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Compulsory Acquisition: 'Shall' Means Mandatory

TARSB v PTG Selangor & Ors

Last week, the Shah Alam High Court, in quashing a compulsory land acquisition, reaffirmed the need for strict adherence to the special provisions of the Land Acquisition Act 1960 (**LAA 1960**) and compliance of the statutorily prescribed procedures, so as to give meaning to the constitutional protection of a person's fundamental right to his property.

Background

A part of TARSB's land was subject to compulsory acquisition for the purpose of a transmission line (**Acquisition**). TARSB (**the Landowner**) was served with a notice in Form E to attend a land enquiry. The Landowner attended three land enquiries.

It was only at the last land enquiry that the Landowner discovered that no Form A (*Notice That Land is Likely to be Acquired*) was issued nor published in the *Gazette* for the Acquisition, albeit it being a mandatory requirement under the LAA 1960. The Landowner confronted and requested that the Land Administrator withdraw the Acquisition, but to no avail.

Aggrieved by the Land Administrator's refusal, the Landowner commenced judicial review proceedings against the Land Administrator, the Director of Land and Mines of Selangor (**PTG**) and the State Government of Selangor (collectively, **the Respondents**) on the grounds, among others, that the Acquisition was wrongful, and null and void for non-compliance with the mandatory provision under the LAA 1960.

The High Court granted leave in favour of the Landowner to commence judicial review. At the same time, the High Court also stayed the Acquisition proceedings pending the disposal of the judicial review application.

In defending the judicial review application, the Respondents raised two preliminary objections:

- (a) the judicial review application was filed out of time;
- (b) the Landowner failed to name the State Executive Council/*Majlis Mesyuarat Kerajaan Negeri* as a party to the judicial review.

The High Court dismissed both the preliminary objections and allowed the judicial review application. The court held that the Acquisition was unconstitutional, illegal and tainted with procedural impropriety for failing to comply with the mandatory provision under the LAA 1960 to issue and gazette Form A.

Judicial review was within time

The Respondents contended that the judicial review application was filed out of time, citing in support thereof the Federal Court decision in *Kijal Resort*,¹ which held that judicial review application to challenge compulsory acquisition must be filed within 40 days (*under the former Rules of the High Court 1980*) from the date of service of Form E, i.e. when the decision to acquire was first communicated to the landowner.

The High Court rejected the Respondents' contention. The High Court agreed with the Landowner's argument that the judicial review was filed within the three-month period prescribed under the current O 53 r 3(6) of the Rules of Court 2012 and held, among others:

- (a) the facts in *Kijal Resort* are distinguishable, and therefore the rationale of the decision does not apply in this case. In *Kijal Resort*, the legality of the acquisition was not challenged;
- (b) the Landowner first had knowledge of the procedural impropriety (non-issuance of Form A) during the last land enquiry. The Landowner filed the judicial review application within one month from the date of the last land enquiry, and was therefore not precluded from challenging the legality of the Acquisition.

¹ *Kijal Resort Sdn Bhd v Pentadbir Tanah Kemaman & Anor* [2016] 1 MLJ 544 (FC)

PTG is the proper party

The High Court also agreed with the Landowner's argument that there is no requirement to name the State Executive Council by virtue of s 16(2) of the National Land Code 2020 (**NLC**), which provides that:

"... any action, suit or other proceeding relating to land in which it is sought to establish any liability on the part of the State Authority shall be brought against the State Director in the name of his office and shall not in any circumstances be in the name of any officer".

The Landowner had properly named the PTG as a party as required by s 16(2) of the NLC

Issuance of Form A is mandatory

Section 4(1) of the LAA 1960 provides:

"(1) Whenever the State Authority is satisfied that any land in any locality in the State is likely to be needed for any of the purposes referred to in section 3 a notification in Form A **shall** be published in the *Gazette*."

The High Court, in upholding a string of decisions by the superior courts,² held that s 4(1) of the LAA 1960 is a mandatory provision, and therefore the non-issuance of Form A amounts to a clear violation of the LAA 1960 and Art 13(1) of the Federal Constitution. Such failure rendered the Acquisition null and void.

Conclusion

This is certainly another welcoming decision that upholds the rule of law and instils public confidence in the judiciary that the courts will not shy away from holding public authorities accountable for their decisions.

² *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat & Another Case* [2017] 5 CLJ 526 (FC); *Ng Kim Moi & Ors v Pentadbir Tanah Daerah, Seremban, Negeri Sembilan Darul Khusus* [2004] 3 CLJ 131 (CA); *Ee Chong Pang & Ors v The Land Administrator of the District of Alor Gajah & Anor* [2013] 3 CLJ 649 (CA); *United Allied Empire Sdn Bhd v Pengarah Tanah dan Galian Selangor & Ors* [2017] 8 CLJ 173 (CA)

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The preliminary objection on time raised by the land authorities also underlines the importance of landowners acting vigilantly and promptly to challenge any threatened compulsory land acquisition. Once a landowner becomes aware of any irregularity in the intended acquisition, any delay could be fatal to a challenge.

The Landowner was successfully represented by Ho Ai Ting and Wong Eu Ca Matthew, from [Lee Hishammuddin Allen & Gledhill](#)'s Commercial and Real Estate Disputes Practice.

Ho Ai Ting and Wong Eu Ca Matthew

If you have any queries pertaining to this update, or to any compulsory land acquisition or real estate disputes, please contact associate Wong Eu Ca Matthew (wec@lh-ag.com) or partner [Ho Ai Ting](#) (hat@lh-ag.com).