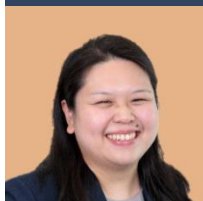


# Land Reference: To Intervene Or To File Form N Objection?



by Ho Ai Ting and Sahira Sha'ari



A few years back, the Federal Court in **Unggul Tangkas**<sup>1</sup> handed down a landmark decision stating that with exception to the land administrator, only a person who has properly objected to an award under s. 37,<sup>2</sup> Land Acquisition Act 1960 (LAA) is entitled to be a party to the land reference proceedings with the rights that entail.<sup>3</sup> The Federal Court held that the application by the paymaster to intervene under O. 15 r. 6(2)(b), Rules of Court 2012 (RC 2012) to be made a party in the land reference proceedings initiated by the landowner was inappropriate.

Recently, the Federal Court in **Spicon Products**<sup>4</sup> revisited the ratio decidendi in **Unggul Tangkas** and related judicial precedents in deciding the issue of whether a landowner who has, without any objection, accepted an award of compensation made by the land administrator, is nevertheless entitled to intervene and participate in land reference proceedings initiated by another interested party, namely the 'paymaster' who had objected to the land administrator's award. A summary of the key takeaways from **Spicon Products** will be discussed in this article.

## Spicon Products

### Salient Facts

The Appellant's land was compulsorily acquired for the 1st Respondent (TNB) to construct its main substation. After due enquiry, the land administrator (LA) made an award consisting of land compensation, incidental costs, and valuer's fees (Award) to the Appellant, which was payable by TNB.

The Appellant accepted the Award without any objection. TNB however filed an objection by way of Form N, challenging part of the Award concerning the incidental costs which they claimed to be excessive and outside the ambit of the First Schedule, LAA. TNB's objection was subsequently referred to the High Court, registered as a land reference.

<sup>1</sup> *Tenaga Nasional Bhd v Unggul Tangkas Sdn Bhd & Anor And Other Appeals* [2018] 4 CLJ 285

<sup>2</sup> Section 37 LAA allows a person interested to raise objections in relation to the measurement of land, amount of compensation payable, persons to whom it is payable, and apportionment of the compensation by lodging a Form N to the land administrator.

<sup>3</sup> Para [43], *Unggul Tangkas*

<sup>4</sup> *Spicon Products Sdn Bhd v Tenaga Nasional Berhad & Anor* [2022] 4 CLJ 195



The Appellant, albeit having accepted the Award unreservedly, filed an application under O.15 r.6(2)(b), RC 2012 to intervene and be made a party to TNB's land reference. The Appellant claimed it should be allowed to partake in the land reference proceedings as it would be prejudiced by any reduction of compensation.

TNB objected to the Appellant's application, citing abuse of process vis-à-vis the Appellant's failure to file Form N was fatal, thereby precluding them from participating in the land reference proceedings.

The High Court allowed the Appellant's intervention application. Subsequently, TNB appealed to the Court of Appeal.

The Court of Appeal agreed with TNB and set aside the High Court's decision. The Appellant then obtained leave to appeal to the Federal Court.

### Key findings by Federal Court

In allowing the appeal, the Federal Court held that a landowner, despite having accepted the Award of compensation by the land administrator without any objection, may still be entitled to intervene and participate in the land reference proceedings, initiated by the paymaster who had filed a Form N objection against the Award.

The key findings made by the Federal Court are -

- a) Unless and until there are clear express provisions restricting a right of participation in any exercise to deprive property, any relevant law must be read to allow if not encourage such participation;<sup>5</sup>
- b) The Appellant, as a '*person interested*' under the provisions of LAA, is entitled to safeguard his or her rights and interests as the outcome of the land reference proceedings will eventually have a bearing on the Award;
- c) The Appellant, who unreservedly accepted the Award, obviously did not qualify nor was entitled to lodge an objection under s. 37(1) LAA.<sup>6</sup>

<sup>5</sup> Para [40]

<sup>6</sup> Section 37(1) LAA provides the requirements for a person who wishes to object to the award must either; not have accepted the award, or has accepted the amount of such award under protest as to its sufficiency.

Consequently, the decision of the Court of Appeal that the Appellant was obliged to lodge Form N in order to participate in the reference proceedings at the High Court was plainly in error; <sup>7</sup>

d) The land reference was on an objection which relates ultimately to the matter of determining the question of adequacy of compensation under Art. 13 of the Federal Constitution. The landowner therefore obviously and rightly has an interest to be added as a party and to appear in the reference proceedings; <sup>8</sup>

e) The landowner's appearance and participation in the reference proceedings are consistent with his or her rights and interests under Art. 13 of the Federal Constitution, and the construction and interpretation of the LAA should always have that as a forefront consideration; <sup>9</sup>

f) The Federal Court disagreed with TNB's contention that ss. 37(1), 38, 43(c), 44(2) and 55 LAA expressly exclude the Appellant who has accepted the Award from participation in the reference proceedings. All these provisions, at best, may infer that the Appellant has no right to object or insist to be notified of the reference proceedings. It would be wrong to state that the scheme and provisions of the LAA exclude the application of RC 2012 such as to prevent a legitimate landowner as the Appellant from intervening and protecting his or her interests; <sup>10</sup>



g) The Third Schedule LAA which governs evidence and procedure in land reference cases neither provides for intervention nor exclude the application of RC 2012. By virtue of s.45(2) LAA, the RC 2012 shall apply to all proceedings before the land reference court, provided the provisions of RC 2012 are not inconsistent with the LAA; and

h) None of the provisions of the LAA excludes a landowner who had accepted an Award without objection to participate in land reference proceedings. The Appellant is therefore entitled to apply to intervene in the TNB's land reference under RC 2012.<sup>11</sup>

### Unggul Tangkas distinguished

The Federal Court also took the trouble to examine the earlier decision of *Ungkul Tangkas*.

### *Unggul Tangkas* and *Spicon Products*

involve a similar issue concerning an intervention application. Factually, the stark difference between these 2 cases lies in the identity of the proposed intervener. In *Unggul Tangkas*, the paymaster i.e. TNB applied to intervene in the landowner's land reference.

In *Unggul Tangkas*, the Federal Court, in arriving at its decision, adopted the Court of Appeal's observation in *Inch Kenneth Kajang* <sup>12</sup>–

*'[16] In the overall scheme and context of the Land Acquisition Act, any application by the appellant under O. 15 r. 6(2)(b) of the RHC 1980 to be a party, is inappropriate. It would amount to an abuse of the process of the court and an attempt to circumvent the clear and unambiguous provisions of the LAA 1960 as regards to the manner and circumstances in which 'persons interested' under the LAA 1960 are to*

<sup>7</sup> Para [69]

<sup>8</sup> Para [83]

<sup>9</sup> Para [84]

<sup>10</sup> Para [82] to [85]

<sup>11</sup> Para [91]

<sup>12</sup> *Sistem Lingkaran Lebuhraya Kajang Sdn Bhd v. Inch Kenneth Kajang Rubber Ltd & Anor And Other Appeals* [2011] 1 CLJ 95



participate in proceedings either before the land administrator at an enquiry or, in the court, upon a reference by the land administrator upon any objection to an award. Filing of Form N is the most appropriate and the only mode available under the LAA 1960 to any person interested under the LAA 1960 to become a party in a land reference at the High Court relating to an objection to the amount of compensation.’

In **Spicon Products**, the Federal Court is of the view that such observation failed to comprehensively address a few aspects, *inter alia* –

- i. While a person may qualify as a ‘person interested’ under s.2 LAA, such person may nevertheless not qualify to file an objection due to the condition precedent under s.37 LAA. This does not however dispel the fact that such person is a ‘person interested’;<sup>13</sup>

- ii. The land reference court is obliged under s.44 LAA to consider the interests of all persons interested regardless whether those persons have filed an objection or have been notified by the court to attend the land reference proceedings. The presence or interests of the Appellant as landowner was amply indicated in Form O;<sup>14</sup> and

- iii. Since the interests of all persons interested must be considered by the land reference court when determining the objection or adequacy of compensation, s.45(2) LAA must be seen as an enabling provision to ensure that the attendance and participation of all persons interested may be facilitated, and in this case, through O.15 r. 6 RC 2012.<sup>15</sup>

### Our view

**Spicon Products** is yet another welcoming decision that upheld landowners’ constitutional right to property guaranteed under Art. 13 of the Federal Constitution. The Federal Court had properly and comprehensively explained the scheme and operation of the LAA, providing clarity to the application and operation of certain important provisions in the LAA which appear to have been frequently overlooked. The Federal Court also remarked that “[t]here should be no injustice caused to any person interested in the name of speedy disposal”.<sup>16</sup>

It is a principle of great antiquity that the decision in each case must be confined to its own peculiar facts and circumstances.<sup>17</sup> It remains to be seen how the courts will apply the *ratio decidendi* of **Spicon Products** when dealing with intervention applications in land reference cases – whether it also applies when the intervention application is made by other persons interested<sup>18</sup> defined under the LAA such as chargee bank, tenants or lessees. Further, it should be noted that while the landowner in **Spicon Products** was allowed to intervene, matters such as the landowner’s ability to adduce evidence, or the extent of the evidence that could be led to partake in the land reference proceedings in order to protect its rights and interests, remain unaddressed.

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<sup>13</sup> Para [104]

<sup>14</sup> Para [105]

<sup>15</sup> Para [111]

<sup>16</sup> Para [117]

<sup>17</sup> *Maria Chin Abdullah v Ketua Pengarah Imigresen & Anor* [2021] 2 CLJ 579

<sup>18</sup> Section 2 LAA defines “person interested” to include every person claiming an interest in compensation to be made on account of the acquisition of land under this Act, but does not include a tenant at will.