DALAM MAHKAMAH TINGGI MALAYA DI KUANTAN
DALAM NEGERI PAHANG DARUL MAKMUR

PERMOHONAN SEMAKAN KEHAKIMAN NO. CA-25-11-08/2020

ANTARA

CHEN YOKE KONG & ORS ... PEMOHON

DAN

1. **PENTADBIR TANAH DAERAH RAUB**
2. **PENGARAH PERHUTANAN NEGERI PAHANG**
3. **PIHAK BERKUASA NEGERI PAHANG**
4. **KERAJAAN NEGERI PAHANG**
5. **PERBADANAN KEMAJUAN PERTANIAN NEGERI PAHANG**
6. **ROYAL PAHANG DURIAN RESOURCES PKPP SDN BHD**

... RESPONDEN

DIDENGAR BERSAMA

DALAM MAHKAMAH TINGGI MALAYA DI KUANTAN
DALAM NEGERI PAHANG DARUL MAKMUR

PERMOHONAN SEMAKAN KEHAKIMAN NO. CA-25-12-10/2020

ANTARA

CHAM TIAN JUN & ORS ... PEMOHON

DAN

1. **PENTADBIR TANAH DAERAH RAUB**
2. **PENGARAH PERHUTANAN NEGERI PAHANG**
3. **PIHAK BERKUASA NEGERI PAHANG**
4. **KERAJAAN NEGERI PAHANG**
5. **PERBADANAN KEMAJUAN PERTANIAN NEGERI PAHANG**
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... RESPONDEN

BRIEF DECISION
(SUBJECT TO FULL GROUNDS OF JUDGMENT)

SUBJECT MATTER OF JR

1. There are five (5) decisions that are the subject matter of this Judicial Review as set out in the Applicants' O.53 Statement and Affidavits:

(a) the decision by the Pentadbir Tanah Daerah Raub (R1) to issue the Eviction Notices on land belonging to R4 located within the area of Sg Chalit, Sg Klau, Sg Ruan, and Tranum in Mukim Gali, Daerah Raub and within the area of Tras, Mukim Tras, Daerah Raub, pursuant to ss. 425 and 426A NLC 1965;

(b) the decision by the Pengarah Perhutanan Pahang (R2) to issue the Eviction Notices on land within the Forest Reserve pursuant to s. 32 National Forestry Act 1984;

(c) the decision by the State Authority (R3) on 26.4.2020 to award a lease and land use rights of 5,357.2 acres of land in Raub District (which include the land that are the subject of the Notices of Eviction) to R6;

(d) the decision by the State Authority (R4) as announced by the YAB Menteri Besar on 9.7.2020 and as announced by R6 on 10.7.2020 on the Land Legalisation Scheme which involves the said award of the lease and land use to R6, subleasing of the

relevant land to the Applicants and a specific arrangements on the selling of durians by the Applicants to R6; and

(e) the decision by R5 to issue Notice of Eviction dated 1/12/2020 with respect to Land under title PN10972 Lot 17362. Although the O.53 Statement and AIS in encl 3 only referred to the Notices issued by R1 and R2, the Applicants' Afdvt Tambahan in encl 10 referred to this Notice issued by R5.

2. There was another Eviction Notice issued by Pentadbir Tanah Maran dated 14/2/2022. This Notice is not part of the Applicants' JR application.

3. The Applicants set out the following reasons as to why those decisions were illegal, irrational and unreasonable and infected with procedural impropriety:

3.1 Illegality:

(a) The Applicants were not in breach of s. 425 of the NLC nor s. 32 of the National Forestry Act as they occupy the lands with lawful authority of R1-R5;

(b) The intended eviction of the Applicants and the planned demolishment of structures and destruction of durian trees on the land are in breach of substantive legitimate expectation that the Applicants would be granted lease or title or interest to the Lands;

(c) The Defendants contravened arts 5,6,8,13 of the FC by depriving the Applicants of their property in breach of law, unfairly depriving the Applicants their sole means of livelihood, acquiring and use property of Applicants arbitrarily without adequate compensation, and compelling the Applicants to perform forced labour;

(d) Appointing R6 as the monopoly buyer to purchase the durians from the Applicants at a fixed and disproportionately low price, through the Legalisation Scheme is in breach of the Competition Act 2010.

3.2 Irrationality and Unreasonableness :

(a) The award of the land lease and land use rights to R6, disregarding the years of occupation of the Land by the Applicants with the express or implied consent of R1-R5, and all the efforts in improving and cultivating the durian trees by the Applicants;

(b) The creation of artificial and arbitrary market for the Applicants to sell their durians through the Legalisation Scheme;

(c) The refusal of R1-R5 to alienate the lands to the Applicants but instead forcing the Applicants to take the short sub-leases through the Legalisation Scheme, and

(d) The short period provided in the Eviction Notices.

3.3 Procedural Impropriety :

(a) Failure to provide the Applicants the right to be heard before arriving at the decisions;

(b) Failure by R1 and R3 to respond to Applicants' multiple requests for lease but instead granted lease to R6;

(c) The time periods of 7-30 days provided in the Eviction Notices without taking into account that the Applicants had occupied the lands over 60 years; and

(d) R1 and R3 in their public statements had asked the Applicants to deal with R6 on matters pertaining to the Legalisation Scheme amounted to excessive delegation of powers/duties.

RELIEFS SOUGHT BY APPLICANTS

4. The reliefs sought are:

(i) Certiorari to quash :

(a) The Notices of Eviction issued by R1 (Pentadbir Tanah Raub) and R2 (Pengarah Perhutanan Pahang);

(b) Any decisions to evict the Applicants, or any decision to destroy, acquire or use the durian trees on the lands;

(c) Any decision to award lease and land use rights for a period of 30+30 years to R6;

(ii) Prohibition Order : to restrain R1 (Pentadbir Tanah Raub) or R3 (State Authority) from alienating or granting any lease to R6 except to the Applicants or their Nominees;

(iii) Mandamus : to compel R1 or R2 to grant a lease of the Lands to the Applicants or their nominees; and

(iv) Damages or adequate compensation.

PRELIMINARY ISSUES

5. Before I deal with the JR application substantively, I shall determine the following preliminary issues raised by the parties:

(i) Locus standi of the Applicants

(ii) Are the impugned decisions amenable to JR due to failure of the Applicants to exhaust local remedies under the NLC ?

(iii) The impugned Notices are not legal notices and are not amenable to JR

(iv) The Impugned Notices are part of criminal process and not amenable to JR as this civil court does not have jurisdiction to deal with ongoing criminal action

(v) Eviction process has not completed

(vi) The JR is improper as the Perbadanan Setiausaha Kerajaan Negeri is not made a party

(vii) The Applicants are not squatters simpliciter.

Issue 1: Locus Standi of the Applicants

6. All counsels for the Defendants argued that the Applicants do not possess the locus standi to bring this JR as they are not aggrieved persons.

7. If this Court rule that the Applicants lack locus standi, then both applications shall be dismissed in limine, and there is no need for this Court to proceed to hear the JR substantively.

8. At the hearing of both applications this Court had taken the position to ask counsels to submit on the issue of locus standi and then to proceed to submit on the substantive complaints by the Applicants on the presumption that this Court is with the Applicants that they possess the locus standi.

9. Counsels for the Defendants had all argued on the need for the Applicants' locus standi to be reviewed at this substantive stage, despite the Applicants having granted leave.

10. The Defendants argued that when the Applicants were granted leave, they had only succeeded in showing they fulfilled the threshold locus standi, which requires low threshold test. The Applicants must satisfy this Court at this substantive stage that they have the substantive locus standi by showing to the satisfaction of this Court that they are aggrieved persons, which is a higher threshold. YB State LA referred to the COA's decision in ***Kajing Tubek*** that laid down this two-tier tests.

11. This two-tier tests of threshold and substantive locus standi tests was the position taken by the House of Lords in ***Inland Revenue Commission v National Federation of Self-Employed and Small Businesses Ltd [1982] AC 617, [1981] 2 All ER 93*** and applied in numerous Malaysian court decisions such as ***Tan Sri Hj Othman Saat v Mohamed Ismail [1982]*** and ***Kajing Tubek [1997].*** These cases were decided before the adoption of the 2012 Court Rules.

12. That is not the position in law now. The test whether the Applicants possess the locus standi is set out in O.53 r.2(4). This provision had codified the test for locus standi in JR applications irrespective of the type of reliefs sought.

13. O.53 r.2(4) only requires that the Applicants must show that they are adversely affected by the impugned decisions. They must show that they are not busybodies who interfere in matters that do not concern them and must show that they are not strangers who suffer no legal wrong, injury or prejudice. This principle was laid down by the Federal Court in ***Malaysian Trade Union Congress v Menteri Tenaga, Air dan Komunikasi [2014] 3 MLJ 145***. The Federal Court also held that an applicant need not establish "infringement of a private right or the suffering of special

damage" but need only to show that he has a real and genuine interest in the subject matter. The applicant need only to show that he is an aggrieved person, that he has "real and genuine interest in the subject matter of review. That is the test.

14. This principle was followed recently by the COA in ***Perbadanan Pengurusan Trelisses & 9 Ors v Datuk Bandar Kuala Lumpur & 3 Ors [2021] 3 MLJ 1.*** In fact, the COA in overruling the High Court decision that propogated two-tier locus standi tests unequivocally held that the single threshold test applies in public interest litigation - such as this one before this Court. That single test is whether the applicant is adversely affected by the impugned decision. The COA further held that as O.53 r.2(4) does not make any distinction between threshold and substantive locus standi, the courts should not read into O.53 any requirements which are simply not there.

15. That is the legal position to which I am bound to follow. There is no 2-tier locus standi for the Applicants to fulfil. Instead they only need to satisfy this Court that they are persons aggrieved by the impugned decisions.

16. Coming back to our case here, I must not fail to remind the Defendants that when the Court of Appeal allowed the Applicants' appeal against the High Court's refusal to grant leave to the Applicants, the COA held uninamously :

> *"It is clear that the Applicants are not busy bodies and they are indeed persons who are "adversely affected" by the impugned notices"*

The COA made that finding based on its initial findings where the COA held:

> *"It is without doubt, that the Notices issued by the 1st Respondent (Pentadbir Tanah Daerah Raub) under s. 425 of the NLC for the Applicants to vacate the Affected Lands and the Notices issued by the 2nd Respondent (Pengarah Perhutanan Negeri Pahang) pursuant to s. 32(1) of the National Forestry Act 1984 for the Applicants to vacate the lands if implemented will cause the Applicants to lose their livelihood through durian farming."*

17. By that statement the COA was not making a determination on the proprietiness of the Eviction Notices. Instead the COA resolved that the Applicants are persons affected by the impugned decisions to issue the impugned notices.

18. In fact, the brief decision of the COA shows that the COA was clearly instructing this Court to proceed with the substantive hearing of the JR application to determine the issues raised by parties. The COA gave that instruction and order after the COA was satisfied that all the Applicants are not busybodies, and that the Applicants are persons who are adversely affected by the impugned notices, contrary to the arguments by the learned State LA and the lead counsel for R6. Consequently leave was granted.

19. The COA had categorically stated in its decision that the issues raised by the Applicants shall be disposed at the substantive JR proceeding. By that it means the impugned decisions are amenable to JR. Those are not matters that are non-justiciable which would have rendered them not amenable to JR as explained in ***Tengku Muhammad Fakhry***

Petra Ibni Sultan Ismail Petra v Yang Maha Mulia Pemangku Raja Kelantan & Ors [2010].

20. This Court is bound by that finding of the COA. This Court cannot become embroiled in the issue of locus standi and aggrieved party all over again.

21. I am satisfied that the Applicants had real and genuine interest in the subject matter. The Applicants possess the locus standi to appear before this as they are directly aggrieved by the impugned decisions. They are entitled to move this Court to hear their complaints vide their applications.

22. As I had ruled that the Applicants are cloaked with the locus standi, this Court must proceed to determine the JR application having seised with the proper jurisdiction, as decided by the COA in ***Bumiputra-Commerce Bank Bhd v. Augusto Pompeo Romei & Anor [2013] 7 MLRA 693; [2013] MLRAU 421; [2014] 6 CLJ 17; [2014] 3 MLJ 672.***

Issue 2: Impugned decisions not amenable to JR because of failure of Applicants to exhaust domestic remedies - the Applicants should have appealed under s. 418 of the NLC instead of pursuing this JR applications

23. Generally yes, any person dissatisfied with any decision made by the authority should appeal against that decision in the manner precribed in the relevant law. In this instance, the Appellants could have chosen to appeal against the decision of the State Authority to grant the lease to R6. The rationale for the Applicants not doing so is no-brainer. Section 418 of

NLC is specific on the categories of the persons against whose decision are appealable. The Applicants' complaints against R2-R6 in this JR therefore cannot come within the purview of s.418 NLC.

24. Even so, there is nothing in the Courts of Judicature Acts and the Rules of Court providing that no JR can be applied without exhaustion to the local remedies first. When the Applicants are aware on the futility of the alternative remedies, they can choose to apply for JR. Of course they must then fulfill all the legal thresholds governing JR.

25. Based on the above, I rule that there is nothing in the law providing that before the Appliants file this JR they must first exhaust all local remedies, such as appealing against the impugned decisions under s. 410 of the NLC.

Issue 3: The Eviction Notices are not legal notices and are therefore not amenable to JR

26. The learned State LA that the Eviction Notices were not issued pursuant to any legal requirements. This was not disputed by the Applicants' counsel.

27. In essence, R1 (Pentadbir Tanah Raub) and R2 (Pengarah Perhutanan Pahang) could have opted to proceed with actions as allowed under the NLC and the Forestry Act respectively against the Appellants without any notice. Instead R1 and R2 issued the Notices which was meant to notify the Applicants of their illegal actions and the repercussions awaiting them if they continue to defy the law. The Respondents argued that the Notices were therefore issued to allow the Applicants right to be heard.

28. I agree with the proposition of the learned State LA. The Notices are not statutorily provided. It is not mandatory for such Notices to be issued as a prescursor to any actions under the relevant provisions of the NLC and the Forestry Act.

29. However, the JR is questioning the legality of the decision of the Pentadbir Tanah Raub and Pengarah Perhutanan Pahang to issue the Notices, not the legality of their Notices. The questioning was grounded on the reasons as I had summarised earlier.

30. I rule that despite the fact that the Eviction Notices issued by R1 and R2 are notices not provided by law, it does not stop the Applicants from questioning the decision and the decision-making process of the Pentadbir Tanah Raub and the Pengarah Perhutanan Pahang in the issuance of the Eviction Notices.

Issue 4: The Eviction Notices issued by R1 and R2 were pursuant to criminal offences and are not amenable to JR

31. The learned State LA and the lead counsel for R6 argued at great length that the issuance and service of the impugned Eviction Notices were part of criminal law enforcement and a precursor to a further enforcement action as permitted under the NLC and the Forestry Act. Therefore, those Notices are not amenable to JR as this Civil Court lacks jurisdiction to deal with the Notices. The JR questioning the Notices are therefore incompetent and must be dismissed by this Court.

32. I agree that it is trite law that an exercise of power in the course of a criminal investigation is not open to judicial review. To hold otherwise would be exposing the criminal investigative process of all law enforcement agencies in the country to constant judicial review which surely could not have been the intention of Parliament.

33. The learned YB State LA referred to the FCt decision of ***SPRM & Ors v Latheefa Beebi Koya & Ors [2017] 10 CLJ 1, [2017] 5 MLJ 349*** and ***Tengku Jaffar bin Tengku Ahmad v Karpal Singh [1993]*** in support of his argument.

34. In ***SPRM v Latheefa Beebi Koya, Latheefa Beebi Koya*** filed JR to question the SPRM's decision in issuing s.30(1)(a) Notice against her. That Notice is an order for the Respondents to attend before the relevant officer of the SPRM to be examined orally in relation to any matter which may assist in the investigation into the offence under the SPRM Act. The FCt held that that notice is not amenable to JR.

35. In ***Tengku Jaffar v Karpal Singh***, the plaintiff filed an action against the defendant seeking a declaration that the statement or words uttered by defendant tantamount to seditious libel, and a declaration that it is sedition to degrade any Ruler or Sultan. The Court allowed the defendant's action to strike out the plaintiff's action on grounds that:

(i) the plaintiff has no *locus standi* to bring the said suit;

(ii) the plaintiff's suit is not maintainable as the issues raised which relate to alleged criminality do not come within the jurisdiction of the civil court and that only the Attorney-General and no one else is vested with the powers to institute proceedings under the Sedition Act.

36. It is therefore clar that both cases were decided on an entirely different spectrum than the action brought before this Court by the Applicants and cannot apply to the facts and circumstances of the matter before this Court.

37. The Applicants' JR is not for this Court to determine the correctness of otherwise of the Notices, neither are they asking this Court to declare that the Applicants do not commit any criminal wrongdoing. The Applicants' JR is questioning the decision-making process that were involved which resulted in the issuance of that Notices. This is in line with the decision of the FCt in ***Peguam Negara v Cing Chee Kow [2019]*** and ***Sundra Rajoo Nadarajah v Menteri Luar Negeri [2021]***. That decision-making process is certainly amenable to JR.

38. However, I want to make it explicitly clear at the outset that this Court is not making any finding that no prosecution can be initiated against the Defendants. That is certainly not within the powers of this Court to decide. It clearly belongs to the realm of the Public Prosecutor and stand separately from any orders granted by this Court.

Issue 5: Eviction process has not completed and thus the JR is premature

39. The learned counsel for the 6th Respondent argued that the application is premature as the eviction process has not completed.

40. The JR is about impugned decision that led to the issuance of the Notices. There is no necessity for the eviction process to be completed before the Applicants can bring this action. In fact if the Applicants were to wait until that process is completed, their actions may fail for non-compliance with the requirement under O. 53 r.3(6) that they shall file their application promptly and within 3 months from the date the grounds of application first arose or when the decision is first communicated to them.

Issue 6: The JR is improper because Perbadanan Setiausaha Kerajaan Negeri Pahang is not made a party

41. Briefly, I disagree with R6's counsel's argument that the JR is improper as the PSK was not made a party to this proceeding. The decisions that are the subject of this review stemmed from Pahang State Government's policy and decisions. PSK does not act on its own volution. Its decision is subjected to policy decision of the Pahang State Government. The State Authorities and the State Government which are R3 and R4 respectively, is more than sufficient to defend against the Applicants' action and the evidence gathered from them are sufficient to represent the State Authorities' position and to enable this Court to come to a just determination of the Applicants' complaints.

Issue raised by R5

42. Counsel for R5 raised on the issue pertaining to discrepancies and wrong markings of the lands marked by the Applicants in their affidavits vis-a-vis areas marked as “Klau”, “Tras” and “Ruan” by the Applicants. With that argument, R5 submitted that the Applicants does not have any cause of action against R5 over those lands as those areas do not belong to R5. The onus lies on the Applicants concerned to produce the precise map prepared by licensed land surveyor to identify the actual location claimed to be occupied by the relevant Applicants. As the Applicants failed to do so, R5 argued that the Applicants do not have any locus standi as they failed to show that they are the persons adversely affected by R5’s decision to issue the Eviction Notice.

43. It is my finding that the issue on discrepancies and wrong markings would be relevant if the Applicants are moving this Court to determine their land ownership, which is not the case here.

44. In any event, this Court had concluded that the Applicants possessed the locus standi based on the reasons I had intimated in the earlier paragraphs.

45. My findings on the issue of the Applicants as squatters and the impact on that status to their JR application will be dealt with in my findings on the substantive JR application.

FINDINGS ON SUBSTANTIVE JR APPLICATION

The Applicants are squatters simpliciter?

46. All counsels agreed on the legal position governing JR now as laid down by the Federal Court in ***R Rama Chandran [1997]*** which permits this Court not only to scrutinise the decision-making process but also the decision itself. But the scrutiny of the decision itself as laid down in ***R Rama Chandran*** is not free-fall and cannot be exercised arbitrarily. This has been explained further in numerous decisions including the FCt's decision in ***Petroliam National Bhd v. Nik Ramli Nik Hassan [2004] 2 MLJ 288; [2003] 4 CLJ 625***, where it held that the reviewing court may scrutinise a decision on its merits but only in the most appropriate of cases and not every case is amenable to the ***R Rama Chandran*** approach.

47. Having appraised myself with the pleadings of parties and the evidence and documents before me provided by all parties to this proceeding, it is without doubt that the crux of the Applicants' complaints that brought about this JR are the inter-connectivity of decisions by R1-R6 constituting:

(i) decision of R3, R4 and R5 in granting the lease and land right use to R6 of a certain perimeters of the land belonging to R4, which encompassed the land occupied by the Applicants;

(ii) decision of R1, R2 and R5 to issue the Eviction Notices;

(iii) decision of R5 and R6 to devise the Legalisation Scheme under the purview of R6, with the tacit approvals of R3 and R4.

48. The learned Counsel for the Applicants was unequivocally clear that the Applicants are-

(i) not asking this Court to determine the Applicants' legal ownership rights over the lands;

(ii) not claiming legal ownership of the lands;

(iii) not asking this Court to ascertain doctrine of adverse possession in favour of the Applicants; and

(iv) not disputing FC decision in ***Sidek Hj Mohamed*** and ***North East Plantation***.

49. The Lead Counsel for R6 took the Plaintiff's counsel to task on that Opening Remarks, which he argued ran counter to the Applicants' Statement made pursuant to O. 53 r.3(2) of the Rules, particularly paragraph 3.1 where the Applicants pleaded :

"The Applicants are all durian farmers on the Affected Lands. They are not squatters or illegal occupants of the Affected Lands."

50. I rule that the said impugned paragraph of the Statement cannot be read in isolation but together with the authoritative text of the pleading in BM. Pursuant to the National Language Acts 1963/67, particularly s.8, and O. 92 r.1 of the Rules, it is clear that the BM text of the Statement shall prevail as the English version is only a translation of the original document which is in BM.

51. Having read the BM version of paragraph 3.1 of the Statement, which reads:

> *"Pemohon-Pemohon adalah pekebun-pekebun atas Tanah-Tanah yang Terlibat tersebut. Mereka bukan semata-mata penduduk setinggan atau penghuni haram atas Tanah-Tanah yang Teribat tersebut.",*

it is clear to this Court that the Applicants pleaded that they are not merely squatters or illegal occupants but they are farmers on the Affected Lands. Reading that with the Applicants' subsequent pleadings and the Applicants' counsel's submission, the Applicants are saying that they are not squatter simpliciter. They are claiming that they have been on the subject land over the years with consent or permission or knowledge or acquiesed by the State Authorities, expressly or impliedly.

52. Whilst the learned Counsel for the Applicants do not dispute the decision of the Supreme Court in ***Sidek Hj Muhammad***, the case of the Applicants is that they are not squatters simpliciter and they are not illegal trespassers as explained in ***Sidek Hj Muhammad***. Their reasons are that whilst occupying the land in question, they made multiple applications for land ownership, land lease and land use. They received acknowledgements by the State Authorities. They had letter of support from the Special Assistant to the former Raub MP. There were collection of information of the farmers by R1 and R5 on various dates, and there were negotiations between R5 and the Applicants. On top of that there was an offer by R1 to one of the Applicant for "tapping rights". The Applicant argued that these are evidence of permission or acquiesed by

the State Authorities, expressly or impliedly by conduct, of their presence on the land over the years.

53. The Applicants relied on the Supreme Court decision of ***Bohari Taib [1991]*** and the COA's decision in ***Tekad Urus [2004]***, and backed with the facts as stated earlier, to substantiate their claims that they are not squatters simpliciter.

54. The direct consequence to their claim that they are not squatters simpliciter but had been occupying the land in question over the years with the direct or indirect, express or implied consent, approval, authority and acquiesce of the Respondents are :

(i) the decision of R1 and R2 to issue the Eviction Notices and the intended eviction of the Applicants and the planned demolishment of structures and destruction of durian trees on the land are illegal, irrational and unreasonable and are in breach of substantive legitimate expectation that the Applicants would be granted lease or title or interest to the Lands;

(ii) the decision of R3, R4, R5 to award of the land lease and land use rights to R6, disregarding the years of occupation of the Land by the Applicants with the express or implied consent of R1-R5, and all the efforts in improving and cultivating the durian trees by the Applicants are illegal, irrational and unreasonable and are in breach of substantive legitimate expectation that the Applicants would be granted lease or title or interest to the Lands.

55. It is my finding that the Applicants' contention finds no basis in law.

56. None of the evidence they relied upon showed an iota of recognition, approval, consent, permission, acquiesce – either expressly or impliedly, by conduct, oral or in writing - that the State Authorities allowed their presence on the land over the years. The silence on the part of the Land Office to respond to their letters and applications cannot be interpreted to mean there was consent. If any, the non-replies by the Land Office on the Applicants' applications only shows certain level of inefficiency on the part of the Land Office. But that per se cannot legally tantamount to consent or permission or acquiesce as such.

57. Applicants counsel's reliance on ***Bohari*** and ***Tekad Urus*** is totally misguided.

58. Firstly ***Bohari*** was decided on an O.89 application, which is not the case here before me. Secondly and most importantly, in ***Bohari*** the Supreme Court observed that the Selangor State Executive Council had approved the alienation of the land of the appellants who were also assured by a member of the State Executive Council that the appellants would be given titles to the said land. With that facts, the Supreme Court held that the farmers are not squatters simpliciter and summary order against them under O.89 is not the proper procedure to evict them. The Supreme Court ordered for the dispute to be resolved at a full trial. ***Tekad Urus*** was also a case under O.89. The COA in ***Tekad Urus*** followed the principle laid down in ***Bohari.***

59. Raja Azlan Shah CJ in delivering the decision of the Federal Court in ***Sidek Hj Muhamad & Ors v the Government of The State of Perak & Ors [1982]*** held:

> *Squatters have no right either in law or in equity. ...*
>
> *Section 341 of the Code empowers the State Authority to dispossess any squatters at any time. So the limitation period does not operate against the State.*
>
> *What equitable right or interest can be conjured up for the squatters who have illegally occupied State land?*
>
> *Squatters go into possession by, or as a result of, illegal occupation of State land. Illegal occupation of State land is an offence under s. 425 of the National Land Code.*
>
> *It is well established that a Court of equity will never assist squatters to resist an order of possession illegally acquired; it will never intervene in aid of wrong-doers.*
>
> *We would like to say this at once about squatters.*
>
> *The owner is not obliged to go to the Courts to obtain an order of possession.*
>
> *He is entitled, if he so wishes, to take the remedy into his own hands.*
>
> *He can go in himself and turn them out without the aid of the Courts of law.*
>
> *He can even use force, so long as he uses no more force than is reasonably necessary.*
>
> *He will not then be liable either criminally or civilly.*
>
> *This however is not to be encouraged because of the disturbance which might follow but the legality of it is beyond question.*

60. The Federal Court in coming to such proposition referred with affrmation the decision of the English Court in ***McPhail v. Persons Unknown [1973] 1 Ch 447*** where Lord Denning MR explained "squatters" as follows:

> *"What is a squatter? He is one who, without any colour of right, enters on an unoccupied house or land, intending to stay there as long as he can. He may seek to justify or excuse his conduct. He may say that he was homeless and that this house or land was standing empty, doing nothing. But this plea is of no avail in law."*

61. Relying on the principle enunicated in ***Sidek Hj Muhammad*** and ***McPhail*** as cited above to the facts before me, I conclude that the Applicants fits the definition of squatters and they are squatters simplicter.

62. That the Applicants are squatters simpliciter forms the starting point of the conversation between this Court and the Applicants.

63. As squatters simpliciter, although the Applicants have the locus standi to appear before this Court to enable their grouses to be heard, they must realise that they have no substantive legal rights and that they cannot succeed in their claims wherever to enforce their rights – which do not exist – pertaining to the land they illegally occupied because they are there as squatters simpliciter.

64. I take it at face value the Appliants' claim that many amongst them have stayed and worked on the land for over 60 years.

65. They may have worked and stayed on the land for 100 years. The length of time of their stay does not in any manner changed the fact that they are squatters simpliciter. Not only that they dont have rights in the context that I had explained earlier, they continue to commit criminal wrongdoings for so long as they remain on the land without permission of the rightful owner. This was the dictum of the Federal Court in ***Sidek Hj Muhammad.***

66. Again this Court must repeat its earlier finding. This Court had been shown efforts by the Applicants to apply for land ownership and land lease but all ended up with either non-response or rejections from the State Authorities. This fact do not in any manner alter the status of the Applicants as squatters and illegal occupants of the Affected Lands.

67. This Court agrees with the counsel for R6 citing the COA's decision in ***Chong Wooi Leong*** that any correspondence and communication between the Applicants and any of the Respondents cannot be deemed as express or implied authorisation or consent for the Applicants to occupy and use the land.

Reasonable Expectation

68. As set out in the earlier paragraphs, the Appellant argued that the intended eviction of the Applicants and the planned demolishment of structures and destruction of durian trees on the land are in breach of substantive legitimate expectation that the Applicants would be granted

lease or title or interest to the Lands through the State Authorities' express or implied consent or acquiesce.

69. In so doing, the Defendants contravened arts 5,6,8,13 of the FC by depriving the Applicants of their property in breach of law, unfairly depriving the Applicants their sole means of livelihood, acquiring and use property of Applicants arbitrarily without adequate compensation, and by R6's act of compelling the Applicants to perform forced labour through the terms of the Legalisation Scheme.

70. I had ruled that all efforts and attempts by the Applicants to apply for land ownership, land use and land lease which ended up with either non-response or rejections from the State Authorities do not in any manner alter the status of the Applicants as squatters and illegal occupants of the Affected Lands. And such correspondence and communication between the Applicants and any of the Respondents cannot be deemed as express or implied authorisation or consent for the Applicants to occupy and use the land.

71. The Applicants' claims of reasonable expectation on this reason is therefore unsustainable.

72. Further, this Court agrees with the responses of the learned State LA on this issue. It is trite law that legitimate expectation cannot override express statutory provisions of the NLC. This principle which was laid down in ***North East Plantations Sdn Bhd [2011], YKK (M) Sdn Bhd v Pengarah Tanah dan Galian Johor [2021]*** was categorically accepted by the Applicants' counsel. More importantly, the doctrine of legitimate expectation cannot create a right when such right does not exist but may

give some form of limited relief to the litigant if there is some unfairness or conduct which led the litigant to suffer inconvenience or damages : ***Government of State of Sarawak v Lah Anyie & Ors [2013] 4 MLJ 184.***

73. I found that the State Authorities' decision, through R5 and R6, to devise the Legalisation Scheme could be considered as a form of relief to the Applicants for the inconveniences they suffered, which is fully in line with the principle laid down by the Federal Court in ***Lay Anyie.***

The Legalisation Scheme

74. A critical fact that was argued by the Applicants themselves and not disputed by the Respondents was that in the decision-making process that resulted in the Legalisation Scheme proposed by R6 to the Applicants, R1-R5 played a significant role either directly or indirectly. Even if they played no role, they are fully aware of the Scheme and none of them objected to the Scheme.

75. I had set out the law earlier, that as the Applicants are squatters simpliciter, the State Authority need not do anything at all to compensate them in any manner. But the State Authority, through R5 and R6 had come out with the Legalisation Scheme. The Scheme may appear to be commercially not viable or unfair or unscrupulous or unjust or ridiculous from the standpoint of the Applicants. But the Applicants must be reminded on the starting point of the conversation between this Court and them – that they are squatters simpliciter. The Applicants have no right to claim anything under the law to begin with.

76. The State Authority however had decided not to abandon them nor to expel them out of the land with nothing. Instead the Applicants were offered to be partners with the State Authority and its bodies, R5 and R6.

77. Had the Applicants embraced and accepted the Legalisation Scheme, the starting point of the conversation between this Court and the Applicants would have been altered. For as soon as the Applicants accept the Scheme, they will no longer be considered as squatters simpliciter. This is so because the State Authority will confer on the Applicants land use rights – in the form of Short Term Subleases.

78. This Court must take these facts into account as it assist me in determining the state of mind of the decision makers of R1-R6 in dealing with the Applicants and in the resultant impugned decisions. R1-R6 were consensus in chosing the most humane solution, albeit totally unsatisfactory from the standpoint of the Applicants.

79. The Court of Appeal in ***Adong Kuwau*** declared as follows (at p. 671 (CLJ); p. 164 (MLJ)):

> *"... It is now settled beyond argument in our jurisdiction that deprivation of livelihood may amount to deprivation of life itself and that state action which produces such a consequence may be impugned on well-established grounds. ..."*

80. The Legalisation Scheme is certainly not a perfect scheme. But it must have been devised with the purpose, among others, to ensure that the Applicants are not deprived of their life and livelihood, as expounded in ***Adong Kuwau***.

81. Having examined the terms and conditions of the Scheme against the backdrop of the status of the Applicants as the squatters, it is my finding that the decision of the State Authorities, in particular R5 and R6, in devising the Legalisation Scheme was never tainted with mala fide, improprietiness or unreasonableness.

82. The Applicants' arguments that the scheme is a form of forced labour, creating false market, creating unfair monopoly and contravened the relevant provisions of the Federal Constitution and the Competition Act is too far-fetched, misguided and infused with irrationality and unreasonableness.

83. The Applicants' contention that the State Authorities' decision to ask the Applicants to deal with R6 on matters relating to the Legalisation Scheme is an excessive delegation is a non-starter argument. R6 was created with the support of the Pahang State Government and the State Authority, the interests of which are represented by R5 and R6. It is a commercial arrangements best left to be dealt with by R5 and R6.

84. As I had stated earlier, this is a significant fact to be considered by this Court in determining whether R1-R6 had acted irrationally and disproportionately at anytime throughout their decision-making process constituting the lease granted to R6 and the conception of the Legalisation Scheme. I am fully satisfied that the answer to that is a resounding negative.

The Impugned Notices

85. Not only does this Court examined carefully the terms and conditions of the Scheme, this Court had also perused the impugned Notices issued by R1, R2 and R5.

86. Firstly, the legality of the Notices cannot be questioned as it was issued consequent to the correct provisions of law.

87. Most importantly, I find that the language of the Notices could assist this Court in determining whether the decision of R1 and R2 in the issuance of these impugned Notices were tainted with irrationality, unreasonableness, mala fide and procedural improprietiness.

88. R1 and R2 used almost similar language. The Applicants were drawn clearly to their non-compliance with the relevant provisions of the NLC and Forestry Act. R1 and R2 then informed the Applicants that despite the Applicants having breached statutory provisions, R1 and R2 do not intend to prosecute them under those provisions. Instead, the Applicants were told to take measures to pack their things and leave. The Applicants were further informed that should they continue to disobey, R1 and R2 would take the next step of entering the lands – which does not belong to the Applicants – to take possession of the Lands and to do what the law allows R1 and R2 to do. The Applicants now argued that as the timeline provided in the Notices were short, that signals irrationality, mala fide, unreasonablenss and procedural improprietiness that warrants the Notices to be quashed.

89. This Court reiterates the starting point of the conversation between this Court and the Applicants – that the Applicants are squatters simplicter with no legal rights. The Applicants counsel stated they are not here asking this Court to determine that the Applicants have legal ownership rights over the lands as none of the Applicants are claiming legal ownership of the lands, none are exerting the application of the doctrine of adverse possession and none of the Applicants are disputing the FC decision in ***Sidek Hj Mohamed*** and ***North East Plantation***. Why is this so? Because the Applicants are aware of their zero rights under the law due to their status as squatters simpliciter.

90. With that backdrop, there was in fact no necessity for R1 and R2 to issue the impugned Eviction Notices. They could have just entered the land and enforce the law accordingly, in full recognition of the Federal Court's decision in ***Sidek Hj Mohamed*** which I had highlighted earlier. I must repeat what Raja Azlan Shah CJ said in that case:

> *We would like to say this at once about squatters. The owner is not obliged to go to the Courts to obtain an order of possession. He is entitled, if he so wishes, to take the remedy into his own hands. He can go in himself and turn them out without the aid of the Courts of law. He can even use force, so long as he uses no more force than is reasonably necessary. He will not then be liable either criminally or civilly.*

91. But R1 and R2 chose not to do so. Instead R1 and R2 took the soft approach by issuing the Notices, again in full recognition of what was said by Raja Azlan Shah CJ in ***Sidek Hj Mohamed*** :

> *This (use of force) however is not to be encouraged because of the disturbance which might follow but the legality of it is beyond question.*

92. The final words in that decision guides this Court now. Even if R1 and R2 decides to dispense with the Notices and proceeded to enter land and forcefully to turn the Applicants out of the land, the legality of such action is beyond question, how could this Court now come to the Applicants' aid to rule that they can legally question the decision-making process of the Notices?

CONCLUSION

93. It is settled law that this Court will not interfere with a decision of the Respondents unless it can be established that the decision is infected with errors of law and the principles governing judicial review.

93. Having examined the impugned decisions, and in the light of all the findings I made as I had set out in the preceding paragraphs, it is my finding that the Applicants failed to show that in making the impugned decisions the Respondents had -

a. asked itself the wrong questions;

b. considered irrelevant matters;

c. failed to consider relevant matters;

d. failed to apply the proper principle(s) of law; and/or

e. reached a decision that was so perverse that no reasonable tribunal under similar circumstances would have reached it.

94. Based on the above considerations, it is my finding that –

(a) the decision by the Pentadbir Tanah Daerah Raub (R1) to issue the Eviction Notices on land belonging to R4 located within the area of Sg Chalit, Sg Klau, Sg Ruan, and Tranum in Mukim Gali, Daerah Raub and within the area of Tras, Mukim Tras, Daerah Raub, pursuant to ss. 425 and 426A NLC 1965;

(b) the decision by the Pengarah Perhutanan Pahang (R2) to issue the Eviction Notices on land within the Forest Reserve pursuant to s. 32 National Forestry Act 1984;

(c) the decision by the State Authority (R3) on 26.4.2020 to award to R6 a lease and land use rights of 5,357.2 acres of land in Raub District (which include the land that are the subject of the Notices of Eviction); and

(d) the decision by the State Authority (R4) as announced by the YAB Menteri Besar and subsquently by representatives of R6 on the Land Legalisation Scheme which involves the said award of the lease and land use to R6, subleasing of the relevant land to the Applicants and a specific arrangements on the selling of durians by the Applicants to R6, and the terms therein; and

(e) the decision by R5 to issue Notice of Eviction dated 1/12/2020 with respect to Land under title PN10972 Lot 17362,

were not in any manner tainted with illegality, irrationality or mala fide. There was no improprietiness or unreasonableness in the decision and the decision-making process when the Notices were issued. On the contrary they were entirely in full compliance with the requirements of the applicable law.

95. I hereby dismiss the Applicants' JR applications in CA-25-11-08/2020 and CA-25-12-10/2020 and I deny all orders prayed by all of the Applicants in both actions, with costs.

96. I wish to end with the quotation of Raja Azlan Shah CJ's decision in ***Sidek Hj Muhammad***:

> *"It cannot have been intended by Parliament in enacting the National Land Code that every person who was in need of land should be able to sue the Government for it or to take the law into his own hands for the purpose. So the Courts must, for the sake of law and order, take a firm stand. We can sympathise with the plight in which the appellants find themselves. But we can go no further. They must make their appeal for help elsewhere, not to us.".*

97. So I order.

Dated 24 April 2024

MOHD RADZI HARUN
JUDGE
HIGH COURT OF MALAYA
KUANTAN