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Land Acquisition Act 1960 – A Double Edged Sword?

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Article 13(1) of the Federal Constitution (FC) provides that “no person shall be deprived of property save in accordance to the law”; whilst Article 13(2) of the FC provides that “no law shall provide for the compulsory use or acquisition of property without adequate compensation”. However, in light of the existence of the Land Acquisition Act 1960 (LAA), are these constitutional rights justly secured?

The LAA could be deemed as a necessary evil as it allows the State to redevelop and repurpose land for urbanisation and modernisation to ensure all land is maximised to its full potential. However, one could also argue that the existence of LAA is draconian as it empowers the State to acquire land and deprive a person of their property as Section 3(1) of LAA provides:

- “(1) The State Authority may acquire any land which is needed –
- (a) for any public purpose;
 - (b) by any person or corporation... which in the opinion of the State Authority is beneficial to the economic development of Malaysia... or,
 - (c) for the purpose of mining or for residential, agricultural, commercial, industrial or recreational purposes or any combination...”

At first glance, it seems as if the State must adhere strictly to the provisions of the LAA^[1] and does not have unfettered discretion in compulsorily acquiring the land of a citizen. However, in reality, it does not always play out this equitably. There are many instances whereby the State compulsorily acquires land under the *label or nomenclature* of “public purposes”^[2] as per Section 3(1)(a) of the LAA when the actual purpose falls out of that ambit.^[3]

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Bad administrative decisions tainted with illegality, irrationality, and procedural impropriety must surely be susceptible to Judicial Review (JR), especially when they deprive private landowners of their right to property for their personal or intended use in the façade of “public purpose”. This can be further explored in the Federal Court case of *DKLS Sunshine*^[5]. Our Head of Dispute Resolution, Rosli Dahlan represented the landowner in this appeal.

Background Facts

In *DKLS Sunshine*,^[6] the 2nd Respondent, PTD Seberang Perai, had purportedly invoked Section 3(1)(a) of the LAA to acquire DLKS’s land for “public purpose” when the acquisition was actually for industrial development which was expressly provided under Section 3(1)(c) of the LAA. To exacerbate matters, DLKS was not even served with Form A or Form D. In fact, the acquisition commenced without the issuance of Form A and in breach of various LAA provisions. These procedural irregularities were only discovered upon searches conducted by their then solicitors that Form A was gazetted on 17.4.2014 for the purported hybrid purpose.

Despite DKLS’s repeated objection, on 14.4.2016, PTD Seberang Perai had made a verbal award of the acquisition. PTD Seberang Perai had also failed to issue and serve on DLKS the written award in Form H until on 6.6.2016, almost 2 months after the verbal award confirming that such illegal acquisition will not be withdrawn. On 4.7.2016, DKLS filed an application for leave to commence judicial review.

The High Court upheld the Respondent’s preliminary objection raised that DKLS’s application was out of time and dismissed the JR. Subsequently, the Court of Appeal dismissed DKLS’s appeal without furnishing the written grounds. Dissatisfied by the outcome, DKLS filed an application for leave to appeal against the decision of the Court of Appeal.

Points Of Law Raised In The Appeal

At the Federal Court, DKLS raised the following points of law:

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(a) *Section 3(1)(a) Public Purpose v Section 3(1)(c) Industrial Purpose*

The acquisition was declared to be for industrial development covered under Section 3(1)(c) of the LAA but PTD Seberang Perai invoked Section 3(1)(a) of the LAA which provides for “public purpose”.

It was held in *United Development Company Sdn Bhd*^[7] that landowners must be protected against compulsory deprivation of their properties for some oblique motive disguised as “public purpose”. Section 3(1)(a) of the LAA is sometimes misused as an “umbrella” provision for land acquisition as Section 3(1)(b) and Section 3(1)(c) of the LAA both requires mandatory compliance of Section 3A to Section 3E of the LAA, which is not required if the land is acquired under Section 3(1)(a).

Hence, PTD Seberang Perai’s action in acquiring the land for industrial purposes under the guise of “public purpose” to circumvent the mandatory procedural requirements imposed by Section 3A to Section 3E of the LAA was argued to be *mala fide*. Ultimately, the State should utilise the appropriate provisions under the LAA when acquiring land.

(b) *When does the 3 Months’ Time Limit Start Ticking?*

Order 53 Rule 6(3) Rules of Court 2012 prescribed that an application for leave for judicial review shall be made within 3 months from:

- (i) the date when the grounds of application first arose; or
- (ii) the date the decision is first communicated to the applicant.

This could be interpreted as a two cut-off dates to make the application. In the context of land acquisition which involves various Forms in different stages, the courts have had various interpretations in respect of when the 3 months’ time limit starts to run, from Form D to Form E. The courts too have varying interpretations on when acquisition is deemed to be completed, from the issuance of Form K^[11] or upon the

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endorsement of the memorial of the acquisition on the document of title.^[12] Arguably, it would cause ‘*irreparable injustice*’^[13] and render the spirit of Article 13 of FC as “*merely illusory, devoid of any real substance*”^[14] to apply such blanket principles without regard to the particular facts and circumstances of each case.

Hence, in DKLS case, the State Government of Penang agreed in the Federal Court for the dispute be referred back to the High Court and subsequently, by way of a consent judgment, both Respondents agreed to withdraw the acquisition of DKLS’s land and paid RM8 million to DKLS as damages.

Conclusion

The thesis of this article is not that land acquisition is unneeded. Compulsory land acquisition is an important development tool for the State to ensure that land is available when needed for essential infrastructure and societal and/or economic benefits.

However, in instances where the landowner is financially capable and dedicated to developing the land, the State should respect the rights of these owners. This is especially true in cases where the landowners are capable of or are already developing the land for purposes which are in line with the intentions of the State. In these instances, the State could instead collaborate with these organisations or companies, rather than unjustly using the LAA as a way to deprive landowners of their land. This constitutes a breach of one’s constitutional rights under Article 13 of the FC.

Therefore, it is of utmost importance that the State must adhere strictly to the provisions of the LAA and not creatively interpret the provisions in a manner which satisfies their personal aims. Conclusively, this also illustrates why it is paramount to interpret the LAA together with the FC.

Authored by Lisa Yong, an Associate and Brenda Loh, a pupil with the firm’s Dispute Resolution practice.

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- [1] *Ee Chong Pang & Ors v The Land Administrator of the District of Alor Gajah & Anor* [2013] 2 MLJ 16
- [2] *United Allied Empire Sdn Bhd v Pengarah Tanah Dan Galian Selangor & Ors* [2015] MLJU 1988
- [3] *Sime Darby Plantation Bhd v Pengarah Tanah dan Galian Negeri Melaka & Ors* [2020] 7 MLJ 776 & *United Allied Empire Sdn Bhd v Pengarah Tanah Dan Galian Selangor & Ors* [2015] MLJU 1988
- [4] *Lee Hay v Yang Di Pertua Majlis Daerah Hulu Langat & Anor* [1998] 5 CLJ 367
- [5] *DKLS Sunshine Sdn Bhd v Kerajaan Negeri Pulau Pinang & Anor* [2017] MLJU 848.
- [6] *Supra n. 5*
- [7] *United Development Company Sdn Bhd v The State of Government of Sabah & Anor* [2010] 5 CLJ 986
- [8] *P Maradevan a/l Perisamy & Ors v Suruhanjaya Pilihan Raya & Anor* [2019] 2 MLJ 70
- [9] *Ee Chong Pang & Ors v The Land Administrator of the District of Alor Gajah & Anor* [2013] 2 MLJ 16
- [10] *Kijal Resort Sdn Bhd v Pentadbir Tanah Kemaman & Anor* [2015] 3 CLJ 861
- [11] *Ishmael Lim bin Abdullah @ Lim Keng Chew v Pesuruhjaya Tanah Persekutuan & Anor* [2015] 2 MLJ 126
- [12] *United Allied Empire Sdn Bhd v Pengarah Tanah dan Galian Selangor & Ors* [2018] 1 MLJ 661
- [13] *Superintendent of Lands and Surveys, Samarahan Division & Anor v Abas ak Naun & 5 Ors and another appeal* [2015] 6 MLJ 788

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