

July 13 2021

# Challenging compensation for acquired land: high court is the final avenue

Gan Partnership | Litigation - Malaysia



FOO JOON  
LIANG



ERI FU  
SWEETHEENG

- [Introduction](#)
- [Land reference proceedings](#)
- [Appealing](#)
- [Facts](#)
- [High court](#)
- [Court of Appeal](#)
- [Federal Court](#)
- [Comment](#)

## Introduction

Article 13 of the Federal Constitution states that "no person shall be deprived of property save in accordance with law" and allows for a lawful acquisition of private land by the government, provided that the acquisition is in accordance with the Land Acquisition Act (LAA) 1960. Under the LAA, landowners (or persons with registered interests) will be compensated by the government for acquired land.

That said, landowners often find themselves dissatisfied with the compensation awarded by the land administrator.<sup>(1)</sup> While there is an opportunity for landowners to object to the compensation, the question remains as to what extent the compensation awarded by the land administrator can be challenged. The Federal Court recently answered this question in its decision in *Pentadbir Tanah Daerah Johor v Nusantara Daya Sdn Bhd*.<sup>(2)</sup> The apex court held that the high court is the highest court that parties can go to when challenging the awarded compensation.

## Land reference proceedings

Landowners, subject to limitations prescribed in sections 37(1) to 37(3) of the LAA, may object to the land administrator's award by making a written application, Form N, to the land administrator, requiring the land administrator to refer the matter to the high court for determination. This is known as "land reference proceedings".

The procedure of land reference proceedings is outlined in the third schedule of the LAA. In brief, parties adduce their valuer's report and rebut the opposing party's valuer's reports. Evidence by factual witnesses may be brought and parties may cross-examine the other party's valuer with the leave of the Court. When the issue is referred to land reference proceedings regarding the amount of compensation, the high court appoints two assessors – a government assessor and a private sector assessor – to aid the judge in determining the issue.<sup>(3)</sup> The high court judge, aided by the two assessors, determines the amount of compensation to be awarded.<sup>(4)</sup>

## Appealing

Section 49(1) of the LAA provides that a party to land reference proceedings may appeal against the high court's decision to the Court of Appeal and the Federal Court. However, there is no absolute right of appeal.

This begs the question of what is appealable under section 49(1) of the LAA. This matter was discussed at length in *Nusantara Daya*.

## Facts

Nusantara Daya Sdn Bhd, the respondent, owned land known as "Lot 46200", which was acquired pursuant to the LAA for the purpose of constructing a water treatment plant in Southern Malaysia. The land administrator had awarded a sum of RM16,516,800 as compensation for the acquisition. However, the respondent claimed that the fair market value of the land was RM28,830,074.40 (RM6,458.35 per square metre). A private valuer's report was offered in support. The respondent also claimed a loss of income of RM40,200 for loss of use of the scheduled land as a car park for 67 vehicles. After making the necessary adjustments to account for the differences between the land and the comparable sales, the government valuer recommended a market value of RM3,700 per square metre. The land administrator rejected the respondent's claim for loss of income. Dissatisfied with the award, the respondent applied to have the matter referred to land reference proceedings before the high court.

## High court

The high court judge, assisted by assessors pursuant to section 40C of the LAA, increased the amount of compensation from RM16,516,800 to RM19,026,907. Both parties provided comparable data in their respective valuer's report. The high court judge made adjustments to the values presented by the parties and stated his reasons for such adjustments. The respondent appealed to the Court of Appeal as it was dissatisfied with the amount of compensation ordered by the judge.

## Court of Appeal

At the Court of Appeal, the appellant raised the issue of whether the appeal was limited to issues of fact on the ground of the quantum of compensation. The appellant submitted that the appeal was barred by reason of section 49(1) of the LAA as the three main issues relied on by the respondent – namely, the 10% deduction to market value, the double counting and the potential development value of scheduled land, were questions of fact. In essence, the appeal was to increase the amount of compensation, but such an appeal is barred under the

proviso in section 49(1) of the LAA.

On the other hand, the respondent contended that the appeal was:

*premised on the ground that there was no evidence upon which the High Court properly directing itself could reach that conclusion of fact. As such, that decision may itself for that reason be wrong in point of law and thus susceptible to an appeal.*<sup>(5)</sup>

The respondent contended that in each of the three points "there was no evidence on which a High Court properly directing itself could reach that conclusion of fact".<sup>(6)</sup> As such, the decision may itself be wrong in point of law and thus susceptible to an appeal.

The Court of Appeal agreed with the respondent; it held that all three points raised were questions of law which, following the Federal Court's decision in *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Hulu Langat & Another Case*,<sup>(7)</sup> were not prohibited by the proviso in section 49(1) of the LAA. Therefore, the Court of Appeal allowed the appeal and increased the amount of compensation awarded by the high court.

## Federal Court

The Federal Court discussed at length what was appealable according to the proviso in section 49(1) of the LAA, which reads as follows:

### ***Appeal from decision as to compensation***

1. *Any person interested, including the Land Administrator and any person or corporation on whose behalf the proceedings were instituted may appeal from a decision of the Court to the Court of Appeal and to the Federal Court:*

***Provided that where the decision comprises an award of compensation there shall be no appeal therefrom.*** (Emphasis added.)

The Federal Court referred to *Semenyih Jaya* and found that the proviso in section 49(1) of the LAA is not a complete bar on all appeals related to compensation. Instead, the bar to appeal in the proviso is limited to issues of facts on the ground of the quantum of compensation. An aggrieved party may appeal against the high court decision on a question of law under section 49(1) of the LAA. The apex court then considered "what is a question of law within the context or for the purpose of section 49 (1) of the LAA?".<sup>(8)</sup>

The Federal Court did not give a restrictive answer as to what constitutes a question of law within the context of section 49 (1) of the LAA. The Court held that the two Malaysian appellate courts should scrutinise appeals originating from land reference proceedings. This is because, unlike appeals against decisions made in civil matters, appeals to the Federal Court in land reference cases do not require leave to appeal under section 96 of the Courts of Judicature Act 1964. Further, the proviso in section 49 (1) of the LAA is unambiguous – appealing the quantum of compensation is not allowed. Therefore, the circumstances which may amount to a question of law under the proviso in section 49(1) of the LAA must be narrowly and strictly construed.

An earlier decision by the Federal Court in *Amitabha Guha [sebagai wasi bagi harta pusaka Madhabendra Mohan Guha] v Pentadbir Tanah Daerah Hulu Langat*<sup>(9)</sup> offers useful guidance as to what may constitute a question of law.

Against this analysis, the Federal Court in the present case held that the respondent's appeal to the Court of Appeal was an appeal against the valuation principles applied by the high court, which ultimately was an appeal against the quantum of compensation awarded by said court. This was not a question of law appealable under section 49(1) of the LAA. Appeals on other issues, such as the measurement of the land, persons to whom the compensation is payable and the apportionment of the compensation, are permissible.

## Comment

The apex court's decision clarifies the question of law exception to section 49(1) of the LAA. If left unchecked, appeals will be made against high court decisions on computation, contrary to the proviso in section 49(1) of the LAA. In this case, the Federal Court looked at the substance of the complaint against the high court decision and not the way in which that complaint is framed. The Federal Court thus concluded that "[t]he complaints are in substance, about the computation of the award, how deductions were said to be erroneously made or certain factors not taken into account".

With this judgment, it is clear that the high court's decision on the quantum of compensation is not appealable, even in circumstances where the court makes an error in the application of valuation principles. The intention of the proviso in section 49(1) of the LAA is to limit the number of appeals against decisions of the high court, with a view to ensuring the finality on the quantum of compensation. The legislature has not carved out exceptions to this proviso. The question of law exception was constructed by a judge and so should not be read expansively. Otherwise, the intent of the proviso in section 49(1) of the LAA would be diluted.

Separately, the Federal Court, in its judgment, urged the relevant agencies, ministries or the Attorney General's Chambers to delete section 40(D) of the LAA pursuant to *Semenyih Jaya*.

This decision highlights the need for landowners to ensure that all issues and evidence relating to the market value of the acquired land be thoroughly canvassed in the land reference proceedings before the high court. This the only opportunity to present and defend claims over the acquired land.

For further information on this topic please contact [Foo Joon Liang](mailto:foo.joon.liang@ganlaw.my) or [Eri Fu Swee Theeng](mailto:eri.fu.swee.theeng@ganlaw.my) at Gan Partnership by telephone (+603 7931 7060) or email ([joonliang@ganlaw.my](mailto:joonliang@ganlaw.my) or [eri.fu@ganlaw.my](mailto:eri.fu@ganlaw.my)). The Gan Partnership website can be accessed at [www.ganlaw.my](http://www.ganlaw.my).

## Endnotes

(1) Section 14 of the LAA.

(2) *Pentadbir Tanah Daerah Johor v Nusantara Daya Sdn Bhd* (Appeal 01(f)-24-08/2019(J), 20 May 2021).

(3) Section 40A (2) of the LAA.

(4) Sections 40(A) to 40(D) of the LAA. See also Federal Court's decision in *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat* [2017] 3 MLJ 561 on the constitutionality of Section 40D of the LAA.

(5) Paragraph 11 of the Federal Court judgment.

(6) *Ibid.*

(7) [2017] 5 CLJ 526.

(8) Paragraph 40 of the Federal Court judgment.

