

LHAG Insights

Dispute Resolution



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Land Reference: Can I Appeal?

Section 49 of the Land Acquisition Act 1960* provides for a limited right of appeal in land reference. The proviso to s 49(1) prohibits appeals against a decision of the High Court, or the Court of Appeal, which “comprises an award of compensation”.

In *Nusantara Daya*,¹ the Federal Court conducted an in-depth review of judicial precedents on the interpretation of the proviso to s 49(1),² and reaffirmed that the proviso does not represent a complete bar on all appeals involving questions of compensation from the High Court. The bar to appeal is instead limited to issues of fact on the ground of quantum of compensation. The Federal Court, however, clarified the scope and ambit of appealable “questions of law” within the context and purpose of s 49(1).

Brief facts

This case stems from a land reference before the High Court. Dissatisfied with the additional compensation awarded by the High Court, the respondent/landowner pursued an appeal to the Court of Appeal on three key points encompassing the issues of assessment of market value, double counting and potential development value of the scheduled land.³ The appellant/Land Administrator (**LA**) objected against the competency of the appeal

* All references to provisions herein shall be to the Land Acquisition Act 1960 (**LAA**), unless otherwise stated

¹ *Pentadbir Tanah Daerah Johor v Nusantara Daya Sdn Bhd* [2021] 7 CLJ 1 (**Nusantara Daya**)

² Section 49(1):

“Any person interested, including the Land Administrator and any person or corporation on whose behalf the proceedings were instituted may appeal from a decision of the Court to the Court of Appeal and to the Federal Court: Provided that where the decision comprises an award of compensation there shall be no appeal therefrom.”

³ *Ibid*, at paras [10] and [73]

relying on the proviso to s 49(1). The Court of Appeal nevertheless dismissed the LA's objection, proceeded to hear the appeal, and ultimately set aside the High Court decision and further increased the amount of compensation. The LA appealed to the Federal Court; the appeal turns on the threshold issue of whether the landowner's appeal to the Court of Appeal was barred by reason of the proviso to s 49(1).

Position prior to *Nusantara Daya*

The interpretation of s 49(1) and its proviso is understood to be well settled based on the consistently followed Federal Court decision of *Calamas*,⁴ which held that there is no right of appeal against an award of compensation issued by the trial judge.⁵

In April 2017, the Federal Court, in the landmark decision of *Semenyih Jaya*,⁶ declared s 40D⁷ to be unconstitutional. This brings about the restoration of the High Court's judicial power to determine and award adequate compensation in land references.⁸

In *Semenyih Jaya*, the Federal Court also dealt with the interpretation and construction of s 40D(3) (*a finality clause which declares a decision made by the land reference court on the amount of compensation as "final"*), read with s 49(1) and its proviso, and s 40C. The court considered whether, in light of these provisions, there is a right of appeal to the Court of Appeal against a decision of the High Court involving compensation for land acquisition on a question of law.⁹

The Federal Court, upon examining *Calamas* and an earlier Federal Court decision in 2013, *Syed Hussain Syed Junid*,¹⁰ held:¹¹

- (a) The proviso to s 49(1) does not represent a complete bar on all appeals on all questions of compensation from the High Court.
- (b) The bar to appeal is instead limited to issues of fact on the ground of quantum and compensation.
- (c) The aggrieved party therefore has the right of appeal against the decision of the High Court on questions of law.

⁴ *Calamas Sdn Bhd v Pentadbir Tanah Batang Padang* [2011] 5 CLJ 125

⁵ *Nusantara Daya*, *supra* n 1, at para [21]

⁶ *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat & Another Case* [2017] 5 CLJ 526 (***Semenyih Jaya***)

⁷ Section 40D imposes on the judge a duty to adopt the opinion of the two assessors on the amount of compensation. If the assessors differ in their opinion, the judge is bound to "elect to concur with the decision of one of the assessors".

⁸ For a detailed analysis of the Federal Court decision, please refer to our *Legal Herald* (November 2017) – "[Semenyih Jaya: Restoration of Judicial Power in Land Acquisition Cases](#)"

⁹ *Nusantara Daya*, *supra* n 1, at para [30]

¹⁰ *Syed Hussain Syed Junid & Ors v Pentadbir Tanah Negeri Perlis* [2013] 9 CLJ 152

¹¹ *Nusantara Daya*, *supra* n 1, at para [32]

The Federal Court in *Semenyih Jaya*, however, did not provide guidance on the scope, meaning and ambit of a question of law within the context of s 49(1).

Decision of Federal Court

In *Nusantara Daya*,¹² the Federal Court took the trouble to first determine whether the issues raised by the landowner were “questions of law” or just another “masked attempt” to circumvent the bar stipulated in s 49(1). The Federal Court sought guidance from an earlier Federal Court decision in *Amitabha Guha*¹³ and adopted the general proposition that “[i]n a general sense, a question of law is an issue involving the interpretation of law (statutes or legal principles) and the application of the law to the facts of each individual case”.¹⁴

The Federal Court, however, cautioned against giving the phrase “question of law” a wide or flexible understanding and construct.¹⁵ The circumstances and meaning of what may amount to a “question of law” under the proviso of s 49(1) must be narrowly and strictly construed to avoid undermining the clear intent of such a proviso.¹⁶

The Federal Court, in allowing the appeal by the LA and restoring the High Court decision, held, *inter alia*:

- (1) The questions posed or issues raised by the landowner were “*all about the award of compensation that was made by the High Court, how the final amount was arrived at and how that amount was wrong*”; “*all complaints against the award of compensation, what the learned Judge did, what the learned Judge should not have done, and what the learned Judge ought to have done in order to arrive at the award that the High Court finally did*”.¹⁷
- (2) The complaints of the landowner which concerned issues of fact and/or application of valuation principles when computing the amount of compensation to be awarded were not questions of law under s 49(1).¹⁸
- (3) The LA’s submission was correct in that the landowner’s complaints relate solely and ultimately to the amount or inadequacy of compensation by reason of the deductions and adjustments made by the High Court judge, a methodology and exercise that a High Court judge, sitting as the land reference court, is perfectly entitled to undertake in order to determine the market value of the scheduled land.¹⁹

¹² *Ibid*

¹³ *Amitabha Guha & Anor v Pentadbir Tanah Daerah Hulu Langat* [2021] 3 CLJ 1

¹⁴ *Nusantara Daya*, *supra* n 1, at paras [48] and [51]

¹⁵ *Ibid*, at para [57]

¹⁶ *Ibid*, at paras [58], [70] and [93]

¹⁷ *Ibid*, at paras [79] and [80]

¹⁸ *Ibid*, at para [82]

¹⁹ *Ibid*, at para [83]

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- (4) The complaints of the landowner were also not about the process of assessment or how the assessors had assisted the High Court in determining the compensation to be awarded. They were, in substance, about the computation of the award, how deductions were said to be erroneously made or certain factors not taken into account.²⁰

Takeaways

This decision upheld the constitutionality of s 49(1) and reaffirmed the legislative intent of its proviso for precluding appeals from the final order of compensation made by the High Court, as the Land Reference Court.²¹ The interpretation of s 49(1) and its proviso, including the ambit of “questions of law” within the context and purpose of the said proviso, is now settled. Given the restrictive scope of appealable “questions of law”, it is imperative that landowners/ persons interested²² prosecute land references effectively before the High Court in order to achieve the ideal land compensation.

Further, a reference to the High Court generally concerns four respects under s 37(1), namely, the amount of compensation, the measurement of the scheduled land, persons to whom the compensation is payable and the apportionment of the compensation, or on matters referred by the LA under s 36(2). This Federal Court decision has clarified in a timely manner that the right to appeal in these matters, other than the amount of compensation, is preserved and not affected by the proviso to s 49(1).²³

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If you have any queries pertaining to this update, or on issues relating to compulsory land acquisition, please contact partner [Ho Ai Ting](mailto:HoAiTing@lh-ag.com) (hat@lh-ag.com).

²⁰ *Ibid*, at para [94]

²¹ *Semenyih Jaya*, *supra* n 6, at para [150]; *Nusantara Daya*, *supra* n 1, at para [52]

²² Section 2 defines “person interested” to include every person claiming an interest in compensation to be made on account of the acquisition of land under the LAA, but does not include a tenant at will

²³ *Nusantara Daya*, *supra* n 1, at paras [63], [67] and [68]