

FORM N IN LAND ACQUISITION PROCEEDINGS: UNLOCKING PARTICIPATION RIGHTS IN LAND REFERENCES

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“...First, the issue involves a deprivation of property. Article 13(1) of the Federal Constitution guarantees that no person shall be deprived of property save in accordance with law. In the reading and application of this guarantee, there must be a propensity to safeguard as opposed to denying that guarantee. Unless and until there are clear express provisions restricting a right of participation in any exercise to deprive property, any relevant law must be read to allow if not encourage such participation. The adequacy of any compensation paid for the deprivation may otherwise be compromised.”

– Federal Court in ***Spicon Products Sdn Bhd v. Tenaga Nasional Bhd & Anor*** [2022] 4 CLJ 195

The Malaysian Federal Constitution bestows upon its citizens several fundamental rights. Amongst these, the right to property is specifically safeguarded by Article 13 of the Federal Constitution. The right to property inherently includes the entitlement to utilise and benefit from its use without interference. However, the protection in Article 13 is not an absolute one, as the same Article provides for the curtailment of the very right that it establishes:

“(1) No person shall be deprived of property save in accordance with law.

“(2) No law shall provide for the compulsory acquisition or use of property without adequate compensation.”

The Land Acquisition Act 1960 (“**LAA 1960**”) is one such law that was enacted for the purpose of governing the acquisition of land, the manner of challenging an acquisition process as well as providing the mechanisms for the assessment of adequate compensation to be made. This is made clear from the preamble of the LAA 1960 which states:

*“An Act relating to the **acquisition of land, the assessment of compensation to be made on account of such acquisition, and other matters incidental thereto.**”*

The LAA 1960 is enacted specifically for and limited to the Peninsular Malaysia in its application. The states of Sabah and Sarawak are governed by laws unique to

them namely, the Land Acquisition Ordinance Cap 68 for Sabah and Part 4 of the Sarawak Land Code (Cap 81) 1958 for Sarawak.

Overview of Land Reference Process

The procedure and constitution of the Court in a land reference proceeding is spelled out in the LAA 1960. Whilst a judicial review seeks to challenge any non-compliance of the procedural law of acquisition or invalidate the entirety of the acquisition, a land reference proceeding is confined to the matters enumerated in Sections 36 and 37 of the LAA 1960. The scope of land reference proceedings is restricted by Section 44 of the LAA 1960 which states:

“(1) In every proceeding under this Part the scope of the inquiry shall be restricted to a consideration of the interests of the persons affected by the objection.”

There are two ways in which the Land Administrator may make references to the Court: (i) on the Land Administrator’s own motion;⁴ and (ii) by way of an objection against the Land Administrator’s award. Central to this issue is the reference by way of an objection against the Land Administrator’s award.⁵ Where the reference to Court is by “any person interested in any scheduled land”, it is upon that person to make an application to the Land Administrator who in turn will refer the application to Court for determination.

The term “person interested” is peppered throughout the LAA 1960. As aptly highlighted by the Federal Court in *Spicon Products*, this phrase is “used quite liberally throughout the Act, sometimes as ‘interested persons’ (s 12(2)), ‘persons interested’ or ‘person whom he knows or has reason to believe to be interested therein’, and must thus be given a contextual and not literal meaning”.

In that regard, the LAA 1960 provides for the statutory mechanisms to challenge the award of compensation for compulsorily acquired lands under Section 37 of the LAA 1960.⁶ Section 37 of the LA allows any person interested, be it pursuant to a notice under Section 10 or 11 or any compensation made under Section 35 or Part VII, who has made a claim to the Land Administrator and refused to accept his award, or has accepted payment of the amount of such award under protest as to its sufficiency,⁷ to make an objection to the: (a) measurement of the land; (b) amount of compensation; (c) persons to whom it is payable; and (d) apportionment of the compensation.⁸ Section 38(1) of the LAA provides that any objections shall be made by a written application in Form N to the Land Administrator.⁹

Against that backdrop, the core issue in question is whether an interested person is permitted to file an application under Order 15 Rule 6 of the Rules of Court 2012 for leave to intervene in land reference proceedings, in absence of filing Form N.

TNB v Unggul Tangkas

In order to decipher this issue, it is apposite to first discuss the Federal Court’s judgment in *Tenaga Nasional Bhd v Unggul Tangkas Sdn Bhd & Anor and other appeals* [2020] 2 MLJ 721 before analysing its subsequent judgment in *Spicon*

⁴ S.2(1) of the LAA 1960 defines “Land Administrator” as any Land Administrator or other officer appointed under the State land law and includes an Assistant Land Administrator.

⁵ S.37(1) LAA 1960

⁶ *Sistem Lingkaran Lebuhraya Kajang Sdn Bhd v Orchard Circle Sdn Bhd & Ors and other appeals* [2018] 2 MLJ 243

⁷ *Lee Ah Mok & Ors v Pentadbir Tanah Daerah Seremban & Anor* [2009] 4 CLJ 611

⁸ S. 37(1) LAA 1960; *Singapore Para Rubber Estate Ltd v Pentadbir Tanah Daerah, Daerah Rembau, Negeri Sembilan* [2009] 1 CLJ 13; *Konsortium Lebuhraya Utara-Timur (KL) Sdn Bhd v Liew Choong Kin* [2018] 3 MLJ 354

⁹ S.38(1) LAA 1960

Products Sdn Bhd v. Tenaga Nasional Bhd & Anor [2022] 4 CLJ 195.

Briefly, in *TNB v Unggul Tangkas*, the Respondent's lands were acquired for the Appellant, TNB, pursuant to Section 3(1)(a) of the LAA 1960. The Respondent was awarded RM12,593,196 as compensation which was payable by the Appellant. Aggrieved with the quantum of compensation, the Respondent filed an objection in Form N to the Land Administrator and initiated two land reference proceedings before the High Court. As the paymaster, the Appellant/TNB filed applications under O 15 r 6 of the Rules of Court 2012 for leave to intervene in the land reference proceedings and to file the valuer's report and the relevant rebuttal reports.

The High Court allowed the Appellant's application and so TNB was added as intervener/second respondent in the land reference proceedings but precluded the Appellant from filing its valuation and rebuttal reports. Aggrieved, both parties appealed against the decision of the High Court. Upon hearing the appeals, the Court of Appeal held that the Appellant should not be allowed to intervene in the first place and thus the issue of adducing the valuation and the rebuttal reports shall necessarily fail.

On further appeal by the Appellant, the Federal Court in *Unggul Tangkas* was tasked to determine 'whether the filing of an objection vide Form N pursuant to s 37 of the Land Acquisition Act 1960 is the only mode available for a paymaster to be a party in a land reference proceeding before the High Court?'. In answering the question in the affirmative, the Federal Court dismissed TNB's appeal and application to intervene under the Rules of Court 2012. The Federal Court, in expounding upon such approach, cited with approval the judgment by His Lordship KN Segara JCA in *Sistem Lingkaran Lebuhraya Kajang Sdn Bhd v Inch Kenneth Kajang Rubber Ltd & Anor* [2011] 4 MLJ 403 which held:

*"In the overall scheme and context of the Land Acquisition Act, any application by the appellant under O 15 r6(2)(b) RHC 1980 to be made a party, is inappropriate. It would amount to an abuse of the process of the court and an attempt to circumvent the clear and unambiguous provisions of the LAA 1960 as regards to the manner and circumstances in which 'persons interested' under the LAA 1960 are to participate in proceedings either before the land administrator at an enquiry or, in court, upon a reference by the land administrator upon any objection to an award. **Filing of Form N is the most appropriate and the only mode available under the LAA 1960 to any person interested under the LAA 1960 to become a party in a Land Reference at the High Court relating to the amount of compensation.**"¹⁰*

The Federal Court in *Unggul Tangkas* further held that TNB, in its capacity as paymaster, has no legal interest in the land reference proceedings and its interest, at best, was only pecuniary in nature:

"[37] It is our judgment that TNB had no legal interest in the land reference proceedings. TNB being the paymaster, it had at the highest only a pecuniary interest (see the case of Tohtonku Sdn Bhd v Superace (M) Sdn Bhd [1992] 2 MLJ 63; [1992] 2 CLJ 1153; [1992] 1 CLJ Rep 344). The evidence in the present case showed that TNB was not aggrieved by the award but was

¹⁰ *Tenaga Nasional Bhd v Unggul Tangkas Sdn Bhd & Anor and other appeals* [2020] 2 MLJ 721, para 31

merely apprehensive that the outcome of the land reference proceedings in the High Court may adversely affect its pocket. At any rate, TNB's rights on whose behalf acquisition proceedings were instituted (see s 43 of the Act) and whose interests must be considered by the court whether they have objected or not (see s 44(2) of the Act) without the need for intervention."

For the reasons discussed above, the Federal Court dismissed TNB's appeal and application to intervene under the Rules of Court 2012.

Spicon Products v TNB

Few years after the pronouncement in *Unggul Tangkas*, the Federal Court revisited this area of the law in *Spicon Products*, except that it was in the context of a landowner who has accepted a Land Administrator's award without any objection:

*"[2] The single poser in this appeal is **whether a landowner who has, without any objection, accepted an award of compensation made by the land administrator is nevertheless entitled to intervene and participate in land reference proceedings initiated by another interested party, namely the 'paymaster' who had objected to that award of the land administrator.** This issue is of utmost importance and relevance to the proper conduct of land reference proceedings.."*

In *Spicon Products*, the Appellant was the registered proprietor of the land acquired for the first Respondent (TNB). Pursuant to an enquiry conducted under Section 12 of the LAA 1960, the Land Administrator awarded RM467,154.22 which the Appellant accepted without any objection and therefore did not file any Form N. Per contra, TNB took the view that the award was excessive and proceeded to lodge a formal objection via Form N to object to the award.

At the land reference proceedings, TNB and the Land Administrator were cited as the applicant and respondent respectively. Since the Appellant did not file Form N, the Appellant was not made party to the proceeding. As such, the Appellant invoked O 15 r 6 of the Rules of Court 2012 to intervene in the land reference on the basis that as the landowner, the Appellant would be prejudiced by any reduction to the compensation awarded. Unsurprisingly, TNB opposed the intervener application on the basis that:

- (a) The application is an abuse of the process prescribed under the LAA 1960;
- (b) The filing of Form N was a compulsory statutory Form and the only mode available under the LAA 1960 for any interested person to be a party in the land reference;
- (c) The Appellant's non-filing of Form N was fatal and as such, the Appellant is precluded from partaking in the land reference proceedings;
- (d) Any interest of the Appellant was sufficiently safeguarded by the Land Administrator, who is the Respondent in the land reference proceedings; and
- (e) It was for the LA to defend the award.

The High Court allowed the Appellant's intervener application and held that Sections 37(1) and 38(1) of the LAA 1960 did not compel the Appellant to file Form N where it had no objections to the award. The Learned High Court Judge also did not find the non-filing of Form N as fatal since it was not the Appellant who was dissatisfied with the award. In that same vein, the High Court noted that only a party objecting to an award is required to file Form N. As such, the High Court ruled that the Appellant ought to be allowed to intervene in order to protect its interests which may be adversely affected.

Aggrieved, TNB filed an appeal. The Court of Appeal agreed with TNB and held that the application to intervene pursuant to O. 15 r. 6(2)(b) of the Rules of Court 2012 was *"in the overall scheme and context of the Land Acquisition Act, to be inappropriate and would amount to an abuse of the court's process"* as *"it circumvents the provisions of the Land Acquisition Act 1960"*. As such, O. 15 r. 6(2)(b) of the Rules of Court 2012 is not applicable in land reference proceedings.

Further, the Court of Appeal held that the lodging of Form N is essential for a party to take part in a land reference proceeding as it is the most appropriate and the only mode available under the LAA 1960. As such, the Court of Appeal agreed with TNB that resorting to O. 15 r. 6(2)(b) of the Rules of the High Court 1980 was an abuse of process and that the Appellant's interests are sufficiently safeguarded by the land administrator.

On further appeal, the Federal Court, in ruling in favour of the Appellant, held the following:

- (a) The Appellant is not entitled to lodge any objection as it does not fulfil the requirements of Section 37(1) of the LAA 1960 for lodging an objection. This is premised on the facts that the Appellant had accepted the award without any objection and was satisfied with the amount of compensation awarded;
- (b) Section 45(2) of the LAA 1960 which states "(2) Save in so far as they may be inconsistent with anything contained in this Act, the law for the time being in force relating to civil procedure shall apply to all proceedings before the Court under this Act" allows for the importation of the provisions in the Rules of Court 2012 as long as those rules are not inconsistent with the LAA 1960;
- (c) In the factual matrix of the present case, the application of the Rules of Court 2012 is not at all inconsistent with the LAA 1960;
- (d) The landowner's appearance and participation at the reference proceedings are consistent with its rights and interests under Article 13 of the Federal Constitution;
- (e) The participation of the Appellant at the reference proceeding is consonant with the rules of natural justice and will assist the court in its determination of the objection lodged; and
- (f) None of the provisions within the LAA 1960, whether expressed or by necessary inference, provide for the exclusion of a landowner who has accepted the award without objection to participate at any land reference proceedings.

Consequently, the Federal Court held that a landowner whose land stands acquired and whose interests are undeniably affected by an objection referred to the High Court, is indeed entitled to invoke O. 15 r. 6 of the Rules of Court 2012. In fortifying its position, the Federal Court examined its previous judgment in *Unggul Tangkas* and held:

*“[111] For the same reasons that we have already discussed, **the interests of such a person interested (that is, the paymaster)**, if not already notified by the court under s. 43 of the Act 486 to attend, surely **will be affected one way or another in the reference proceedings** in which case, **such a person is indeed entitled to attend and participate through the mechanics of the Rules of Court 2012. If a paymaster is entitled to so attend, more so a landowner who has legal and pecuniary interests under art. 13 of the Federal Constitution. In our view, since the interests of all persons interested must be considered by the court when determining the objection or adequacy of compensation, s. 45(2) of the Act 486 must be seen as an enabling provision to ensure that the attendance and participation of all persons interested may be facilitated, and in the present appeal, through O.15 r. 6 of the Rules of Court 2012.**”*

Although it is noted that the Federal Court in *Spicon Products* did not expressly overrule its judgment in *Unggul Tangkas*, its pronouncement exemplifies the judiciary’s essential role in ensuring the significance of adequate compensation relating to compulsory acquisitions of land.

Conclusion

The Federal Court’s judgment in *Spicon Products* reflect a growing judicial consciousness in Malaysia toward safeguarding constitutional rights in the face of rigid statutory frameworks. While the LAA 1960 provides the procedural machinery for compulsory land acquisition, it is the courts that serve as the ultimate guardians of Article 13 of the Federal Constitution.

Spicon Products is a persuasive authority that will undoubtedly guide future disputes involving acquisition and compensation. In this regard, the Court of Appeal in *Tenaga Nasional Bhd v Sime Darby Plantation Bhd & Anor (Petronas Gas Bhd, proposed intervener)*,¹¹ adopted the liberal interpretation by the Federal Court in *Spicon Products* and allowed the intervener application by the paymaster in the land reference proceeding as it would also be affected if it was denied hearing in those proceedings. The evolving jurisprudence in this area provides a roadmap for reconciling the need for compulsory acquisition with the constitutional imperative to provide adequate and just compensation.

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¹¹ [2024] 6 MLJ 460