

PETROLIUM NASIONAL BERHAD

v.

PENTADBIR TANAH DAERAH KOTA TINGGI;
KOO MING KUANG & ANOR (INTERVENER)

High Court Malaya, Johor Bahru
Choo Kah Sing JC
[Land Reference No: 15-76-12-2012]
26 March 2017

Land Law: Acquisition of land — Objection against amount of compensation awarded — Applicant objected to amount of compensation awarded to interveners — Whether application was res judicata — Whether applicant had to adduce his own valuer's report to establish prima facie case — Land Acquisition Act 1960, Third Schedule, para 2(1)

This was an application by the applicant, being the acquiring agent, against the amount of compensation award by the land administrator ('the award') to the interveners following the acquisition of the scheduled land. In this proceedings, the interveners contended, that the court had no jurisdiction to hear the applicant's application as the consideration of the award had already been determined by a previous decision of the High Court ('previous proceedings') and therefore the application was *res judicata*; and the applicant could not object to the award without filing its own valuation report.

Held (dismissing the application with costs):

(1) The object and exercise which were carried out by the assessors in the previous proceeding was different from the object and exercise to be carried out by the assessors in the present application. In the previous proceedings, the court had considered the question of whether the land administrator's award was inadequate and found it to be not inadequate. In this application, the court had to consider whether the Land Administrator's award had over compensated the interveners based on the available evidence. Accordingly, the present application was not *res judicata*. (paras 18, 25 & 26)

(2) Pursuant to para 2(1) of the Third Schedule to the Land Acquisition Act 1960, the burden lay with the applicant to establish a *prima facie* case by adducing his own valuer's report as evidence to prove the same. If the applicant failed to adduce his own valuer's report, it followed that the applicant's case could not establish a *prima facie* case. In the present case, the applicant did not adduce its valuer's report in court. Therefore, there was nothing in the applicant's case that could establish a *prima facie* case. (*Ong Yan & Anor v Collector of Land Revenue (refd)*). (paras 28-30)



Case(s) referred to:

A Karunathan Arunasalam & Ors v. Pentadbir Tanah Daerah Petaling & Another Appeal [2011] 1 MLRA 418 (refd)

Jitender Singh Pagar Singh & Ors v. Kerajaan Malaysia [2010] 1 MLRH 454 (refd)

Ong Yan & Anor v. Collector Of Land Revenue Alor Gajah Malacca [1985] 2 MLRH 42 (refd)

Legislation referred to:

Land Acquisition Act 1960, s 37(1)(b), First Schedule, para 1(3A), Third Schedule, para 2(1), (3)

Counsel:

For the applicant: Preetha Pillai (Khong Siong Sie with her); M/s Skrine

For the respondent: Suhana Sabil; State Legal Adviser

For the interveners: Gurdiah Singh Nijar (Tan Hee Soon with him); M/s Tan Hee Soon, Wong & Partners

JUDGMENT

Choo Kah Sing JC:

Introduction

[1] The applicant was the acquiring agent of a piece of land known as Lot No PTD 957, Hakmilik No HSM 98, Mukim Pengerang, Daerah Kota Tinggi (hereinafter referred to as 'the scheduled land'). The land acquisition exercise was to pave the way for the development of a refinery and petrochemical integrated development project (RAPID) in the State of Johore.

[2] On 19 November 2012, the Land Administrator of Kota Tinggi held an enquiry to determine the values of the scheduled land and the buildings erected on the scheduled land. The enquiry was attended by all relevant parties, including representative from the applicant company. The 1st intervener was the owner of the scheduled land. The 2nd intervener was the owner of the buildings on the scheduled land.

[3] An assessment of the values of the scheduled land and the buildings was carried out during the enquiry. At the end of the enquiry, the Land Administrator determined a compensation amount for the scheduled land, buildings and other claims as fair value. The interveners were then awarded with the compensation amount by the Land Administrator.

[4] The applicant, being the acquiring agent, was not satisfied with the Land Administrator's award. On 7 December 2012, the applicant filed a Form N in protest of the Land Administrator's award. The protest was lodged pursuant to s 37(1)(b) of the Land Acquisition Act 1960 (hereinafter referred as 'LAA 1960'). The reason provided in the Form N is as follows:



“Jumlah pampasan yang diberikan adalah jauh terlalu tinggi berbanding dengan jumlah nilai yang dicadangkan oleh pihak Jabatan Penilaian dan Perkhidmatan Harta Johor.”

[5] As a result of the filing of the Form N by the applicant, the Land Administrator had referred the matter to the High Court for its determination.

[6] The learned counsel for the interveners raised an objection on the day of the hearing of the proceeding. The learned counsel for the interveners contended that this court has no jurisdiction to hear the applicant's application. The interveners' learned counsel submitted two grounds in his objection. First, the consideration of the Land Administrator's award had already been determined by a previous decision of the High Court via consolidated Suits No 15-12-1-2013 and 15-13-1-2013. Therefore, the applicant's application to determine again the Land Administrator's award in this court is *res judicata*.

[7] Secondly, the applicant cannot object to the Land Administrator's award without filing its own valuation report. The applicant cannot rely on a valuation report prepared by the Jabatan Penilaian dan Perkhidmatan Harta, Johore (hereinafter referred to as the JPPH's report) to support its case in this land reference proceeding. The applicant has to file its own valuation report in the proceeding, the learned counsel for the interveners submitted.

[8] On 23 February 2017, this court allowed the interveners' objection, and the applicant's application was dismissed. This court maintained the Land Administrator's award. The reasons for the decision of this court are set out as below.

The Finding Of This Court

First Objection: The Applicant's Application To Determine Again The Land Administrator's Award In This Court Is *Res Judicata*

[9] It is instructive to understand the chequered history of this case in order to appreciate the argument raised by the learned counsel for the interveners.

[10] At the outset, the 1st and 2nd interveners were the applicants in two land reference proceedings, namely No 15-12-1-2013 and 15-13-1-2013 respectively. Both proceedings were filed in reference to the protest of the Land Administrator's award dated 19 November 2012.

[11] The interveners (as the applicants in the two land reference proceedings) were not satisfied with the Land Administrator's award and sought a higher value of compensation at the High Court. The two land reference proceedings and this present land reference proceeding were consolidated and heard together at the High Court.

[12] In the consolidated proceeding, the counsel for the interveners (as the applicants in the two land reference proceedings) raised an objection to



the locus of the applicant. It was submitted that the applicant was not an 'interested person' in the scheduled land pursuant to s 37 of the LAA 1960, and therefore, had no *locus standi* to file this land reference proceeding and ought not to be heard in the consolidated proceeding, the learned counsel for the interveners in the consolidated proceeding argued. The High Court in the consolidated proceeding held in favour of the interveners' counsel's objection. As a result, this present proceeding was dismissed at the previous High Court in the consolidated proceeding.

[13] The previous High Court then proceeded to hear the two land reference proceedings. The previous High Court and its assessors decided to maintain the Land Administrator's award after hearing the parties' submissions.

[14] With regard to the applicant's land reference proceeding (this proceeding), the applicant was not satisfied with the ruling of the previous High Court and filed an appeal to the Court of Appeal. On 31 October 2015, the Court of Appeal reversed the previous High Court's ruling and ordered the matter to be remitted to the High Court for determination. As a result, the applicant's land reference proceeding ended up in this High Court.

[15] Against the aforesaid backdrop, the interveners' counsel submitted that the present proceeding is *res judicata*. The interveners' counsel submitted that the Land Administrator's award has already been determined and assessed by the assessors in the consolidated proceedings. To re-examine the Land Administrator's award would require this court to re-examine the earlier evidence which had been assessed by the assessors in the previous High Court. Such an exercise would tantamount to the same subject matter being litigated twice, the learned interveners' counsel argued.

[16] This court is of the considered view that the interveners' counsel's submission could not hold true. First, the interveners' previous land reference proceedings stemmed from the two Form N filed by the respective interveners. In the two Form N, the interveners objected to the Land Administrator's award on the basis that they were not adequately compensated by the award. As such, the entire exercise carried out by the assessors in the interveners' proceedings was to determine whether the Land Administrator's award was inadequate in compensating the interveners' losses. On the contrary, the applicant's land reference proceeding, ie this present proceeding, is to determine whether the Land Administrator's award had over compensated the interveners' losses. There is a clear distinction between the two references to the court. On one hand, the interveners were seeking to increase the Land Administrator's award; on the other hand, the applicant is now seeking to reduce the Land Administrator's award.

[17] In the consolidated proceeding, the assessors had scrutinised the valuation report filed by the interveners in support of their assertion that they were not adequately compensated. The assessors had studied the interveners' valuation report and used it to compare with the respondent's valuation report which



was the JPPH's report. Whereas, the assessors in this present proceeding have to consider the applicant's evidence, such as a valuation report, to support its contention that the interveners were over compensated.

[18] The object and exercise which were carried out by the assessors in the consolidated proceeding is different from the object and exercise which are going to be carried out by the assessors in the present proceeding. In the former, the assessors considered whether to raise the Land Administrator's award, and in the latter, the assessors will consider whether to reduce the Land Administrator's award.

[19] The parties, the scheduled land, documents and the JPPH's report may be the same in the interveners' proceedings and the applicant's proceeding. However, the questions to be considered by the assessors in the interveners' proceedings and the present proceeding are clearly divergent.

[20] Secondly, the court and the assessors had been given different 'terms of reference' under the various Form O filed by the Land Administrator referring the matters (the interveners' objection and the applicant's objection) to court by way of reference. On one hand, with regard to the Form O of the interveners' objection, the term of reference of the court and assessors was to determine whether the Land Administrator's award was inadequate and should be increased. On the other hand, with regard to the Form O of the applicant's objection, the term of reference of this court and the assessors is to determine whether the Land Administrator had over compensated the interveners and whether the award should be decreased.

[21] Flowing from the preceding paragraph, it is axiomatic that the court and assessors in the consolidated proceeding were precluded from reducing the Land Administrator's award since the term of reference is to determine whether the compensation is inadequate and should be increased. Likewise, this court and assessors are precluded from increasing the Land Administrator's award since the term of reference is to determine whether the interveners were over compensated and thus decrease the award. The court and assessors, when exercising their discretion in a land reference proceeding, are bound by the matters which are being referred to them in the Forms N and O within the ambit of the law.

[22] Notwithstanding the aforesaid, if an award is made contrary to the law, the court still has the jurisdiction to reduce the land administrator's total award by not allowing the wrongly awarded amount to be paid even though the reference is only to determine whether the compensation is inadequate. For example, where an award which is given for the value of a building on a scheduled land in which the said building is not permitted to be erected therein by virtue of the category of land use or an express or implied condition or restriction to which the scheduled land is subject or deemed to be subject under a State land law (see paras 1(3A) of the First Schedule of the Land Acquisition Act 1960), the court is not precluded from reducing the Land Administrator's award even though



the reference is to determine whether to increase the Land Administrator's award. Further, if the Land Administrator has adopted a wrong principle in determination of the compensation value, the court is also not precluded from interfering with the land administrator's award.

[23] The applicant's counsel submitted that the previous High Court did not make a ruling in the interveners' proceedings for *res judicata* to apply. The present High Court is going to decide for the first time whether the Land Administrator's award had over compensated the interveners, the learned applicant's counsel submitted. The relevant passage of the previous High Court's decision in the consolidated proceeding states as follows:

“(2) Untuk dan berkenaan dengan Rujukan Tanah No 15-12-01-2013 dan Rujuk Tanah No 15-13-01-2013

Mahkamah dan Pengapit-Pengapit Hakim sebulat suara membuat kesimpulan bahawa Wang Pampasan yang diawadkan oleh pihak Responden kepada Pemohon-Pemohon adalah lebih daripada memadai tetapi oleh kerana bukan di dalam bidangkuasa Mahkamah untuk menurunkan amaun yang diawadkan MAKA

(a) ADALAH DIPERINTAHKAN bahawa amaun yang telah diawadkan oleh pihak Responden kepada Pemohon-Pemohon dikekalkan;

(b) ...;

(c) ...;

(d) ...”

[24] Based on the above excerpt of the judgment of the previous High Court, the court and the assessors had considered the valuation reports adduced by the interveners (the applicants in the previous proceeding) and the respondent. After having considered the evidence, the assessors had unanimously agreed to maintain the Land Administrator's award.

[25] In the previous land reference proceeding, the court had considered the question whether the Land Administrator's award was inadequate and found it not inadequate. Now, in this proceeding, this court has to consider whether the Land Administrator's award had over compensated the interveners based on the available evidence before the assessors of this court.

[26] This court is satisfied that the present proceeding is not *res judicata*. Hence, the first ground of objection raised by the interveners' counsel was dismissed.

Second Objection: The Applicant Could Not Object To The Land Administrator's Award If The Applicant Did Not File Its Own Valuation Report

[27] With regard to this second ground of objection, this court refers to para 2 of the Third Schedule (Evidence and Procedure in Land Reference Cases) of the LAA 1960 which states as follows:



2. Valuer's report and oral evidence

(1) The applicant's valuer's report alone must establish a *prima facie* case for the applicant.

(2) Oral evidence by the applicant's valuer shall only be adduced during cross-examination and re-examination, if any.

(3) The respondent's valuer's report must be sufficient to rebut the applicant's valuer's report.

(4) Subparagraph (2) shall apply to the respondent's valuer as it applies to the applicant's valuer.

[28] Paragraph 2(1) above states that the applicant's valuer's report alone must establish a *prima facie* case for the applicant. The wording in para 2(1) connotes, first, the applicant must have his own valuer's report; and secondly, the applicant's valuer's report by itself must sufficiently establish a *prima facie* case. The burden is placed on the applicant to convince the court that its valuer's report establishes a *prima facie* case.

[29] In *Ong Yan & Anor v. Collector Of Land Revenue Alor Gajah Malacca* [1985] 2 MLRH 42, it was held as follows:

"In land acquisition cases the burden is on the applicant to make out a *prima facie* case of inadequate award. Only when he succeeds in doing so would the respondent be called upon to introduce his evidence; otherwise the applicant's case must fail and the Collector's award should stand."

"... The findings of an expert valuer, though based on mere opinion of the value of the land constitute a *prima facie* case, provided of course sound reasons are given for such opinion. It will then be open to the Collector to challenge this opinion by producing more persuasive proof on comparative sale of lands in the same neighbourhood."

[30] The above excerpt clearly explains the burden lies with the applicant to establish a *prima facie* case by adducing his own valuer's report as evidence to prove the same. If the applicant failed to adduce his own valuer's report, it follows that the applicant's case could not establish a *prima facie* case. In the present case, the applicant did not adduce its valuer's report in court. It then follows that there is nothing in the applicant's case that could establish a *prima facie* case.

[31] The object behind para 2(1) is further fortified in para 2(3) which says: 'the respondent's valuer's report must be sufficient to rebut the applicant's valuer's report'. Clearly, para 2(3) makes reference to two distinct valuer's reports, namely, one from the applicant's valuer, and the other from the respondent's valuer.

[32] In the present case, the applicant wanted to rely on the JPPH's report, which is the respondent's valuer's report to challenge the Land Administrator's



award. In a normal course of a land reference proceeding, the applicant will file his own valuation report which will be prepared by a private licenced valuer. With regard to the respondent's case, the respondent's valuation report will be prepared by the Valuation and Property Services Department of the Ministry of Finance (or Jabatan Penilaian dan Perkhidmatan Harta - in acronym known as 'JPPH'). The respondent will rely on the valuation report and the rebuttal report prepared by JPPH in defending the applicant's claim.

[33] In the present proceeding, the applicant did not adduce its own valuer's report. Instead, the applicant wanted to rely on the respondent's valuer's report which was prepared by JPPH. The counsel for the applicant submitted that JPPH as an independent institution could prepare a valuation report upon a request made by any local authority, statutory body or body corporate in which the government of the state government has an interest. This court is of the opinion that the status of the applicant indeed qualifies it to make a request to JPPH to prepare a valuation report. However, in this proceeding, the JPPH's report was not prepared at the request of the applicant. JPPH merely extended a copy of their valuation report to the applicant at their request. The JPPH's report was a detailed report prepared for the respondent as its valuation report at the proceeding. The JPPH's report which was not prepared at the request of the applicant could not be taken as the applicant's valuation report.

[34] The applicant ought to have engaged an independent valuer to prepare a valuation report. If the assessment of the applicant's independent valuer as to what is a fair value is the same as stated in the JPPH's report, that could be used by the applicant to argue that the Land Administrator ought to have relied on the recommendation made in the JPPH's report. In such a case, the applicant could have established a *prima facie* case without much effort.

[35] The law requires the applicant to establish a *prima facie* case through the applicant's valuer's report. Paragraph 2(1) of the Third Schedule of the LAA 1960 could not be worded any clearer. Regrettably, the applicant did not comply with this fundamental requirement of the law. If the applicant had filed its own valuer's report containing an assessment which is consistent with the assessment in the JPPH's report, a *prima facie* case would have easily been established.

[36] In *Jitender Singh Pagar Singh & Ors v. Kerajaan Malaysia* [2010] 1 MLRH 454, at p 460, Justice Aziah Ali (as Her Ladyship then was, now a Federal Court Judge) stated as follows:

"The law accords the judge with two experts whose sole role is to decide the amount of compensation after having considered the documentary evidence including **the valuation reports of both parties** [Emphasis Added] and the submissions made. The duty of the two assessors is therefore limited to that extent ...The judge is obliged to be satisfied that the assessors have, in forming their opinions, considered all matters that ought to be considered under the Act ..."



[37] The above passage offers the proposition that in order for the assessors to form their opinions, it is necessary for them to consider both the applicant's and respondent's valuers' reports. In this instant case, the assessors did not have the benefit of the valuation reports of both parties, the assessors only have the JPPH's report to consider. The assessors informed the court that without a private valuer's report from the applicant, they could not make a fair assessment.

[38] In *A Karunathan Arunasalam & Ors v. Pentadbir Tanah Daerah Petaling & Another* [2011] 1 MLRA 418, p 423, the Court of Appeal held as follows:

“Since there has been no evidence adduced that would establish a *prima facie* claim in favour of the applicant ... Arising from the failure of the appellants to establish a *prima facie* case the court has to accept the quantum of compensation as awarded by the Land Administrator ...”

[39] In conclusion, guided by the above decision of the Court of Appeal, this court is satisfied that the applicant has failed to establish a *prima facie* case at this juncture because it has failed to adduce its own valuer's report. This court accepted the interveners' counsel's objection based on his second ground of objection that the applicant could not object the Land Administrator's award without filing its own valuation report. This court found the applicant did not satisfy the minimum threshold, ie to establish a *prima facie* case, in order to proceed to the next stage of the proceeding. Hence, the applicant's land reference proceeding was dismissed with costs, and the quantum awarded by the Land Administrator shall be maintained.

