the acquisition to the extent of proving *mala fide* on the part of the State Authority. The State Authority may not rely upon a statutory provision where a litigant had alleged that the said act complained of was unconscionable or was of unmeritorious conduct.

As observed by Gopal Sri Ram JCA when commenting on the doctrine of estoppel in the case of **Sia Siew Hong & Ors vs. Lim Gim Chian & Anor**¹¹:

Another way of stating the doctrine when applying it to written law is comprised in the maxim "equity will not permit statute to be used as an engine of fraud". It is a doctrine of wide operation ... The doctrine, when invoked, has the effect of precluding a litigant who is guilty of unconscionable or unmeritorious conduct from relying upon a statutory provision that would defeat his opponent's case. An application of the doctrine requires a meticulous examination of the facts and circumstances of the particular case to determine whether there has been any inequitable conduct. The doctrine has been applied to several statutes, including those governing contracts, wills, trusts and assignments. The categories of statutes to which the doctrine may be applied are not closed and I am unable to find any serious

impediment in applying it to bar a litigant from raising and relying upon the provisions of the Limitation Act 1953...

At this juncture, it may be relevant to discuss the decision of the Court of Appeal, in **Stamford Holdings Sdn Bhd vs. Kerajaan Negeri Johor**¹². In this case the CA¹³ held that if the said acquisition proceedings had deprived the landowner of his legitimate expectation of profit from the development of the said land, then it may be held that the acquisition proceedings may be challenged on the ground of *mala fide* or bad faith.

The appellant had applied to the Government of Johor for development of his land. The application was not approved even after four years. Subsequently, the land was approved for development. However, the respondents wanted 70 per cent of the equity in the proposed development plans and also that the land should be sold to them for a certain sum of money. The appellant disagreed and the respondents began proceedings for the compulsory acquisition of the said land.

The appellant contended that the acquisition was unconstitutional and outside the ambit of section 3 of the Act. The Court of Appeal held that the acquisition proceedings were *mala fide* and had resulted in the appellant being deprived of its legitimate expectation of profit from the land. The respondents were unconscionable and unmeritorious in the conduct of the acquisition proceedings and if the facts alleged by the appellants were to be proven, then the appellants had a good cause of action against the respondents.

Conclusion

From the two cases discussed above, a number of issues provide fertile grounds for contemplation. A landowner who has proposed his land for development ought to

have his plans studied and approved. However, if the State Authority needs the land for economic development, then an amicable solution may be to invite the landowner to be a partner in the proposed development. This move would ensure that justice and fairness are not overlooked. Economic development is necessary but so is a right to property, which is enshrined in the Federal Constitution. Such a right may only be taken away provided adequate compensation is paid. All parties would appreciate consideration and justice, and as far as possible a "win-win" situation should always be the goal of all concerned. □

Endnote

¹This article is a continuation of an earlier article, "Compulsory Acquisition of Land in Malaysia", Journal of Valuation and Property Services, Vol. 1, No. 1, (1998) p. 71.

²The Land Acquisition Act 1960 (the Act).

³The Land Acquisition (Amendment) Act 1991 (the Amendment).

⁴Where any land has been acquired under this Act, whether before or after the commencement of this section, no subsequent disposal or use of, or dealing with, the land, whether by the State Authority or by the Government, person or corporation on whose behalf the land was acquired, shall invalidate the acquisition of the land.

⁵Section 68A - Where any land has been acquired under this Act, whether before or after the commencement of this section, no subsequent disposal or use of, or dealing with, the land, whether by the State Authority or by the Government, person or corporation on whose behalf the land was acquired, shall invalidate the acquisition of the land.

⁶ [1998] 5 MLJ 129.

⁷ See the "Dewan Rakyat" Reports dated 30.7.1991 at pages 162-163.

⁸ Section 3(1)(a).

¹⁰ [1982] 1 MLJ 204.

⁹ Please refer to the “Dewan Rakyat” Reports dated 30.7.1991 at pages 162-163, especially in relation to the paragraph as to what should be done when a landowner had already proposed plans for development.

¹¹ [1995] 3 MLJ 141, 155.

¹² [1998] 1 MLJ 607.

¹³ Court of Appeal