

DECLARATIONS, NOT LAND: SEMANTAN ESTATE AND THE FEDERAL COURT'S HARD LINE ON REMEDIES AGAINST GOVERNMENT

by Kavin Raaj

The Federal Court's broad grounds in Semantan Estate (1952) Sdn Bhd v Kerajaan Malaysia & Ors and another application (13 November 2025) arise from two related motions for leave to appeal in a dispute over government occupation of land and the scope of mandamus and section 417 of the National Land Code (NLC).

Semantan Estate sought to use public law remedies to compel the transfer and registration of land in its favour, based on a 2009 High Court declaration recognising its beneficial interest and entitlement to possession. The Federal Court held that the case did not satisfy the threshold for leave under section 96 of the Courts of Judicature Act 1964 (CJA) and reiterated that where the proper constitutional relief is compensation, the courts will not order recovery of land against the Government.

Background Facts

Parties and applications

The applicant, Semantan Estate (1952) Sdn Bhd, claimed a beneficial interest in 263.272 acres of land in Mukim Batu, Wilayah Persekutuan, now held under CT 17038, formerly Lot 4647 (CT 12530).

Two separate motions were before the Federal Court:

1. 08(f)-250-07/2025 (W) – leave to appeal in the Mandamus Appeal, i.e. against the Court of Appeal's dismissal (24.6.2025) of Semantan's appeal from the High Court's dismissal (27.10.2021) of its judicial review for mandamus; and
2. 08(f)-251-07/2025 (W) – leave to appeal in the section 417 NLC Appeal, i.e. against the Court of Appeal's decision allowing the Registrar's appeal and setting aside a High Court order compelling the Registrar of Titles to transfer the land to Semantan Estate under section 417 NLC.

In both matters, Semantan Estate effectively sought to have the Land transferred and registered in its name.

The 2009 High Court order

The foundation of Semantan Estate's position was a 2009 High Court order, which declared that:

- i. Semantan Estate retained its beneficial interest in the 263.272 acres;
- ii. The Government had, through its servants/agents, taken unlawful possession of the land;

- iii. Semantan Estate was entitled to possession as against the Government; and
- iv. The Government was to pay mesne profits as damages for trespass, to be assessed by the Senior Assistant Registrar.

The order, however, was declaratory and did not expressly direct the Government or the Registrar to transfer or register the land in Semantan Estate's name.

Later steps – mandamus and section 417

Only in 2017, some eight years after the 2009 order, did Semantan Estate apply for:

- i. Judicial review, seeking mandamus to compel the Government to transfer the land; and
- ii. An order under section 417 NLC compelling the Registrar of Titles to effect the transfer so as to "give effect" to the 2009 declaration.

These applications eventually culminated in the Court of Appeal decisions of 24.6.2025 and the present leave applications.

The Law

Three main strands of law frame the Federal Court's analysis.

Section 96 CJA – leave test

Section 96 CJA governs civil appeals from the Court of Appeal to the Federal Court.

Leave is required and may be granted where:

- i. Under s.96(a): the case involves a question of general principle decided for the first time, or a question of importance where further argument and a Federal Court decision would be of public advantage; or
- ii. Under s.96(b): a decision as to the effect of a constitutional provision, including the validity of written law relating to it.

The Court cited Terengganu Forest Products and Datuk Syed Kechik, which stress that the question must be one of general legal principle not previously decided.

It also referred to Malanjum CJ's observations in Titular Roman Catholic Archbishop of Kuala Lumpur on the degree of public importance and the need for the legal issue to be finally resolved by the Federal Court.

Government Proceedings Act 1956

Section 29(1)(b) of the Government Proceedings Act 1956 ("GPA") prohibits courts from making any order for the recovery or delivery of land against the Government. This is a key statutory limit: litigants may obtain declarations or compensation, but not an order compelling the Government to hand over land.

Section 417 National Land Code

Section 417 NLC empowers the Registrar of Titles to do all things necessary to "give effect" to any judgment, order or direction of a court. It is ancillary and administrative: the Registrar gives effect to an existing operative order but does not create or enlarge substantive rights beyond what the court has ordered.

Previous Courts' Findings

Court of Appeal – Mandamus Appeal

In the Mandamus Appeal, the Court of Appeal held that the 2009 order was “purely declaratory in nature” and contained no operative or executory order directing the Government to transfer the land to Semantan Estate.

Without such a directive, there was no enforceable public duty upon which mandamus could issue. The Court also held that:

- i. Section 29(1)(b) GPA expressly prohibits orders for recovery or delivery of land against the Government;
- ii. Granting mandamus would circumvent this statutory bar; and
- iii. The proper remedy was compensation, assessed as at 3.12.1956, the date the Government took possession, consistent with section 44 of the Land Acquisition Enactment (Cap 140).

Court of Appeal – Section 417 NLC Appeal

In the section 417 NLC Appeal, the Court of Appeal allowed the Registrar’s appeal and set aside the High Court’s order compelling transfer. It held that:

- i. Section 417 NLC empowers the Registrar only to give effect to an existing judgment or order;
- ii. Since the 2009 order did not direct any transfer of title, there was nothing to implement under section 417; and
- iii. Both the mandamus and section 417 avenues were therefore legally unsustainable because they attempted to treat a declaration as if it were an executory command.

Counsel’s Arguments (Reconstructed)

The broad grounds do not detail submissions, but the general positions can be inferred.

Applicant (Semantan Estate)

Semantan Estate’s arguments can be summarised as follows:

1. Enforcement of the 2009 declaration
 - a. The 2009 declaration of beneficial interest and entitlement to possession was said to carry an implicit obligation on the Government and land authorities to restore registrable title.
 - b. Mandamus and section 417 NLC were presented as lawful mechanisms to give effect to that entitlement, not as attempts to bypass the GPA.
2. Constitutional and public importance
 - a. The case was framed as involving constitutional property rights and the consequences of long-term unlawful occupation by the State, thus allegedly satisfying section 96(b) CJA.
3. Public interest and long history
 - a. The age of the dispute (with possession taken in 1956) and its implications for government liability in land acquisitions were said to justify Federal Court clarification.

Respondents (Government and Registrar)

The Government and Registrar's likely stance:

1. Fact-centric dispute
 - a. The case turned on the wording of the 2009 order, the delay until 2017, and established principles of mandamus, GPA and section 417 NLC – in other words, a fact-driven application of settled law.
2. No new question of law
 - a. No novel question of general principle or conflicting Court of Appeal authority was identified; therefore section 96(a) was not engaged.
3. No real constitutional issue
 - a. The issues did not truly involve the effect of a constitutional provision, but rather remedial choices and statutory constraints. Section 96(b) CJA was therefore not satisfied.

Federal Court's Findings

Threshold under section 96 not met

The Federal Court reaffirmed the statutory test in section 96 CJA, citing Terengganu Forest Products, Datuk Syed Kechik, and the guidance in Titular Roman Catholic Archbishop. It reiterated that leave is reserved for:

- i. Questions of law of general principle not previously decided;
- ii. Issues of sufficient importance and novelty that clarification is in the public interest; or
- iii. Genuine issues as to the effect of constitutional provisions.

On the facts, the Court concluded that neither limb of section 96(a) nor 96(b) was satisfied.

Nature of the 2009 order

The Court reproduced the 2009 order and endorsed the Court of Appeal's conclusion that it was clear, unambiguous and declaratory:

- i. It declared beneficial interest, entitlement to possession, and ordered mesne profits;
- ii. It did not direct transfer or registration of the land.

The Court held that the late 2017 mandamus application was fact-centric, and no constitutional question of importance arose that required further ventilation by the Federal Court.

GPA and the limits of mandamus

The Federal Court agreed that section 29(1)(b) GPA barred orders for recovery/delivery of land against the Government, and that issuing mandamus to compel transfer would circumvent this statutory bar. The correct route was compensation, assessed as at 3.12.1956, when Semantan was first deprived of possession, as envisaged by section 44 of the Land Acquisition Enactment.

Section 417 NLC – ancillary only

On section 417 NLC, the Court held that the provision allows the Registrar only to give effect to an existing judgment or order. Since the 2009 order did not instruct

any transfer, there was nothing for the Registrar to implement, and section 417 could not be used to convert a declaration into an executory order.

Outcome and directions

The Federal Court therefore dismissed both leave applications, with no order as to costs, holding that they failed to meet the section 96 CJA threshold. It also directed that a case management date be fixed on 17 November 2025 at 9.00 a.m. before YA Tuan Roslan bin Mat Nor, to secure an early hearing date in the High Court, and ordered all parties to attend.

Commentary

The Semantan Estate decision is concise but significant for public law and land practitioners.

Declarations vs executable orders

The case is a powerful reminder that declaratory relief and executory relief are different. A declaration that a party has a beneficial interest and is entitled to possession does not, by itself, become an order to transfer land. If transfer is the intended outcome, counsel must secure an explicit operative order at the trial stage. Trying to “enforce” a bare declaration years later through mandamus or section 417 NLC is unlikely to succeed.

No backdoor around the GPA

The Court’s reliance on section 29(1)(b) GPA confirms that litigants cannot use public law remedies to evade statutory limits on remedies against the Government. Mandamus cannot be a backdoor to land recovery where Parliament has restricted relief to compensation.

This has practical consequences in historical and current acquisition cases: even where occupation was unlawful, the remedy may be monetary, not restoration of title.

Section 417 NLC – strictly administrative

The judgment also reinforces that section 417 NLC is strictly ancillary. The Registrar is not a second court and cannot expand, reinterpret, or “improve” a judgment. Where a judgment is declaratory only, section 417 is not applicable.

Leave discipline – fact-driven cases will stop at CA

Finally, Semantan Estate illustrates the Federal Court’s continued insistence on discipline at the leave stage. Long-running, fact-heavy disputes, even with constitutional overtones, will not cross the section 96 threshold unless they raise a clearly framed, novel question of law or a genuine constitutional issue.

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