DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR
DALAM WILAYAH PERSEKUTUAN KUALA LUMPUR, MALAYSIA
(BAHAGIAN KUASA-KUASA KHAS)
[PERMOHONAN UNTUK SEMAKAN KEHAKIMAN NO: WA-25-60-03/2023]

Dalam perkara suatu Keputusan Responden seperti yang dinyatakan dan dianggap dalam surat-surat Pemohon bertarikh 21.2.2023 dan 3.3.2023 dan telah dianggap disampaikan kepada Pemohon pada 7.3.2023;

Dan

Dalam perkara Seksyen 40 Akta Cukai Pendapatan 1967;

Dan

Dalam perkara hak asasi ke atas harta seperti yang diperuntukkan di bawah Fasal 13(2) Perlembagaan Persekutuan;

Dan

Dalam perkara suatu keputusan Mahkamah Persekutuan Malaysia di dalam Rayuan Sivil No. 01(f)-38-08/2022(W) yang telah diberikan pada 9.12.2022;

Dan

Dalam perkara suatu permohonan untuk antara lain, suatu Perintah Certiorari dan suatu Perintah Mandamus;

Dan

Dalam perkara Aturan 53 Kaedah-Kaedah Mahkamah 2012.

Antara

TANDA BESTARI DEVELOPMENT SDN BHD
[No. Syarikat: 200001025329 (527936-D)] **...Pemohon**

Dan

KETUA PENGARAH HASIL DALAM NEGERI **...Responden**

Judgment

Introduction

[1] The Applicant on 8.3.2023, filed an application for leave to commence judicial review proceeding **(Enclosure 1)** under Order 53 of the Rules of Court 2012 **(ROC)** seeking, among other orders the following: -

1.1 An Order of Certiorari to quash the Respondent's decision made on 7.3.2023 and communicated to the Applicant on the same date. The Applicant alleged that the said Decision was illegal, void, unlawful and in excess of authority. Additionally, it allegedly breached of principles of natural justice, had been irrational, unreasonable, and resulted to the denial of the Applicant's legitimate expectations;

1.2 A Mandamus Order to compel the Respondent to acknowledge and enforce the decision of the Federal Court

dated 9.12.2022 in the case of *Wiramuda (M) Sdn Bhd v. Ketua Pengarah Hasil Dalam Negeri* [2023] 5 MLRA 285; [2023] 5 AMR 967; [2023] 4 MLJ 753; [2023] 8 CLJ 21 (the Wiramuda Decision), which was held, that Section 4C of the Income Tax Act 1967 **(ITA)** is unconstitutional as it contravenes Article 13(2) of the Federal Constitution **(FC);**

1.3 A Mandamus Order to compel the Respondent to acknowledge and apply the legal position that established in the case of Wiramuda, the compensations received by the Applicant for the compulsory acquisition of its land parcel **(Land)** by the Selangor State Authority in the year of assessment **(YA)** 2017, are not taxable under Section 4C of the ITA and hence, should not be subjected to income tax:

No.	Land	Compensation Received (RM)	YA
i.	No. Lot 106577, PN 96741, Mukim Dengkil, Daerah Sepang	8,410,164.00	2017

1.4 A Mandamus Order to sought for the Respondent allowing the Applicant to submit revised tax computations for the YA 2017 on the basis that the compensations received by the Applicant on the Land are not considered as income under the ITA, and for the Respondent to accept and give effect to the revised tax computations accordingly;

1.5 A Mandamus Order to instruct the Respondent to refund the sums of taxes paid by the Applicant on the compensation received for the compulsory acquisition of the Land according to Wiramuda Decision, together with interest accruing at the rate of 8% per annum on the said sum

(calculated from the day on which the Applicant has made payment of such taxes to the Respondent until the date the taxes are fully refunded to the Applicant by the Respondent);

1.6 A Declaration that the Respondent is bound by and must adhere to the decision of the Federal Court in the Wiramuda Decision that, amongst others, Section 4C of the ITA is unconstitutional as it contravenes Article 13(2) of the FC;

1.7 A Declaration that following the Wiramuda decision, the compensations received by the Applicant for the compulsory acquisitions of its Land by the Selangor State Authority in the YA 2017 are not taxable under Section 4C of the ITA and hence, not subject to income tax;

1.8 That all necessary and consequential directions and orders be given; and

1.9 All other and further reliefs which this Honourable Court deems fit and proper.

[2] After the hearing, I allowed the Applicant's application for leave for judicial review (Enclosure 1). This judgment provides the rationale behind my decision.

Background Facts

[3] The following salient facts are generally undisputed. The background narrative presented here is adopted, either with or without modifications, from the Statement, Affidavit in Support and submissions of the parties.

[4] The Applicant is a company incorporated in Malaysia and having office address at Level 23A, IOI City Tower 2, Lebuh IRC, IOI Resort City, 62502 Putrajaya. The Applicant's principal activity is in the field of property development.

[5] At all material times, the Applicant had been the owner and registered proprietor of the Land.

[6] The Applicant had acquired and held the Land as its stock-in-trade until their compulsory acquisition by the Selangor State Authority. The compensation awarded to the Applicant for the Land is RM8,410,164.00.

[7] On 28.2.2018, the Applicant filed in their Borang C (Borang Nyata Cukai Pendapatan) their tax return for the Year of Assessment 2017 **(YA 2017).**

Upon the Applicant's submission of their tax refund Form for YA 2017, according to Section 90 of the ITA, the assessment for YA 2017 is a deemed assessment.

[8] There was no appeal was lodged via Form Q to the Special Commissioners of Income Tax **(SCIT)** regarding the assessment issued on 28.2.2018.

[9] Given that no appeal under Section 99 of the ITA, the assessment stand as valid and final.

[10] The Wiramuda decision was decided by the Federal Court on 9.12.2022 establishing that Section 4C of the ITA is unconstitutional.

[11] Prior to Wiramuda decision, the Respondent's position was the compensation received from compulsory acquisition of property held as stock in trade are taxable under Section 4C of the ITA. In light of the Respondent's position, the Applicant recognised that the compensation received from the compulsory acquisition of the Land as its income and subjected the same to in YA 2017.

[12] Subsequently, the Applicant aware of the Wiramuda Decision by the Federal Court of 9.12.2022. Amongst others, the Wiramuda Decision has been reported by news outlets in Malaysia, including

the Edge, and in the legal article titled "Is it Taxing or Inadequate Compensation that is Unconstitutional?" by Tun Abdul Hamid Mohamad published in the Current Law Journal.

[13] Pursuant to the Wiramuda Decision, compensation received by landowners from the compulsory acquisition of properties should not be subject to income tax under Section 4C of the ITA.

[14] On 21.2.2023, the Applicant issued a letter to the Respondent. The Applicant requested the Respondent to give effect to the Wiramuda Decision and to discharge and refund the taxes relating to the compensation received for the land **(Discharge Application).**

[15] On 22.2.2023, the Applicant was contacted by Encik Mohd Hafizan, an officer in the Cheras Branch of the Inland Revenue Board **(IRB)** by telephone. In particular, she was informed that the IRB / Respondent is unable to confirm at this juncture, whether they would be giving effect to the Wiramuda Decision i.e., by discharging and refunding taxes which have been paid by taxpayers on compensation received for the compulsory acquisition of their land pursuant to Section 4G of the ITA.

[16] The officer has also requested the Applicant to submit its revised tax computation for YA 2017 i.e., on the basis that the compensation from the compulsory acquisition of the Land is not subject to income tax.

[17] On 27.2.2023, the Applicant issued another letter to the Respondent attaching the Applicant's revised tax computation for YA 2017 as requested by the Respondent, which was received by the Respondent on 3.3.2023.

[18] The Applicant has also requested for the Respondent's written confirmation that the Applicant's Discharge Application would be allowed before 7.3.2023, failing which it would be constrained

to take it that the Respondent has decided to reject the Discharge Application.

[19] To date, the Applicant has yet to receive a positive response / approval of the Applicant's Discharge Application.

[20] On this basis, the Respondent is deemed to have decided on 7.3.2023 that it will be rejecting the Applicant's Discharge Application i.e., the Respondent's Decision.

The grounds for judicial review

[21] The grounds of relief sought are based on the contention that the Respondent's Decision was illegal, in excess of authority, irrational / unreasonable, procedurally improper, made in breach of the principles of natural justice and procedural fairness and in breach of the Applicant's legitimate expectations. These contentions are supported by several reasons among which include the following: -

21.1 **Illegality**

(a) The Respondent had acted unlawfully by rejecting the discharging application and failing to implement the Wiramuda Decision;

(b) The Respondent being a party in the proceeding of Wiramuda Decision, possesses complete awareness of the said decision. The Respondent also benefits from the legal counsel provided by its Legal Department which should have advised that the Discharge Application ought to be allowed and the taxes paid on the compensation received for the Land ought to be discharged and refunded in light of the Wiramuda Decision;

(c) The Wiramuda Decision is binding on the Respondent as an arm of the executive. The Respondent has no jurisdiction to ignore the same. Amongst others, the Federal Court has held in *Arumugam Pillai v. Government of Malaysia* [1980] 2 MLJ 283; [1980] 1 MLRA 427; that 'a decision of any court of competent jurisdiction is binding on Revenue as on any subject of the land' and that a failure by the Revenue to take action pursuant to a court decision is liable to be challenged by way of judicial review;

(d) The Respondent's Decision has exceeded its powers under the ITA in light of the Wiramuda Decision that Section 4C is unconstitutional;

(e) The Respondent's Decision also violates the Applicant's rights as guaranteed under Articles 13(2) and/or Article 96 of the FC; and

(f) The Respondent's decision to tax the gains from the compulsory acquisition of the Land to income tax pursuant to Section 4C of the ITA is clearly unlawful in accordance with Wiramuda Decision. This action has deprived the Applicant of the use of its funds. Hence, the Respondent ought to compensate the Applicant accordingly including interest on the owed refunds.

21.2 **Irrationality and Unreasonableness**

The Respondent has also acted irrationally and unreasonably in refusing to allow the Discharge Application despite being aware of the Wiramuda Decision. To date, the Respondent has failed to provide any valid reasons as to

why it should not honour and implement the Wiramuda Decision.

21.3 **Legitimate Expectations**

The Respondent's action or inaction has clearly violated the Applicant's legitimate expectations that the Respondent would adhere and implement the law, particularly as established by the Federal Court in the Wiramuda Decision.

Case for the Putative Respondent

[22] The Putative Respondent submits that the Applicant in this case has inferred a deemed decision from the Putative Respondent's non-reply to the Applicant's letter dated on or before 6.3.2023 (for the letter dated 21.2.2023) and on or before 7.3.2023 (for the letter dated 27.2.2023). This non-responses is regarded as a "decision" by the Putative Respondent according to the Applicant's.

[23] The Putative Respondent contends that the non-reply to the Applicant's letters cannot be interpreted as a deemed decision by the Putative Respondent, and this shall not amenable to an application for judicial review under Order 53 of the ROC.

[24] Therefore, this application is premature, frivolous, vexatious, abuse of process and does not fulfill all the basic requirement of Order 53 Rule 2 (4) of the ROC which requires that the person who are entitle to file Judicial Review Application is a person who are affected by the decision of the public authority.

[25] According to Putative Respondent, the Applicant is essentially attempting to quash the decision of the Putative Respondent for the YA 2017 by trying to jumpstart a fresh date of application for Judicial Review Application.

[26] The Applicant's leave application for judicial review was filed out of time and there is no application forextension of time is filed.

[27] The Putative Respondent submits that the crux of the Applicant's application for judicial review before this Honourable Court is against the decision of the Putative Respondent on 28.2.2018 for YA 2017 where the Applicant seeks an order to quash the said decision and also to refund the paid tax by the Applicant.

[28] The duration between the decision made by the Respondent for YA 2017 which was dated on 28.2.2018 and the date of the Applicant's filing of this leave application on 8.3.2023 is approximately 5 years.

[29] The Putative Respondent submits that though the discretion is still with the Court to act by way of judicial review in revenue cases, the order of certiorari will not be issued unless the Applicant could prove that there is an apparent lack of jurisdiction or blatant failure by the Respondent to perform statutory duty or there is a severe breach of natural justice caused by the Respondent.

[30] Based on the present case facts, when the assessment for YA 2017 was issued by the Putative Respondent upon the Applicant submit their tax return, no appeal were made. This implied that the Applicant conceded to the assessment. If the Court allows the Applicant's judicial review application, it would mean this Court bypassing the SCIT.

[31] The Putative Respondent submits the facts and situation in this instant case differ from those in the Wiramuda Decision. In Wiramuda, the challenge questioned the validity of Section 4C of the ITA subsequent to an audit, leading to the issuance of an Additional Assessment for YA 2018. However, in this case, the

Applicant did not get audited and they declared and labelled the compensation as part of their stock in trade.

[32] Based on paragraph 13 of the Affidavit in Support affirmed by Tan Swee Peng, the Putative Respondent submits that the Applicant admitted that prior to the Wiramuda Decision, the Putative Respondent's position was the compensation received from compulsory acquisition of property held as stock in trade was taxable under Section 4C of the ITA. In line with the Putative Respondent's position, the Applicant recognized the compensation from the compulsory acquisition of the Land as its income and subjected to income tax in YA 2017.

[33] Therefore, based on the above paragraph, the Applicant during the submissions of their YA 2017 was complying with Section 4C of the ITA, which was then a valid law. The exhibit TB-8 explicitly indicated that the Applicant filed their e-C on 28.2.2018 for YA 2017 abiding to the prevailing valid law at that time.

[34] Thus, the Putative Respondent's argued that the Order in exhibit TB-3 the Federal Court, should be read prospectively for other future assessment and not retrospectively for other cases.

[35] The decision of the Federal Court was made on 9.12.2022. There was no mention in the Order that the law would be read retrospectively nor prospective. In such situation, one must look at each situation. The Putative Respondent urged this Court to take into consideration the case of *Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat* and another case [2017] 3 MLJ 561; [2017] 4 MLRA 554; [2017] 5 CLJ 526; [2017] 4 AMR 123 and *Vignesh Naidu a/l Kuppusamy Naidu v. Prema Bonanza Sdn Bhd & Another Appeal* [2023] 3 MLRA 333; [2023] 4 CLJ 715; [2023] 2 MLJ 776 and to take it as prospective ruling.

The Law

[36] The Federal Court in *WRP Asia Pacific Sdn Bhd v. Tenaga Nasional Bhd* [2012] 4 CLJ 478; [2012] 4 MLRA 257; [2012] 4 MLJ 296 at 303, speaking through Suriyadi Halim Omar FCJ (as he then was) held:

"... Leave may be granted if the leave application is not thought of as frivolous, and if leave is granted, an arguable case in favor of granting the relief sought at the substantive hearing may be the resultant outcome. A rider must be attached to the application though i.e. unless the matter for judicial review is amenable to judicial review absolutely no success may be envisaged."

[37] The test laid down for leave to commence a judicial review in **WRP Asia Pacific Sdn Bhd *(supra)*** are as follows:

37.1 whether the subject matter is amenable to judicial review; and if so

37.2 from the materials available, whether the application is frivolous and if not thought as frivolous, to consider that the applicant has an arguable case to obtain the relief sought at the substantive hearing.

[38] The principles governing applications for leave to commence judicial review proceedings have also been set out in *Tang Kwor Ham & Ors v. Pengurusan Danaharta Nasional Bhd & Ors* [2006] 1 MLRH 507; [2006] 1 CLJ 927; [2006] 5 MLJ 60 at 69 where Gopal Sri Ram JCA (as he then was) held:

[10]"...the High Court should not go into the merits of the case at the leave stage. Its role is only to see if the application for leave is frivolous... So too will the court be entitled to refuse leave if it is a case where the subject matter of the review is one which by

settled law (either written law or the common law) is non-judiciable."

[39] It is trite that the Applicant have to satisfy the tests propounded in the abovementioned cases to secure the leave to commence the judicial review proceedings. At this stage, the court need not go into the merits of the case, but only to see if the subject matter is amenable to judicial review or whether the application for leave is frivolous.

[40] In any event, a judicial review is the discretion of the court, the application for leave to commence judicial review may be allowed in exceptional circumstances as explained by the then Supreme Court in *Government of Malaysia & Anor v. Jagdis Singh* [1987] 2 MLJ 185; [1986] 1 MLRA 207; [1987] CLJ REP 110 which held:

> "Held: allowing the appeal: (1) the discretion is still with the courts to act by way of judicial review but where there is an appeal provision available to the applicant, certiorari should not normally issue unless there is shown a clear lack jurisdiction or a blatant failure to perform some statutory duty or in appropriate cases a serious breach of the principles of natural justice."

The decision of the Court

The Putative Respondent deemed decision is amenable to judicial review

[41] Order 53 rule 2(4) of the ROC expressly allows persons who are "adversely affected" by the decision made by a public authority to initiate judicial review applications. For ease of reference, subrule 4 is reproduced as follows:

> "(4) Any person who is adversely affected by the decision, action or omission in relation to the exercise of the public duty or function shall be entitled to make the application."

[42] The requirements of Order 53 of the ROC are mandatory and must be complied with, failing which the application would not be entertained by the Court.

[43] The Putative Respondent submits that it has made no decision which is amenable to judicial review and that the Applicant's application is premature. It is to say that the Putative Respondent's non-reply to the Applicant's letter does not amount to a decision amenable to judicial review under Order 53 of the ROC.

[44] It is trite law that failure or refusal by a public authority to make a decision is also amenable to judicial review. The Courts will have to allow the leave for judicial review in such circumstances.

[45] In *Orange Rederiet Aps v. Ketua Pengarah Hasil Dalam Negeri* [2018] MLRHU 165; [2018] 1 LNS 384; [2018] MLJU 218, Azizah Nawawi J (now JCA) had allowed the leave application and had stated that: -

> "[14] On the same day, **the applicant also wrote to the DGIR stating its legal position** that pursuant to Article IX of the Malaysia-Denmark DTA and the case laws, payments received by the applicant from Wira Swire are not subject to withholding tax. Furthermore, the applicant reiterated that Article IX of the Malaysia-Denmark DTA prevails over S. 4A (iii) of the ITA 1967. The **applicant also expressly stated in the letter that if the DGIR fails to respond favourably to the applicant's representation and appeal, then the applicant will treat its appeal and representation as being rejected by the DGIR.**
>
> [15] When the DGIR fails to respond to the applicant's letter dated 29.12.2016, the applicant takes the position that the DGIR's letter dated 29.12.2016 is the decision of the DGIR

and deemed to be have been served on the applicant on 29.1.2017. **Hence, the applicant filed this application for judicial review action."**

(emphasis added)

[46] It is important to note that Order 53 of the ROC allows for a broader scope of reviewable decisions as compared to the previous provisions under the Rules of the High Court 1980. A decision deemed made by the Putative Respondent is sufficient to initiate an application for judicial review. In **Tang Kwor Ham & Ors** *(supra)* the Court of Appeal held: -

"[60] The other point raised by learned counsel before us, with far less confidence, is that there was here no "decision" by anyone. And. Since O. 53 r. 2(4) speaks of a "decision", the applicants have no cause to argue on an application for judicial review. **Again, I cannot agree ... O. 53 r. 2(4) must not be read in isolation. It must be read contextually, together with O. 53 r. 3(6)** which provides ...

[61] **If the sub-rules are read together and in their proper context, it can be seen that three need not always be an actual decision by someone."**

(emphasis added)

[47] I noticed that the High Court has adopted a similar position in allowing judicial review against deemed decisions made by public authorities. In this regard, the High Court has declined to rely on older decisions which were premised upon Order 53 rule 2(4) of the Rules of High Court 1980, where the ambit of reviewable decisions are limited.

[48] I can provide no better reference than the case of Impian *Seloka Sdn Bhd v. Merited Kewangan Malaysia* [2022] MLJU 3479;

[2022] AMEJ 2020 wherein my learned brother, Wan Ahmad Farid J held as follows: -

"[27] The learned Senior Federal Counsel attracted my attention to the impugned letter and referred me to the judgment of *the Court of Appeal Abdul Rahman bin Abdullah Munir & Ors v. Datuk Bandar Kuala Lumpur & Anor* [2008] 6 MLJ 704 CA. **The learned SFC then submitted that the Minister's non-response to the impugned letter does not constitute a decision** within the meaning of O. 53 r. 2(4). In short, the learned SFC contended that any attempt to convert a "deemed **decision" would give rise to an artificial meaning to the word "decision."**

[28] With respect, **one should approach the decision on** this specific issue in Abdul Rahman bin Abdullah Munir with caution. My reason is this. **The decision of the Court of Appeal is premised on O. 53 r. 2(4) of the former Rules of High Court 1980**. It states as follows: -

> Any person who is adversely affected by the decisions of any public authority shall be entitled to make the application.

However, **the new O. 53 r. 2(4)** of the **ROC** provides as follows: -

> **Any person who is adversely affected by the decision, action or omission** in relation to the existence of the public duty or function shall be entitled to make the application.

[29] The **new O. 53 r. 2(4) of the ROC has added the phrase "decision, action or omission in relation to the existence of the public duty or function."** In my view, **the word omission is simply a failure to make a decision. It is a**

non-decision. With the introduction of the word "omission" in the new O. 53 r. 2(4), the question of an "artificial decision" does not longer arise."

(emphasis added)

a) (See: *Syarikat Kapasi Sdn Bhd v. Menteri Kewangan Malaysia and other cases* [2023] AMEJ 0471; [2023] MLJU 524;

b) *BD Agriculture (Malaysia) Sdn Bhd v. Menteri Kewangan Malaysia* [2023] 4 AMR 963; [2023] MLJU 430;

c) *CMMT Investment Ltd v. Menteri Kewangan Malaysia* [2022] MLJU 360)

[49] Based on the above, it is evident that the Putative Respondent's deemed decision of 7.3.2023 arising from its non-reply to the Applicant's letter can be amenable to judicial review under O. 53 rule 2(4) of the ROC.

Out of time

[50] The Putative Respondent contends that the application is time-barred by approximately 5 years since the YA 2017 Assessment was completed on 28.2.2018. However, I find that the subject matter for this judicial review pertains to the Putative Respondent's deemed decision to refuse the Applicant's Discharge Application in compliance with Wiramuda Decision, and not the YA 2017 Assessment.

[51] In **BD Agriculture** *(supra)* the High Court recognised this: -

"[30] But not to make any decision, in the context of the urgency of the time frame, would amount to an omission within the context of O. 53 r. 2(4) of the ROC and I so hold. **The Minister's inaction or omission is now the subject matter**

> **of the leave application for judicial review.** It is **not the issuance of the NAA by the DGIR... "**

(emphasis added)

[52] In the instant case, I find that the Applicant's Discharge Application to the Putative Respondent premised upon the Federal Court's decision in Wiramuda dated 9.12.2022. The Applicant seeks compliance from the Putative Respondent with the Wiramuda Decision, as Enclosure 1 reflects the Putative Respondent's refusal to comply. Clearly, the grounds of this application arose by 9.12.2022. Therefore, this Court views that Enclosure 1 was filed within 3 months from 9.12.2022 (when the grounds of the application arose), and also within 3 months from the date of the Putative Respondent's deemed decision of 7.3.2023.

Alternative Remedy

[53] The Putative Respondent contended that the Applicant must exhaust the alternative remedy of appealing to the SCIT.

[54] The Applicant in the instant case seeks Mandamus orders for the Putative Respondent to refund the taxes paid in the previous YA, where gains from compulsory acquisition were previously subjected to tax. Therefore, I am of the view that the High Court has the authority to grant such reliefs.

[55] Even in respect of judicial reviews against tax assessments under the ITA, the then Supreme Court has held in **Jagdis Singh** *(supra)* that the Revenue is not immune from judicial review notwithstanding the availability of an alternative remedy, so long as exceptional circumstances exist in the form of:

"... a clear lack of jurisdiction or a **blatant failure to perform some statutory duty** or in appropriate cases **a serious breach of the principles of natural justice..."**

(emphasis added)

[56] This Court views that the Putative Respondent failure to follow the Federal Court's decision in Wiramuda renders its decision flawed. Moreover, I am of the view that the Putative Respondent has no right to retain the taxes paid by the Applicant for gains from the compulsory acquisition of the Subject Lands. Additionally, the Putative Respondent has also unjustly enriched from both collecting and retaining of such taxes.

[57] Based on the above, it is my view that the Applicant's case is neither frivolous nor vexatious. This application raises important questions of law: -

(a) Whether the Putative Respondent can refuse to recognise and give effect to the Wiramuda Decision which has held, Section 4C of the ITA to be unconstitutional as it contravenes Art 13(2) of the FC?

(b) Whether the Putative Respondent can refuse to refund the Applicant the amount of taxes arising from and paid on the compensation received for the compulsory acquisition of the Subject Lands notwithstanding the Wiramuda Decision by the Federal Court?

[58] The Court is of the view that the above questions of law is more suitable to be decided by this Court at the substantive stage. At the leave application, the Court is not supposed to descend into the substantive merits of the application.

Conclusion

[59] Bearing in mind, that this is an application for leave to commence judicial review proceeding under Order 53 of the ROC, it is trite that test for leave to commence with judicial review must be complied with.

[60] Having considered the application, it is my opinion that the Applicant has met the leave threshold of the judicial review. It is clear that there is a clear and arguable case presented by the Applicant. This application for leave is neither frivolous nor vexatious.

[61] Accordingly, the application for leave to commence judicial review proceeding is hereby allowed with costs awarded in the cause.

Dated: 18 DECEMBER 2023

(Ahmad Kamal Md. Shahid)
Judge
High Court Kuala Lumpur

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