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Land Reference Proceedings: Disclosure Of Assessors' Written Opinions

Contact Persons:

Austen Emmanuel Pereira*Partner*

✉ austen@rdslawpartners.com

Bahari Yeow Tien Hong*Partner*

✉ bahari@rdslawpartners.com

Chia Loong Thye*Partner*

✉ ltchia@rdslawpartners.com

Falisa Abu Bakar*Partner*

✉ falisa@rdslawpartners.com

Farah Shuhadah Razali*Partner*

✉ farah@rdslawpartners.com

Lim Sheh Ting*Partner*

✉ shehting@rdslawpartners.com

Ooi Bee Hong*Partner*

✉ beehong@rdslawpartners.com

Rosli Dahlan*Partner*

✉ rosli@rdslawpartners.com

Tan Gek Im*Partner*

✉ gekim@rdslawpartners.com

In land acquisition disputes, the right to adequate compensation is a fundamental guarantee under Article 13 of the Federal Constitution. This right is embedded into the procedures outlined in the Land Acquisition Act 1960 (LAA 1960). In respect of Section 40C of the LAA 1960, the Federal Court in *Tegas Sejati Sdn Bhd v Pentadbir Tanah Dan Daerah Hulu Langat & Anor and Another Appeal* [2024] 4 CLJ 1 brought to light the importance of transparency and fairness in land reference proceedings by examining the requirement to disclose the assessors' written opinions to parties.

Brief Facts

On 11.12.1987, Tegas Sejati Sdn Bhd entered into a joint venture with Perbadanan Setiausaha Kerajaan Selangor (PSKS) to develop several lots of land in Hulu Langat, Selangor, with PSKS agreeing to relinquish its rights on the lands after receiving full consideration. 28 years later, on 23.7.2015, the State Government acquired parts of the land and subdivided the land into Lots 35126, 35127 and 35129 for the "Projek Lebuhraya Bertingkat Sungai Besi - Ulu Kelang (SUKE)" project with Lembaga Lebuhraya Malaysia (LLM) as the paymaster.

Disputes arose over the compensation assessment, particularly regarding the appropriate valuation date and inclusion of development costs. The Land Administrator, who was also named as the 1st Respondent by Tegas Sejati in this action was awarded R M59,706,236.85. This sum covered market value of the land, preliminary work costs, termination costs, site replacement costs and loss of profit.

Both Tegas Sejati and LLM objected to this sum, which led consolidated land reference proceedings under Section 36 of the LAA 1960 before a High Court judge. On 22.9.2020,

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Tegas Sejati sought to strike out LLM's land reference proceeding. The High Court heard the striking out application together with the merits of both land reference proceedings. The High Court dismissed Tegas Sejati's striking out application and land reference and allowed LLM's land reference.

Tegas Sejati appealed the High Court's decision and LLM cross-appealed as well, seeking a variation of the High Court's decision and a refund of an excess sum of over RM 31 million with interest. On 4.10.2022, the Court of Appeal dismissed Tegas Sejati's appeal and allowed LLM's cross-appeal. Tegas Sejati then appealed to the Federal Court raising several issues including whether there was non-compliance with Section 40C when the written opinions of the assessors were not made available to the parties during the land reference proceeding before the High Court and neither the written opinions were produced in the record of appeal before the Court of Appeal.

Decision Of The Federal Court

The Federal Court allowed the appeal by Tegas Sejati and found that there was non-compliance with Section 40C as the written opinions were not disclosed to the parties or even called for by the Court of Appeal. The matter was remitted to the High Court for a rehearing before another judge.

The decision by the Federal Court was based on its analysis of Section 40C which provides that "*The opinion of each assessor on the various heads of compensation claimed by all persons interested shall be given in writing and shall be recorded by the Judge.*"

In its decision, the Federal Court addressed key contentions raised by LLM's counsel regarding the disclosure of assessors' written opinions in land reference proceedings that:

- (a) Section 40C only requires the assessors' opinions to be provided in writing and recorded by the judge and that they are merely part of 'internal administration', which are only furnished to appellate courts if

necessary. If a party wishes to access these opinions, a formal application was required.

- (b) An appellate court should not examine the merits of the assessors' opinions or any inconsistencies with the judge's findings, as these pertain to subjective issues like factual assessment, evidence evaluation, compensation calculation and valuation principles, which were not appealable.

The Federal Court disagreed with LLM's counsel and examined the matter by looking at Article 13 of the Federal Constitution which safeguards the right to property and ensures adequate compensation for compulsory acquisition. The Federal Court held that the safeguard in Article 13(2) requires a protective rather than restrictive interpretation. Thus, the construction of the provisions in the LAA 1960 must serve to preserve the safeguard envisaged in Article 13(2).

The Federal Court acknowledged that the role of the assessors was to sit with the judge in hearing the objections and thereafter, will provide the judge with their views on the right to compensation as well as the quantum. The final decision will be made by the judge. Hence, the Federal Court explained that since judges were required to provide reasons for their decisions, the written opinions of assessors in land reference proceedings must also be disclosed to the parties involved so that they were given the opportunity to review and respond accordingly.

As such, it is fundamental that assessors' written opinions form part of the record of the land reference proceedings or record of appeal, in the event of an appeal. This would allow parties to prepare their arguments effectively and allow the appellate courts to evaluate how the assessors' opinions influence the judge's decision. If assessors' opinions were not produced in the record of appeal, it would be challenging to address how the adequacy of compensation was determined.

The Federal Court concluded that assessors' written opinions in land reference proceedings were not merely an internal administrative matter. In line with Section 45 of the

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✉ austen@rdslawpartners.com

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✉ shehting@rdslawpartners.com

Ooi Bee Hong

Partner

✉ beehong@rdslawpartners.com

Rosli Dahlan

Partner

✉ rosli@rdslawpartners.com

Tan Gek Im

Partner

✉ gekim@rdslawpartners.com

LAA 1960 which requires all land reference proceedings to be conducted in open court, it was imperative that there was transparency and fairness in open court proceedings including the way opinion evidence is treated.

Conclusion

The Federal Court's decision upholds landowners' rights by enforcing transparency and fairness in land reference proceedings. This decision highlights the necessity of a purposive interpretation of Section 40C of the LAA 1960 to uphold the constitutional guarantee of the right to property and adequate compensation in Article 13 of the Federal Constitution. By mandating the disclosure of assessors' written opinions, landowners can fully engage in the proceedings. This will ensure a fair evaluation of compensation and proper preparation for appeals.

Landowners should be vigilant in ensuring that all procedural requirements in the LAA 1960 are met, including the availability of assessor opinions. By actively participating in proceedings as well as engaging counsel to assist with the proceedings, landowners can better protect their rights and ensure that their compensation is determined fairly by ensuring proper access to all relevant documents.



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