VEERASINGAM A/L SUBRAMANIAM & ORS v DATUK BANDAR KUALA LUMPUR

CaseAnalysis | [2012] 8 MLJ 479 | [2011] MLJU 1070 | [2012] 3 CLJ 1041; [2011] 1 LNS 1446

Veerasingam a/l Subramaniam & Ors v Datuk Bandar Kuala Lumpur [2012] 8 MLJ 479

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HIGH COURT (KUALA LUMPUR)

ZABARIAH MOHD J

SUIT NO S-22NCVC-205 OF 2011

21 August 2011

Case Summary

Local Government — Buildings — Building without approval — Action by defendant to demolish 'squatter huts' erected by plaintiffs — Definition of 'squatter hut' — Essential (Clearance of Squatters) Regulations 1969 — Whether plaintiffs had locus standi to sue defendant — Whether plaintiffs could injunct defendant from carrying out public duty — Whether defendant proper party to be sued for reliefs — Specific Relief Act 1950 s 54(d)

The defendant had issued to the plaintiffs a notice under the Essential (Clearance of Squatters) Regulations 1969 ('the Regulations') to vacate and demolish 'squatter huts' they had erected on a piece of land. The plaintiffs claimed they were former workers, or the beneficiaries of former workers of an estate that used to occupy the land. They had several meetings with the defendant to get extensions of time to continue to occupy the land and the buildings thereon. When further extensions were no longer possible, the

plaintiffs filed the instant claim alleging, inter alia, that they had a right to be compensated for costs incurred in enhancing the condition of the land, for the construction of houses, shop-houses, stalls and other structures thereon as well as costs for relocation. Apart from declaratory relief, the plaintiffs applied for an injunction to restrain the defendant, its servants and/or agents from entering upon the land and demolishing the structures the plaintiffs had erected. The defendant filed encls 14 and 16 to strike out the writ and statement of claim under O 18 r 19 (1)(a)–(d) of the Rules of the High Court 1980 on the grounds the plaintiffs had no locus standi to institute the suit, the defendant was the wrong party sued for the reliefs the plaintiffs wanted, the plaintiffs were barred from seeking a permanent injunction against the defendant and that the plaintiff's claim was barred by the Public Authorities Protection Act 1948.

Held, allowing encls 14 and 16 with costs:

(1) The carrying out of the duties of demolition under the Regulations by the defendant did not involve the issue of whether the plaintiffs were squatters or not. The concern was whether the structures built by the plaintiffs fell within the term 'squatter huts' (see para 72).

(2) The plaintiffs had not shown that the structures to be demolished did not fall within the definition of 'squatter huts' under the Regulations, in other words, that they had been built with the defendant's approval (see para 46).

(3) There were no issues to be tried between the plaintiffs and the defendant. The defendant was exercising its statutory authority to ensure buildings or structures within the Federal Territory were built in accordance with the Regulations, irrespective of whether the parties affected were squatters or not. So long as the structures fell under the term 'squatter hut' under the Regulations, the defendant was entitled to demolish them (see para 44).

(4) Section 54(d) of the Specific Relief Act 1950 prohibited the granting of an injunction against the defendant, whether permanent or interim, as the defendant was a department of the Government of Malaysia (see para 71).

(5) The plaintiffs failed to show they had locus standi to institute their claim against the defendant. They had not shown they had legal or beneficial interest in the land. In any event, the plaintiffs were not claiming for an interest in the land but for monetary reliefs for which the defendant was not the correct party to be sued (see paras 32 & 74).

(6) The plaintiffs' claim was barred by the Public Authorities Protection Act 1948 as the action was filed outside the limitation period of three years under that Act (see para 54).

Defendan telah mengeluarkan notis kepada plaintif-plaintif di bawah Peraturan-Peraturan Perlu (Pembersihan Setinggan-Setinggan) 1969 ('Peraturan-Peraturan') untuk mengosongkan dan memusnahkan 'pondok-pondok setinggan' yang dibina mereka di atas sebidang hartanah. Plaintif-plaintif mendakwa mereka merupakan pekerja-pekerja lama, atau benefisiari-benefisiari pekerja-pekerja estet lama yang pernah menduduki hartanah tersebut. Mereka mengadakan beberapa perjumpaan dengan defendan untuk mendapatkan perlanjutan masa untuk terus mendiami hartanah dan bangunan di atasnya. Apabilan perlanjutan tidak lagi dibenarkan, plaintif-plaintif memfailkan tuntutan ini yang mendakwa, antara lainnya, bahawa mereka mempunyai hak untuk diberi ganti rugi untuk kos-kos yang terlibat dalam meningkatkan keadaan hartanah, untuk pembinaan rumah-rumah, rumah kedai-rumah kedai, gerai-gerai dan struktur-struktur lain di atasnya begitu juga dengan kos-kos untuk penempatan semula. Selain daripada relif deklarasi, plaintif-plainti memohon satu injuksi untuk menahan defendan, pekerja-pekerjanya dan/atau ejen-ejennya daripada memasuki hartanah dan memusnahkan struktur-struktur yang dibina oleh plaintif-plaintif. Defendan memfailkan lampiran dan 16 untuk menolak writ dan penyataan tuntutan di bawah A 18 k 19 (1)(a)–(d) Kaedah-Kaedah Mahkamah Tinggi 1980 atas alasan-alasan bahawa plaintif-plaintif tidak mempunyai locus standi untuk memulakan guaman, defendan merupakan pihak yang salah untuk disaman untuk relif-relif yang dimahukan oleh plaintif-plaintif, plaintif-plaintif dihalang daripada mendapatkan injunksi kekal terhadap defendan dan bahawa tuntutan plaintif-plaintif dihalang oleh Akta Perlindungan Pihak Berkuasa Awam 1948.

Diputuskan, membenarkan lampiran 14 dan16 dengan kos:

(1) Kerja-kerja pemusnahan di bawah Peraturan-Peraturan yang dijalankan oleh defendan tidak membabitkan isu sama ada plaintif-plaintif merupakan penduduk setinggan ataupun tidak. Yang dititikberatkan ialah sama ada struktur-struktur yang dibina oleh plaintif-plaintif terangkum dalam terma 'pondok-pondok setinggan' (lihat perenggan 72).

(2) Plaintif-plaintif tidak menunjukkan bahawa struktur-struktur yang akan dimusnahkan tidak termasuk dalam definisi 'pondok-pondok setinggan' di bawah Peraturan-Peraturan, dalam erti kata lainnya, bahawa struktur-struktur tersebut dibina dengan kebenaran defendan (lihat perenggan 46).

(3) Tiada isu-isu untuk dibicarakan di antara plaintif-plaintif dan defendan. Defendan melaksanakan tanggungjawab statutorinya untuk memastikan bangunan-bangunan atau struktur-struktur dalam Wilayah Persekutuan dibina mengikut Peraturan-Peraturan, tidak mengira sama ada pihak-pihak yang terjejas adalah penduduk-penduduk setinggan ataupun tidak. Asalkan struktur–struktur tersebut terangkum dalam terma 'pondok-pondok setinggan' di bawah Peraturan-Peraturan, defendan berhak untuk memusnahkannya (lihat perenggan 44).

(4) Seksyen 54(d) Akta Relief Spesifik 1950 menghalang pembenaran injunksi terhadap defendan, samaada kekal atau interim, memandangkan defendan merupakan jabatan Kerajaan Malaysia (lihat perenggan 71).

(5) Plaintif-plaintif gagal untuk menunjukkan bahawa mereka mempunyai locus standi untuk mengemukakan tuntutan mereka terhadap defendan. Mereka tidak menunjukkan bahawa mereka mempunyai kepentingan dari segi undang-undang atau benefisiari dalam hartanah. Dalam mana-mana keadaan, plaintif-plaintif tidak menuntut untuk kepentingan dalam hartanah tetapi relief kewangan di mana defendan bukanlah pihak yang betul untuk disaman (lihat perenggan 32 & 74).

(6) Tindakan plaintif-plaintif dihalang oleh Akta Perlindungan Pihak Berkuasa Awam 1948 memandangkan tindakan ini difailkan di luar had masa tiga tahun di bawah Akta tersebut (lihat perenggan 54).

Notes

For cases on building without approval, see 10 *Mallal's Digest* (4th Ed, 2011 Reissue) paras 16–24.

Cases referred to

American Cyanamid Co v Ethicon Co [1975] 1 All ER 504, HL (refd)

Datuk Bandar Majlis Bandaraya Shah Alam & Anor v Yusuf bin Awang & Ors [2007] 7 MLJ 327; [2007] 4 CLJ 253, CA (folld)

Ganad Media Sdn Bhd v Dato' Bandar Kuala Lumpur (No 2) [2002] 1 MLJ 508; [2002] 6 CLJ 6, HC (refd)

Government of Malaysia v Lim Kit Siang, United Engineers (M) Bhd v Lim Kit Siang [1988] 2 MLJ 12; [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63, SC (refd)

Smith v Inner London Education Authority [1978] 1 All ER 411, CA (refd)

Yap Ea Teck v Yang DiPertua Majlis Daerah Kota Tinggi [1995] 2 BLJ 157, HC (refd)

Legislation referred to

Essential (Clearance of Squatters) Regulations 1969reg 10

Land Acquisition Act 1960

Local Government Act 1976ss 2, 8

Public Authorities Protection Act 1948

Rules of the High Court 1980O 18 r 19, O18 r 19(1), 19(1)(a), (b), (c), (d)

Specific Relief Act 1950 s 54(d)

Ragunath Kesavan (Muhamad Afiq with him) (Kesavan & Associates) for the plaintiffs.
Ashmadi Othman (Mohd Akram with him) (Mokhtar & Ling) for the defendant.

Zabariah Mohd J:

[1]Enclosure 14 is the striking out application by the defendant of the plaintiffs' writ and statement of claim pursuant to O 18 r 19(1)(b), (c), (d).

[2]Enclosure 16 is the striking out application by the defendant of the plaintiffs' writ and statement of claim pursuant to O 18 r 19(1)(a) of the Rules of the High Court 1980.
BRIEF FACTS

[3]The defendant had issued a notice of demolition of 'squatter huts' to the plaintiffs dated 15 June 2007 under the Essential (Clearance of Squatters) Regulations 1969. The notice stated that the plaintiffs were to vacate the 'squatter huts' on or before 29 June 2007 to make way for development. This is not in dispute.

[4]The plaintiffs claimed that they were the former workers or the beneficiaries of the former workers of the Estate of Ladang Bukit Jalil. The land in question belongs to JAWI. This is not on dispute.

[5]There were subsequent notices issued after the 15 June 2007 notice to evict. It was postponed due to discussions between the plaintiffs and the various agencies on the issue of compensation, salary and EPF contributions of the plaintiffs.

[6]Finally after several postponements of the eviction notices, the defendant issued a

final notice dated 1 March 2011. Thereafter the plaintiffs filed the writ and statement of claim herein against the defendant claiming for the following reliefs:

(i) Satu deklarasi bahawa wujudnya satu ekuiti bagi pihak Plaintif-Plaintif yang mana ekuiti tersebut meliputi nilai perbelanjaan pengubahsuaian tanah, rumah (termasuk kedai dan gerai), harga semasa rumah mereka serta kos pemindahan;

(ii) Satu deklarasi bahawa Plaintif-Plaintif mempunyai hak milikan ekslusif keatas tanah tersebut selagi hak ekuiti mereka itu tidak ditunaikan melalui tawaran membeli rumah, dan pembayaran pampasan dan gantirugi yang perlu ditaksir.

(iii) Satu injunksi menghalang Defendan samada secara sendiri dan/atau pekerja-pekerja mereka dan/atau ejen mereka dari memasuki dan merobohkan rumah dan apa-apa bangunan yang telah didirikan oleh Plaintif-Plaintif di ladang tersebut;

(iv) Relif-relif lain sekiranya Mahkamah yang mulia ini merasakan perlu; dan

(v) Kos.

[7]Pending the disposal of the main suit the plaintiffs filed an application in encl 4 for an injunction which I had dismissed and were subsequently upheld by the Court of Appeal on 10 August 2011.

[8]Hence now, the defendant filed encls 14 and 16 to strike out the plaintiffs' writ and statement of claim pursuant to O 18 r 9(1) of the Rules of the High Court 1980.

THE COURTS FINDINGS

[9]The defendant premised its application for the striking out based on the following grounds:

(a) the plaintiffs failed to established that they have the locus standi to institute the claim herein against the defendant;

(b) the defendant is the wrong party for the plaintiff to make the claim herein;

(c) the plaintiffs is barred from seeking for a permanent injunction against the defendant; and

(d) the claim by the plaintiffs is barred by the Public Authorities Protection Act 1948.

WHETHER THE PLAINTIFFS HAVE LOCUS STANDI TO INSTITUTE THE ACTION HEREIN AGAINST THE DEFENDANT

[10]In the affidavit in reply in encl 17 to oppose the application by the defendant, the plaintiffs No 1–41 affirmed that they are not squatters simpliciter as they and their parents have been occupying the land and are former estate workers of Ladang Bukit Jalil, Batu 6 1/2, Jalan Puchong, Kuala Lumpur and/or beneficiaries of former workers of the same. The plaintiffs claimed that they have been staying on the land together with their families.

[11]The plaintiffs also aver that the defendant had acknowledged the fact that the plaintiffs are former estate workers and/or the beneficiaries of the former estate workers of Ladang Bukit Jalil, at meetings between the plaintiffs and the defendant on 16 November 2010 at the Bilik Mesyuarat of the defendant at 27th Floor, Menara DBKL1.

[12]The plaintiffs aver that, as a result of the meeting, the defendant state that the defendant would only be issuing out the notice of eviction to 14 plaintiffs as they are deemed as 'squatters' and has no relation to the former estate workers of the Ladang Bukit Jalil. The defendant had given its guarantee that in the event that the 14 plaintiffs were able to provide proof as to their status to DBKL on or before 22 November 2010, they would be categorised as former estate workers or the beneficiaries of the former estate workers and not 'squatters'.

[13]The plaintiffs had informed to the defendant the status of eight of the plaintiffs as evidenced in exh BK2 of encl 17. The defendant however did not give any response to the said letter of the plaintiffs.

[14]The plaintiffs also averred that they have been acknowledged by the Government and the Ministry of Federal Territory that they are former workers and/or the beneficiaries of the former estate workers. Various newspapers reports were exhibited in BK3 as support to this said acknowledgement.

[15]JAWI was only gazetted as the owner of the said land on 17 September 2009 whereas the discussion between the plaintiffs and the defendant had started since February 1994. The notice of eviction to the plaintiffs were sent to the plaintiffs only in 2007 which was way before JAWI being the owner of the said land. Discussions were still pending even after the notice of eviction in 2007 was issued. This is evidenced when the Minister of Wilayah Persekutuan had issued out a letter to differ the eviction action to the Director General of DBKL.

[16]The plaintiffs state that the issue of locus standi and the issue of the legality of the notice of eviction are issues of law and fact which have to go for full trial. Hence the plaintiffs pray that the application by the defendant for encls 14 and 16 are to be dismissed.

[17]With regards to the issue of locus standi, my view is that the plaintiffs have failed to show that they do have the locus standi to institute the present claim against the defendant.

[18]Until the date of the application herein, the plaintiffs have not clarified their status with regards to the land. What is glaringly clear is that the land is registered in JAWI's name.

[19]The defendant said that BK2 shows the status of eight of the plaintiffs ie:

(a) Verasingam ('the first plaintiff');

(b) Selvaraju ('the second plaintiff');

(c) Seevinasagam ('the 18th plaintiff');

(d) Pannir Selvam ('the 19th plaintiff');

(e) Batumalay ('the 30th plaintiff');

(f) Ganthi ('the 35th plaintiff');

(g) Ramakrishnan ('the 37th plaintiff'); and

(h) Ganeson ('the 41th plaintiff').

[20]As to the rest of the plaintiffs, none shown.

[21]Perusing through BK2, the following can be discerned:

(a) the first and the second plaintiffs did not show that they are former estate workers or the beneficiaries of the same;

(b) the 18th and the 19th plaintiffs' relationship is that of son in law and father in law;

(c) the 19th plaintiff's I/C shows that he has an address at 2399—3 JKR Quarters, Batu 7 1/2 Jalan Puchong, 58200 Kuala Lumpur;

(d) the 35th plaintiff does not show at all that he is the former estate workers and/or beneficiary of the former estate workers;

(e) the 37th plaintiffs I/C discloses that his address is at No 9, Jalan TK 1/6, Taman Kinrara, 58200 Kuala Lumpur; and

(f) the 41th plaintiff did not prove at all that he is a former estate worker and/or beneficiary to the former estate worker.

[22]Thus, as at the hearing of the application in encls 14 and 16 herein, the plaintiffs herein failed to prove that they do have the locus standi to institute the claims against the present defendant.

WHETHER THE DEFENDANT IS THE WRONG PARTY FOR THE PLAINTIFF TO MAKE THE CLAIM HEREIN

[23]From the averment in the statement of claim, the Bukit Jalil Estate ('the estate') started its operation as early as 1930 under the management of Harrison Private Ltd, also known as the Harrison Estate. In the 1940s, Harrison Estate was renamed as Bukit Jalil Estate ('the estate') (para 3 of the statement of claim).

[24]The Estate was under the management and administration of Malayan Estate Agencies Group Ltd, which set up a subsidiary known as The Bukit Jalil Estate Ltd and Kinrara Group Estates Sdn Bhd to operate the Estate and the Kinrara Estate (para 4 of the statement of claim).

[25]On 22 January 1976 a committee which consisted of the workers of the estate ('NUPW') sent a letter to the management of the Bukit Jalil Estate Ltd to apply for a piece of land so as to build a place for the plaintiffs as at that point in time there were rumours that the estate was to be bought over by the Malaysian Government. However these rumours were denied by the Kinrara Group Estate Sdn Bhd. The plaintiffs alleged that Kinrara Group Estates Sdn Bhd had assured the plaintiffs that there was to be no change in the management of the estate and that the plaintiff would continue to have security in tenure. The letter was dated 4 May 1976 (paras 5 and 6 of the statement of claim).

[26]Subsequently, on 1 July 1980 the plaintiffs received a letter from the manager of the estate stating that the land of the estate would be acquired by the government pursuant to the Land Acquisition Act 1960. On the same date the plaintiffs were given notices of termination of their services and were told to vacate their quarters (para 7 of the statement of claim).

[27]Subsequently the estate was taken over by the Ministry of the Federal Territory of Wilayah Persekutuan and the management were placed under various contractors and the plaintiffs have continued to work in the estate (refer to para 9 of the statement of claim). The various contractors were:

(a) Sykt Sri Bama on 1 August 1980;

(b) Sykt Lidra on 1 December 1981;

(c) Sykt Sukra on 1 December 1982;

(d) Sykt Lingo on 1 December 1983;

(e) Sykt Sikas on 1 June 1984;

(f) Sykt Swarna on 1 June 1985; and

(g) Sykt Sharida on 1 September 1986.

[28]The plaintiffs averred that from 1980 until 1986 the plaintiffs were faced with various problems of EPF contributions, SOCSO and salaries not paid (para 10 of the statement of claim).

[29]There have been various discussions on the status of the plaintiffs between the plaintiffs and the defendant. There have been requests from various politicians being made to the defendant seeking for indulgences and for time to be given to the plaintiffs before the defendant took any further action with regards to the vacant possession of the estate land against the plaintiffs (paras 11–14 of the statement of claim). However, whatever promises or assurances given by the various politicians does not amount to a contract or undertaking which binds the defendant. The promises and assurances were not given by the defendant. What the defendant did was merely giving the plaintiffs several indulgences pursuant to the request from the politicians for the plaintiffs to sort out the compensation and the alternative accommodation that may be due to them, before the defendant proceed with the eviction notices.

[30]The plaintiffs were informed by the defendant via letter dated 10 April 1995 that the ownership of the land is not a matter to be brought up with the defendant but that is within the jurisdiction of the Pejabat Tanah dan Galian Wilayah Persekutuan Kuala Lumpur (para 16 of the statement of claim).

[31]The defendant deny that they have ever agreed that the plaintiffs have a right to remain on the estate land and neither was there any legal obligation on their part to provide for compensation to the plaintiffs in the event their houses are to be demolished. The defendant contended that the fact that the plaintiffs were former estate workers or

that they are the beneficiaries of the estate Workers does not give the plaintiffs the right to build structures nor to remain on the estate land which now belongs to JAWI.

[32]From the affidavit filed by the plaintiffs, it has not been shown that the plaintiffs have a legal nor beneficial interest in the estate land. As early as 10 April 1995, the plaintiffs were informed as to the status of the estate land (refer to para 16 of statement of claim).

[33]Even taking the plaintiffs case at its best i.e assuming for a moment that the plaintiffs do have a claim for the legal or beneficial interest of the land (which the plaintiffs have failed to show), the defendant is not the rightful party to be sued in this case. If a claim to the land is concerned, then the claim ought to be made against JAWI, the rightful owner, the Government of Malaysia or the Pejabat Tanah Dan Galian Wilayah Persekutuan. These entities have not been made a aprty to the suit herein.

[34]It is an undisputed fact that the defendant is a local authority which is empowered under the law to enforce the provisions of the law in the conduct of the affairs of the city of Kuala Lumpur. This is provided for under ss 2 and 8 of the Local Government Act 1976.

[35]The dispute arises from the notice which was issued by the defendant to the plaintiffs dated 15 June 2007 under the Essential (Clearance of Squatters) Regulations 1969. The houses of the plaintiffs are situated on the said estate land. This regulation regulates the clearance of squatters on state as well as private land. Regulation 10 of the regulation states that:

> 10(1) If in the opinion of a local authority it is expedient and necessary to do so having regard to the public interest then notwithstanding regulations 6 and 7, the local authority, its agents or servants may, after giving 7 days' notice in writing to the occupier:
>
> (a) enter by day or by night any private land for the purpose of summarily demolishing any squatter hut; and
>
> (b) remove any person or movable property in any squatter hut; and
>
> (c) summarily demolish any squatter hut on the land …
>
> (d)

[36]'Squatter hut' has been defined in the regulation as:

> 'Squatter hut' means any house, hut, shed, stall, lean-to, shelter, roof enclosure or any extension or structure attached to any building or other erection, of whatever materials made and whether used for the purpose of a human habitation or otherwise *which has been erected or is in the course of erection otherwise than in accordance with a plan approved by a local authority or in respect of which a license issued by a local authority* has been cancelled, withdrawn or has expired and is situated on any land.

[37]The defendant was empowered with the statutory authority to issue the said notices against the plaintiffs pursuant to the provisions abovementioned.

WHETHER THE PLAINTIFFS IS BARRED FROM SEEKING FOR A PERMANENT INJUNCTION AGAINST THE DEFENDANT

[38]The present case is a case of the defendant, who is a local authority exercising its statutory duties to demolish 'squatter huts'.

[39]Lord Denning MR in *Smith v Inner London Education Authority* [1978] 1 All ER 411 at p 418 said in his judgment that *American Cyanamid Co v Ethicon Co* [1975] 1 All ER 504 requirement of a 'serious case to be tried' has no relevance to the application for an injunction against a public authority. He said that:

> Lastly, a word about *American Cyanamide Co v Ethicon Ltd* [1975] 1 All ER 504; [1975] AC 396 which we have so often. Counsel for the authority said that it should be confined to actions between parties in private law; and should not be extended to cases against local authorities in public law. I see some merit in this suggestion, especially in view of *F Hoffmann-La Roche & Co AG v Secretary of State for Trade and Industry* [1974] 2 All ER 1128; [1975] AC 295; and also when one is considering the respective compensation in damages. But without going into detail, I am of opinion that a local authority should not be restrained, even by an interlocutory injunction, from exercising its statutory powers or doing its duty towards the public at large, unless the plaintiff shows that he has a 'real prospect of succeeding in his claim for a permanent injunction at the trial' [1975] 1 All ER 504; [1975] AC 396 at p 408. In this case I fear that I see no real prospect of the parents succeeding at the trial. To grant an interlocutory injunction in the circumstances would do more harm than good. It would only put off the evil day for a year.

[40]However, Brown LJ delivering his judgment in the same case states that the requirement of the determination of 'issues to be tried' still applies except that it is worded differently. This is how he said it at p 419 of the report:

> The first question is whether the plaintiffs have satisfied the first requirement laid down by the House of Lords in *American Cyanamid Co v Ethicon Ltd* [1975] 1 All ER 504 at p 510; [1975] AC 396 at pp 407–408: is their action not frivolous or vexatious? Is there a serious question to be tried? Is there a real prospect that they will succeed in their claim for a permanent injunction at the trial? The first two questions were clearly intended to state the same test, because they are joined by the phrase 'in other words', and the third cannot, I think, have meant to state any different one.

[41]These authorities mentioned of situation primarily in cases of interlocutory injunction, where the issue that needs to be determined at that stage for the said application, is whether the plaintiff has a real prospect of success at the main trial for a permanent injunction. As far as our present case is concerned, I had determined that as far as the application for interlocutory injunction by the plaintiffs is concerned, that had been dismissed. This finding had been confirmed by the Court of Appeal.

[42]When I determined that the application for the interlocutory injunction by the plaintiff was dismissed, it was on the premise that the plaintiffs have no real prospect of success at the main trial.

[43]There are no issues to be tried between the plaintiffs and the defendant. The reliefs prayed for by the plaintiffs herein should not be directed to the defendant.

[44]The defendant is exercising its statutory authority to ensure that buildings or structures within Federal Territory are built in accordance to regulations. In fact, the exercise of the powers of the defendant under the Essential (Clearance of Squatters) Regulations 1969 is irrespective of whether the plaintiffs are squatters or not. So long as the building/structures falls under the term of 'squatter hut' under the said regulations, the defendant is entitled to demolish the same.

[45]The defendant has a duty to the public at large to ensure that buildings or structures are built with approval from the local authority and are safe for the public. The defendant cannot allow anybody to just build any structures as they like as it may be a safety hazard to the public and the occupier concerned. That is the duty that had been imposed on the defendant by law.

[46]It has not been shown by the plaintiffs that the structures about to be demolished by the defendant do not fall within the definition of 'squatter huts' under the Essential (Clearance of Squatters) Regulations 1969 ie that the structures erected by the plaintiffs on the said land were built without approval from the defendant. As far as these facts are

concerned, it is not in dispute. Hence the plaintiffs will not have a real prospect of success for a permanent injunction against the defendant (to restrain the defendant from carrying out its public duty pursuant to the provisions under the regulations) should the case proceed for trial. This is in line with the observations made by Geoffrey Lane LJ in *Smith v Inner London Education Authority* at p 426:

> Indeed the whole purpose of the decision in that case was to avoid the necessity of the court trying the case in advance on inadequate facts and arguments and to provide rules designed to ensure that a fair balance was maintained between the parties until trial. The present case is dissimilar from *American Cyanamid Co v Ethicon Ltd* [1975] 1 All ER 504; [1975] AC 396 in almost every particular. There is no material dispute about the facts. The authority have contended that the principles in that case are not appropriate to cases where the issue is the propriety or otherwise of the exercise by a public authority of its statutory powers and they pray in aid the decision of their Lordships in *F Hoffmann-La Roche & Co AG v Secretary of State for Trade and Industry* [1974] 2 All ER 1128 at pp 1134–1135; [1975] AC 295 at pp 341–342. The plaintiffs on the other hand have argued that they can show they have 'a real prospect of succeeding' at the eventual trial. As a result of these various contentions it has been necessary for each side to deploy in full all the legal arguments and for this court to give them such mature consideration as it has been able. Consequently, to apply the rules laid down by Lord Diplock (which are designed to circumvent the necessity of deciding disputed facts or determining points of law without hearing full argument) would in the circumstances seem inappropriate. The outcome of the full argument applied to the undisputed facts is to my mind clear. The authority succeeds and the injunction should be discharged. In any event, if one does pose the *American Cyanamid* [1975] 1 All ER 504; [1975] AC 396 at p 408 question, namely: do the plaintiffs have a real prospect of succeeding in the eventual trial?, the answer is no.

[47]Similarly in our case, the answer to the question of whether the plaintiffs herein would have a real prospect of success at the trial for a permanent injunction against the defendant, is an outright 'No'.

[48]Further, local authority, like the defendant is a department of the Government of Malaysia (refer to *Yap Ea Teck v Yang DiPertua Majlis Daerah Kota Tinggi* [1995] 2 BLJ 157), which is subservient to the Minister charged with the responsibility for local government. As a government department, the defendant cannot be subject to an injunction, be it interim or perpetual (refer to the case of *Ganad Media Sdn Bhd v Dato' Bandar Kuala Lumpur (No 2)* [2002] 1 MLJ 508; [2002] 6 CLJ 6). Therefore s 54(d) of the Specific Relief Act 1950 applies which states that:

> An injunction cannot be granted:
>
> (a) to interfere with the public duties of any department of any Government in Malaysia, or with the sovereign acts of a foreign Government.

[49]Further support can be found in the case of *Government of Malaysia v Lim Kit Siang, United Engineers (M) Bhd v Lim Kit Siang* [1988] 2 MLJ 12; [1988] 1 CLJ 219; [1988] 1 CLJ (Rep) 63 (SC). Salleh Abas LP at p 12 (MLJ); p 214 (CLJ) said this:

> Refusal to grant the injunction in this case is also consistent with paras (d) and (k) of s 54 of the Specific Relief Act in that no injunction can be granted 'to *interfere with the public duties of any department of any Government*' nor can it be granted 'where the applicant has no personal interest in the matter'. Personal interest here must surely mean a legal interest and not merely political interest, (Emphasis added.)

[50]A similar Court of Appeal case of *Datuk Bandar Majlis Bandaraya Shah Alam & Anor v Yusuf bin Awang & Ors* [2007] 7 MLJ 327; [2007] 4 CLJ 253 where the respondents filed an application under an originating summons, the principle as stated by His Lordship with regards to the effect of granting a permanent injunction against a local authority is applicable to our case herein. His Lordship said p 345(MLJ); at p 282(CLJ) that:

> The effect of the perpetual injunction granted in this instant appeal would be tantamount to the respondents having established their right that they can continue to occupy the squatter huts erected on the said property and that the appellants cannot take any fresh action or act further under reg 10 of the said regulations against the respondents. The perpetual injunction would also tantamount to vesting of a right to remain on the said property and indirectly the vesting of a right to occupy land by prescription, which is off course foreign to our land law. Our Code clearly does not all provide for the right to occupy land by prescription.

[51]Further support can be found in the passage by Mohd Ghazali Yusoff JCA in the same case at p 346(MLJ); p 283(CLJ) where he said that:

> The second appellant is clearly a public authority and it exercises public functions as local authority. The meaning assigned to the expression 'public authority' in the Federal Constitution also includes a local authority (see art 160 (2)). In an application for an injunction where the public authority is involved, it is the duty of the court to consider the injury or the inconvenience which may result to the public or whether it would be detrimental to public interest and welfare in case an injunction is granted. To grant the perpetual injunction under the circumstances of this case would have the effect of nullifying the said regulations. The appellants have a statutory duty to perform under the said regulations and once they decide to act under the same, they cannot be prevented from doing so by a perpetual injunction. We are also of the view that the granting of the perpetual injunction was an unwarranted exercise of discretionary powers. We would also think that this relief prayed for is beyond the jurisdiction of the court.

[52]Therefore, the plaintiffs are barred from seeking for a permanent injunction against the defendant.

WHETHER THE CLAIM BY THE PLAINTIFFS IS BARRED BY THE PUBLIC AUTHORITIES PROTECTION ACT 1948

[53]It is not disputed that the notice for eviction was issued by the defendant on 15 June 2007.

[54]The present action was commenced by the plaintiffs on 14 March 2011. Clearly the action herein has exceeded the limitation period of three years under the Public Authorities Protection Act 1948.

THE ISSUE ON THE LEGALITY OF THE NOTICES OF EVICTION

[55]The plaintiffs state that the issue of the legality of the notice of eviction are issues of law and fact which have to go for full trial.

[56]The legality of the notices of eviction are premised on the following grounds, ie that:

(a) the notices were not served personally on the plaintiffs;

(b) the notices did not state the provisions under which it seek to enforce; and

(c) the plaintiff did not receive any notice from the owner of the land for them to vacate the land.

(Refer to para 60 of the statement of claim.)

THE NOTICES OF EVICTION WERE NOT SERVED PERSONALLY

[57]The plaintiffs averred in the statement of claim at para 60 that they were never served with the notice from the defendant personally.

[58]The plaintiffs cannot dispute that they were aware of the notices as they have found it fit to challenge the notices by filing the action herein and the summons in chambers in encl 4 for an injunction restraining the defendant or its agents from entering or demolishing houses or any structures which were built by the plaintiffs at Ladang Bukit Jalil, Batu 6 1/4 Jalan Puchong, Kuala Lumpur.

[59]In fact, after the first notice by the defendant dated 15 July 2007 were issued, the

plaintiffs stated in the pleadings that there were discussions after discussions between the plaintiffs' representative and the relevant authorities, for the defendant to differ in the eviction and the demolition exercise of the structures on the land. There have been requests from politicians and certain officials seeking for extensions to be given to the plaintiffs pending the discussions on the compensation and the alternative accommodation to be given to the plaintiffs. These facts show that the contention of the plaintiffs that they have never received the notice from the defendant is not true.

[60]I have made a finding at the hearing of the application for the interim injunction that, the plaintiffs, themselves in para 21 of the affidavit in support at encl 5 states as follows:

> 21. Saya akan menyatakan bahawa *Plaintif-Plaintif telah menerima Notis Pengusiran daripada DBKL pada 15.6.2007.* Plaintif-Plaintif dikehendaki mengosongkan premis kediaman mereka sebelum atau pada 29.6.2007 kerana telah menduduki tanah tersebut secara haram dan mereka adalah setinggan. (Emphasis added.)

[61]Clearly, from the averments, the plaintiffs have admitted that they have received the notice dated 15 June 2007. How can now the plaintiffs say that they have not received the said notice.

[62]I have also made a finding that the notice was served on 16 June 2007 and the service of the notice was stated as 'Cara penyampaian: Tampal' which means it was posted at the premises of the plaintiffs. These Notices are documents which were exhibited by the plaintiffs themselves.

[63]These facts therefore show that the plaintiffs were served with the notices and are aware of the consequences of the notice.

THE NOTICE DID NOT STATE THE PROVISIONS OF THE LAW THAT THE DEFENDANT WERE ACTING TO EVICT THE PLAINTIFFS

[64]I have made a finding on this issue in the application for the interlocutory injunction which I reproduced below:

[65]The first notice dated 15 June 2007 clearly stated that the defendant was acting

under the provisions of Essential (Clearance of Squatters) Regulations 1969. For clarity I hereby reproduce the notice that was issued out by the defendant:

NOTIS PERATURAN-PERATURAN PERLU (PEMBERSIHAN SETINGGAN-SETINGGAN) 1969

NOTIS MERUNTUHKAN PONDOK SETINGGAN

KEPADA …

…

Tarikh 15hb. Jun2007

Tuan/Puan,

PEMBERSIHAN SETINGGAN : DIKAMPONG LADANG BUKIT JALIL, KUALA LUMPUR

PROJEK PEMBANGUNAN : PROGRAM PEMBERSIHAN SETINGGAN WILAYAH PERSEKUTUAN KUALA LUMPUR

Adalah dengan ini di maklumkan bahawa kerajaan akan melaksanakan projek pembangunan di kawasan tersebut diatas, dan di dapati bangunan yang tuan/puan duduki/gunakan sekarang adalah terlibat secara langsung dengan perlaksanaan projek tersebut.

2. Maka dengan hal yang demikian atas kuasa-kuasa yang diberikan kepada saya di bawah PERATURAN-PERATURAN PERLU (PEMBERSIHAN SETINGGAN-SETINGGAN) 1969 yang meliputi kawasan Wilayah Persekutuan Kuala Lumpur, dengan ini memberi tuan/puan tempoh 14 (EMPAT BELAS) hari dari tarikh penerimaan notis ini supaya berpindah dan mengosongkan serta merobohkan bangunan dan apa-apa sambungan atau binaan di atas tanah yang tuan/puan duduki/gunakan sekarang.

3. SILA AMBIL PERHATIAN bahawa jika tuan/puan gagal mengosongkan tapak tersebut dalam masa yang ditetapkan, jabatan ini akan mengambil tindakan merobohkan bangunan tersebut dan menuntut semua kos kerja daripada tuan/puan.

Sekian.

[66]From the wordings of the notice, it cannot be any clearer as to the provisions under which the defendant is acting.

[67]The subsequent notices were a follow up on the notice dated 15 July 2007.

[68]In any event, the conduct of the plaintiffs or their representatives in sending letters after letters to the defendant and the relevant authorities seeking for extension of time

and indulgences from 2007 until now, are clear pointers that the plaintiffs are very much aware of the provisions of the law that the defendant is acting.

NO NOTICE FROM THE OWNER OF THE LAND FOR THE PLAINTIFFS TO BE EVICTED FROM THE LAND

[69]This argument of the plaintiffs is misconceived. Regulation 10 of the Essential (Clearance of Squatters) Regulations 1969, provides that a local authority may enter the private land in question after giving the appropriate notice to the occupier to demolish the 'squatter huts'.

[70]Thus, the defendant do have the authority to enter private land for the purposes mentioned in reg 10 of the same. Hence the arguments by counsel for the plaintiffs have no merit.

CONCLUSION

[71]Section 54(d) of the Specific Relief Act 1950 prohibits the granting of an injunction against the defendant, be it permanent or interim. In any event the injunction prayed for in the relief by the plaintiffs, is to prevent the defendant from carrying out its duties to demolish structures which contravened the Essential (Clearance of Squatters) Regulations 1969. The court cannot be a party to prevent the defendant from carrying out its legitimate duty and encourage flouting of the law by some individuals.

[72]It is also pertinent to bear in mind that, the carrying out of the duties of demolition under the Essential (Clearance of Squatters) Regulations 1969 by the defendant does not involve the issue of whether the plaintiffs are squatters or not. The concern is whether the structures built by the plaintiffs of the houses of the plaintiffs falls within the term 'squatter huts' 'which has been erected or is in the course of erection otherwise than in accordance with a plan approved by a local authority or in respect of which a license issued by a local authority has been cancelled, withdrawn or has expired and is situated on any land'.

[73]From the reliefs prayed for in the writ and statement of claim, the plaintiffs are not claiming for an interest in the land. Amongst the reliefs prayed for in the main suit state as follows:

> Satu deklarasi bahawa wujudnya satu ekuiti bagi pihak Plaintif-Plaintif yang mana ekuiti tersebut meliputi nilai perbelanjaan pengubahsuaian tanah, rumah (termasuk kedai dan gerai), harga semasa rumah mereka serta kos pemindahan;
>
> Satu deklarasi bahawa Plaintif-Plaintif mempunyai hak milikan ekslusif ke atas tanah tersebut selagi hak ekuiti mereka itu tidak ditunaikan melalui tawaran membeli rumah, dan pembayaran pampasan dan gantirugi yang perlu ditaksir.

[74]Clearly, the defendant is claiming for monetary reliefs, whereby the defendant is not the correct party for the declaration that is being sought.

[75]There is thus no reasonable cause of action against the defendant. The action is frivolous and vexatious and an abuse of courts process. Hence the plaintiffs' writ and statement of claim and statement of claim is clearly unsustainable and ought to be struck out under O 18 r 19(1) of the Rules of the High Court 1980.

[76]Therefore, the applications by the plaintiffs in encls 14 and 16 are allowed with costs.

Enclosures 14 and 16 allowed with costs.

Reported by Ashok Kumar
