

**DALAM MAHKAMAH TINGGI MALAYA DI SHAH ALAM
DALAM NEGERI SELANGOR DARUL EHSAN, MALAYSIA
[PERMOHONAN SEMAKAN KEHAKIMAN NO.: BA-25-51-
06/2020]**

Dalam perkara mengenai Notis Mengosongkan Bangunan oleh Majlis Daerah Kuala Selangor bertarikh 29 Januari 2019.

Dan

Dalam perkara mengenai Seksyen 83 Akta Jalan, Parit dan Bangunan 1974.

Dan

Dalam perkara mengenai Akta Spesifik Relif 1950.

Dan

Dalam perkara mengenai Aturan 53 Kaedah- Kaedah Mahkamah 2012

ANTARA

HONHUB SDN BHD

... PEMOHON

DAN

MAJLIS DAERAH KUALA SELANGOR ... RESPONDEN

GROUND OF JUDGEMENT

[1] This is an application for judicial review pursuant to Order 53 of the Rules of Court 2012 against the decision of the respondent. At the end of the proceedings, this court dismissed this application for judicial review. This is the grounds for this court's decision.

Relief Sought

[2] The amongst reliefs sought by the applicant are as follows:

- (i) A declaration that the *Notis Mengosongkan Bangunan* dated 29.01.2019 issued by Majlis Daerah Kuala Selangor to the owners/tenants of Bangunan No.1, 3, 5, 7, 9, 11 & 13 Jalan Ria 2, Zon IKS Sungai Gulang-Gulang 4500 Tanjong Karang, Selangor is illegal and is revoked; and
- (ii) A certiorari to revoke the *Notis Mengosongkan Bangunan* dated 29.01.2019 issued by Majlis Daerah Kuala Selangor to the owners/tenants of Bangunan No.1, 3, 5, 7, 9, 11 & 13 Jalan Ria 2, Zon IKS Sungai Gulang-Gulang 4500 Tanjong Karang, Selangor.

Brief Facts

[3] The applicant is the developer for 11 unit of shop-houses located under Lot 9120. The development was completed with Certificate Of Completion And Compliance dated 17.04.2014.

[4] Around March 2019, applicant was informed that respondent issued *Notis Mengosongkan Bangunan* dated 29.01.2019 (“the Notice”) requiring 2 of the 11 units shop-houses to be vacated immediately.

[5] The Notice was issued on the basis that under section 83(1), respondent is satisfied with finding of consultant that the building is unsafe to be occupied.

Grounds for Judicial Review

[6] In support of this application for judicial review, the applicant raised several grounds. Briefly, these grounds are:

- (i) Illegality – notice issued without due and proper inquiry
- (ii) Ultra vires – issued in the absence of the owner of the building
- (iii) Against Wednesbury principles – issued without partial or proper investigation
- (iv) Against rules of natural justice – failed to conduct meeting with relevant parties
- (v) Substantial injustice to all parties affected (applicant, shop owners) – notice to vacate is indefinite

Analysis

[7] This court will proceed to consider the grounds raised by the applicant.

[8] With regard to the issue of illegality, reference was made to section 83 of the Street, Drainage and Building Act 1974 which provides:

“Section 83. Powers as regards building in ruinous and dangerous state.

(1) If after conducting such inquiry as it thinks fit, the local authority is satisfied that any building or anything affixed thereon is in a ruinous state, likely to fall or is in any way dangerous to any person therein or foot passengers on the streets adjoining such building, the local authority shall serve notice on the owner of such building requiring him to either repair the defects or demolish the building or anything affixed thereon within such period of time as the local authority may specify and the local authority may also require such owner to put up such hoardings or fences of such specifications and within such period of time as it may specify.

(2) Notwithstanding any notice under subsection (1), if the local authority is satisfied that it is dangerous for any person to remain or reside inside such building, it may by notice require every occupier of and every lodger in such building to vacate the building within such period of time as it may specify.

(3) If upon service of the notice the owner desires to repair, he shall not proceed to do so unless he has obtained planning approval to do so from the relevant authority in charge of town and country planning in the area where his building is situate.

(4) Where planning approval has been granted, the owner shall not proceed to repair unless he has submitted such plans and specifications showing the intended repairs and until such plans and specifications have been approved by the local authority.

(5) Where the owner fails to put up hoardings or fences within the period of time specified in the notice or fails to put up hoardings or fences in accordance with the

specifications of the local authority, the local authority may enter upon such premises where the building is situate and put up such hoardings or fences.

(6) Where the owner is unable to demolish such building within the time specified in the notice, the owner may request the local authority to carry out the requirements of the notice.

(7) No request by the owner made under subsection (6) shall absolve the owner from his liability under this section unless he makes the request within the time specified for him to demolish such building and unless within the same period of time he-

(a) deposits with the local authority such sum which the local authority thinks is sufficient to cover the costs and expenses of-

(i) demolishing such building;

(ii) removal of any movable property found in such building;

(iii) storage of such movable property; and

(iv) any other activities incidental to or arising out of subparagraphs (i), (ii) and (iii);

(b) indemnifies and keeps indemnified the local authority against any claim, damage, loss, action or proceedings that may be brought against the local authority arising out of and incidental to subparagraphs (i), (ii), (iii) and (iv); and

(c) notwithstanding any sum paid under paragraph (a), pays the local authority a further sum which may be prescribed by the State Authority for relocation purposes.

(8) Any person who fails to comply with any of the requirements of the notice under subsection (1) or (2) shall be liable on conviction to a fine not exceeding two hundred and fifty ringgit for every day that the offence is continued after the expiry of the period specified in the notice.

(9) Where the owner fails to comply with the requirements of the notice, the local authority may do any or all of the acts required by the notice and notwithstanding the owner's liability to pay any fine under subsection (8), the owner shall pay such sums to the local authority as may be required under subsection (7) and shall be deemed to have indemnified the local authority in carrying out the terms of the notice as if he had requested the local authority to do so.

(10) A certificate by the local authority stating the sum required to be paid by the owner under subsections (5) and (9) shall be conclusive proof of the sums due and shall not be subject to any appeal or review in any court.”

[9] It was argued by learned counsel for the applicant that there was illegality in the decision of the respondent. The ground of illegality arose as the notice was issued illegally as there was no proper inquiry or investigation conducted. It was also argued by the applicant that the notice was against Wednesbury principles. This is because the notice was issued without a proper investigation.

[10] In relation to these grounds raised by the applicant, this court referred to section 83 of the Street, Drainage and Building Act 1974. Specifically, subsection 83(1) of the Street, Drainage and Building Act 1974 provides that the local authority conducts an inquiry as it thinks fit. Here in this case, the respondent which is the local authority had engaged the services of an impartial and independent third party Greenex Consultants. Having conducted the inquiry, the respondent then issued a notice to vacate. In this instance, this court is of the view there is no illegality nor was it against the Wednesbury principles as the local authority had conducted the inquiry as prescribed by section 83.

[11] Pertaining to the ground of ultra vires, the applicant argued that the Notice was ultra vires. This was because the Notice had failed to require the building owner to repair or demolish the building. Subsection 83(1) states that, the local authority shall serve notice on the owner. In this case, the applicant is the developer of the building. The facts before this court reveal the applicant is not the owner.

[12] This leads to the question of whether the applicant is a person adversely affected by the decision, action or omission in relation to the exercise of the public duty or function as provided for in Order 53 Rule 2 (4). The applicant in this application for judicial review is neither the owner nor a tenant or occupant in the said building. There is no evidence before this court to demonstrate how or in what manner the applicant has been adversely affected.

[13] This court made reference to the case of *Malaysian Trade Union Congress & Ors v. Menteri Tenaga, Air dan Komunikasi & Anor* [2014] 3 MLJ 145 where the court held:

“In our view for an applicant to pass “adversely affected” test, the applicant has to at least show he has real and genuine interest in the subject matter”

[14] In the considered view of this court, the applicant is not a person adversely affected who has a real and genuine interest in the subject matter. Hence, this court is of the considered view that there is no merit to this ground.

[15] The subsequent raised by the applicant is that the Notice was against the rules of natural justice. In support of this argument, it was submitted that there was no meeting with all relevant parties. To consider this ground, this court made reference to section 83 of the Street, Drainage and Building Act 1974. From a perusal of the said section, there is no requirement for a meeting with all parties involved. Even if there was a meeting held, this court is not convinced the applicant would be a party to the meeting.

[16] Furthermore, this court is of the view that in the event a meeting with parties involved were to be held prior to the issuance of the Notice, such a meeting would take time to be organised. In a circumstance such as this where the safety of the occupants and users of the building may be at risk, it is even more pertinent that the respondents act swiftly.

[17] Nonetheless, the respondents had around November 2017 been given a copy of the report of Tetuan Perunding TrussMaju who were appointed by the Tan Lian Hor, the landowner who developed the property with the applicant. Together with this report, the applicant was given a report by AMAS FM Consultant Sdn Bhd as building surveyors who confirmed the damage to the said buildings.

[18] Around October and November 2018, another report was sent to the applicant by Ir Dr Tan Kuang Leong stating that the building was not fit for occupation. On 3.1.2019, the respondent sent a letter to the applicant informing the applicant of the condition of the building which was not safe for occupation and sought the applicant's response. When no response or feedback was forthcoming from the applicant, the respondent issued the Notice. Hence, this court is of the

considered view there is no merit to the ground that the Notice was against the rules of natural justice as there was no meeting held with relevant parties.

[19] Relating to the ground of substantial injustice to all parties affected (applicant, shop owners, tenants), this was a ground raised by the applicant. In the considered view of this court, the applicant has failed to demonstrate to this court how the applicant is an adversely affected person under Order 53 of the Rules of Court 2012. Hence, this court does not consider the applicant as an adversely affected person under Order 53 of the Rules of Court 2012. This court takes cognizance of the fact that no shop owner or tenant filed an application for judicial review.

[20] Furthermore, this court agrees with the contention of the respondent that the application for extension of time filed by the applicant should have been served on the respondents and be heard *inter parte*. In this regard, reference is made to Order 53 rule 3 (8) of the Rules of Court 2012.

Decision

[21] In the final analysis, this court is not convinced that the respondent had committed an error which would enable this court to order a relief of certiorari. (see: *Hotel Equatorial (M) Sdn Bhd v National Union of Hotel Bar & Restaurant Workers & Anor* [1984] 1 MLJ 363)

[22] For the abovementioned reasons, this court is of the considered view there is no merit to this application. Consequentially, this application is dismissed with costs of RM 3000.00.

Dated: 19 SEPTEMBER 2022

(SHAHNAZ SULAIMAN)

Judge

High Court of Malaya, Shah Alam

COUNSEL:

For the applicant - R K Sharma & Chua Li Li; M/s Lily Chua & Associates

No. 65-1-10, Fadason Business Centre, Jalan 1/17, Taman Fadason,
52000 Kuala Lumpur.

lilychua.associates@gmail.com

+6 03 6731 7673

For the respondent - Mohamed Ibrahim K P Kunji Mohamad; M/s Ibrahim & Fuaadah

No. 12F, Jalan Bidara 8, SU Mall, Saujana Utama 3,
47000 Sungai Buloh, Selangor

info@ibrahimfuaadah.my

+6 03 6038 8164

Case(s) referred to:

Malaysian Trade Union Congress & Ors v. Menteri Tenaga, Air dan Komunikasi & Anor [2014] 3 MLJ 145

Hotel Equatorial (M) Sdn Bhd v. National Union of Hotel Bar & Restaurant Workers & Anor [1984] 1 MLJ 363

Legislation referred to:

Street, Drainage and Building Act 1974, ss. 83(1)

Rules of Court 2012, O. 53 rr. 2 (4), 3 (8)