Mega Forest Plantation Management Sdn Bhd v Pengarah Perhutanan Negeri Selangor & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B-01(A)-682–12 OF 2018
MARY LIM , HAS ZANAH MEHAT AND NANTHA BALAN JJCA
23 JUNE 2020

Administrative Law — Judicial review — Res judicata — Plaintiff filed judicial review ('JR') application to quash State Forestry Department's decision that it vacate land and abandon commercial trees that were planted on it under reforestation project — Plaintiff sought declaration that it was entitled to be compensated for monies it had invested in planting and nurturing the trees till maturity — Plaintiff wanted court to order State authorities to value the trees to determine compensation payable — Whether High Court was right in dismissing JR application on ground plaintiff's interest and claim was only in the value of the trees which claim it could have raised in its previous suit against its joint-venture ('JV') partner in the reforestation project — Whether dismissal of that suit on the ground of illegality of the JV rendered plaintiff's claim res judicata in the wider sense of the term — Whether party properly entitled to claim any compensation was the JV company to whom the trees belonged — Whether plaintiff as mere shareholder in JV company had no legal right to the company's assets — Whether monies plaintiff had expended on the project could only be regarded as shareholder's loans to the JV company and did not vest plaintiff with any independent cause of action

The appellant entered into a joint-venture ('JVA') with the Selangor Agricultural Development Corporation ('PKPS') to plant timber trees of the 'Sentang' variety in a Selangor State Government-initiated reforestation project. The State Government leased land ('the land') in a *gazetted* forest reserve to PKPS to implement the project. In turn, PKPS subleased the land to the joint-venture company ('MNSB') that was formed between the appellant and PKPS to carry out the tree-planting. The appellant and PKPS were, respectively, the majority and minority shareholders in MNSB. The appellant wholly funded the project with loans taken from a bank. PKPS later discovered that its participation in the formation of MNSB and its shareholding in it breached the terms of the Selangor Agricultural Development Corporation (Amendment) Enactment No 12 of 1972 and the Incorporation (State Legislatures Competency) Act 1962 for failing to obtain the prior written consent of the Minister of Finance to enter into the joint-venture. Consequently, PKPS petitioned for the winding up of MNSB on just and equitable grounds. The High Court agreed with the reasons for the petition and wound up MNSB and held that both the incorporation of MNSB and the

JVA were illegal. That decision caused the appellant to sue PKPS ('Suit 514') for damages for misrepresentation and/or breach of contract and/or breach of statutory duty, all premised upon the JVA. In turn, PKPS counterclaimed against the appellant and its directors for damages including for loss of profits from potential sale of the timber and loss of dividends as a shareholder in MNSB. The High Court dismissed both the said claim and counterclaim. Meanwhile, the State Forestry Department demanded for the return of the land and informed the appellant by letter ('the impugned letter') that it had to vacate the land within 30 days. The appellant filed a judicial review ('JR') application to quash the impugned letter and to obtain an order directing the respondents to appoint licensed valuers to ascertain the value of the planted trees on the land to determine the compensation payable to the appellant. The appellant also sought a declaration that it was entitled to compensation for wholly financing the planting of the Sentang and other trees. The High Court dismissed the JR application holding, inter alia, that: (a) the appellant lacked locus standi as it had no direct interest in the land but only in the trees standing on it; hence, its interest was purely monetary flowing from its investment in MNSB via the JVA; (b) as previous court proceedings had found both the JVA and the incorporation of MNSB to be illegal, the court could not assist the appellant to enforce a right emanating from an illegal contract; (c) the issue of compensation claimed by the appellant was already determined in Suit 514 and was res judicata; dan (d) MNSB's liquidator made no application to the state authority for permission to take possession of the commercial trees that were planted on the land but had, instead, agreed to hand back possession of the land to the state authority, which decision the appellant as shareholder in MNSB never challenged.

In the instant appeal against the dismissal of the JR application, the appellant submitted that, inter alia: (i) the respondents' order to vacate the land and abandon the planted trees infringed its right to property under art 13 of the Federal Constitution and was conduct that was illegal, irrational and procedurally improper; (ii) the illegality in the incorporation of MNSB and the JVA should not affect the appellant's claim for reasonable compensation since it had invested huge sums of monies in the project and the trees were ready for harvesting with a commercial value of RM600 per metric ton; (iii) the appellant was not responsible for the illegality in the joint-venture as all legal documents and agreements connected with the JVA were prepared by PKPS's solicitors and vetted by the state legal advisor; and (iv) the finding that the appellant had no locus standi was wrong as it was 'adversely affected' by the respondents' decision and had a real and genuine interest in the subject-matter of the JR proceedings. The respondents, on the other hand, submitted that: (A) with the finding that the JVA and the formation of MNSB were illegal and the fact that under s 14 of the National Forestry Act 1984 all things on the land belonged to the state, the respondents were not liable to pay any compensation to the appellant; (B) the appellant took no steps as shareholder of MNSB to challenge the liquidator's decision to surrender the land back to the state; and

(C) res judicata precluded the appellant from re-litigating matters that were already adjudicated upon both in Suit 514 as well as when MNSB was wound up.

Held, unanimously dismissing the appeal:

(1) Res judicata, in the wider sense, prohibited the judicial review application. The real matters and grievance of the appellant as raised in the judicial review were matters which ought to and could have been raised in Suit 514. In any event, it was clear that the appellant's monetary claim via the judicial review proceedings was subsumed in the claim that was previously presented by the appellant in Suit 514. The compensation that the appellant was seeking through the judicial review application was actually part and parcel of the claim which was previously made in Suit 514 against PKPS (see paras 79–80).

(2) The appellant had no interest in the subleased land and the entity which had a direct legal interest in that land and, by extension, in the Sentang trees situated thereon, was MNSB. As a matter of law, the appellant had no legal right to the assets of MNSB since it was only a shareholder in the company. Whether the assets were in the form of the Sentang trees or other vegetation which had been planted on the subleased land, or whether the asset was in the form of a chose in action, the right to sue for the asset lay with MNSB. Therefore, the appellant's locus standi to commence the judicial review application strained the terms of the 'adversely affected' test in O 53 r 2(4) of the Rules of Court 2012 (see paras 82 & 85–86).

(3) It was for the liquidator of MNSB to take any action as he thought fit. It was therefore MNSB which should have mounted an action, if at all, and to make a claim for any compensation payable in respect of the Sentang trees. It was obvious that the judicial review proceedings were, in substance, an action by the appellant to assert the rights or entitlements of MNSB, rather than the rights and entitlements of the appellant itself (see paras 87 & 92).

(4) The fact that the appellant had taken loans to finance the reforestation did not vest any independent cause of action in the appellant as such financing was, at best, a form of a shareholder's loan to MNSB (see para 93).

(5) The appellant had not established or identified any appealable error or misdirection on the part of the High Court which warranted appellate intervention (see para 94).

[Bahasa Malaysia summary

Perayu memasuki satu perjanjian usahasama ('JVA') dengan Perbadanan Kemajuan Pertanian Selangor ('PKPS') untuk menanam pokok kayu dari kepelbagaian 'Sentang' dalam projek penghutanan semula yang dimulakan oleh Kerajaan Negeri Selangor. Kerajaan Negeri memajak tanah ('tanah tersebut') di hutan simpan yang telah *diwartakan* kepada PKPS bagi melaksanakan projek tersebut. Sebaliknya, PKPS memajak semula tanah tersebut kepada syarikat usahasama ('MNSB') yang dibentuk antara perayu dan PKPS untuk menjalankan kerja penanaman pokok. Perayu dan PKPS masing-masing merupakan pemegang saham majoriti dan minoriti di MNSB. Perayu membiayai sepenuhnya projek tersebut dengan pinjaman diambil dari bank. PKPS kemudiannya mendapati bahawa penyertaannya dalam pembentukan MNSB dan pegangan saham di dalamnya melanggar terma Enakmen Perbadanan Kemajuan Pertanian Selangor (Pindaan) No 12 Tahun 1972 dan Akta Pemerbadanan (Kekompetanan Badan Perundangan Negeri) 1962 kerana gagal memperoleh kebenaran bertulis Menteri Kewangan sebelum memasuki usahasama tersebut. Lanjutan dari itu, PKPS mengemukakan petisyen untuk menggulung MNSB dengan alasan adil dan saksama. Mahkamah Tinggi bersetuju dengan alasan petisyen tersebut dan menggulung MNSB dan memutuskan bahawa pembetukan MNSB dan JVA adalah bertentangan dengan undang-undang. Keputusan tersebut menyebabkan perayu menyaman PKPS ('Guaman 514') atas ganti rugi kerana salah nyata dan/atau pelanggaran kontrak dan/atau pelanggaran tanggungjawab statutori, kesemuanya berdasarkan JVA tersebut. Sebaliknya, PKPS membuat tuntutan balas terhadap perayu dan pengarahnya atas ganti rugi termasuk kehilangan keuntungan potensi penjualan kayu dan kehilangan dividen sebagai pemegang saham di MNSB. Mahkamah Tinggi menolak kedua-dua tuntutan tersebut dan tuntutan balas. Sementara itu, Jabatan Perhutanan Negeri menuntut pengembalian semula tanah tersebut dan memaklumkan kepada perayu melalui surat ('surat yang dipersoal') bahawa pihaknya harus mengosongkan tanah tersebut dalam tempoh 30 hari. Perayu memfailkan permohonan semakan kehakiman ('SK') untuk membatalkan surat yang dipersoal dan untuk mendapatkan perintah bagi mengarahkan responden untuk melantik penilai berlesen untuk menaksirkan nilai pokok yang ditanam di tanah tersebut untuk menentukan pampasan yang harus dibayar kepada perayu. Perayu juga memohon satu deklarasi bahawa ia berhak mendapatkan pampasan kerana membiayai sepenuhnya penanaman pokok Sentang dan pokok-pokok lain. Mahkamah Tinggi menolak permohonan SK dengan memutuskan, antara lain, bahawa: (a) perayu tidak memiliki locus standi kerana tidak mempunyai kepentingan langsung terhadap tanah tersebut tetapi hanya pada pokon-pokon di atasnya; oleh itu, kepentingannya adalah wang semata-mata berdasarkan pelaburannya di MNSB melalui JVA tersebut; (b) kerana prosiding mahkamah sebelumnya mendapati JVA dan pembentukan MNSB adalah tidak sah, mahkamah tidak dapat membantu

perayu untuk menguatkuasakan hak yang berasal dari kontrak yang tidak sah; (c) isu pampasan yang dituntut oleh perayu telah ditentukan dalam Guaman 514 dan merupakan res judicata; dan (d) pelikuidasi MNSB tidak membuat permohonan kepada pihak berkuasa negeri untuk kebenaran untuk mengambil alih pokok komersial yang ditanam di tanah tersebut tetapi, sebaliknya, telah bersetuju untuk menyerahkan semula hak milik tanah tersebut kepada pihak berkuasa negeri, yang memutuskan bahawa perayu sebagai pemegang saham di MNSB tidak pernah dicabar.

Dalam rayuan semasa terhadap penolakan permohonan SK, perayu mengemukakan bahawa, antara lain: (i) perintah responden untuk mengosongkan tanah dan meninggalkan pokok yang ditanam telah melanggar haknya atas harta benda di bawah perkara 13 Perlembagaan Persekutuan dan adalah tindakan yang menyalahi undang-undang, tidak rasional dan tidak wajar secara prosedur; (ii) penyalahan undang-undang dalam pembetukan MNSB dan JVA tidak seharusnya mempengaruhi tuntutan perayu untuk mendapatkan pampasan yang munasabah kerana pihaknya telah melaburkan sejumlah besar wang dalam projek tersebut dan pokok-pokok tersebut sedia untuk ditebang dengan nilai komersial RM600 setiap tan metrik; (iii) perayu tidak bertanggung jawab atas ketidaksahan dalam usaha sama tersebut kerana kesemua dokumen dan perjanjian undang-undang yang berkaitan dengan JVA disediakan oleh peguamcara PKPS dan disemak oleh Penasihat Undang-Undang Negeri; dan (iv) dapatan bahawa perayu tidak mempunyai locus standi adalah salah kerana telah 'adversely affected' oleh keputusan responden dan wujudnya kepentingan yang nyata dan tulen dalam perkara utama prosiding SK. Sebaliknya, responden menhujahkan bahawa: (A) dengan dapatan bahawa JVA dan pembentukan MNSB adalah tidak sah dan fakta bahawa di bawah s 14 Akta Perhutanan Negara 1984 kesemua benda di atas tanah tersebut adalah milik negeri, responden tidak bertanggungjawab untuk membayar pampasan kepada perayu; (B) perayu tidak mengambil langkah sebagai pemegang saham MNSB untuk mencabar keputusan pelikuidasi untuk menyerahkan semula tanah tersebut kepada negeri; dan (C) res judicata menghalang perayu daripada membicarakan semula perkara-perkara yang telah diputuskan pada kedua-duanya dalam Guaman 514 dan juga ketika MNSB digulung.

Diputuskan, dengan sebulat suara menolak rayuan:

(1) Res judicata, dalam makna yang lebih luas, melarang permohonan semakan kehakiman. Perkara-perkara sebenar dan rungutan perayu seperti yang dibangkitkan dalam semakan kehakiman adalah perkara-perkara yang seharusnya dan mungkin telah dibangkitkan dalam Guaman 514. Bagaimanapun, jelas bahawa tuntutan kewangan perayu melalui proses semakan kehakiman termasuk dalam tuntutan tersebut yang sebelumnya dikemukakan oleh perayu dalam Guaman 514. Pampasan yang dipohon oleh perayu melalui permohonan semakan

kehakiman sebenarnya adalah sebahagian daripada tuntutan yang sebelumnya dibuat dalam Saman 514 terhadap PKPS (lihat perenggan 79–80). A

(2) Perayu tidak memiliki kepentingan dalam tanah yang dipajak dan entiti yang memiliki kepentingan perundangan secara langsung terhadap tanah tersebut dan, secara meluas, pada pokok Sentang yang terletak di atasnya, adalah MNSB. Dari segi undang-undang, perayu tidak mempunyai hak perundangan ke atas aset MNSB kerana hanya pemegang saham syarikat tersebut. Sama ada aset tersebut adalah pokok Sentang atau tumbuhan lain yang telah ditanam di tanah yang dipajak semula, atau sama ada aset tersebut dalam bentuk tindakan yang terpilih, hak untuk menyaman bagi aset tersebut dimiliki oleh MNSB. Oleh itu, locus standi perayu untuk memulakan permohonan semakan kehakiman memperketat berdasarkan syarat ujian 'adversely affected' dalam A 53 k 2(4) Kaedah-Kaedah Mahkamah 2012 (lihat perenggan 82 & 85–86). B C D

(3) Ia adalah bagi pelikuidasi MNSB untuk mengambil tindakan yang difikirkannya sesuai. Oleh itu, adalah MNSB yang seharusnya memulakan tindakan tersebut, sekiranya benar, dan membuat tuntutan untuk pampasan yang harus dibayar berkenaan dengan pokok Sentang. Jelas bahawa prosiding semakan kehakiman pada hakikatnya merupakan tindakan oleh perayu untuk menguatkuasakan hak atau kepentingan MNSB, dan bukannya hak dan kepentingan perayu tersebut sendiri (lihat perenggan 87 & 92). E

(4) Fakta bahawa perayu telah mengambil pinjaman untuk membiayai penanaman kembali hutan tidak memberikan kausa tindakan bebas kepada perayu kerana pembiayaan tersebut, paling penting, merupakan bentuk pinjaman pemegang saham kepada MNSB (lihat perenggan 93). F

(5) Perayu tidak membuktikan atau mengenalpasti sebarang kekhilafan rayuan atau salah arah oleh pihak Mahkamah Tinggi yang membenarkan campur tangan mahkamah rayuan (lihat perenggan 94).] G

Cases referred to

GPQ Sdn Bhd v Constant View Sdn Bhd [2017] 6 MLJ 728; [2017] 1 LNS 821; [2017] 4 MLRA 483; [2017] AMEJ 0689, CA (refd) H

Liputan Simfoni Sdn Bhd v Pembangunan Orkid Desa Sdn Bhd [2019] 4 MLJ 141; [2019] 1 CLJ 183; [2018] 1 LNS 1613; [2018] MLRAU 484, FC (refd)

Macaura v Northern Assurance Co Ltd [1925] AC 619; [1925] All ER 51, HL (folld) I

Malaysian Trade Union Congress & Ors v Menteri Tenaga, Air dan Komunikasi & Anor [2014] 3 MLJ 145; [2014] 2 CLJ 525; [2014] 2 AMR 101, FC (refd)

Mega Forest Plantation Management Sdn Bhd lwn Perbadanan Kemajuan

Pertanian Negeri Selangor [2014] 1 LNS 753; [2014] AMEJ 0893; [2014] MLRHU 439, HC (refd)
Patel v Mirza [2017] 1 All ER 191; [2017] AC 467; [2016] UKSC 42; [2016] 3 WLR 399; [2016] 5 LRC 355; [2016] LLR 731, SC (refd)
Perbadanan Kemajuan Pertanian Selangor v Megafores Nursery Sdn Bhd & Ors [2010] MLJU 1572; [2011] 8 CLJ 484; [2010] 1 LNS 1337; [2010] AMEJ 0373; [2010] 3 MLRH 688, HC (refd)
Pioneer Haven Sdn Bhd v Ho Hup Construction Co Bhd & Anor and other appeals [2012] 3 MLJ 616; [2012] 5 CLJ 169, CA (refd)
Sykt Sebati Sdn Bhd v Pengarah Jabatan Perhutanan & Anor [2019] 2 MLJ 689; [2019] 3 CLJ 157; [2019] 1 LNS 82; [2019] 2 MLRA 171; [2019] 2 AMR 492; [2019] AMEJ 0054, FC (refd)
Tan Poh Yee v Tan Boon Thien and other appeals [2017] 3 MLJ 244; [2017] 3 CLJ 569; [2018] 2 MLRA 514, CA (refd)

Legislation referred to

Companies Act 1965 (repealed by Companies Act 2016) s 218(1)(f), (1)(i)
Companies Act 2016 s 486, 486(2)
Contracts Act 1950 s 24(a), (b)
Federal Constitution art 13
Incorporation (State Legislatures Competency) Act 1962 s 14(1)
Land Acquisition Act 1960
National Forestry Act 1984 s 14
Rules of Court 2012 O 53 rr 2(4), 3(2)
Selangor Agricultural Development Corporation Enactment No 12 of 1972 s 14B, 14B(1)

Appeal from: No B-01(A)-682–12 of 2018 (High Court, Shah Alam)

Hizri bin Hasshan (Muhammad Akram bin Abdul Aziz with him) (Akram Hizri Azad & Azmir) for the appellant.
Masri bin Mohd Daud (Siti Fatimah bt Talib and Nik Haizie Azlin bt Nabidin with him) for the respondents.

Nantha Balan JCA (delivering judgment of the court):

INTRODUCTION

[1] This is an appeal against the decision of the learned judge of the High Court at Shah Alam dated 5 November 2018 dismissing the appellant's application for judicial review with costs of RM15,000 to be paid to the respondents. The appellant in this appeal is Mega Forest Plantation Management Sdn Bhd (No Syarikat 292996-W) ('the appellant'). On 23 June 2020, we dismissed the appellant's appeal with no order as to costs.

[2] The application for judicial review concerns a reforestation project which had been undertaken by the appellant through its subsidiary, Megafores Nursery Sdn Bhd ('MNSB'). The appellant held 51% of the issued share capital in MNSB and the balance 49% was held by an entity known as Perbadanan Kemajuan Pertanian Selangor ('PKPS'). PKPS is a statutory body established under the Selangor Agricultural Development Corporation Enactment No 12 of 1972 (No 7 of 1982) ('the 1972 Enactment'). PKPS was incorporated to, inter alia, 'encourage the industry or agricultural development inside and outside of the State of Selangor' (see: s 12(1) of the 1972 Enactment).

[3] PKPS is also subject to the provisions of the Incorporation (State Legislatures Competency) Act 1962 ('the 1962 Act'). In particular, s 14(1) of the 1962 Act (which is in pari materia with s 14B(1) of the 1972 Enactment) provides that the prior written consent of the Minister of Finance ('MOF') is required before the corporation (PKPS) can establish a company to carry out activities under the control or partial control of the corporation itself or independently.

[4] It is necessary to mention that in a winding up petition which was filed by PKPS via Kuala Lumpur High Court Companies (Winding Up) No D-28-NCC-65 of 2010, it was established that PKPS had failed to obtain the prior written consent of the MOF to incorporate MNSB and to hold 49% of its shareholding. The High Court held that the incorporation of MNSB was in fundamental breach of the statutory requirements under s 14 of the 1962 Act and s 14B of the 1972 Enactment. On 14 September 2010, MNSB was wound up by the Kuala Lumpur High Court.

[5] At any rate, prior to the winding up of MNSB and pursuant to the reforestation project, trees of the Sentang variety were planted on part of a parcel of land which had been leased by the State of Selangor to PKPS and thereafter subleased to MNSB. Acording to the appellant, the trees had matured and have commercial value. The replanting of Sentang trees were done by MNSB, but the financing for the project was procured by the appellant through loans from Agrobank.

[6] After MNSB was wound up, the appellant filed a civil action against PKPS over the reforestation project but was unsuccessful. There was also a judicial review application over the same project, which was commenced by an entity known as Mega Forest Plantation Sdn Bhd ('MFPSB') against PKPS and the State via Shah Alam High Court Application for Judicial Review No 24–74 of 2011, but this was struck out on 18 June 2015. It ought to be mentioned

that Mega Forest Plantation Sdn Bhd is not the same entity as the appellant whose name is Mega Forest Plantation Management Sdn Bhd. They are entirely separate legal entities.

[7] The first respondent subsequently issued a letter dated 13 December 2017 to the appellant demanding that they vacate the subleased land within 30 days from the date of the letter ('the impugned letter').

[8] The appellant commenced the judicial review proceedings to obtain:

(a) an order of certiorari to quash the impugned letter;

(b) an order of mandamus to compel the respondents to appoint two licensed valuers to prepare valuation reports to ascertain the value of assets on the said forest land and to thereby determine the appropriate compensation to be paid to interested parties (including the appellant); and

(c) a declaration that the appellant is entitled to claim compensation as the contributory/shareholder of MNSB (sublessee).

BACKGROUND FACTS

[9] The first respondent is the Pengarah Perhutanan Negeri Selangor and is the lawful authority for the exercise of powers under the National Forestry Act 1984 ('the Act') for the State of Selangor.

[10] The second respondent is the Pegawai Hutan Daerah who is the authority responsible for implementing the directives of the first respondent for the forest areas in the district of Hulu Selangor.

[11] The third respondent is the Government of the State of Selangor ('the State').

[12] On 16 August 1998, the state announced its intention to commercialise the planting of selected timber, namely Sentang and Jati trees. The appellant expressed its intention to participate in the reforestation plan on the basis that it had the necessary capacity, expertise and funds to carry out a reforestation plan.

[13] On 1 November 1998, the appellant wrote a letter to Menteri Besar of Selangor ('the MB') attaching a written proposal to develop an integrated forest farm for the planting of Sentang trees at Hutan Simpan Rantau Panjang and Hutan Simpan Bukit Tarek. On 23 June 1999, the appellant wrote another

letter to the MB notifying the outcome of discussions with PKPS, the State Financial Officer, the Forestry Department and Lembaga lndustri Kayu Malaysia.

[14] On 12 August 1999, the Board of PKPS gave its approval for a joint venture between the appellant and PKPS, to undertake the reforestation project for the planting of Sentang trees. On 5 January 2000, Majlis Tindakan Ekonomi Selangor ('MTES') approved the grant of a concession of land to PKPS for a lease period of 60 years for the purpose of it being used as a forest farm ('ladang hutan'). The land concession was formalised by a lease and concession agreement dated 22 February 2001 (see: para 16 below).

[15] On 5 September 2000, PKPS wrote to the appellant notifying that a new company has to be set up as the joint venture corporate vehicle. PKPS made it clear that they will not acquire shares in the appellant. On 30 September 2000, MNSB was then incorporated. The appellant held 51% shares in MNSB while PKPS held 49% shares.

[16] On 22 February 2001 pursuant to a lease and concession agreement ('the LAC'), the state authority ('the state') as lessor, granted a lease of 5,000 hectares from land *gazetted* as permanent forest reserve and known as Hutan Simpan Rantau Panjang ('the land') for a period of 60 years to PKPS as lessee to undertake and commence reforestation of Hutan Simpan Rantau Panjang.

[17] The State gave approval to PKPS to replace the existing Acacia Mangium trees with Sentang, Jati and rubber trees together with other species of trees approved by the State, the National Forestry Council and other relevant authorities ('the reforestation plan').

[18] On the same date, PKPS entered into a joint venture agreement ('the JVA') with the appellant to jointly undertake the reforestation plan.

[19] On that same date too, a sublease agreement ('the SLA') was entered into between PKPS and MNSB, whereby MNSB was to undertake the reforestation plan including agro-forestry activities subject to terms and conditions therein contained the sublease period was for 50 years but it may be extended up to 59 years from the date of the SLA. The SLA was undertaken pursuant to cl 15 of the LAC.

[20] The appellant was not a party to the SLA and does not have any direct interest in the subleased land. Rather, it is MNSB that has a legal interest in the land via the SLA. The appellant is merely a shareholder in MNSB.

[21] On 29 August 2002, the State decided to take back 43.68 hectares of the subleased land for the purpose of construction of a link road from Bukit Beruntung to Berjuntai Bistari (due to the privatisation of University Selangor ('UNISEL'). The State directed PKPS to propose the compensation sum to be paid to MNSB.

[22] It was discovered later that the incorporation of MNSB, with PKPS as a shareholder, was illegal as the prior written consent of the MOF had not been obtained pursuant to s 14B of the 1972 Enactment. The participation of PKPS as a shareholder of MNSB was also contrary to s 14(1) of the 1962 Act.

[23] PKPS filed a petition to wind-up MNSB via Kuala Lumpur High Court Petition for Winding Up No 28NCC-65 of 2010. The winding up petition was predicated on s 218(1)(f) and (1)(i) of the Companies Act 1965. PKPS raised the issue of illegality as well as other grounds in support of the winding up petition. On 14 September 2010, the Kuala Lumpur High Court allowed the winding up petition. The High Court made a finding that the incorporation of MNSB was illegal. The decision of the High Court in respect of the winding up of MNSB is reported as *Perbadanan Kemajuan Pertanian Selangor v Megafores Nursery Sdn Bhd & Ors* [2010] MLJU 1572; [2011] 8 CLJ 484; [2010] 1 LNS 1337; [2010] AMEJ 0373; [2010] 3 MLRH 688.

[24] In the winding up proceedings, the Kuala Lumpur High Court also found the JVA to be tainted with illegality and hence unenforceable. The relevant parts of the grounds of judgment in relation to illegality are as follows:

> 6.1 Issue 1 — Whether The Incorporation Of The first Respondent Was Illegal
>
> 6.1.1 The petitioner being a statutory body/body corporate is subject to the direction of the Prime Minister or Minister nominated by him or the Minister of Finance pursuant to s 12A of the 1972 Enactment.
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> 6.1.2 Section 14B(1) of the 1972 Enactment provides that: The corporation shall not, without the prior written consent of the Minister of Finance unless he gives a general or specific direction on the matter:
>
> (a) establish or promote the establishment or expansion of companies or other bodies to carry on activities either under the control or partial control of the Corporation itself or independently;
>
> (b) give financial assistance to any company, other statutory authority, any body or person by the taking up of shares or debentures or by way of any loan, advance, grant or otherwise.
>
> 6.1.3 The petitioner is also subject to the provisions of the Incorporation (State Legislatures Competency) Act 1962 (the 1962 Act). In particular, s 14(1) of the 1962 Act which is pari materia with s 14B(1) of the 1972 Enactment provides that the prior written consent of the Minister of Finance is required before the

corporation can establish a company to carry out activities under the control or partial control of the corporation itself or independently.

6.1.4 The petitioner's petition and supporting affidavits clearly state that the petitioner had failed to obtain the prior written consent of the Minister of Finance to incorporate the first respondent and to hold 49% of its shareholding. The incorporation of the first respondent was in fundamental breach of the statutory requirements under s 14 of the 1962 Act and s 14B of the 1972 Enactment.

...

6.1.7 It is the finding of the court that the incorporation of the first respondent with the petitioner as one of its two shareholders without the petitioner first having obtained the prior written consent of the Minister of Finance is therefore illegal. On this ground alone, it would be just and equitable for the court to order the winding-up of the first respondent.

...

6.3 Issue 3 — Whether The JVA Is Valid

6.3.1 It will be noted that the first respondent was incorporated on 30 September 2000, which is about five months before the petitioner entered into the JVA with the second respondent on 22 February 2001 for the purpose of carrying out the Reforestation Plan. Importantly, it was the declared intention of the petitioner and the second respondent to enter into the JVA to carry out the Reforestation Plan through the first respondent.

6.3.2 Since it is the finding of the court that the incorporation of the first respondent is illegal, I am of the view that the JVA, although entered into between the petitioner and the second respondent (and not with the first respondent), is tainted with illegality as well. If the JVA is allowed to be enforced this would contravene the statutory requirements of the 1962 Act and the 1972 Enactment by circumventing those same statutory provisions.

[25] The appellant then filed Shah Alam High Court Suit No 22NCvC-514 of 2011 ('Suit 514') against PKPS for damages for misrepresentation and/or breach of contract and/or breach of statutory duty, all arising from the JVA. PKPS filed a counterclaim against the appellant and the appellant's directors for conspiracy to injure PKPS' interest. In Suit 514, the appellant and PKPS sought the following reliefs in the claim and counterclaim:

(The claim by the appellant)

Tuntutan plaintif (Tuntutan Asal)

[1] Plaintif Mega Forest Plantation Management Sdn Bhd (disebut sebagai 'MFPM' selepas ini) melalui writ saman dan pernyataan tuntutan bertarikh 29.4.2011 menuntut terhadap defendan Perbadanan Kemajuan Pertanian Negeri Selangor (disebut sebagai 'PKPS' selepas ini) bagi perkara-perkara berikut:

(a)(i) gantirugi khas berjumlah RM59,874,011.00 atau jumlah lain seperti yang ditaksirkan dan didapati adil oleh mahkamah;

(a)(ii) faedah di atas jumlah gantirugi khas di (a) di atas pada kadar 6% setahun dari tarikh pemfailan tindakan ini sehingga tarikh penyelesaian penuh;

(b) gantirugi am untuk salahnyataan (misrepresentation) dan/atau kecuaian dan/atau pelanggaran statutori dan/atau pemecahan kontrak;

(c) gantirugi teladan untuk salahnyataan (misrepresentation) dan/atau kecuaian dan/atau pelanggaran statutori dan/atau pemecahan kontrak;

(d) faedah di atas gantirugi am di (b) dan gantirugi teladan di (c) di atas masing-masing pada kadar 8% setahun dari tarikh pemfailan tindakan ini sehingga tarikh penyelesaian penuh;

(e) kos; dan

(f) apa-apa relif dan/atau perintah lain yang dianggap adil dan sesuai oleh mahkamah ini.

(Counterclaim by PKPS)

Tuntutan balas defendan PKPS (Dalam Tuntutan Balas)

[2] Defendan PKPS melalui Pembelaan dan Tuntutan Balas Terpinda (Pembelaan Terpinda) yang difailkan bertarikh 21.9.2012 membuat tuntutan balas terhadap plaintif (MFPM) (defendan pertama dalam tuntutan balas) bersama-sama tiga defendan lain, iaitu Brig-Jen (B) Dato' Abdullah bin Omar (defendan kedua dalam tuntutan balas), Datin Norizan binti Hussein (defendan ketiga dalam tuntutan balas) dan Dato' Haji Karim bin Marzuki (defendan keempat dalam tuntutan balas), bagi perkara berikut:

(1) gantirugi khas berjumlah RM95,310.050.37 atau jumlah lain yang difikir suaimanfaat oleh mahkamah ini;

(2) gantirugi am untuk ditaksirkan yang merangkumi tetapi tidak terhad kepada:

(a) hasil pembalakan komersil (bagi tanah seluas 956.32 hektar tersebut);

(b) kerugian dan kehilangan keuntungan masa hadapan dan dividen daripada projek penanaman semula pokok Sentang dan getah yang dijalankan dan dibangunkan dalam kawasan pajakan kecil tersebut;

(c) kerugian dari segi dividen-dividen yang tidak pernah dinikmati oleh PKPS sebagai pemegang saham dalam MNSB (digulungkan)(untuk ditaksirkan oleh mahkamah ini);

(3) faedah pada kadar 8% setahun ke atas semua jumlah yang dihakimkan yang perlu dibayar oleh defendan pertama, defendan kedua, defendan ketiga dan defendan keempat, samada secara bersesama atau pun berasingan, dari tarikh pemfailan tuntutan balas terpinda ini sehingga tarikh penyelesaian penuh;

(4) kos tindakan ini;

(5) relif-relif lain atau selanjutnya yang mahkamah ini fikirkan suaimanfaat dan adil untuk dibenarkan.

[26] On 26 June 2014, the Shah Alam High Court dismissed the appellant's claim and the counterclaim by PKPS with costs. The grounds of judgment of the Shah Alam High Court are reported as *Mega Forest Plantation Management*

Sdn Bhd lwn Perbadanan Kemajuan Pertanian Negeri Selangor [2014] 1 LNS 753; [2014] AMEJ 0893; [2014] MLRHU 439.

[27] In the meanwhile, the Jabatan Perhutanan Selangor, Daerah Hulu Selangor issued a notice dated 11 October 2010 for the removal of all the trees planted on part of the subleased land. There were some negotiations between the appellant and the State to resolve the dispute amicably. However, the discussions were not fruitful.

[28] In the meanwhile, an application for judicial review was filed by MFPSB via Shah Alam High Court Application for Judicial Review No 25–74 of 2011 for an order of certiorari to quash the decision of the State made on 5 January 2011 (endorsed by the Majlis Mesyuarat Kerajaan Negeri or 'MMKN' on 12 January 2011) ('the impugned decision') revoking the lease under the LAC and that the subleased land be returned to the Jabatan Perhutanan Negeri Selangor.

[29] Pursuant to the impugned decision, the Jabatan Perhutanan Negeri Selangor was to undertake the reforestation programme. As mentioned in para 6 of this judgment, the party which initiated the judicial review was Mega Forest Plantation Sdn Bhd which is not the same entity as the appellant whose name is Mega Forest Plantation Management Sdn Bhd. They are separate legal entities.

[30] But this point appears to have escaped the attention of the parties when they argued the appeal before us. At any rate, on 8 June 2015 the said judicial review application was struck out.

[31] The next event of significance is the issuance of a lengthy letter dated 25 September 2017 by the appellant's solicitors. The letter was addressed to the MB. The letter captures the essence of the claim by the appellant or their grievances and it reads as follows:

> Tarikh: 25hb September 2017
>
> *Y.A.B DATO' MENTERI BESAR SELANGOR*,
>
> Pejabat Menteri Besar Selangor,
>
> Tingkat 21, Bangunan Sultan Salahuddin Abdul Aziz Shah, 40503 Shah Alam, Selangor Darul Ehsan
>
> Y.A.B. Dato' Seri,
>
> *PER: PENYELESAIAN TUNTUTAN PAMPASAN DAN CADANGAN MENGAMBIL ALIH PROJEK PEMULIHAN PENGHUTANAN SEMULA TANAMAN SENTANG OLEH SYARIKAT MEGA FOREST PLANTATION MANAGEMENT SDN BHD*

melibatkan kawasan berukuran 1,000 hektar di Hutan Simpan Rantau Panjang, Daerah Ulu Selangor yang merangkumi Blok-Blok 12/86, 3/85 dan 15/87 yang dahulunya dipajak kecil kepada syarikat Megafores Nursery Sdn Bhd (Dalam Likuidasi)

Kami adalah pihak perantara yang mewakili *Mega Forest Plantation Management Sdn Bhd* (selepas ini dirujuk sebagai '*klien kami*').

2. Pihak kami melampirkan salinan-salinan surat-menyurat di antara pihak kami dengan Pejabat Y.A.B Dato' Seri dan Jabatan Perhutanan Negeri Selangor sejak Jun 2017 hingga September 2017.

3. Adalah dimaklumkan bahawa sehingga kini, pihak Jabatan Perhutanan Negeri Selangor tidak memberikan apa-apa maklum balas atau jawapan bertulis mengenai hasrat klien kami untuk mengadakan perbincangan bagi menyelesaikan isu tuntutan pampasan yang telah tertangguh sejak tahun 2015.

4. Untuk makluman Y.A.B Dato' Seri, klien kami dimaklumkan bahawa Kerajaan Negeri Selangor melalui *minit MMKN Ke 1/2011* dan *MMKN Ke 2/2011* telah membuat keputusan untuk mengambil balik keseluruhan 1,000 hektar tanah yang dipajak kepada Perbadanan Kemajuan Pertanian Selangor (PKPS) dan dipajak kecil kepada Megafores Nursery Sdn Bhd.

5. Walaupun syarikat Megafores Nursery Sdn Bhd telah digulungkan, segala urusan dan aset syarikat tersebut kini diletak di bawah *Jabatan Insolvensi Malaysia* sebagai pelikuidasi di mana aset tersebut juga meliputi segala tanaman kelapa sawit, ternakan dan lain-lain harta di kawasan pajakan kecil tersebut. Jabatan Insolvensi telah mengeluarkan surat-surat kebenaran sejak Mac 2011 untuk syarikat-syarikat sekutu meneruskan aktiviti di kawasan pajakan tersebut.

6. Berkenaan isu pengambilan tanah, klien kami tidak bercadang untuk membantah keputusan Kerajaan Negeri untuk mengambil balik kawasan tersebut dan meletakkan kawasan tersebut di bawah pengurusan Jabatan Perhutanan Negeri untuk tujuan pemuliharaan.

7. Bagaimanapun, klien kami ingin memaklumkan bahawa segala aset terutamanya *tanaman Sentang* yang berada di atas kawasan pajakan kecil tersebut adalah diusahakan menggunakan wang pelaburan daripada klien kami selaku pemegang saham majority syarikat Megafores Nursery Sdn Bhd.

8. Selain mengeluarkan wang pelaburan sendiri, klien kami juga mengambil dana pertanian sebanyak *RM5.2 juta* daripada *Kementerian Kewangan Malaysia* melalui pinjaman daripada Bank Pertanian Malaysia Berhad. Salinan surat Kementerian Kewangan bertarikh 2/4/2009 dan surat tawaran Bank Pertanian Malaysia Berhad dilampirkan di sini untuk rujukan pihak YAB. Bank Pertanian Malaysia Berhad juga merupakan pemegang debenture bagi syarikat klien kami.

9. Meskipun kawasan pajakan telah diambil balik oleh Kerajaan Negeri Selangor dan diletakkan di bawah pengurusan Jabatan Perhutanan Negeri Selangor, segala aset, tanaman Sentang serta tanaman lain yang telah diusahakan oleh klien kami adalah dipegang oleh pihak Jabatan Perhutanan sebagai pemegang amanah (*constructive trustee*). Oleh itu, klien kami selaku benefisiari mempunyai kepentingan benefisial dan tuntutan sah terhadap aset dan tanaman yang berada di atas kawasan pajakan tersebut.

Dalam isu amanah konstruktif ini, piak kami ingin merujuk kepada *keputusan Mahkamah Persekutuan* di dalam kes *Perbadanan Kemajuan Pertanian Selangor v. JW Properties Sdn Bhd [2017] 1 LNS 1129*.

10. Klien kami juga menegaskan bahawa hak klien kami terhadap aset dan tanaman yang diusahakan di atas kawasan pajakan tersebut tidak boleh dinafikan kerana ia dijamin di bawah *Fasal 13 Perlembagaan Persekutuan*.

11. Oleh yang demikian, adalah menjadi satu pengkayaan tidak wajar (*unjust enrichment*) bagi pihak Jabatan Perhutanan Negeri menafikan hak klien kami terhadap nilaian aset dan tanaman di kawasan pajakan tersebut.

12. Bagi menyelesaikan tuntutan pampasan di atas berkenaan nilai aset dan tanaman Sentang di atas kawasan pajakan kecil tersebut, klien kami telah mencadangkan untuk mengambil semula pengurusan projek tanaman Sentang tersebut di mana klien kami juga telah mengenalpasti pelabur bagi menampung kos operasi bagi menjayakan projek pemulihan ini. Projek ini juga akan memberi manfaat kepada Kerajaan Negeri Selangor antaranya:

– Membantu usaha penghijauan dan pembangunan hutan terancang;

– Menggalakkan pelaburan dan pengkomersilan Hutan Simpan di Selangor;

– Membantu kutipan cukai kepada Kerajaan Negeri melalui pengeluaran lesen/permit dan cukai jualan kayu/balak yang ditebang; dan

– Menambah peluang pekerjaan kepada 100 pekerja tempatan.

13. Namun demikian, klien kami berasa sedikit kecewa kerana pihak Jabatan Perhutanan Negeri Selangor langsung tidak memberikan jawapan untuk usaha penyelesaian damai yang dicadangkan oleh klien kami.

14. Oleh yang demikian, sukacita jika pihak Y.A.B Dato' dapat memberikan *satu arahan eksekutif yang jelas* kepada *Jabatan Perhutanan Negeri Selangor* untuk *mengadakan perbincangan dengan klien kami* dalam kadar segera supaya isu tuntutan pampasan dan pelaksanaan projek Tanaman Sentang dapat diselesaikan secepat mungkin tanpa melalui proses tindakan undang-undang di Mahkamah.

15. *AMBIL PERHATIAN* sekiranya tiada apa-apa maklum balas positif diterima dalam *tempoh 14 hari* dari tarikh penerimaan surat ini, klien kami tidak mempunyai pilihan lain melainkan memfailkan tuntutan deklarasi di Mahkamah Tinggi untuk merizabkan hak klien kami sebagai pemegang kepentingan benefisial/benefisiari ke atas aset dan tanaman Sentang di atas kawasan pajakan kecil tersebut.

16. Pihak klien kami amat berharap agar isu-isu tuntutan pampasan ini seboleh-bolehnya diselesaikan secara rundingan damai di antara pihak-pihak.

Sekian, terima kasih. Yang benar,

Bagi pihak *TETUAN AKRAM HIZRI & AZAD*

s.k 1. MEGA FOREST PLANTATION MANAGEMENT SDN BHD

No. 8, Lorong Setiarasa, Bukit Damansara

50490. Kuala Lumpur

[U/P: Brig Gen (R) Dato' Abdullah Bin Omar]

[32] The first respondent then issued the impugned letter to the appellant's solicitors giving the appellant 30 days' notice to vacate and deliver vacant possession of the subleased land.

[33] The impugned letter reads as follows:

Tetuan Akram Hizri & Azad

Suite 9.03, Level 9, Wisma Zelan

No. 1, Jalan Tasik Permaisuri 2 Bandar Tun Razak

56000. KUALA LUMPUR

Tuan,

13. Disember 2017

PENYELESAIAN DAMAI BAGI MENGAMBIL ALIH PROJEK PEMULIHAN PENGHUTANAN SEMULA TANAMAN SENTENG OLEH SYARIKAT MEGA FOREST PLANTATION MANAGEMENT SDN BHD

Dengan segala hormatnya saya merujuk kepada perkara di atas, emel pihak tuan bertarikh 28 November 2017 adalah berkaitan.

2. Jabatan ini telah menerima pandangan yang telah diberikan oleh Penasihat Undang-Undang Negeri Selangor berhubung dengan perkara di atas dan berdasarkan pandangan tersebut Jabatan ini telah memutuskan bahawa kesemua surat yang dihantar oleh pihak tuan sebelum ini adalah merupakan suatu permohonan yang baharu dan tidak berkaitan sama sekali dengan kes yang telah diputuskan oleh Mahkamah sebelum ini.

3. Oleh yang demikian, Jabatan ini mengarahkan anak guam tuan untuk mengosongkan tanah yang telah diduduki dalam masa tiga puluh hari (30) dari tarikh penerimaan surat.

4. Sekiranya anak guam tuan gagal untuk mengosongkan tanah tersebut, Jabatan ini akan menjalankan penguatkuasaan dan Jabatan ini tidak akan bertanggungjawab atas apa-apa kerosakan harta benda yang akan timbul semasa operasi penguatkuasaan dijalankan.

Sekian, terima kasih.

'MEMBANGUN BANGSA MEMAKMUR NEGERI'

'BERKHIDMAT UNTUK NEGARA'

'SAYANGI HUTAN'

Saya yang menurut perintah,

(*DR. HJ MOHD PUAT BIN DAHALAN*) S.M.S., P.K.T

Pengarah Perhutanan Negeri Selangor Darul Ehsan.

s.k 1. YB Penasihat Undang-Undang Negeri

Kamar Penasihat Undang-Undang Negeri Selangor

Tingkat 4, Podium Utara

Bangunan Sultan Salahuddin Abdul Aziz Shah

40512 Shah Alam
SELANGOR
2. Pegawai Hutan Daerah,
Pejabat Hutan Daerah Hulu Selangor
Kompleks Kerajaan Rawang Perdana
Jalan 4M, Rawang Perdana
48000 Rawang
SELANGOR
Mohon pihak tuan melaksanakan tindakan penguatkuasaan setelah tiga puluh hari (30) dari tarikh penerimaan surat)

[34] The appellant's solicitors replied stating that the appellant must be adequately compensated for its investment in the joint venture if it were required to vacate the subleased land. The appellant then filed the judicial review essentially to challenge that decision of the first respondent which was communicated via the impugned letter. The reliefs sought in the judicial review application are as appearing as para 8 herein.

[35] The grounds for judicial review as may be gleaned from the Statement filed pursuant to O 53 r 3(2) of the Rules of Court 2012 are as follows:

(a) Responden Pertama (dan/atau Responden Kedua) telah melakukan kesilapan dari segi undang-undang apabila memutuskan dan mengarahkan Pemohon untuk mengosongkan tanah tersebut dalam tempoh 30 hari sedangkan Pemohon secara sendiri dan/atau melalui anak- anak syarikat Pemohon mempunyai aset tidak boleh alih dalam bentuk tanama Sentang dan tanaman lain yang mana suatu pampasan yang setimpal perlu diberikan kepada Pemohon dan/atau pihak-pihak lain yang mempunyai kepentingan benefisial ke atas aset di atas Tanah tersebut;

(b) Responden Pertama (dan/atau Responden Kedua) telah melakukan kesilapan dari segi undang-undang apabila cuba bertindak merampas dan/atau memusnahkan aset Pemohon di atas tanah tersebut tanpa pampasan setimpal di mana ia bertentangan dan/atau ultra vires peruntukan Artikel 13 Perlembagaan Persekutuan yang memberikan jaminan hak terhadap harta kepada Pemohon;

(c) Keputusan Responden Pertama (dan/atau Responden Kedua) untuk mengarahkan tindakan pengosongan dan/atau merampas dan/atau memusnahkan aset Pemohon selepas luput tempoh 30 hari adalah salah di sisi undang-undang dan di luar bidangkuasa di mana kuasa sedemikian tidak diperuntukkan di bawah Akta Perhutanan Negara 1984 apatah lagi sehingga kini tiada sebarang pendakwaan atau sabitan dibuat terhadap Pemohon. Oleh itu, keputusan dan arahan tersebut adalah terbatal di sisi undang-undang dan satu penyalahgunaan kuasa;

(d) Pemohon bukannya penceroboh ke atas Tanah tersebut sebaliknya adalah lisensi (licensee) yang sah dan diberikan hak untuk menjalankan projek penghutanan semula di kawasan tersebut oleh Responden Ketiga melalui perjanjian-perjanjian iaitu Perjanjian Pajakan dan Konsesi, Perjanjian Usahasama dan Perjanjian Pajakan Kecil kesemuanya bertarikh 22/2/2001;

(e) Pemohon telah mengeluarkan wang pelaburan dan mengambil pinjaman daripada Kementerian Kewangan Malaysia melalui Bank Pertanian Malaysia bagi membiayai projek penghutanan semula dan agro-forestri di atas Tanah tersebut dan tidak wajar dinafikan hak terhadap pampasan setimpal sedangkan Pemohon masih terpaksa menanggung beban pinjaman;

(f) Perjanjian Pajakan dan Konsesi, Perjanjian Usahasama dan Perjanjian Pajakan Kecil kesemuanya bertarikh 22/2/2001 dengan nyata memperuntukkan supaya pampasan dinilai dan dibayar sekiranya projek penghutanan semula dan Tanah tersebut diambil balik oleh Responden Ketiga;

(g) Responden-Responden telah melakukan kesalahan dari segi undang-undang kerana tidak memberikan apa-apa pampasan setimpal kepada Pemohon sedangkan Pemohon melalui anak syarikat Megafores Nursery Sdn Bhd telah menjalankan aktiviti penghutanan semula selama lebih 9 tahun dan kini dinafikan hak terhadap hasil daripada tanaman Sentang dan tanaman lain yang telah diusahakan melalui dana dan pelaburan Pemohon;

(h) Pemohon dari segi undang-undang dan ekuiti berhak menuntut wang pampasan yang setimpal berhubung nilaian aset dan kepentingan ke atas Tanah tersebut;

(i) Meskipun Tanah tersebut adalah milik Responden Ketiga sebagai pihak berkuasa negeri, Pemohon masih mempunyai hak dan kepentingan benefisial terhadap harta, aset dan/atau nilai pajakan kecil ke atas Tanah tersebut;

(j) Tindakan Responden-Responden mengambil balik projek penghutanan semula dan mengusir Pemohon dari kawasan Tanah tersebut tanpa memberi peluang kepada Pemohon membuat penjelasan dan/atau tuntutan adalah satu kemungkiran prinsip-prinsip asas keadilan asasi di mana Pemohon dinafikan hak untuk didengar.

THE HIGH COURT

[36] The crux of the appellant's claim in the High Court revolved around the decision of the respondents which has the effect of evicting the appellant without adequate compensation being paid for the loss of Sentang trees and other trees planted onto part of the subleased land wherein the funding for the planting of these trees came from the appellant.

[37] On 29 November 2018, the High Court dismissed the appellant's application for judicial review. The following paragraphs of the learned judge's grounds of judgment are relevant:

> [16] The State had, as a matter of policy, decided that PKPS will no longer be involved in the reforestation of the said Land. The State had decided to terminate the Lease to PKPS and take back the said Land for it to be managed by the forestry department, as part of the State's forest reserve. This would necessarily mean the eviction of any third parties illegally in occupation of the said Land, including the Applicants herein.
>
> [17] The State's decision in this regard was conveyed to PKPS by the Pengarah Perhutanan Negeri in his letter dated 4.4.2011, where the relevant portion reads:
>
> > 2. Dimaklumkan bahawa MMKN Ke 1/2011 yang diadakan pada 5 Januari 2011 yang telah disahkan oleh MMKN Ke 2/2011 pada 12 Januari 2011 membuat keputusan seluas 1,000 hektar di Hutan Simpan Rantau Panjang yang dipajak kecil kepada Megafores Nursery Sdn Bhd dikembalikan kepada Jabatan Perhutanan Negeri Selangor dan pihak Jabatan Perhutanan Negeri Selangor di minta membuat program pemulihan Kawasan tersebut.
> >
> > 3. Pihak kami dimaklumkan pada 14 September 2010 satu perintah penggulungan telah dibuat terhadap Syarikat Megafores Nursery Sdn Bhd oleh Mahkamah Tinggi Kuala Lumpur di atas permohonan Perbadanan Kemajuan Pertanian Selangor dan pegawai dari Jabatan Insolvensi Malaysia telah dilantik sebagai pelikuidasi syarikat. Perbincangan dengan Jabatan Insonvensi [sic] telah dilakukan pada 1 April 2011 dan pihak Jabatan Insolvensi Malaysia akan menyerahkan Kawasan seluas 1,000 hektar kembali kepada Jabatan Perhutanan Negeri Selangor dalam masa 14 hari mulai pada 4 April 2011.
>
> [18] Hence, it is clear that after the winding-up of MNSB, the liquidator, ie the Official Receiver, had entered into discussions with the State and had agreed to redeliver possession of the said Land to the State within 14 days from 4 April 2011. The Applicant did not challenge this decision of the liquidator of MNSB.
>
> ...
>
> [21] When the facts are considered, I find that the Applicant does not have *locus standi* to bring this judicial review. The Applicant does not have any direct interest or contractual nexus to the subject matter, ie the said Land or the Sub-Lease. See *Tan Poh Yee v Tan Boon Thien and another appeal* [2017] 3 MLJ 244 Contracts Act 1950; *GPQ Sdn Bhd v Constant View Sdn Bhd* [2017] 6 MLJ 728. For all intends and purpose, the Applicant is a trespasser on the said Land, and its continued occupation of the said Land is unlawful.
>
> [22] If at all there is any injured party, it would be MNSB, as the sub-lease holder. Any investment on the said Land would have been made by MNSB as the sub-lessee. The liquidator of MNSB can if he thinks it appropriate take the necessary legal action to safeguard the interest of the company and its members. However, it has been almost 9 years since the winding-up order was made and there is no challenge being made by the liquidator of MNSB as regard its investment, if any, on the said Land. It is the shareholder of MNSB, ie the Applicant, who has been

at the forefront of all legal action so far. And this speaks volumes about the strength and validity of the Applicant's legal contentions advanced in this application.

[23] In fact, s 14 of the National Forestry Act 1984 provides:

> All forest produce situate, lying, growing or having its origin within a permanent reserved forest or State land shall be the property of the state authority except where the rights to such forest produce have been specifically disposed of in accordance with the provisions of this Act or any other written law.

And section 15(1) of the Act states:

> (1) No person shall take any forest produce from a permanent reserved forest or a State land except —
>
> (a) under the authority of licence, minor licence or use permit;
>
> (b) in accordance with any other written law.

Hence, the removal any forest produce from a permanent reserved forest would require a licence of permit issued by the relevant authority, which in this case would be the first Respondent. However, no such permits had been applied for or issued. If indeed the liquidator was of the view that the Sentang and other trees on the said Land belongs to MNSB, then he should have applied for the appropriate licence to remove them. This has not been done. In fact the contrary intent was shown by the liquidator when he agreed to redeliver possession of the said Land to the State sometime in April 2011.

[24] In any event, the Applicant's claim is not an interest in the said Land, but *merely to the trees that are standing on it. In a gist, the Applicant's interest is purely monetary in nature*. And that interest flows from its investment in MNSB via the JVA, both of which had been declared illegal by the Kuala Lumpur High Court. Hence, in effect the Applicant is seeking remedies from this court based on contractual nexus that has been declared as arising from illegal contracts or acts. Hence, this court cannot give its assistance to the Applicant to enforce a right that emanates from a contract that is tainted with illegality.

[25] Further, the issue of compensation has been fully litigated by the Applicant and ruled on by the Shah Alam High Court. Thus, I do not see any reason why the Respondents ought to be made to pay compensation to the Applicant. (Emphasis added.)

SUBMISSION

[38] Essentially, it was argued for the appellant that the learned judge ought to have ruled:

(a) that the appellant's locus standi as shareholder and contributor of MNSB had previously been decided during the leave stage for judicial review;

(b) that the appellant is not a trespasser by reason of the fact that the appellant had carried out the reforestation plan by planting Sentang since 2001 through a joint venture with PKPS and this was within the full knowledge of the respondents;

(c) that the appellant has a legitimate expectation that reasonable compensation should be paid in the event the reforestation project is taken back or acquired by the respondents;

(d) that the Sentang timber plantation for the reforestation plan was carried out using capital and loans taken by the appellant;

(e) that the respondents' order to vacate the subleased land and direction to destroy the trees planted have infringed upon the appellant's right to property which is guaranteed under art 13 of the Federal Constitution;

(f) that the respondents are liable to conduct a valuation to determine a reasonable compensation to be awarded to the appellant and any other interested parties; and

(g) that notwithstanding the finding that the incorporation of MNSB with PKPS as shareholder is illegal and/or that the JVA is tainted with illegality, the appellant nevertheless has a legal interest in the plantation, trees and assets on the subleased land and the court is not precluded from granting the appropriate remedy in favour of the appellant.

[39] In amplification, it was submitted for the appellant that the respondents chose to ignore and deny the financial contributions made by the appellant since 2001 to develop the subleased land into an integrated forest farm with the planting of Sentang trees and other approved species.

[40] It was contended that since 2001 the appellant had made a huge financial investment via its subsidiary, MNSB, in terms of planting Sentang trees in the subleased area. The Sentang trees are now ready to be harvested and are estimated to have a commercial value of RM600 per ton metric.

[41] The appellant contends that in 2009 they took a loan of RM5.2m from Agrobank (Bank Pertanian Malaysia Bhd) to ensure the successful implementation of the planting and reforestation project. The appellant is still burdened with the outstanding loan which is due and payable to Agrobank.

[42] In the judicial review application, the appellant did not challenge the right of the state to take back the subleased land since it is *gazetted* permanent forest reserve and belongs to the state.

[43] However, it is the appellant's position that the respondents' action of taking back the subleased land, taking possession of the planted trees, terminating the main lease, evicting the appellant in a compulsory manner and threatening to destroy the planted trees and assets of the appellant, were not done in accordance with the law. Thus, the appellant contends that the conduct of the respondents is illegal, irrational and tantamounts to serious procedural impropriety.

[44] Counsel for the appellant submitted that it will be an unjust enrichment and blatant disregard of the rule of law if the state were allowed to take back the subleased land together with all marketable Sentang trees on the land without adequate compensation being paid to the appellant and other related parties including PKPS (the subsidiary owned by the state). Counsel referred to art 13 of the Federal Constitution which provides:

> (1) *No person shall be deprived of property* save in accordance with law.
>
> (2) No law shall provide for *compulsory acquisition* or *use of property* without *adequate compensation*.

[45] In so far as the issue of illegality is concerned, it was submitted for the appellant that the so-called illegality was not caused by the appellant. In this regard, MNSB as the JVA company was eventually wound up and the JVA was declared as being illegal due to the failure or serious non-compliance on the part of PKPS to obtain the consent of the MOF pursuant to s 14B(1) of the 1972 Enactment.

[46] Counsel for the appellant further submitted that the respondents should not be allowed to gain any benefit from the reforestation project by relying on their self-induced illegality. With regard to the vetting of the JVA, the appellant relied on the representation by the state legal advisor and PKPS' solicitors, Messrs Baharuddin Ali & Co that the JVA was lawful.

[47] According to counsel, this is evident from the letter dated 30 August 2000 issued by Messrs Baharuddin Ali & Co. He said that it is clear that the formation of MNSB was proposed by the then State Legal Advisor. Hence, the respondents should be estopped from arguing that that the vetting is a mere formality. It was contended that the state legal advisor should have advised the parties especially PKPS of all the regulatory and mandatory legal requirements to be complied with, including the requirement to obtain consent of the MOF.

[48] It was argued for the appellant that even though the JVA is now rendered illegal, the state should not be permitted to confiscate and seize all the marketable timber without paying any compensation to the appellant as this will result in an unjust enrichment to the state.

[49] Counsel for the appellant referred to the legal principle laid down in *Patel v Mirza* [2017] 1 All ER 191; [2017] AC 467; [2016] UKSC 42; [2016] 3 WLR 399; [2016] 5 LRC 355; [2016] LLR 731 (SC) which was adopted by Malaysian Federal Court in the case of *Liputan Simfoni Sdn Bhd v Pembangunan Orkid Desa Sdn Bhd* [2019] 4 MLJ 141; [2019] 1 CLJ 183; [2018] 1 LNS 1613; [2018] MLRAU 484 (FC). Counsel for the appellant argued that, a wrongful party cannot benefit from their own illegality and wrongdoing.

[50] He referred to the Federal Court in the case of *Sykt Sebati Sdn Bhd v Pengarah Jabatan Perhutanan & Anor* [2019] 2 MLJ 689; [2019] 3 CLJ 157; [2019] 1 LNS 82; [2019] 2 MLRA 171; [2019] 2 AMR 492; [2019] AMEJ 0054 (FC) where it was enunciated that it would be inequitable for a party to deny liability to pay compensation after having derived a benefit from the other party:

> [81] In our view, the GCA should not be used by the Government or State Government as '*a cloak for denial of responsibilities*'. The lack of a formal contract should not serve as a loophole for the second defendant to deny its contractual responsibilities arising from the logging contract. *The conduct of the parties, particularly the defendants who benefited from the forest produce cess collection, would make it inequitable for the defendants to now claim that there was no contract to begin with*.
>
> ...
>
> [84] The logging contract is a valid and enforceable contract between the parties and the *plaintiff is entitled to claim compensation or damages* from the defendant arising from the termination of the said contract. (Emphasis and underlining added.)

[51] On the issue of locus standi, it was submitted for the appellant that they have a real and genuine interest in this subject matter (ie the reforestation project). In this regard, it was the appellant who made the proposal for reforestation, financed the project, paid for the relevant permits. It was contended that MNSB was only a special purpose vehicle which was set up to run the reforestation project.

[52] Counsel for the appellant submitted that the proper test to be adopted in determining whether or not the appellant has any locus standi to bring judicial review application should be the 'adversely affected' test as propounded by the Federal Court in the case of *Malaysian Trade Union Congress & Ors v Menteri Tenaga, Air dan Komunikasi & Anor* [2014] 3 MLJ 145; [2014] 2 CLJ 525; [2014] 2 AMR 101 (FC).

[53] In the present case, the learned judge (para [21] of the grounds of judgment) relied on the case of *Tan Poh Yee v Tan Boon Thien and other appeals* [2017] 3 MLJ 244; [2017] 3 CLJ 569; [2018] 2 MLRA 514 and the

A case of *GPQ Sdn Bhd v Constant View Sdn Bhd* [2017] 6 MLJ 728; [2017] 1 LNS 821; [2017] 4 MLRA 483; [2017] AMEJ 0689 (CA) on the issue of locus standi and held that the appellant lacked the requisite locus standi.

B **[54]** Further and/or alternatively, the learned judge held that there was also no issue of trespassing in the present case. The appellant was not occupying the said subleased land. The appellant filed this action to protect its interest in the land particularly all the Sentang trees planted over 1,400 acres of the subleased land.

C **[55]** Counsel for the appellant submitted that the respondents cannot now invoke s 14 of the Act to claim the planted Sentang trees as the state's property when the appellant was the one who bore all the costs and expenses for the plantation of Sentang trees.

D **[56]** As such, the appellant contended that the respondents' conduct is clearly illegal, irrational and tantamounts to serious procedural impropriety.

E **[57]** Counsel for the appellant reiterated that the appellant is the one who suffered actual loss and was adversely affected by the decision of the state. In amplification, it was contended that all the appellant's investment since 2001 in the Sentang plantation has been simply ignored by the respondents.

F **[58]** According to counsel, the appellant is still obligated to settle the loan sum of RM5.2m due and owing to the Agrobank. The appellant's directors have even pledged their own residential properties as security for repayment of the loan and will face foreclosure action in the event that the loan sum is not fully settled/redeemed.

G **[59]** According to the appellant, the respondents have appointed a new company to revive the reforestation project and as such the respondents should first conduct a valuation and determine the quantum for adequate compensation to be paid to the appellant and other interested parties, before
H allowing the new company to fell the trees planted.

[60] Counsel for the appellant referred to the following contractual clauses in the various agreements between the parties:

I *Clause 14 Lease and Concession Agreement*

14. 1 The parties herein agree that if during the Agreed Period hereby stated, the said Areas or any part thereof shall be acquired by the Federal Government of Malaysia and/or the State Government of Selangor or any other authority or authorities as aforesaid, *all monies payable as or by way of compensation shall be paid in accordance with Land Acquisition Act 1960*.

Clause 23.1 Joint Venture Agreement

23. 1 The parties hereto agree that in the event the said area or any part thereof is subject to exercise of any rights under Land Acquisition Act, *all compensations shall be paid in accordance with the Land Acquisition Act 1960*.

Clause 14 Sub-Lease Agreement

14. 1 The parties herein agree that if during the Agreed Period hereby stated, the said Areas or any part thereof shall be acquired by the Federal Government of Malaysia and/or the State Government of Selangor or any other authority or authorities as aforesaid, *all monies payable as or by way of compensation shall be paid in accordance with Land Acquisition Act 1960*.

[61] Counsel for the appellant submitted that by virtue of the aforesaid clauses, it is an undisputed fact that the state has intended and agreed to adopt the method under Land Acquisition Act 1960 for the purpose of paying compensation in the event that the subleased area is taken back by the state (despite the fact that the land is *gazetted* permanent forest reserve and no issue document of title has been issued).

[62] Counsel said that this clear intention of the parties can be garnered from all the contractual provisions inserted in the three agreements which were all vetted by the state legal advisor and prepared by PKPS' panel solicitors.

[63] Further and/or alternatively, it was argued for the appellant that the state has, by conduct in 2004, agreed for a compensation sum of RM4m to be paid for a partial take-over of the subleased land. A valuation report had been prepared. Hence, a precedent had already been set. The appellant thereafter seeks for a mandamus or an order to direct the respondents to appoint a valuer to assess the adequate compensation to be paid to the affected parties including the appellant.

[64] In this present appeal, it is submitted that the appellant will suffer grave injustice if the respondents were to be allowed to take the benefit from all the marketable timber trees planted by the appellant through MNSB. Counsel emphasised that the illegality pertaining to the JVA was not even contributed to by the appellant.

[65] As such, in order to prevent an injustice, counsel for the appellant urged the court to mould the appropriate reliefs and order the respondents to conduct a valuation and pay reasonable compensation to the appellant and to other aggrieved parties.

[66] We may now turn to the position that was taken by the respondents.

A **[67]** The learned State Legal Advisor (representing the respondents) argued that the respondents are not liable to pay nor offer any compensation to the appellant since the JVA was tainted with illegality. The respondents relied on s 24(a) and (b) of the Contracts Act 1950, which provides as follows:

B 24 The consideration or object of an agreement is lawful, unless —

(a) it is forbidden by a law;

(b) it is of such a nature that, if permitted, it would defeat any law;

C **[68]** It was submitted that the appellant has no direct interest in the subleased land and is a trespasser thereon. The state had granted a 60 years lease of the land to PKPS, and PKPS in turn had granted a 50 years sublease to MNSB. The subleased was not granted to the appellant.

D **[69]** On illegality, counsel for the respondents emphasised that on 14 September 2010 the Kuala Lumpur High Court in the winding up proceedings by PKSB against MNSB, had ruled that the formation of MNSB is illegal and further held that the JVA is also illegal.

E **[70]** Hence, it was argued that any purported interest that the appellant may have on the land (if at all), via its shareholding in MNSB, is unenforceable in law as the JVA is illegal.

F **[71]** It was contended that the respondents are not liable to undertake any assessment of compensation since there was no acquisition of land under the Land Acquisition Act 1960. Hence, the question of land acquisition proceedings does not arise.

G **[72]** The land involved in this case is in fact *gazetted* permanent forest reserve land which belongs to the state. There is no obligation on their part to pay any compensation to the appellant as the land and everything thereupon belonged to the state per s 14 of the National Forestry Act 1984. Section 14 of the National Forestry Act 1984 provides:

H All forest produce situate, lying, growing or having its origin within a permanent reserved forest or State land *shall be the property of the state authority* except where the rights to such forest produce have been specifically disposed of in accordance with the provisions of this Act or any other written law.

I **[73]** The respondents also contended that the appellant, as a shareholder of MNSB, had failed to apply to the winding up court under s 486 of the Companies Act 2016 ('the CA 2016') in respect of the liquidator's exercise of power. In this regard, it was contended that MNSB's liquidator had previously agreed to hand over the subleased land. The appellant as shareholder of MNSB,

has not to-date, challenged the liquidator's exercise of power in this regard.

[74] The next point that was raised was res judicata.

[75] In this regard, it was argued for the respondents that on 14 September 2010 the High Court had allowed the winding up petition which was filed by PKPS and the court found, inter alia, that the incorporation of MNSB to be illegal for contravention of s 14B of the 1972 Enactment and s 14(1) of the 1962 Act. The High Court also found that the substratum of MNSB's incorporation had collapsed.

[76] The appellant then brought an action against PKPS via Suit 514 claiming for damages. PKPS filed a counterclaim against the appellant and the appellant's directors for conspiracy to injure PKPS' interest. On 26 June 2014, the Shah Alam High Court dismissed the claim and counterclaim with costs. The respondents take the position that the principle of res judicata applies to preclude the appellant from raising matters which had already been adjudicated upon in previous litigation.

OUR DECISION

[77] Obviously, there is a history of litigation related to the reforestation project. That litigation resulted in two significant events:

(a) the winding up order dated 14 September 2010 which resulted in MNSB being wound up; and

(b) Suit 514 between the appellant and PKPS as the joint venture partners for misrepresentation and return of investments etc. The appellant's claim and the counterclaim by PKPS were both dismissed. The counterclaim concerned amongst others, the Sentang trees which had been planted on the subleased land.

[78] The judicial review herein seeks to quash the notice (per the impugned letter) to vacate the subleased land which was issued by first respondent and also a mandamus directing a valuation of the 'assets' on the subleased land to be undertaken for purposes of determining the compensation to be paid by the respondents. We can only understand those assets to be a reference to the Sentang trees.

[79] We are of the view that the real matters and grievance of the appellant as raised in this judicial review are matters which ought to and could have been raised in Suit 514. In any event, it is clear that the appellant's monetary claim via the judicial review proceedings is subsumed in the claim that was previously presented by the appellant in Suit 514.

[80] The compensation that the appellant is seeking through the judicial review application is actually part and parcel of the claim which was previously made in Suit 514 against PKPS, its joint venture partner. We are thus impelled to the view that res judicata in the wider sense applies to prohibit the judicial review application.

[81] In reality, the appellant is asserting its rights as a shareholder of MNSB (in liquidation) in circumstances where that right can only be taken up under the terms of s 486(2) of the CA 2016 which reads, 'The exercise by the liquidator in a winding up by the court of the powers conferred by this section is subject to the control of the court and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers'.

[82] We mentioned in the early part of this judgment (para 21 above) that the appellant has no interest in the subleased land and that the entity which has a direct legal interest in the subleased land, and by extension the Sentang tress situated thereon, is MNSB. The appellant, being a shareholder of MNSB has no legal interest in the assets of MNSB.

[83] The principle that shareholders have no legal interest in the assets of the company in which shares are held, is trite. In this regard it was established by the seminal case of *Macaura v Northern Assurance Co Ltd* [1925] AC 619; [1925] All ER 51 (HL) that shareholders have no interest in a company's property. Lord Wrenbury's speech at p 633 is instructive. He said that 'the corporator even if he holds all the shares is not the corporation … neither he nor any creditor of the company has any property legal or equitable in the assets of the corporation'.

[84] For completeness, we think that it is also relevant to refer to *Pioneer Haven Sdn Bhd v Ho Hup Construction Co Bhd & Anor and other appeals* [2012] 3 MLJ 616; [2012] 5 CLJ 169, where the Court of Appeal (per Zainun Ali JCA, as she then was) enunciated,

> [151] It is of course trite that the cornerstone of company law is that a company is a separate legal entity from its shareholders. As such, a *shareholder cannot claim any right to any asset of the company, for it has no legal or equitable interest therein* (See *Law Kam Loy & Anor v Boltex Sdn Bhd & Ors* [2005] MLJU 225; [2005] 3 CLJ 355).

[85] As such, as a matter of law, the appellant as the majority shareholder of MNSB has no legal right to the assets of MNSB. Thus, whether the assets are in the form of the Sentang trees or other vegetation which had been planted on the subleased land, or whether the asset is in the form of a chose in action, the right to sue for the asset lies with MNSB. This appear to be the real intent and grievance of the appellant.

[86] That being so, we therefore agree that the appellant's locus standi to commence the judicial review application would strain the terms of the 'adversely affected' test in O 53 r 2(4) of the Rules of Court 2012.

[87] In our view, it is for the liquidator of MNSB to take any action as he thinks fit. It is therefore MNSB which should be mounting an action, if at all, and to make a claim for the compensation payable (if any) in respect of the Sentang trees. In this regard, vis a vis the judicial review application, it is pertinent to note that the Jabatan Insolvensi Malaysia had intimated via letter dated 19 March 2018,

> 2.Untuk makluman tuan, Pegawai Penerima selaku Pelikuidasi (PP) Megafores Nursery Sdn Bhd (MNSB) tidak mempunyai apa-apa bantahan terhadap Permohonan Untuk Semakan Kehakiman No: BA-25-4-01/2018 di Mahkamah Tinggi Shah Alam dan tidak berhasrat untuk dijadikan pihak kepada prosiding tersebut.

[88] And in their letter dated 28 March 2018 the liquidator had stated that,

> 2.Untuk makluman tuan, Kebenaran Mahkamah Penggulungan Syarikat di bawah Seksyen 225 (3) (a) Akta Syarikat 1965 dan Kebenaran Pelikuidasi di bawah Seksyen 236 (2) (a) Akta Syarikat 1965 tidak diperlukan kerana permohonan semakan Kehakiman difailkan oleh Pemohon (Mega Forest Plantation Management Sdn Bhd) atas kapasitinya sendiri dan bukannya sebagai Megafores Nursery Sdn Bhd.

[89] As the learned judge had observed in para [18] of his judgment, the appellant did not challenge the liquidator's stand that he (the liquidator) had decided to re-deliver possession of the subleased land to the state within 14 days of the letter dated 4 April 2011 which was issued by Jabatan Perhutanan Negeri Selangor to PKPS.

[90] The relevant part of the letter reads as:

> 3. Pihak kami dimaklumkan pada 14 September 2010 satu perintah penggulungan telah dibuat terhadap Syarikat Megaforest Nursery Sdsn.[sic] Bhd oleh Mahkamah Tinggi Kuala Lumpur di atas permohonan Perbadanan Kemajuan Pertanian Selangor dan pegawai dari Jabatan Insolvensi Malaysia telah dilantik sebagai pelikuidasi syarikat. *Perbincangan dengan Jabatan Insolvensi telah dilakukan pada 1 April 2011 dan pihak Jabatan Insolvensi Malaysia akan menyerahkan kawasan seluas 1,000 hektar kembali kepada Jabatan Perhutanan Negeri Selangor dalam masa 14 hari mulai pada 4 April 2011*. (Emphasis added.)

[91] Clearly, it was open to the appellant, as the shareholder of MNSB, to challenge the liquidator's decision to re-deliver possession of the subleased land to the state. However, the appellant appears not willing to challenge the liquidator's decision in that regard. That is of course the appellant's prerogative.

[92] Ultimately, it is obvious that the judicial review proceedings are in substance, an action by the appellant to assert rights or entitlements of MNSB, rather than rights or entitlements of the appellant themselves.

[93] In our view, the fact that the appellant had taken loans to finance the reforestation does not vest any independent cause of action in the appellant as the financing of the reforestation by the appellant is at best, a form of a shareholders loan to MNSB, as these were funds which were provided to MNSB being the legal entity which was to undertake the reforestation.

[94] In the result, while we empathise with the predicament of the appellant we are nevertheless impelled to the conclusion that the appellant had not established or identified any appealable error or misdirection on the part of the learned judge which warrants appellate intervention.

[95] In the result, we find no merits in the appeal. The appeal is therefore dismissed with no order as to costs.

Appeal dismissed.

Reported by Ashok Kumar