IN THE HIGH COURT OF MALAYA AT TAIPING

IN THE STATE OF PERAK DARUL RIDZUAN, MALAYSIA

APPLICATION FOR JUDICIAL REVIEW NO. 25-07-07/2015

In the matter of a decision made by the 1st Respondent vide notice dated 15.4.2015 directing the 1st to 9th Applicants to remove all farming produce and products in relation to their farming activities carried out on a plot of land described as Wilayah Padang Tembak, Mukim Sungai Siput, Daerah Kecil Sg. Siput (U), 31100, Perak Darul Ridzuan

And

In the matter of Order 53 of the Rules of Court 2012

And

In the matter of Section 25 of the Court of Judicature Act 1964 and paragraph 1 of the Schedule thereto

BETWEEN

1. **KRISHNAN A/L LETCHUMANAN**
2. **THURAIRAJU A/L POOMALAI**
3. **LAU HIAP LEE**
4. **ANBALAGAN A/L SINNASAMY**
5. **YEOH YET KHEONG**
6. **MOGAN A/L SUBRAMANIAM**
7. **NAGESPNEREN A/L RAMAN**
8. **GATHERESAN A/L MUNISAMY**
9. **SIVAJI A/L SREENIVASANY**
10. **DR. MICHAEL JEYAKUMAR DEVARAJ** **APPLICANTS**

AND

1. **PEJABAT TANAH DAN DAERAH SUNGAI SIPUT**
2. **PENGARAH TANAH DAN GALIAN NEGERI PERAK**
3. **KERAJAAN NEGERI PERAK** **RESPONDENTS**

JUDGMENT

Introduction

[1] The 1st to 9th applicants are farmers. They have been farming on a piece of land belonging to the Perak State Government, namely the 3rd respondent, for a number of years. The 10th applicant is the honorary Member of Parliament, for the constituency of Sungai Siput.

[2] The application for judicial review is in respect of a notice issued by the 1st respondent to the 1st to 9th applicantsdated 15.4.2015 ('the notice'). The notice required the latter, to remove their farming products, and produce from the land, within fourteen days.

[3] Leave to apply for judicial review was granted on the 3.12.2015 to the applicants, save for the 10th applicant, as he lacked locus standi. The 10th applicant chose not to appeal. The applicants in this judgment therefore, refer to the 1st to 9th applicants only.

[4] The applicants had also obtained a stay of the notice, pending the conclusion of the judicial review application.

Facts

The parties

[5] The 1st to the 9th applicants had been farming on the land, described as Wilayah Padang Tembak, Mukim Sungai Siput, Daerah Kecil Sg. Siput (U), 31100, Perak Darul Ridzuan ('the land') for quite some time, save for the 5th applicant. The particulars of their farming activities, and years on the land are set out below:-

Applicant	Name	Duration of farming on the land	Farming activity
1	Krishnan a/l Letchumanan	7 years	Cattle farming (12 head of cattle)
2	Thurairaju a/l Poomalai	10 years	Growing pineapple, lime and chilli trees
3	Lau Hiap Lee	17 years	Growing papaya and lime trees
4	Anbalagan a/l Sinnasamy	8 years	Cattle farming (15 head of cattle)
5	Yeoh Yet Kheong	1 year	Rearing Tilapia fish
6	Mogan a/l Subramaniam	6 years	Growing banana trees
7	Nagespneren a/l Raman	7 years	Growing pumpkin, ladies fingers and coconut trees
8	Gatheresan a/l Monosomy	7 years	Growing lime trees
9	Sivaji a/l Sreenivasamy	6 years	Growing jasmine trees

[6] Diametrical to the applicants, arefirstly, the 1st respondent, which is entrusted to enhance the standards of land management, in line with the National Development Policy, and lead reforms for the efficiency of land administration services. It operates under the supervision of the 2nd respondent.

[7] The 2nd respondent in turn, is answerable to the Perak State Authority, and is tasked with the administration of state land under the National Land Code. Last but not least, is the 3rd respondent,the owner of the land.

The applicants' history

[8] The 1st applicant took the lead in relating the applicants' history vis-à-vis the land, and their ordeal, which I shall now summarize.

[9] The 1st applicant in particular, had been rearing cattle on the land for some seven years, and had twelve head of cattle to account for. He had prior to rearing cattle on the land, applied to the Veterinary Services Department of the Ministry of Agriculture and Agro-Based Industry in 2007, for land to rear cattle, but was informed by the department concerned, that his application should be directed to the state authority. He then moved his activities to the land in 2008.

[10] The 1st applicant found support from the 'penghulu' (village head), of Kampung Jawang, who had through a letter dated 10.11.2009 to the Perak Department of Veterinary Services,

requested them to grant the 1st applicant land for cattle farming. There was no response.

[11] The 2nd and 3rd applicants too had applied for land, from the 1st respondent in 2008. Their applications were rejected in writing.

[12] The 3rd applicant it seemed, was compensated by the MMC-Gamuda Joint Venture Sdn Bhd sometime in 2008, when part of the latter's 'Electrified Double Track Project', encroached into a portion of the land that was occupied by him.

[13] The applicants contend that all these factors proved that the respondent and third parties have acknowledged their presence and rights on the land, and did not object nor interferewith the farming activities carried out by them.

[14] Presumably based on the inaction of the respondents, the applicants proceeded to invest in their activities, such as buying farming equipment, developing irrigation systems, clearing the land and so on. They claimed to haveinvested their own funds, and also borrowed from moneylenders at high interest rates.

[15] The applicants assert that as they had occupied the land without any interruption from the respondents, this implies that the respondents had consentedto their presence and activities.

[16] The applicants depended on their farming activities for livelihood. Malaysia, according to them, is facing a food crisis, and is overly dependant on food imports.They say that their farming activities contribute to the demand for food from the people of Perak and Malaysia.

The notice

[17] All was well until the applicants were served with the notice from the 1st respondent.

[18] The notice seemed like a template notice used by the 1st respondent. Nevertheless, the notice, in gist, stated the following:-

(a) That the applicants have been found to occupy government land without permission, and have committed an offence under s. 425 of the National Land Code 1965 ('NLC 1965'); and

(b) The applicants are to remove all their equipment and farming produce from the land within fourteen days, failing which, they shall be demolished and destroyed, and that the applicants will be charged in court.

[19] The 1st to 9th applicants then sought the 10th applicant's help. Following the latter's advise, they then wrote to the 1st respondent, through a letter dated 20.4.2015. The 10th applicant, together with some of the applicants, delivered this

letter personally to the 1st respondent on the 21.4.2015. They claimed to have been told by the Chief Assistant District Officer, that there are plans to build a school on the land. They claimed to have also been assured by the officer concerned, that he would be raising their request for an alternative piece of land with the District Officer.

[20] The applicants' bone of contention is the fact that they were never informed of plans for the land, and that they would not have expended time and money, had they been informed. They are also unhappy that the respondents had never taken steps to consult them.

The reliefs sought

[21] The major reliefs sought by the applicants are as follows:-

(a) An order for certiorari, to quash the decision made by the 1st respondent through the notice;

(b) An order of prohibition to prevent the respondents from issuing any subsequent notices, or carrying out any action which prevents the 1st to 9th applicants from carrying out their farming activities on the land;

(c) In the alternative to the orders sought under paragraphs (a) and (b), an order of mandamus, to compel the respondents to give the applicants a minimum of one year grace period to relocate their farming activities from the land; and

(d) An award for damages to be assessed;

The applicants' case

[22] The applicants had made it clear from the outset, that they are not staking any legal or equitable right to ownership of the land.

[23] Their main grievance was in the manner that the respondents have chosen to exercise their powers, which they contend, was in complete disregard of the basic principles of justice and fairness, and is inconsistent with the manner that a public authority should exercise its powers.

[24] As stated earlier, the applicants are not asserting any legal or equitable rights over the land. They are not harbouring any illusory thoughts of owning the land, and are clear, that the land belongs to the state, namely the 3rd respondent.

[25] However, the applicants do not see themselves as simply squatters either. They argued that they had occupied the land with the respondents' implied consent, as the government agencies knew and supported their activities.

[26] Learned counsel for the applicants drew an analogy with applications for summary possession made under O. 89 Rules of Court 2012, where the courts have held that an implied consent would amount to a triable issue, that will

defeat an application for summary possession; see *Bahari bin Taib v Pengarah Tanah Galian Selangor* [1991] 1 MLJ 343 (SC), *Shaheen bte Abu Bakar v Perbadanan Kemajuan Negeri Selangor* [1998] 4 MLJ 233 (FC) and *Salim bin Ismail v Lebbey Sdn Bhd (No. 2)* [1997] 2 MLJ 4 (CA).

[27] In those cases, the courts held that persons who had occupied the land, by claiming that they did so with the implied consent or license from the rightful owners, could not be summarily deemed as squatters simpliciter, and that it becomes a triable issue, that should not be decided on affidavit evidence alone.

[28] Learned counsel for the applicantssubmitted, that if the respondents'claim could similarly defeat an application under 0. 89 RC 2012, it should therefore warrant the attention and consideration of the respondents.

[29] The applicants contend that they had acquired a legitimate expectation to:-

(a) remain on the land to conduct their farming activities;

(b) be given advance notice of any intention by the respondent to take back the land; and

(c) would be consulted and heard with the possible provision of an alternative land, or payment of compensation.

[30] The applicants are aggrieved, with the fact that the applicants did not bother to explain, why they were only given fourteen days to vacate the land. They were also equally aggrieved, that the respondents did not accord them any opportunity to be consulted.

[31] Learned counsel for the applicants also submitted, that the respondents' contention that the applicants were mere trespassers and had committed an offence under s. 425 NLC 1965, was baseless. It was further submitted, that although s. 425 and s. 426A NLC 1965 did not accord a right to be heard, the duty to consult and hear the applicants is implied. Learned counsel exhorted that parliament could not be presumed to act unfairly, and that the justice of the common law will supply the omission of the legislature.

[32] The Federal Court's decision in *Ketua Pengarah Kastam v Ho Kwan Seng* [1977] 2 MLJ 152, was referred to, where the following passage by Raja Azlan Shah FJ (as his Highness then was) was cited:-

> The rule of natural justice that no man may be condemned unheard applies to every case where an individual is adversely affected by an administrative action, no matter whether it is labelled "judicial", "quasi-judicial" or "administrative" or whether or not the enabling statute makes provision for a hearing".

The respondents' case

[33] The respondents' response is succinct. They take the view that the applicants are merely trespassers, and had carried out their farming activities on the land illegally, as they had never obtained permission.

[34] The respondents also deny acknowledging the applicants' presence and activities, as they would not have issued the notice, had that been the case.

[35] In conclusion, the respondents contend in no uncertain terms, that the land belongs to the 3rd respondent, and that it had the exclusive rights to take any action over its land.

Findings

The notice qua decision?

[36] The applicants had referred to the notice as 'the decision'. With respect, I am unable to label the notice, as a decision. The plain meaning of a 'decision', is a conclusion reached after consideration.

[37] A plain reading of the notice shows that it was quite simply a notice for eviction. There was nothing to indicate that the notice was on the face of it, a decision, nor were there any evidence put forward to suggest that it was a decision reached after deliberation. As the applicants had pointed out,

they were never accorded an opportunity to put forward their case.

Squatters simpliciter

[38] The applicants had relied on the fact, that since the respondents have not taken any positive actions to evict, or protest their occupation for a considerable amount of time, it meant that the latter had impliedly consented to, or acquiesced to their occupation of the land.

[39] I have difficulty in appreciating the applicants' contention that the government agencies knew and supported their activities on the land, and attempted to relate them to the respondents. Presumably, the applicants had meant the Veterinary Services Department of the Ministry of Agriculture and Agro-Based Industry, which the 1st applicant had written to in 2007 for land to rear his cattle, and the letter of support from the 'Penghulu' of Kampung Jawang.

[40] I fail to see how the Veterinary Services department or the Ministry concerned, and the 'Penghulu', are related to the respondents, or seen as government agencies that are concerned with the land. In any event, the letter written by the 1stapplicant was to request for land for farming, and not specifically the land in question. Furthermore, the department concerned had in response to the 1st applicant's request, directed him to make his application to the state authority. The 1st applicant never did. In fact, only then did

the 1st applicant move his activities to the land. The letter written by the 'Penghulu' was merely a letter of support.

[41] As for the 2nd and 3rd applicants' application for land to the 1st respondent, which was rejected, I am also unable to fathom, how a rejection of their application could be deemed as awareness of their farming activities. The application forms exhibited in the affidavit was a standard application form for an application for land. Although they had indicated in the forms, that the land requested was for agriculture, there are no particulars to suggest that they had been farming on the land.

[42] In respect of the compensation received by the 3rd applicant from MMC-Gamuda Joint Venture Sdn Bhd, the latter is a private entity, and could not possibly be deemed as part of the respondents. It does seem rather odd however, that the 3rd applicant was compensated, when it should have been the 3rd respondent.

[43] The pertinent question is whether this factor entitles the applicants to acquire a legitimate expectation to remain on the land, or a right to be consulted first, before the notice was issued.

[44] For one to have a legitimate expectation, he must first have some semblance of legitimacy. I am of the view the applicants are, with the greatest of respect, simply squatters. They had occupied the land without any express permission

from the respondents. Squatters have no legitimate rights over land belonging to others.

[45] I am mindful of the applicants' contention, that the respondents had impliedly allowed them to occupy, and farm the land. Inaction by the respondents could not be equated to an implied permission. The mere fact that the respondents have not taken any positive action against them,does not clothe them with any semblance of legality.

[46] I am fortified in my view with the Federal Court's decision in *Sidek Hj. Muhamad v The Government of the State of Perak* [1982] 1 MLJ 313. The three hundred and seventy seven appellants had since 1950, occupied a large tract of land in the Mukim of Bandar, Teluk Anson. The State Government then took steps to organise the settlement.Promises and demands were exchanged by both parties, which culminated in an impasse. The State Government then issued notices to the appellants to vacate the land. The disgruntled appellants took the State Government to court, to demand what had been allegedly promised to them.

[47] The following judgment by Raja Azlan Shah CJ (as his Highness then was), is most instructive:-

> What equitable right or interest can be conjured up for the squatters who have illegally occupied State land? Squatters go into possession by, or as a result of illegal occupation of State land. Illegal occupation of State land is an offence under s. 425 of the National Land Code. It is

well established that a Court of equity will never assist squatters to resist an order or possession illegally acquired; it will never intervene in aid of wrong-doers. (See *Grafton v Griffin* 39 ER 130). We would like to say this at once about squatters. The owner is not obliged to go to the Courts to obtain an order of possession. He is entitled, if he so wishes, to take the remedy into his own hands. He can go in himself and turn them out without the aids of the Courts of law. He can even use force, so long as he uses no more force than is reasonable necessary. He will not be liable criminally or civilly.

[48] The upshot is this, the respondents are very much entitled in law to take any action that they so wish over the land, being a state land. If and until the land is registered to any other persons or entity, it remains state land, which the respondents are entitled to repossess at any time.

[49] The case of *Salim bin Ismail v Lebbey Sdn Bhd (No. 2)* (supra) that was referred to by learned counsel for the applicants, had a sequel, as the parties eventually went to trial which concluded. It culminated into an appeal to the Court of Appeal, and reported as *Chong Wooi Leong v Lebbey Sdn Bhd* [1998] 3 CLJ 685. It will not be necessary to delve into the facts of the case. It would suffice to state, that the occupiers of the land did not succeed in the High Court, and subsequently the Court of Appeal.

[50] The decision by the Court of Appeal in *North East Plantation Sdn Bhd v Pentadbir Tanah Daerah Dungun* [2011] 2 CLJ 392, is most relevant to the facts of this case. The appellants had more substance to complain of, than the applicants here.

In that case, the appellants had in the year 2000, applied to the Chief Minister of Terengganu for alienation of 10,000 acres of reserved land in the state of Terengganu. The state government had initially agreed in principle, to approve the appellant's application, but subject to terms and conditions imposed. The appellants proceeded to submit the necessary forms, and had even forwarded cheques being payment for quit rent, land premiums, survey fees, and for the preparation and registration of land titles as required.

[51] In 2004, the state government revoked the previous approval for alienation. The appellants filed an application for judicial review, seeking for amongst others, a declaration that the state government had acted ultra vires, an order for certiorari to revoke the state government's decision, and an order of mandamus, to compel the state government to take steps, to register the land in their name.

[52] Of great interest is the appellant's argument in the Court of Appeal. Similar to the applicants' contention here, the appellants in that case submitted that they had a legitimate expectation to acquire registered titles to the land, based on the state government's previous approval and representation. It was also submitted, that legitimate expectation includes expectationthat goes beyond legal rights, provided that it has some reasonable basis. Similar to the applicants' demand here, the appellants there too had claimed a right to a fair hearing before the state government. However, in fairness to the applicants here, unlike the

appellants in that case who had also sought for titles to the land, the applicants here are merely seeking a right to be heard.

[53] The Court in Appeal in dismissing the appellant's appeal addressed the point of legitimate expectation as follows:-

> Decided cases however had shown that the doctrine of legitimate expectation cannot be applied indiscriminately in all cases. It does not apply to every single case of denial of a fair hearing or opportunity to make representation before a decision is made.

[54] The Court of Appeal held, that legitimate expectation could not override the statutory provisions of the National Land Code, in particular s. 40(a), s. 48 and s. 78(3) NLC 1965, which vests the state government with absolute authority over its land.

S. 425 and s. 426A NLC 1965

[55] I am also unable to concur with the proposition that the duty to consult and hear the applicants is implied under s. 425 and s. 426A NLC 1965. Although learned counsel for the applicants exhorted that parliament could not be presumed to act unfairly, and that the justice of the common law will supply the omission of the legislature, I take the view that the wordings of these sections are clear and unambiguous, and must be given its literal meaning; see *Hari Bhadur Ghale v PP* [2012] 6 MLJ 597. I am as such, disinclined to stretch it beyond its plain meaning and common usage.

Food security

[56] I do not wish to belittle the applicants' contention that their farming activities are crucial for the supply of food to the state of Perak and Malaysia. Without a doubt, farmers are crucial to the well being of society. It would suffice to just state that, their proposition, with the greatest of respect, is exaggerated. One only has to perusethe farming activities set out in the table in the preceding paragraph, to note that.

Conclusion

[57] No doubt the applicants have occupied and harvested the land, but this should be seen more of as an act of kindness on the part of the respondents. The applicants had for many years harvested, and utilised the land for their own benefit. For so many years, the respondents, and in particular the 3rd respondent, did not even demand any fees or proceeds from them. Any other landowner could very well demand some form of fees from them. It would be inequitable for the applicants to now make demands, having reaped rewards from the land, without giving any consideration to the respondents.

[58] I had also considered the prayers sought by the applicants. Firstly, the applicants had in the alternative prayed for an order of mandamus to compel the respondents to give the applicants a minimum of 1 year grace period, to relocate their farming activities from the land.

[59] The application for leave was filed on 14.7.2015, and leave was subsequently granted on 3.12.2015. A stay was also granted on the same day, which meant the applicants were spared from having to comply with the notice pending the disposal of their application.

[60] The application for judicial review was then heard and the decision delivered on 13.4.2016. The notice was received sometime in April 2015.

[61] Clearly almost a year had passed from the time that they had received the notice. They would have the time to do relocate, if they were sincere in needing time. Furthermore, the applicants had already obtained a stay.

[62] For these reason, the applicants' application is dismissed, with costs of RM2,500.00.

Dated: 21 June 2016.

(Mohamed Zaini Mazlan)
Judicial Commissioner
Taiping High Court

Counsel for the applicants
Ambiga Sreenevasan and Shireen Ann Selvaratnam
[Messrs Sreenevasan]

Counsel for the respondents
Teoh Chin Chong
[State Legal Advisor's Office, Perak]