DALAM MAHKAMAH TINGGI DI TAIPING

DALAM NEGERI PERAK DARUL RIDZUAN

PERMOHONAN UNTUK SEMAKAN KEHAKIMAN NO. 25-07-07/2015

Dalam perkara mengenai keputusan yang dibuat oleh Responden Pertama melalui notis bertarikh 15.4.2015 yang mengarahkan Pemohon Pertama hingga Kesembilan untuk memindahkan semua hasil pertanian dan produk berkaitan dengan aktiviti pertanian yang dijalankan pada sebidang tanah yang dinyatakan sebagai Wilayah Padang Tembak, Mukim Sungai Siput, Daerah Kecil Sg. Siput (U), 31100 Perak Darul Ridzuan

Dan

Dalam perkara Aturan 53 Kaedah-Kaedah Mahkamah 2012

Dan

Dalam perkara Seksyen 25 Akta Mahkamah Kehakiman 1964 dan perenggan 1 Jadual di dalamnya

ANTARA

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 ... PEMOHON-PEMOHON

DAN

1. PEJABAT DAERAH DAN TANAH SUNGAI SIPUT
2. PENGARAH TANAH DAN GALIAN NEGERI PERAK
3. KERAJAAN NEGERI PERAK ... RESPONDEN-RESPONDEN

HUJAHAN RESPONDEN-RESPONDEN

PEJABAT PENASIHAT UNDANG-UNDANG NEGERI
PERAK DARUL RIDZUAN
ARAS SATU, BANGUNAN PERAK DARUL RIDZUAN,
JALAN PANGLIMA BUKIT GANTANG WAHAB,
30512 IPOH, PERAK

Dengan izin Yang Arif,

Pemohon-Pemohon memohon relif yang berikut :-

1. Suatu perintah certiorari bagi membatalkan keputusan yang dibuat oleh Responden Pertama melalui notis bertarikh 2015/04/15 [Notis] yang mengarahkan Pemohon Pertama hingga Kesembilan untuk menghapuskan semua produk pertanian dan hasilan yang terletak di sebidang tanah yang dinyatakan sebagai Wilayah Padang Tembak, Mukim Sungai Siput, Daerah Kecil Sg. Siput (U), 31100, Perak Darul Ridzuan [Tanah] dalam tempoh 14 hari dari tarikh Notis [Keputusan];

2. Suatu perintah larangan untuk menghalang Responden daripada mengeluarkan apa-apa notis selanjutnya atau menjalankan apa-apa tindakan yang menghalang Pemohon Pertama hingga Kesembilan menjalankan aktiviti-aktiviti pertanian di atas Tanah tersebut;

3. Dalam alternatif kepada semua di atas, perintah mandamus yang mengarahkan Responden untuk memberikan Pemohon sekurang-kurangnya tempoh 1 tahun untuk menempatkan semula aktiviti pertanian mereka dari Tanah tersebut:

4. Award gantirugi untuk ditaksirkan;

5. Kebebasan untuk memohon;

6. Segala relif, arahan dan perintah yang perlu dan berbangkit sebagaimana yang difikirkan adil oleh Mahkamah Yang Mulia ini;

7. Kos

Dan, sementara menunggu pelupusan terakhir Permohonan ini untuk Semakan Kehakiman, suatu perintah yang menggantungkan Keputusan tersebut.

2. Pihak Responden mohon Afidavit Pemohon No.2 yang diikrarkan oleh Responden Kesepuluh pada 14 Julai 2015 diketepikan kerana permohonannya untuk kebenaran memohon dalam permohonan Semakan Kehakiman ini telah ditolak oleh Mahkamah Yang Mulia ini pada 3-12-2015. Dalam Afidavit tersebut, Responden telah mengikrar dalam kedudukannya sebagai Pemohon Kesepuluh.

3. Pihak Responden berhujah bahawa undang-undang berkenaan Semakan Kehakiman adalah jelas bahawa :

"Judicial review in its traditional sense in administrative law refer to the exercise of the courts supervisory power over the decisions of inferiors tribunals and statutory authorities by testing it against certain established criteria developed incrementally by the common law".

"The Malaysian courts have consistently stated the role and function of judicial review as jurisdiction to supervise the decision-making process of public bodies, not the merits of the decisions made. The function of the courts is not appellate but supervisory. Its function and proper jurisdiction is not assessing whether the decision itself is correct, i.e the merits or substance of the decision, but to ensure *than in arising at the decision impugned the Respondent has follow the proper procedure and compiled with the minimum standards consistent with the administrative good governance".*

4. Mahkamah Agong dalam kes ***Harpers Trading (M) Sdn. Bhd. v. National Union of Commercial Workers (1991) 1 MLJ 417***

Tag A – Ikatan Otoriti Pihak Responden-Responden

Held, dismissing the appeal

(1) *"Judical review is not an appeal from a decision but a review of the manner in which the decision was made and the High Court is not entitle on the merits of the facts, was fair and reasonable".*

5. Mahkamah Persekutuan dalam kes ***R. Ramachandran v Industrial Court of Malaysia & Anor (1997) 1 CLJ 147***

Tag B – Ikatan Otoriti Pihak Reponden-Responden

Per Edgar Joseph Jr. FCJ (majority decision)
m/s 150

(1) *If often said that judicial review is concerned not with the decision but the decision making process. This proposition may well convey the impression that the jurisdiction of the Court in judicial review proceedings is confined to cases where the aggrieved party has not received fair treatment by the authority to which he has been subjected, or as stated by Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service where the impugned decision is flawed on the ground of procedural impropriety. But Lord Diplock's other grounds for impugning a decision susceptible to judicial review make it abundantly clear that such a decision is also open to challenge on ground of 'illegality' and 'irrationality' and in practice this permits the Courts to scrutinise such decisions not only for process but also for substances. Lord Diplock also mentioned "proportionality" as a possible ground of review which called for development.*

m/s 172

In this context it is useful to note how Lord Diplock defined the three grounds of review, to wit, (i) illegality, (ii) irrationality and (iii) procedural impropriety. This is how he put it:

By 'irrationality' I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness' (see Associated Provincial Picture Houses Limited v. Wednesbury Corporation [1948] 1 KB 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted oral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that Judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the Court's exercise of the role, resort I think is today no longer needed to Viscount Radcliffe's ingenious explanation in Edwards (Inspector of Taxes) v. Bairstow [1956] AC 14, of irrationality as a ground for a Court's reversal of a decision by ascribing it to an inferred though undefinable mistake of law by the decision by ascribing it to an inferred though undefinable mistake of law by the decision-maker. 'Irrationality' by now can stand on its own feet as an accepted ground on which a decision may be attacked by judicial review.

I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failing to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice.

6. Pemohon-pemohon merupakan petani yang menjalankan aktiviti pertanian, tanaman dan menternak lembu dan ikan secara haram dan merupakan penceroboh tanah Kerajaan di Wilayah Padang Tembak, Mukim Sungai Siput Daerah Kecil Sungai Siput (U) (Tanah tersebut).

7. Kanun Tanah Negara 1965 (KTN) berasaskan Sistem Torrens di mana pendaftaran adalah satu-satu caranya seseorang memperolehi hak ke atas sesuatu tanah. Menduduki secara haram atau pencerobohan Tanah tersebut tanpa didaftarkan sebagai pemilik berdaftar Tanah tersebut adalah suatu kesalahan yang boleh dihukum di bawah Seksyen 425 KTN.

8. Di bawah Seksyen 78(3) KTN, Tanah tersebut kekal sebagai tanah Kerajaan sehingga pendaftaran dalam nama Pemohon-Pemohon dan sehingga itu Pihak Berkuasa Negeri (PBN) mempunyai hak mutlak untuk mengambil apa-apa tindakan berhubung dengan Tanah tersebut yang dianggap sesuai. Di bawah seksyen 40(a) KTN, Tanah tersebut masih diletakhak sepenuhnya di tangan PBN.

9. Seksyen 48 KTN telah memperjelaskan bahawa tiada hakmilik kepada tanah Kerajaan akan diperolehi oleh milikan, menduduki secara haram atau menduduki di bawah apa-apa lesen untuk apa-apa tempoh. Oleh itu ia adalah tidak penting sama ada Pemohon-Pemohon telah terlalu awal memasuki milikan Tanah tersebut atau menjalankan aktiviti-aktiviti tersebut. Pemohon-Pemohon tidak mempunyai kuasa untuk mengikat PBN walaupun mereka mendakwa PBN telah mengiktirafkan dan mengaku hak mereka ke atas Tanah tersebut (yang mana dinafikan oleh Responden-Responden).

10. KTN telah memperuntukkan satu cara khusus bagi pemberimilikan tanah Kerajaan, menurunkan pelbagai langkah yang diambil sebelum mengeluarkan dokumen-dokumen hakmilik dan mengistiharkan tanah itu kekal tanah Kerajaan

sehingga pendaftaran suatu daftar dokumen hakmilik. Pengharapan sah tidak boleh mengatasi peruntukan-peruntukan mengikut undang-undang ekspres.

11. Mahkamah Rayuan dalam kes ***North East Plantations Sdn Bhd v. Pentadbir Tanah Daerah Dungun & Anor (2011) 2 CLJ 392***

Tag C – Ikatan Otoriti Responden-Responden

m/s 393 dan 394

Held (dismissing the appeal with costs)

Per Abu Samah Nordin JCA delivering the majority judgment of the court:

(1) *The legislature had in clear words enacted that the lands remained as State Land until they were registered in the appellant's name. The process of alienation had not been completed. The document of titles had not been issued to the appellant. Being State Land, it was, by virtue of s. 40(a) of the Code still vested solely in the State Authority. (paras 23 & 34)*

(2) *Section 48 of the Code makes it clear that no title to State Land shall be acquired by possession, unlawful occupation or occupation under any licence for any period whatsoever. It was thus immaterial whether the appellant had prematurely entered into possession of the land or planted the said land with oil palm. The respondents had no authority to bind the State Authority even if permission to enter into possession had been granted by the respondents. (para 23).*

m/s 416

[42] *Similarly, in this appeal there is a statute namely, the Code which expressly prescribes a specific mode for alienation of State Land, lays down the various steps to be taken before the issue of documents of titles and declares that the land shall remain State Land until registration of a register document of title. The rights, duties and liabilities of the State Authority vis-a vis that of the appellant has been exhaustively spelt out in the Code. Abdoolcader J in delivering the judgment of the Federal Court in Pemungut Hasil Tanah, Kota Tinggi v. United Malayan Banking Corp. Bhd [1982] CLJ 23: [1982] CLJ (Rep) 244, pointed out that, The relevant provisions of the Code provide a complete code regulating the respective rights, duties and liabilities of the State Authority and its agents on the one hand and the registered proprietor of alienated land on the other hand in relation to the rent payable in respect thereof and no recourse can legitimately be had to look beyond their specific terms to seek any relief for the hardship". Although that observation was made in respect of forfeiture of alienated land for non-payment of rent, the Code also represents a complete code regulating the respective rights, duties and liabilities of the State Authority in respect of State Land vis-à-vis that of the appellant.*

[43] *In our judgment, legitimate expectation cannot and should not, override the express statutory provisions of the Code. The appellant here is in a worse situation. It has no legitimate expectation that titles would be issued to it when the State Authority had validly revoked the approval of alienation of the said lots. At the time of revocation, the said lots were still State Land.*

12. KTN tidak memperuntuk bahawa Pemohon-Pemohon perlu berunding atau memberi amaran terdahulu kepada Pemohon-Pemohon sebelum Notis bertarikh 10.4.2015 dikeluarkan mengarahkan mereka untuk menghapuskan semua produk pertanian dan hasilan yang terletak di Tanah tersebut dalam tempoh 14 hari dari tarikh Notis.

13. Seksyen 426A(1) KTN memberi kuasa kepada PBN untuk mengambil tindakan undang-undang terhadap Pemohon-Pemohon selaku penduduk-penduduk haram atau penceroboh Tanah tersebut.

14. Mahkamah Persekutuan dalam kes ***Sidek Hj. Muhamad & Ors v. The Government of The State of Perak & Ors (1982) CLJ (Rep) 321***

Tag D – Ikatan Otoriti Responden-Responden
m/s 322

Held:

[1] *It is clear beyond doubt that the appellants cannot succeed in their action because they are squatters. Squatters have no right either in law or in equity. It does not lie in their mouths to assert that they used and occupied the land as squatters.*

[2] *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 of possession illegally acquired; it will never intervene in aid of wrong-doers. What equitable right or interest can be conjured up for the squatters who have illegally occupied State land?*

15. Dalam kes ***Dr. Ti Teow Siew & Ors v. PendaftarGeran-Geran Tanah Negeri Selangor [1982] 1 MLJ 38, Hashim Yeop A. Sani J*** :

Tag E – Ikatan Otoriti Responden-Responden

" As Edward J said in delivering the judgment of the court of appeal in Fels v Knowles:

1. *The Cardinal Principle of the statue is that the register is everything ...*

It is registration that gives and extinguishes title under the National Land Code. Registration is the corner stone of the Torrens System.

In my opinion the word "alienation" is crucial for the proper interpretation of section 105. Section 78(3) of the code determined when the alienation of state land shall take effect and it is clear from the sub-section that alienation takes effect upon registration.

Oleh itu permohonan Pemohon-Pemohon di Prayer 1 hendaklah ditolak.

16. Mahkamah Rayuan dalam kes ***Tan Bun Teet & Ors v. Menteri Sains, Teknologi Dan Inovasi Malaysian & Ors [2013] 3 CLJ 1115***

Ikatan F – Ikatan Otoriti Responden-Responden

m/s 1117 telah memutuskan

(3) *In judicial review proceedings, an application for an injunction could only be made pursuant to O. 53 r. 2(2) of the Rules of Court 2012. Further, an injunction, interim/interlocutory or permanent, could not be granted against the government under S. 29 of the Government Proceedings Act 1956 ('GPA') and s. 54 of the Specific Relied Act 1950 ('SPA') (Lim Kit Siang v. United Engineers (M) Bhd). If the relief sought for was granted, this would interfere with the public duty of the second respondent under the AELA, and as such, s. 29 of the GPA protects the second respondent, being a public authority, from any form of injunctive orders. (paras 13, 14 & 16)*

Seterusnya di m/s 1128 dan 1129

[14] *But that is not all. An injunction, interim/interlocutory or permanent, cannot be granted against the government under s. 29 of the GPA and under s. 54 of the SPA. The authority to support this proposition can be found in the decision of our then Supreme Court in Lim Kit Siang v. United Engineers (M) Bhd & Ors [1987] 2 CLJ 195; [1987] CLJ (Rep) 170 SC. In particular, the relevant passage from the judgment states:*

> *This means that no injunction could be directly or indirectly issued against the Government or its officers. Similarly, the court has no jurisdiction to grant an injunction against a private litigant if the injunction would have the effect of 'restraining the Government or its officers from performing their functions. This has been the interpretation which has been placed by the courts in England as well as in this country.*
>
> [15] *The principle of law enunciated above has been reaffirmed by the Court of Appeal in Superintendant of Lands and Surveys, Kuching Division & Ors v. Kuching Waterfront Development Sdn Bhd [2009] 6 CLJ 751.*
>
> [16] *It follows from this, after giving due considerations to the submissions of all parties, if the relief sought is granted, this will interfere with the public duty of the 2nd respondent under the AELA and as such, s. 29 of the GPA protects the 2nd respondent, being a public authority, fom any form of injunctive orders.*
>
> Oleh itu permohonan Pemohon-Pemohon di perenggan 2 & 3 hendaklah ditolak.

17. Perenggan 4 – Award gantirugi

Mahkamah Persekutuan dalam kes ***Datuk Mohd Ali Hj Abdul Majid & Anor [2014] 6 CLJ 269***

Ikatan G – Ikatan Otoriti Responden-Responden

m/s 271

Held (allowing appeal with costs)

Per Arifin Zakaria CJ delivering the judgment of the court :

(1) *The claimant has the burden of proving both liability and quantum of damages, before he can recover the sum claimed. The burden of proving a fact is upon him who alleges it and not upon him who denies it, so that where a particular allegation forms an essential part of a person's case, the proof of such allegation falls on him (s. 103 of the Evidence Act 1950). If he fails to prove both the liability and the quantum of damages, he loses the action. Therefore, in a claim for damages, it was not sufficient for the plaintiff to merely state the amount of damages that he was claiming, he must prove the damage that he had in fact suffered to the satisfaction of the court. (paras 32 & 33)*

(2) *The claim by the plaintiff herein was for general and special damages arising out of a breach of contract and/or negligence. Therefore the burden rested on the plaintiff to prove the damages. It was not sufficient for the plaintiff to merely assert that he had suffered such damages without proving it. The High Court Judge was correct in ordering that summary judgment be entered on liability with damages to be assessed. Thus, the answer to the question posed was in the positive. The order of the Court of Appeal was set aside. (paras 34 & 35).*

18. Pemohon-Pemohon telah gagal membuktikan di Mahkamah Yang Mulia ini bahawa mereka telah mengalami sebarang kerugian dan/atau kerosakan. Dengan yang demikian Prayer 4 permohonan Pemohon-Pemohon hendaklah ditolak.

19. Berdasarkan alasan-alasan di atas Responden-Responden memohon permohonan Pemohon-Pemohon dalam Semakan kehakiman ini ditolak dengan kos.

Bertarikh pada 18 Februari 2016.

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Penolong Penasihat Undang-Undang
Negeri Perak Darul Ridzuan.
Peguam bagi dan untuk Defendan